

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

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2007

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number 000-31293

EQUINIX, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State of incorporation)

77-0487526
(I.R.S. Employer Identification No.)

301 Velocity Way, Fifth Floor, Foster City, California 94404
(Address of principal executive offices, including ZIP code)

(650) 513-7000
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) Yes No and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer. See definition of "accelerated filer" and "large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check one):
Large accelerated filer Accelerated filer Non-accelerated filer

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The number of shares outstanding of the registrant's Common Stock as of September 30, 2007 was 36,293,262.

[Table of Contents](#)

EQUINIX, INC.

INDEX

	<u>Page No.</u>
Part I - Financial Information	
Item 1. Financial Statements (unaudited):	
Condensed Consolidated Balance Sheets as of September 30, 2007 and December 31, 2006	3
Condensed Consolidated Statements of Operations for the Three and Nine Months Ended September 30, 2007 and 2006	4
Condensed Consolidated Statements of Cash Flows for the Nine Months Ended September 30, 2007 and 2006	5
Notes to Condensed Consolidated Financial Statements	6
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	32
Item 3. Quantitative and Qualitative Disclosures About Market Risk	51
Item 4. Controls and Procedures	53
Part II - Other Information	
Item 1. Legal Proceedings	53
Item 1A. Risk Factors	55
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	68
Item 3. Defaults Upon Senior Securities	68
Item 4. Submission of Matters to a Vote of Security Holders	68
Item 5. Other Information	68
Item 6. Exhibits	69
Signatures	75
Index to Exhibits	76

[Table of Contents](#)

PART I - FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements

EQUINIX, INC.
Condensed Consolidated Balance Sheets
(in thousands)

	September 30, 2007	December 31, 2006
	(unaudited)	
Assets		
Current assets:		
Cash and cash equivalents	\$ 343,452	\$ 82,563
Short-term investments	64,005	48,831
Accounts receivable, net	49,176	26,864
Prepays and other current assets	26,489	8,003
Total current assets	483,122	166,261
Long-term investments	28,905	25,087
Property and equipment, net	1,069,080	546,395
Goodwill	430,277	16,919
Intangible assets, net	70,191	522
Debt issuance costs, net	22,474	3,006
Other assets	26,517	13,642
Total assets	<u>\$ 2,130,566</u>	<u>\$ 771,832</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable and accrued expenses	\$ 94,339	\$ 27,269
Accrued property and equipment	60,469	23,337
Current portion of accrued restructuring charges	14,142	13,469
Current portion of capital lease and other financing obligations	3,765	1,977
Current portion of mortgage and loans payable	3,162	2,150
Other current liabilities	22,142	10,151
Total current liabilities	198,019	78,353
Accrued restructuring charges, less current portion	19,671	28,103
Capital lease and other financing obligations, less current portion	94,501	92,722
Mortgage and loans payable, less current portion	278,946	96,746
Convertible debt	678,236	86,250
Deferred rent and other liabilities	46,516	34,630
Total liabilities	<u>1,315,889</u>	<u>416,804</u>
Stockholders' equity:		
Common stock	36	29
Additional paid-in capital	1,356,427	904,573
Accumulated other comprehensive income	10,773	3,870
Accumulated deficit	(552,559)	(553,444)
Total stockholders' equity	814,677	355,028
Total liabilities and stockholders' equity	<u>\$ 2,130,566</u>	<u>\$ 771,832</u>

See accompanying notes to condensed consolidated financial statements

[Table of Contents](#)

EQUINIX, INC.
Condensed Consolidated Statements of Operations
(in thousands, except per share data)

	Three months ended September 30,		Nine months ended September 30,	
	2007	2006	2007	2006
	(unaudited)			
Revenues	\$ 103,782	\$ 73,726	\$ 280,728	\$ 207,143
Costs and operating expenses:				
Cost of revenues	62,891	49,137	171,265	138,045
Sales and marketing	9,630	7,502	27,602	23,180
General and administrative	25,182	18,631	72,122	53,486
Restructuring charges	—	1,527	407	1,527
Total costs and operating expenses	<u>97,703</u>	<u>76,797</u>	<u>271,396</u>	<u>216,238</u>
Income (loss) from operations	6,079	(3,071)	9,332	(9,095)
Interest income	3,309	1,724	10,340	5,065
Interest expense	(5,662)	(3,604)	(15,240)	(10,820)
Other income (expense)	3,167	53	3,168	(164)
Loss on conversion and extinguishment of debt	(2,554)	—	(5,949)	—
Income (loss) before income taxes and cumulative effect of a change in accounting principle	4,339	(4,898)	1,651	(15,014)
Income taxes	(215)	(270)	(766)	(870)
Net income (loss) before cumulative effect of a change in accounting principle	4,124	(5,168)	885	(15,884)
Cumulative effect of a change in accounting principle for stock-based compensation (net of income taxes of \$0)	—	—	—	376
Net income (loss)	<u>\$ 4,124</u>	<u>\$ (5,168)</u>	<u>\$ 885</u>	<u>\$ (15,508)</u>
Basic net income (loss) per share:				
Net income (loss) per share before cumulative effect of a change in accounting principle	\$ 0.13	\$ (0.18)	\$ 0.03	\$ (0.56)
Cumulative effect of a change in accounting principle	—	—	—	0.01
Net income (loss) per share	<u>\$ 0.13</u>	<u>\$ (0.18)</u>	<u>\$ 0.03</u>	<u>\$ (0.55)</u>
Weighted-average shares	<u>31,683</u>	<u>28,743</u>	<u>30,845</u>	<u>28,356</u>
Diluted net income (loss) per share:				
Net income (loss) per share before cumulative effect of a change in accounting principle	\$ 0.12	\$ (0.18)	\$ 0.03	\$ (0.56)
Cumulative effect of a change in accounting principle	—	—	—	0.01
Net income (loss) per share	<u>\$ 0.12</u>	<u>\$ (0.18)</u>	<u>\$ 0.03</u>	<u>\$ (0.55)</u>
Weighted-average shares	<u>33,112</u>	<u>28,743</u>	<u>32,339</u>	<u>28,356</u>

See accompanying notes to condensed consolidated financial statements

[Table of Contents](#)

EQUINIX, INC.
Condensed Consolidated Statements of Cash Flows
(in thousands)

	Nine months ended September 30,	
	2007	2006
	(unaudited)	
Cash flows from operating activities:		
Net income (loss)	\$ 885	\$ (15,508)
Adjustments to reconcile net (income) loss to net cash provided by operating activities:		
Depreciation	64,495	52,200
Stock-based compensation	31,032	23,540
Restructuring charge	407	1,527
Accretion of asset retirement obligation and accrued restructuring charges	2,373	2,795
Amortization of intangible assets and non-cash prepaid rent	689	833
Amortization of debt issuance costs	1,985	643
Cumulative effect of a change in accounting principle	—	(376)
Gain on foreign currency hedge	(1,494)	—
Other	(1,152)	22
Changes in operating assets and liabilities, net of effect of acquisition:		
Accounts receivable	(7,068)	(6,908)
Prepays and other assets	(1,825)	(2,305)
Accounts payable and accrued expenses	23,079	470
Accrued restructuring charges	(10,100)	(9,213)
Other liabilities	2,833	1,833
Net cash provided by operating activities	<u>106,139</u>	<u>49,553</u>
Cash flows from investing activities:		
Purchases of investments	(89,476)	(68,619)
Maturities and sales of investments	71,521	56,789
Purchases of San Jose IBX properties	(71,471)	—
Purchase of Los Angeles IBX property	(49,059)	—
Purchase of IXEurope, net of cash acquired	(541,729)	—
Purchase of Chicago IBX property	—	(9,766)
Purchases of other property and equipment	(295,809)	(102,904)
Accrued property and equipment	23,940	2,814
Other investing activities	877	8
Net cash used in investing activities	<u>(951,206)</u>	<u>(121,678)</u>
Cash flows from financing activities:		
Proceeds from exercise of stock options and employee stock purchase plans	27,568	28,756
Proceeds from issuance of common stock	339,946	—
Proceeds from convertible subordinated notes	645,986	—
Proceeds from loans payable	118,754	—
Proceeds from borrowings from credit line	—	40,000
Repayment of borrowings from credit line	—	(30,000)
Repayment of capital lease and other financing obligations	(1,445)	(1,130)
Repayment of mortgage payable	(1,573)	(835)
Debt issuance costs	(22,224)	(253)
Other financing activities	—	814
Net cash provided by (used in) financing activities	<u>1,107,012</u>	<u>37,352</u>
Effect of foreign currency exchange rates on cash and cash equivalents	(1,056)	145
Net increase (decrease) in cash and cash equivalents	260,889	(34,628)
Cash and cash equivalents at beginning of period	82,563	119,267
Cash and cash equivalents at end of period	<u>\$ 343,452</u>	<u>\$ 84,639</u>
Supplemental cash flow information:		
Cash paid for taxes	<u>\$ 240</u>	<u>\$ 545</u>
Cash paid for interest	<u>\$ 16,130</u>	<u>\$ 11,352</u>

See accompanying notes to condensed consolidated financial statements

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. Basis of Presentation and Significant Accounting Policies

The accompanying unaudited condensed consolidated financial statements have been prepared by Equinix, Inc. (“Equinix” or the “Company”) and reflect all adjustments, consisting only of normal recurring adjustments, which in the opinion of management are necessary to fairly state the financial position and the results of operations for the interim periods presented. The balance sheet at December 31, 2006 has been derived from audited financial statements at that date. The financial statements have been prepared in accordance with the regulations of the Securities and Exchange Commission (“SEC”), but omit certain information and footnote disclosure necessary to present the statements in accordance with generally accepted accounting principles. For further information, refer to the Consolidated Financial Statements and Notes thereto included in Equinix’s Form 10-K as filed with the SEC on February 28, 2007. Results for the interim periods are not necessarily indicative of results for the entire fiscal year.

The preparation of consolidated financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Certain amounts in the accompanying condensed consolidated financial statements have been reclassified to conform to the condensed consolidated financial statement presentation as of and for the three months ended September 30, 2007.

On September 14, 2007, a wholly-owned subsidiary of the Company purchased the entire issued and to be issued share capital of IXEurope plc (“IXEurope”), a publicly-held company headquartered in London, U.K. (the “IXEurope Acquisition”) (see Note 2). Under the final terms of the IXEurope Acquisition, IXEurope shareholders received 140 British pence in cash for each IXEurope share. The purchase price, including direct transaction costs, totaled 271,113,000 British pounds or \$549,154,000. IXEurope, a similar business to that of the Company, operates data centers in the United Kingdom, France, Germany and Switzerland and provides the Company with an immediate entry into the European data center market, supplementing the Company’s existing U.S. and Asia-Pacific operations. The condensed consolidated financial statements of the Company include the operations of IXEurope from September 14, 2007 to September 30, 2007 and reflect the net assets acquired. In September 2007, the Company completed the sale of 4,211,939 shares of its common stock resulting in net proceeds of \$339,946,000 and the sale of its 3.00% Convertible Subordinated Notes resulting in gross proceeds of \$395,986,000 (see Note 11) primarily to fund the IXEurope Acquisition.

Consolidation and Foreign Currency Transactions

The accompanying unaudited condensed consolidated financial statements include the accounts of Equinix and its subsidiaries, including the operations of IXEurope from September 14, 2007 to September 30, 2007. All significant intercompany accounts and transactions have been eliminated in consolidation. Foreign exchange gains or losses resulting from foreign currency transactions, including intercompany foreign currency transactions that are anticipated to be repaid within the foreseeable future, are reported within other income (expense) on the Company’s accompanying statements of operations.

In September 2007, a dormant subsidiary of the Company in the Netherlands was substantially liquidated. As a result, the historical foreign exchange gain of \$621,000 accumulated within other comprehensive income associated with this dormant subsidiary was recognized in the Company’s results of operations for the three and nine months ended September 30, 2007 within other income (expense).

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Revenue Recognition and Allowance for Doubtful Accounts

Equinix derives more than 90% of its revenues from recurring revenue streams, consisting primarily of (1) colocation services, such as from the licensing of cabinet space and power; (2) interconnection services, such as cross connects and Equinix Exchange ports; (3) managed infrastructure services, such as Equinix Direct, bandwidth, mail service and managed platform solutions and (4) other services consisting of rent from non-IBX space. The remainder of the Company's revenues are from non-recurring revenue streams, such as from the recognized portion of deferred installation revenues, professional services, contract settlements and equipment sales. Revenues from recurring revenue streams are billed monthly and recognized ratably over the term of the contract, generally one to three years for IBX space customers. Non-recurring installation fees, although generally paid in a lump sum upon installation, are deferred and recognized ratably over the longer of the term of the related contract or expected life of the installation. Professional service fees are recognized in the period in which the services were provided and represent the culmination of the earnings process as long as they meet the criteria for separate recognition under EITF Abstract No. 00-21, "Revenue Arrangements with Multiple Deliverables." Revenue from bandwidth and equipment is recognized on a gross basis in accordance with EITF Abstract No. 99-19, "Recording Revenue as a Principal versus Net as an Agent", primarily because the Company acts as the principal in the transaction, takes title to products and services and bears inventory and credit risk. To the extent the Company does not meet the criteria for gross basis accounting for bandwidth and equipment revenue, the Company records the revenue on a net basis. Revenue from contract settlements, when a customer wishes to terminate their contract early, is generally recognized on a cash basis when no remaining performance obligations exist to the extent that the revenue has not previously been recognized.

The Company occasionally guarantees certain service levels, such as uptime, as outlined in individual customer contracts. To the extent that these service levels are not achieved, the Company reduces revenue for any credits given to the customer as a result. The Company generally has the ability to determine such service level credits prior to the associated revenue being recognized, and historically, these credits have generally not been significant. There were no significant service level credits recorded during the three and nine months ended September 30, 2007 and 2006.

Revenue is recognized only when the service has been provided and when there is persuasive evidence of an arrangement, the fee is fixed or determinable and collection of the receivable is reasonably assured. It is customary business practice to obtain a signed master sales agreement and sales order prior to recognizing revenue in an arrangement. Taxes collected from customers and remitted to governmental authorities are reported on a net basis and excluded from revenue.

The Company assesses collection based on a number of factors, including past transaction history with the customer and the credit-worthiness of the customer. The Company generally does not request collateral from its customers although in certain cases the Company obtains a security interest in a customer's equipment placed in its IBX centers or obtains a deposit. If the Company determines that collection of a fee is not reasonably assured, the Company defers the fee and recognizes revenue at the time collection becomes reasonably assured, which is generally upon receipt of cash. In addition, Equinix also maintains an allowance for doubtful accounts for estimated losses resulting from the inability of its customers to make required payments for which the Company had expected to collect the revenues. If the financial condition of Equinix's customers were to deteriorate or if they became insolvent, resulting in an impairment of their ability to make payments, greater allowances for doubtful accounts may be required. Management specifically analyzes accounts receivable and current economic news and trends, historical bad debts, customer concentrations, customer credit-worthiness and changes in customer payment terms when evaluating revenue recognition and the adequacy of the Company's reserves. A specific bad debt reserve of up to the full amount of a particular invoice value is provided for certain problematic customer balances. An additional reserve is established for all other accounts based on the age of the invoices and an analysis of historical credits issued. Delinquent account balances are written-off after management has determined that the likelihood of collection is not probable.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The Company recorded a net adjustment of \$775,000 to its U.S. recurring revenues as a result of the correction of billing errors attributable to prior periods, the net impact of which increased the Company’s U.S. recurring revenues during the three months ended June 30, 2007. The Company concluded that the cumulative credit to recurring revenues, totaling \$775,000, was not material to any previously-reported historical period and expected results of operations for the current fiscal year. As such, this cumulative credit was recorded during the quarter ended June 30, 2007 and is included in the statement of operations for the nine months ended September 30, 2007.

Net Income (Loss) per Share

The Company computes net income (loss) per share in accordance with SFAS No. 128, “Earnings per Share;” SEC Staff Accounting Bulletin (“SAB”) No. 98; EITF Issue 03-6, “Participating Securities and the Two-Class Method Under FASB 128;” EITF Issue 04-8 “The Effect of Contingently Convertible Instruments on Diluted Earnings per Share” and SFAS No. 123(R), “Share-Based Payment.” Basic net income (loss) per share is computed using net income (loss) and the weighted-average number of common shares outstanding. Diluted net income (loss) per share is computed using net income (loss), adjusted for interest expense as a result of the assumed conversion of the Company’s Convertible Subordinated Debentures, 2.50% Convertible Subordinated Notes and 3.00% Convertible Subordinated Notes, if dilutive, and the weighted-average number of common shares outstanding plus any dilutive potential common shares outstanding. Dilutive potential common shares include the assumed exercise, vesting and issuance activity of employee equity awards using the treasury stock method, as well as warrants and shares issuable upon the conversion of the Convertible Subordinated Debentures, 2.50% Convertible Subordinated Notes and 3.00% Convertible Subordinated Notes.

The following table sets forth the computation of basic and diluted net income (loss) per share for the periods presented (in thousands, except per share amounts) (unaudited):

	Three months ended September 30,		Nine months ended September 30,	
	2007	2006	2007	2006
Numerator:				
Numerator for basic net income (loss) per share	\$ 4,124	\$ (5,168)	\$ 885	\$ (15,508)
Effect of assumed conversion of convertible debt:				
Interest expense, net of tax	—	—	—	—
Numerator for diluted net income (loss) per share	\$ 4,124	\$ (5,168)	\$ 885	\$ (15,508)
Denominator:				
Weighted-average shares	32,142	28,991	31,305	28,606
Weighted-average unvested restricted shares issued subject to forfeiture	(459)	(248)	(460)	(250)
Denominator for basic net income (loss) per share	31,683	28,743	30,845	28,356
Effect of dilutive securities:				
Convertible subordinated debentures	—	—	—	—
2.50% convertible subordinated notes	—	—	—	—
3.00% convertible subordinated notes	—	—	—	—
Employee equity awards	1,429	—	1,494	—
Warrants	—	—	—	—
Total dilutive potential shares	1,429	—	1,494	—
Denominator for diluted net income (loss) per share	33,112	28,743	32,339	28,356
Net income (loss) per share:				
Basic	\$ 0.13	\$ (0.18)	\$ 0.03	\$ (0.55)
Diluted	\$ 0.12	\$ (0.18)	\$ 0.03	\$ (0.55)

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The following table sets forth potential shares of common stock that are not included in the diluted net income (loss) per share calculation above because to do so would be anti-dilutive for the periods indicated (unaudited):

	Three months ended September 30,		Nine months ended September 30,	
	2007	2006	2007	2006
Shares reserved for conversion of convertible subordinated debentures	816,457	2,183,548	816,457	2,183,548
Shares reserved for conversion of 2.50% convertible subordinated notes	2,231,475	—	2,231,475	—
Shares reserved for conversion of 3.00% convertible subordinated notes	2,944,551	—	2,944,551	—
Unvested restricted shares issued subject to forfeiture	—	247,750	—	247,750
Common stock warrants	1,034	9,490	1,034	9,490
Common stock related to employee equity awards	1,065,073	3,935,819	1,093,041	3,935,819

Income Taxes

Income taxes are accounted for under the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the year in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts that are expected more likely than not to be realized in the future.

The IXEurope Acquisition did not result in a significant impact to the Company's tax accounting. The condensed consolidated financial statements include acquired deferred tax assets of \$1,188,000 attributable to the operations in Switzerland. The deferred tax assets in all the jurisdictions other than Switzerland had been fully reserved by IXEurope prior to the IXEurope Acquisition.

The Company will continue to provide a valuation allowance for the net deferred tax assets, other than the deferred tax assets associated with its Singapore and Switzerland subsidiaries, until it becomes more likely than not that the net deferred tax assets will be realizable. The Company released the tax valuation allowance on the Company's Singaporean net deferred tax assets during the year ended December 31, 2006; the Company also recorded additional deferred tax assets attributable to Switzerland upon closing the IXEurope Acquisition. For the three and nine months ended September 30, 2007, the Company recorded a tax provision of \$215,000 and \$766,000, respectively. For the three and nine months ended September 30, 2006, the Company recorded a tax provision of \$270,000 and \$870,000, respectively. The tax provision recorded in the periods ended September 30, 2007 was attributable to the Company's foreign operations. The tax provision recorded in the periods ended September 30, 2006 is primarily related to federal alternative minimum tax, which was attributable to the Company's domestic operations. The Company did not record any excess tax benefit associated with the stock options exercised by employees during the three and nine months ended September 30, 2007. For the nine months ended September 30, 2006, the Company recorded \$825,000 of excess tax benefit associated with the stock options exercised by employees during the period.

In January 2007, the Company adopted the provisions of FIN 48, "Accounting for Uncertainty in Income Taxes" ("FIN 48"), which clarifies the accounting for uncertainty in income taxes recognized in the condensed consolidated financial statements in accordance with FASB Statement No. 109, "Accounting for Income Taxes." FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. The adoption of FIN 48 resulted in no cumulative effect of a change in accounting principle being recorded on the Company's condensed consolidated financial statements during the three and nine months ended September 30, 2007.

As of the date of adopting FIN 48, the Company had approximately \$1,883,000 of unrecognized tax benefits including \$138,000 of interest primarily related to tax positions claiming refundable research credits in the State of Hawaii. The Company has filed an appeal in the Tax Court in Hawaii and is currently working to settle the claim. As of September 30, 2007, the Company believed that the appeal filed in the Tax Court in Hawaii would possibly be settled within the next nine months. However, the Company cannot estimate the range of any settlement. Subsequent to the adoption of FIN 48, the Company recorded additional unrecognized tax benefits of \$206,000 attributable to certain expenditures included in the Singaporean net operating loss carry-forward as it is probable that the inclusion of those expenditures in the Singaporean net operating loss carry-forward would be denied by the local tax authority. As a result, the total unrecognized tax benefits were \$2,303,000 as of September 30, 2007. A majority of the unrecognized tax benefits, if subsequently recognized, will affect the Company's effective tax rate at the time of recognition. The Company will continue to classify the interest and penalties recognized in accordance with paragraphs 15 and 16, respectively, of FIN 48 in the financial statements as income tax. The Company's income tax returns for all tax years remain open to examination by federal and state taxing authorities due to the Company's Net Operating Loss ("NOL") carry-forward. In addition, the Company's tax years of 2001 through 2005 also remain open and subject to examination by local tax authorities in the foreign jurisdictions in which the Company has major operations.

The Internal Revenue Service completed the examination of the Company's income tax return for fiscal year 2003 during the three months ended June 30, 2007, which did not result in any impact to the Company's tax liabilities and financial statements.

Construction in Progress

Construction in progress includes direct and indirect expenditures for the construction and expansion of IBX centers and is stated at original cost. The Company has contracted out substantially all of the construction and expansion efforts of its IBX centers to independent contractors under construction contracts. Construction in progress includes certain costs incurred under a construction contract including project management services, engineering and schematic design services, design development and construction services and other construction-related fees and services. In addition, the Company has capitalized certain interest costs during the construction phase. Once an IBX center or expansion project becomes operational, these capitalized costs are allocated to certain property and equipment categories and are depreciated at the appropriate rates consistent with the estimated useful life of the underlying assets.

Interest incurred is capitalized in accordance with SFAS No. 34, "Capitalization of Interest Costs." Total interest cost incurred and total interest capitalized during the three months ended September 30, 2007 were \$8,636,000 and \$2,974,000, respectively. Total interest cost incurred and total interest capitalized during the nine months ended September 30, 2007 were \$21,360,000 and \$6,120,000, respectively. Total interest cost incurred and total interest capitalized during the three months ended September 30, 2006 were \$3,958,000 and \$354,000, respectively. Total interest cost incurred and total interest capitalized during the nine months ended September 30, 2006 were \$11,862,000 and \$1,042,000, respectively.

The Company recorded a net adjustment of \$491,000 to its capitalized interest as a result of the inclusion of certain fixed assets under construction attributable to prior periods, the net impact of which decreased the Company's interest expense during the three months ended September 30, 2007. The Company concluded that the cumulative amount, totaling \$491,000, was not material to any previously-reported historical period and expected results of operations for the current fiscal year. As such, this capitalized interest was recorded during the quarter ended September 30, 2007 and is included in the statement of operations for the nine months ended September 30, 2007.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Asset Retirement Obligations

The fair value of a liability for an asset retirement obligation is to be recognized in the period in which it is incurred if a reasonable estimate of fair value can be made. The associated retirement costs are capitalized and included as part of the carrying value of the long-lived asset and amortized over the useful life of the asset. Subsequent to the initial measurement, the Company is accreting the liability in relation to the asset retirement obligations over time and the accretion expense is being recorded as a cost of revenue. The Company's asset retirement obligations are primarily related to its IBX Centers, of which the majority are leased under long-term arrangements, and, in certain cases, are required to be returned to the landlords in original condition. All of the Company's leased IBX centers have been subject to significant development by the Company in order to convert them from, in most cases, vacant buildings or warehouses into IBX centers. The majority of the Company's leased IBX centers' initial lease terms expire at various dates ranging from 2010 to 2027 and all of them have renewal options available to the Company.

During the three and nine months ended September 30, 2007, the Company recorded accretion expense related to its asset retirement obligations of \$150,000 and \$439,000, respectively. During the three and nine months ended September 30, 2006, the Company recorded accretion expense related to its asset retirement obligations of \$138,000 and \$394,000, respectively.

Stock-Based Compensation

On January 1, 2006, the Company adopted the provisions of, and accounts for stock-based compensation in accordance with, SFAS No. 123(R), "Share-Based Payment," and related pronouncements ("SFAS 123(R)"). Under the fair value recognition provisions of this statement, stock-based compensation cost is measured at the grant date for all stock-based awards made to employees and directors based on the fair value of the award using an option-pricing model and is recognized as expense over the requisite service period, which is generally the vesting period. SFAS 123(R) supersedes the Company's previous accounting under Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees, ("APB 25") for periods beginning in fiscal year 2006. In March 2005, the SEC issued Staff Accounting Bulletin No. 107 ("SAB 107") providing supplemental implementation guidance for SFAS 123(R). The Company has applied the provisions of SAB 107 in its adoption of SFAS 123(R).

The Company currently uses the Black-Scholes option-pricing model to determine the fair value of stock options and shares purchased under the employee stock purchase plan as they only have a service condition. The Company currently uses a Monte Carlo simulation option-pricing model to determine the fair value of certain restricted stock grants that have both a service and market price condition. The determination of the fair value of stock-based payment awards on the date of grant using an option-pricing model is affected by the Company's stock price as well as assumptions regarding a number of complex and subjective variables. These variables include the Company's expected stock price volatility over the term of the awards, actual and projected employee stock option exercise behaviors.

In January 2007, the Stock Option Committee of the Board of Directors approved stock option grants to employees, excluding executive officers, to purchase an aggregate of 511,310 shares of common stock as part of the Company's annual refresh program. In addition, the Compensation Committee of the Board of Directors approved the issuance of 178,400 restricted stock units to certain employees, excluding executive officers, and an aggregate of 218,000 shares of restricted common stock and restricted stock units to executive officers as part of the annual refresh program. All such grants were made pursuant to the 2000 Equity Incentive Plan. In April 2007, the Compensation Committee of the Board of Directors approved the issuance of 84,000 shares of restricted common stock to the Company's new Chief Executive Officer who joined the Company in April 2007. In September 2007, the Company granted 62,436 restricted stock units to the two top officers of IXEurope, subject to vesting conditions including continuous employment through at least the end of 2008 (see Note 2) and achievement of certain financial performance criteria of the Europe operations. Additionally, the Compensation Committee of the Board of Directors approved the grant of 102,000 restricted stock units to senior management of IXEurope in September 2007 pursuant to the 2000 Equity Incentive Plan. All awards are subject to vesting provisions. All such equity awards described

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

in this paragraph have a total fair value as of the date of grants, net of estimated forfeitures, of \$63,347,000, which is expected to be amortized over a weighted-average period of 3.3 years. During the three and nine months ended September 30, 2007, the Company had amortized \$4,511,000 and \$12,030,000, respectively, net of estimated forfeitures, of the total fair value of such equity awards.

The following table presents, by operating expense, the Company's stock-based compensation expense recognized in the Company's condensed consolidated statement of operations (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2007	2006	2007	2006
Cost of revenues	\$ 878	\$ 664	\$ 3,019	\$ 2,385
Sales and marketing	2,049	1,623	6,440	5,647
General and administrative	7,562	4,598	21,573	15,508
	<u>\$ 10,489</u>	<u>\$ 6,885</u>	<u>\$ 31,032</u>	<u>\$ 23,540</u>

Goodwill and Other Intangible Assets

Goodwill and other intangible assets, net, consisted of the following (in thousands):

	September 30, 2007	December 31, 2006
Goodwill:		
Singapore	\$ 17,415	\$ 16,919
Europe	412,862	—
	430,277	16,919
Other intangibles:		
Intangible asset – customer contracts	70,327	4,370
Intangible asset – leases	5,337	1,017
Intangible asset – tradename	349	339
Intangible asset – workforce	160	160
Intangible asset – lease expenses	111	111
	76,284	5,997
Accumulated amortization	(6,093)	(5,475)
	<u>70,191</u>	<u>522</u>
	<u>\$ 500,468</u>	<u>\$ 17,441</u>

In September 2007, as a result of the IXEurope Acquisition, the Company recorded goodwill of \$408,812,000 and intangible assets, comprised of customer contracts and leases, of \$70,150,000. The customer contracts intangible asset is being amortized over an estimated useful life of 11 years and the lease intangible asset is being amortized over the remaining lease terms of the associated leases. All of these assets are denominated in British pounds and are subject to foreign currency fluctuations. The Company's goodwill from Singapore is an asset denominated in Singapore dollars and is also subject to foreign currency fluctuations. The Company's foreign currency translation gains and losses are a component of other comprehensive income and loss (see Note 15).

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

For the three and nine months ended September 30, 2007, the Company recorded amortization expense of \$423,000 and \$689,000, respectively. For the three and nine months ended September 30, 2006, the Company recorded amortization expense of \$160,000 and \$638,000, respectively. The Company expects to record the following amortization expense during the remainder of 2007 and beyond (in thousands):

Year ending:	
2007 (three months remaining)	\$ 1,636
2008	6,538
2009	6,421
2010	6,387
2011	6,278
2012 and thereafter	42,931
Total	<u>\$70,191</u>

Derivatives and Hedging Activities

The Company follows SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended, which requires the Company to recognize all derivatives on the consolidated 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 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. Any ineffective portion of a derivative's change in fair value will be immediately recognized in earnings.

In July and August 2007, the Company entered into forward contracts to purchase 265,156,000 British pounds at an average forward rate of 2.020007, or the equivalent of \$535,617,000, for purposes of hedging a portion of the purchase price of the IXEurope Acquisition. Upon cash payment in September 2007, the Company recorded a foreign exchange gain of \$1,494,000, which is reflected within other income (expense) on the Company's statement of operations for the three and nine months ended September 30, 2007.

The Company acquired interest rate swaps in connection with the European Financing (see Note 12). Interest incurred for the European Financing is based on variable interest rates and exposes the Company to interest rate risk. To mitigate the interest rate exposure, IXEurope had entered into two interest rate swap agreements to hedge a portion of the European Financing in order to transfer floating rate exposure to the counterparty in exchange for fixed payments by the Company. Upon the date of the IXEurope Acquisition and through September 30, 2007, these interest rate swaps were considered not to be effective hedges under the provisions of SFAS No. 133. As a result, the change in fair value of these two interest rate swaps totaling a loss of \$24,000 was recorded as an increase in interest expense in the accompanying statements of operations for the three and nine months ended September 30, 2007.

The Company may enter into additional hedging agreements in the future to mitigate its exposure to interest rate or foreign exchange risk.

2. IXEurope Acquisition

On September 14, 2007, a wholly-owned subsidiary of the Company purchased the entire issued and to be issued share capital of IXEurope, a publicly-held company headquartered in London, U.K. Under the final terms of the IXEurope Acquisition, IXEurope shareholders received 140 British pence in cash for each IXEurope share. The purchase price, including direct transaction costs, totaled 271,113,000 British pounds or \$549,154,000. IXEurope, a similar business to that of the Company, operates data centers in the United Kingdom, France, Germany and Switzerland and provides the Company with an immediate entry into the European data center market, supplementing the Company's existing U.S. and Asia-Pacific operations. This is the primary reason that contributed to the Company paying significantly more than the carrying amount of IXEurope's historical net book value, resulting in a significant amount of goodwill and intangible assets being recorded by the Company.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Fully-diluted shares of IXEurope held by IXEurope's two top officers representing 1,974,000 British pounds of the total purchase price were not paid in cash upon closing. Instead, equity awards of the Company's common stock with a fair value of \$4,007,000 were issued to the two top officers of IXEurope and are subject to vesting based on continuous employment through the end of 2008, as well as certain financial performance criteria of the Europe operations (the "IXEurope Equity Compensation"). The IXEurope Equity Compensation was not accounted for as part of the purchase price of IXEurope. Rather, the IXEurope Equity Compensation will be expensed into the operations of the Company over the vesting life of such awards.

Preliminary Purchase Price Allocation

Under the purchase method of accounting, the total estimated purchase price is preliminarily allocated to IXEurope's net tangible and intangible assets based upon their estimated fair value as of the date of acquisition. Based upon the estimated purchase price and the preliminary valuation, the preliminary purchase price allocation, which is subject to change based on the Company's final analysis, is as follows (in thousands):

Cash and cash equivalents	\$ 7,425
Accounts receivable	15,322
Other current assets	16,611
Property and equipment	168,832
Goodwill	408,812
Intangible asset – customer contracts	65,831
Intangible asset – leases	4,319
Other assets	12,289
Total assets acquired	699,441
Accounts payable and accrued expenses	(44,010)
Accrued property and equipment	(13,192)
Current portion of capital leases	(1,430)
Current portion of loan payable	(826)
Other current liabilities	(8,333)
Capital leases, less current portion	(3,504)
Loan payable	(65,196)
Unfavorable leases	(6,525)
Other liabilities	(7,271)
Net assets acquired	\$549,154

A preliminary estimate of \$65,831,000 has been allocated to customer contracts, an intangible asset with an estimated useful life of 11 years. A preliminary estimate of \$4,319,000 has been allocated to favorable leases, an intangible asset with an estimated life of 15.8 years. A preliminary estimate of \$6,525,000 has been allocated to unfavorable leases, a liability with an estimated life of 11.7 years.

A preliminary estimate of \$408,812,000 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 SFAS 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 of IXEurope is subject to revision as more detailed analysis is completed and additional information on the fair values of IXEurope's assets and liabilities becomes available. Any changes in the fair value of the net assets of IXEurope will change the amount of the purchase price allocable to goodwill.

The Company expects to finalize its preliminary purchase price allocation in the fourth quarter of 2007 in conjunction with its year-end reporting.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Unaudited Pro forma Consolidated Combined Results

The condensed consolidated financial statements of the Company include the operations of IXEurope from September 14, 2007 to September 30, 2007 and reflect the net assets acquired. The following unaudited pro forma combined financial information has been prepared to give effect to the IXEurope Acquisition by the Company using the purchase method of accounting and the related financings, the Common Stock Offering and the sale of 3.00% Convertible Subordinated Notes, to fund this acquisition. The unaudited pro forma combined financial information presents the consolidated results of the Company as if the IXEurope Acquisition and the related financings had been completed as of January 1 for both 2006 and 2007. This pro forma financial information is presented for illustrative purposes only and is not necessarily indicative of the results of operations that would have actually been reported had the IXEurope Acquisition and the related financings occurred as of January 1, 2006 or 2007, nor is it necessarily indicative of the future results of operations of the combined company. Unaudited pro forma consolidated combine results of operations for the three and nine months ended September 30, 2007 and 2006 are as follows (in thousands, except per share data):

	Three months ended September 30,		Nine months ended September 30,	
	2007	2006	2007	2006
Revenues	\$ 132,272	\$ 90,113	\$ 358,683	\$ 249,726
Net loss	(562)	(12,054)	(15,136)	(38,648)
Basic and diluted net loss per share	\$ (0.02)	\$ (0.37)	\$ (0.43)	\$ (1.19)

3. IBX Acquisitions and Expansions***San Jose Property Acquisition***

In January 2007, the Company entered into a conditional purchase agreement to purchase the building and property where its original Silicon Valley IBX center is located (the "San Jose Property Acquisition") for \$65,232,000, including closing costs, which was paid in full in a cash transaction during July 2007 following an initial \$6,500,000 cash deposit paid in January 2007. In conjunction with the San Jose Property Acquisition, the Company wrote-off the associated deferred rent and asset retirement obligations totaling \$1,386,000 and \$138,000, respectively, and as a result, recorded property and equipment totaling \$63,708,000. Furthermore, in August 2007, the Company purchased an adjacent piece of land for \$6,239,000, including closing costs, for potential future expansion.

Singapore IBX Expansion Project

In March and July 2007, the Company entered into long-term leases for new space in the same building in which the Company's existing Singapore IBX center is located (the "Singapore IBX Expansion Project"). Minimum payments under four leases, which qualify as operating leases, total 4,973,000 Singapore dollars (approximately \$3,336,000 as translated using effective exchange rates at September 30, 2007) in cumulative lease payments with monthly payments commencing in the third quarter of 2007. The Company is building out this new space in multiple phases. As of September 30, 2007, the Company had incurred approximately \$12,209,000 of capital expenditures to build out this space.

Washington, D.C. Metro Area IBX Expansion Project

In March 2007, the Company announced its intention to build out a new IBX center within the Ashburn Campus, which will be the fifth IBX center in the Washington, D.C. metro area, in order to further expand its existing Washington, D.C metro area IBX center (the "Washington, D.C. Metro Area IBX Expansion Project"). As of September 30, 2007, the Company had incurred \$9,298,000 of capital expenditures for the Washington, D.C. Metro Area IBX Expansion Project.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Los Angeles Metro Area IBX Expansion Project

In June 2007, the Company purchased a new property, comprised of land and an empty building, located in El Segundo, California, for \$49,059,000, including closing costs, which the Company paid in full in a cash transaction in June 2007. The Company intends to build an IBX center on this property, which will be the Company's fourth IBX center in the Los Angeles metro area (the "Los Angeles Metro Area IBX Expansion Project"). As of September 30, 2007, the Company had incurred \$1,101,000 of capital expenditures for the Los Angeles Metro Area IBX Expansion Project.

Silicon Valley Metro Area IBX Expansion Project

In June 2007, the Company announced its plan to invest further in an existing IBX center in the Silicon Valley metro area (the "Silicon Valley Metro Area IBX Expansion Project"). The Company intends to expand this IBX center for customer availability during the second quarter of 2008.

4. Related Party Transactions

A significant amount of the Company's Asia-Pacific revenues are generated in Singapore and a significant portion of the business in Singapore is transacted with entities affiliated with STT Communications, which is the Company's single largest stockholder (owning approximately 11.8% of outstanding common stock as of September 30, 2007). For the three and nine months ended September 30, 2007, revenues recognized with related parties, primarily entities affiliated with STT Communications, were \$2,345,000 and \$6,322,000, respectively, and as of September 30, 2007, accounts receivable with these related parties was \$1,952,000. For the three and nine months ended September 30, 2007, costs and services procured with related parties, primarily entities affiliated with STT Communications, were \$284,000 and \$921,000, respectively, and as of September 30, 2007, accounts payable with these related parties was \$144,000. For the three and nine months ended September 30, 2006, revenues recognized with related parties, primarily entities affiliated with STT Communications, were \$1,279,000 and \$4,117,000, respectively, and as of September 30, 2006, accounts receivable with these related parties was \$1,062,000. For the three and nine months ended September 30, 2006, costs and services procured with related parties, primarily entities affiliated with STT Communications, were \$864,000 and \$2,883,000, respectively, and as of September 30, 2006, accounts payable with these related parties was \$283,000.

5. Accounts Receivable

Accounts receivables, net, consisted of the following (in thousands):

	September 30, 2007 (unaudited)	December 31, 2006
Accounts receivable	\$ 81,760	\$ 52,500
Unearned revenue	(32,199)	(25,363)
Allowance for doubtful accounts	(385)	(273)
	<u>\$ 49,176</u>	<u>\$ 26,864</u>

Trade accounts receivable are recorded at the invoiced amount and do not bear interest. Unearned revenue consists of pre-billing for services that have not yet been provided, but which have been billed to customers in advance 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.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

6. Prepaids and Other Current Assets

Prepaids and other current assets consisted of the following (in thousands):

	September 30, 2007 (unaudited)	December 31, 2006
Taxes receivable	\$ 11,807	\$ 5
Prepaid expenses	10,954	4,467
Other current assets	3,728	3,531
	<u>\$ 26,489</u>	<u>\$ 8,003</u>

7. Property and Equipment

Property and equipment consisted of the following (in thousands):

	September 30, 2007 (unaudited)	December 31, 2006
Leasehold improvements	\$ 392,883	\$ 416,952
IBX plant and machinery	314,209	191,243
Buildings	109,273	50,526
IBX equipment	100,205	84,499
Site improvements	97,713	904
Computer equipment and software	51,662	35,913
Land	50,578	24,967
Furniture and fixtures	6,007	2,438
Construction in progress	364,533	88,429
	1,487,063	895,871
Less accumulated depreciation	(417,983)	(349,476)
	<u>\$ 1,069,080</u>	<u>\$ 546,395</u>

Site improvements are improvements to owned property versus leasehold improvements, which are improvements to leased property. Site improvements are depreciated using the straight-line method over the estimated useful life of the respective asset, generally 10 to 15 years.

Leasehold improvements, IBX plant and machinery, computer equipment and software and buildings recorded under capital leases aggregated \$40,295,000 at September 30, 2007 and \$35,361,000 at December 31, 2006. Amortization on the assets recorded under capital leases is included in depreciation expense and accumulated depreciation on such assets totaled \$6,571,000 and \$4,119,000 as of September 30, 2007 and 2006, respectively.

As of September 30, 2007 and December 31, 2006, the Company had accrued property and equipment expenditures of \$60,469,000 and \$23,337,000, respectively. The Company's planned capital expenditures during the remainder of 2007 and 2008 in connection with recently acquired IBX properties and expansion efforts are substantial. For further information, refer to "Other Purchase Commitments" in Note 14.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

8. Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses consisted of the following (in thousands):

	September 30, 2007 (unaudited)	December 31, 2006
Accounts payable	\$ 18,992	\$ 4,515
Accrued compensation and benefits	32,674	11,836
Accrued acquisition and financing costs	11,712	—
Accrued taxes	10,044	2,081
Accrued utility and security	8,120	3,849
Accrued interest	4,977	1,318
Accrued professional fees	1,518	1,362
Accrued other	6,302	2,308
	<u>\$ 94,339</u>	<u>\$ 27,269</u>

9. Other Current Liabilities

Other current liabilities consisted of the following (in thousands):

	September 30, 2007 (unaudited)	December 31, 2006
Deferred installation revenue	\$ 11,783	\$ 7,838
Deferred recurring revenue	5,425	674
Customer deposits	4,283	799
Deferred rent	403	401
Other current liabilities	248	439
	<u>\$ 22,142</u>	<u>\$ 10,151</u>

10. Deferred Rent and Other Liabilities

Deferred rent and other liabilities consisted of the following (in thousands):

	September 30, 2007 (unaudited)	December 31, 2006
Deferred rent, non-current	\$ 25,649	\$ 20,522
Deferred installation revenue, non-current	5,922	3,856
Deferred recurring revenue, non-current	5,709	6,058
Asset retirement obligations	4,859	3,985
Other liabilities	4,377	209
	<u>\$ 46,516</u>	<u>\$ 34,630</u>

The Company currently leases the majority of its IBX centers and certain equipment under non-cancelable operating lease agreements expiring through 2027. The IBX centers' lease agreements typically provide for base rental rates that increase at defined intervals during the term of the lease. In addition, the Company has negotiated rent expense abatement periods for certain properties to better match the phased build-out of its centers. The Company accounts for such abatements and increasing base rentals using the straight-line method over the life of the lease. The difference between the straight-line expense and the cash payment is recorded as deferred rent.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

11. Convertible Debt

The Company's convertible debt consisted of the following (in thousands):

	September 30, 2007 (unaudited)	December 31, 2006
Convertible subordinated debentures	\$ 32,250	\$ 86,250
2.50% Convertible subordinated notes	250,000	—
3.00% Convertible subordinated notes	395,986	—
	<u>\$ 678,236</u>	<u>\$ 86,250</u>

Convertible Subordinated Debentures

In March 2007, the Company entered into agreements with certain holders ("Holders") of its 2.5% Convertible Subordinated Debentures due February 15, 2024, pursuant to which the Company agreed to exchange an aggregate of 1,367,090 newly issued shares of its common stock for such Holders' \$54,000,000 of \$86,250,000 principal amount of the Convertible Subordinated Debentures (the "Convertible Subordinated Debentures' Partial Conversion"). The number of shares of common stock issued equals the amount issuable upon conversion of the Convertible Subordinated Debentures in accordance with their terms. In addition, each Holder received cash consideration equal to accrued and unpaid interest through the redemption date totaling \$111,000, as well as the present value of future interest due through February 15, 2009 and an incremental fee, totaling \$3,395,000 (the "Inducement Fee").

The Company recognized a loss on debt conversion totaling \$3,395,000 as a result of the Convertible Subordinated Debentures' Partial Conversion in accordance with FASB No. 84, "Induced Conversions of Convertible Debt", due to the Inducement Fee. As a result of the Convertible Subordinated Debentures' Partial Conversion, a total of \$53,229,000 was credited to stockholders' equity during the first quarter of 2007, which was comprised of \$54,000,000 of Convertible Subordinated Debentures, offset by \$771,000 of unamortized debt issuance costs since, at the time of issuance, the Convertible Subordinated Debentures did not contain a beneficial conversion feature. As of September 30, 2007, debt issuance costs related to the Convertible Subordinated Debentures, net of amortization, were \$330,000 and are being amortized to interest expense using the effective interest method through February 15, 2009.

As of September 30, 2007, a total of \$32,250,000 Convertible Subordinated Debentures remained outstanding and were convertible into 816,457 shares of the Company's common stock.

2.50% Convertible Subordinated Notes

In March 2007, the Company issued \$250,000,000 aggregate principal amount of 2.50% Convertible Subordinated Notes due April 15, 2012 (the "2.50% Convertible Subordinated Notes"). Interest is payable semi-annually on April 15 and October 15 of each year, commencing October 15, 2007.

The 2.50% Convertible Subordinated Notes are governed by an Indenture dated as of March 30, 2007, between the Company, as issuer, and U.S. Bank National Association, as trustee (the "Indenture"). The Indenture does not contain any financial covenants or any restrictions on the payment of dividends, the incurrence of senior debt or other indebtedness, or the issuance or repurchase of securities by the Company. The 2.50% Convertible Subordinated Notes are unsecured and rank junior in right of payment to the Company's existing or future senior debt and equal in right of payment to the Company's existing and future subordinated debt.

Upon conversion, holders will receive, at the Company's election, cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock. However, the Company may at any time irrevocably elect for the remaining term of the 2.50% Convertible Subordinated Notes to satisfy its obligation in cash up to 100% of the principal amount of the 2.50% Convertible Subordinated Notes converted, with any remaining amount to be satisfied, at the Company's election, in shares of its common stock or a combination of cash and shares of its common stock.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The initial conversion rate is 8.9259 shares of common stock per \$1,000 principal amount of 2.50% Convertible Subordinated Notes, subject to adjustment. This represents an initial conversion price of approximately \$112.03 per share of common stock. Holders of the 2.50% Convertible Subordinated Notes may convert their notes at any time prior to the close of business on the business day immediately preceding the maturity date under the following circumstances:

- during any fiscal quarter (and only during that fiscal quarter) ending after June 30, 2007, if the sale price of the Company's common stock, for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the previous fiscal quarter, is greater than 130% of the conversion price per share of common stock on such last trading day, presently \$145.64 per share (the "Stock Price Condition Conversion Clause");
- subject to certain exceptions, during the five business day period following any ten consecutive trading day period in which the trading price of the 2.50% Convertible Subordinated Notes for each day of such period was less than 98% of the product of the sale price of the Company's common stock and the conversion rate (the "Parity Provision Clause");
- if such Convertible Subordinated Notes have been called for redemption;
- upon the occurrence of specified corporate transactions described in the Indenture, such as a consolidation, merger or binding share exchange in which the Company's common stock would be converted into cash or property other than securities (the "Corporate Action Provision Clause"); or
- at any time on or after March 15, 2012.

Upon conversion, due to the conversion formulas associated with the 2.50% Convertible Subordinated Notes, if the Company's stock is trading at levels exceeding 130% of the conversion price per share of common stock, and if the Company elects to pay any portion of the consideration in cash, additional consideration beyond the \$250,000,000 of gross proceeds received would be required. However, in no event would the total number of shares issuable upon conversion of the 2.50% Convertible Subordinated Notes exceed 11.6036 per \$1,000 principal amount of Convertible Subordinated Notes, subject to anti-dilution adjustments, or the equivalent of \$86.18 per share of common stock or a total of 2,900,900 shares of the Company's common stock. As of September 30, 2007, the 2.50% Convertible Subordinated Notes were convertible into 2,231,475 shares of the Company's common stock.

The conversion rates may be adjusted upon the occurrence of certain events, including for any cash dividend, but they will not be adjusted for accrued and unpaid interest. Holders of the 2.50% Convertible Subordinated Notes will not receive any cash payment representing accrued and unpaid interest upon conversion of a note. Accrued but unpaid interest will be deemed to be paid in full upon conversion rather than cancelled, extinguished or forfeited. The 2.50% Convertible Subordinated Notes called for redemption may be surrendered for conversion prior to the close of business on the business day immediately preceding the redemption date.

The Company may redeem all or a portion of the 2.50% Convertible Subordinated Notes at any time after April 16, 2010 for cash but only if the closing sale price of the Company's common stock for at least 20 of the 30 consecutive trading days immediately prior to the day the Company gives notice of redemption is greater than 130% of the applicable conversion price per share of common stock on the date of the notice, presently \$145.64 per share. The redemption price will equal 100% of the principal amount of the 2.50% Convertible Subordinated Notes, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Holders of the 2.50% Convertible Subordinated Notes have the right to require the Company to purchase with cash all or a portion of the 2.50% Convertible Subordinated Notes upon the occurrence of a fundamental change at a purchase price equal to 100% of the principal amount of the 2.50% Convertible Subordinated Notes plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase. Following certain corporate transactions that constitute a change of control, the Company will increase the conversion rate for a holder who elects to convert the 2.50% Convertible Subordinated Notes in connection with such change of control in certain circumstances.

The Company has considered the guidance in FASB No. 133, "Accounting for Derivative Instruments and Hedging Activities", EITF Abstract No. 00-19, "Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock" and EITF Abstract No. 00-27, "Application of EITF Issue No. 98-5, 'Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios,' to Certain Convertible Instruments" and other related accounting pronouncements and has determined that the 2.50% Convertible Subordinated Notes do not contain a beneficial conversion feature as the fair value of the Company's common stock on the date of issuance was less than the initial conversion price outlined in the agreement. In addition, the 2.50% Convertible Subordinated Notes contain one embedded derivative requiring bifurcation and separate accounting treatment, the Parity Provision Clause, which had a zero fair value as of September 30, 2007. The Company will be remeasuring this embedded derivative each reporting period, as applicable. Changes in fair value will be reported in the statement of operations.

The costs related to the 2.50% Convertible Subordinated Notes were capitalized and are being amortized to interest expense using the effective interest method, through March 15, 2012, the first date that the holders of the 2.50% Convertible Subordinated Notes can convert without satisfaction of the Stock Price Condition Conversion Clause, Parity Provision Clause or the Corporate Action Provision Clause. Debt issuance costs related to the 2.50% Convertible Subordinated Notes, net of amortization, were \$7,169,000 as of September 30, 2007.

3.00% Convertible Subordinated Notes

In September 2007, the Company issued \$395,986,000 aggregate principal amount of 3.00% Convertible Subordinated Notes due October 15, 2014 (the "3.00% Convertible Subordinated Notes"). Interest is payable semi-annually on April 15 and October 15 of each year, commencing April 15, 2008.

The 3.00% Convertible Subordinated Notes are governed by an Indenture dated as of September 26, 2007, between the Company, as issuer, and U.S. Bank National Association, as trustee (the "Indenture"). The Indenture does not contain any financial covenants or any restrictions on the payment of dividends, the incurrence of senior debt or other indebtedness, or the issuance or repurchase of securities by the Company. The 3.00% Convertible Subordinated Notes are unsecured and rank junior in right of payment to the Company's existing or future senior debt and equal in right of payment to the Company's existing and future subordinated debt.

Holders of the 3.00% Convertible Subordinated Notes may convert their notes at their option on any day up to and including the business day immediately preceding the maturity date into shares of the Company's common stock. The base conversion rate is 7.4360 shares of common stock per \$1,000 principal amount of 3.00% Convertible Subordinated Notes, subject to adjustment. This represents a base conversion price of approximately \$134.48 per share of common stock. If, at the time of conversion, the applicable stock price of the Company's common stock exceeds the base conversion price, the conversion rate will be determined pursuant to a formula resulting in the receipt of up to 4.4616 additional shares of common stock per \$1,000 principal amount of the 3.00% Convertible Subordinated Notes, subject to adjustment. However, in no event would the total number of shares issuable upon conversion of the 3.00% Convertible Subordinated Notes exceed 11.8976 per \$1,000 principal amount of 3.00% Convertible Subordinated Notes, subject to anti-dilution adjustments, or the equivalent of \$84.05 per share of the Company's common stock or a total of 4,711,283 shares of the Company's common stock. As of September 30, 2007, the 3.00% Convertible Subordinated Notes were convertible into 2,944,551 shares of the Company's common stock.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The conversion rates may be adjusted upon the occurrence of certain events, including for any cash dividend, but they will not be adjusted for accrued and unpaid interest. Holders of the 3.00% Convertible Subordinated Notes will not receive any cash payment representing accrued and unpaid interest upon conversion of a note. Accrued but unpaid interest will be deemed to be paid in full upon conversion rather than cancelled, extinguished or forfeited. The Company may not redeem the 3.00% Convertible Subordinated Notes at its option.

Holders of the 3.00% Convertible Subordinated Notes have the right to require the Company to purchase with cash all or a portion of the Convertible Subordinated Notes upon the occurrence of a fundamental change at a purchase price equal to 100% of the principal amount of the 3.00% Convertible Subordinated Notes plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase. Following certain corporate transactions that constitute a change of control, the Company will increase the conversion rate for a holder who elects to convert the 3.00% Convertible Subordinated Notes in connection with such change of control in certain circumstances.

The Company has considered the guidance in FASB No. 133, "Accounting for Derivative Instruments and Hedging Activities", EITF Abstract No. 00-19, "Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company's Own Stock" and EITF Abstract No. 00-27, "Application of EITF Issue No. 98-5, 'Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios,' to Certain Convertible Instruments" and other related accounting pronouncements and has determined that the 3.00% Convertible Subordinated Notes do not contain a beneficial conversion feature as the fair value of the Company's common stock on the date of issuance was less than the initial conversion price outlined in the agreement.

The costs related to the 3.00% Convertible Subordinated Notes were capitalized and are being amortized to interest expense using the effective interest method over the seven-year term of the 3.00% Convertible Subordinated Notes. Debt issuance costs related to the 3.00% Convertible Subordinated Notes, net of amortization, were \$10,880,000 as of September 30, 2007.

12. Non-Convertible Debt

The Company's non-convertible debt consisted of the following (in thousands):

	September 30, 2007 (unaudited)	December 31, 2006
Mortgage Payable	\$ 97,322	\$ 98,896
Chicago IBX Financing	93,721	—
Asia-Pacific Financing	25,033	—
European Financing	66,032	—
	<u>\$ 282,108</u>	<u>\$ 98,896</u>

Chicago IBX Financing

In February 2007, a wholly-owned subsidiary of the Company obtained a loan of up to \$110,000,000 to finance up to 60% of the development and construction costs of the Chicago Metro Area IBX Expansion Project (the "Chicago IBX Financing"). The Company periodically receives advances of funds in conjunction with costs incurred for construction of its Chicago Metro Area IBX Expansion Project (the "Loan Payable"). As of September 30, 2007, the Company had received advances totaling \$93,721,000. As a result, up to \$16,279,000 remained available for borrowing from the Chicago IBX Financing and is expected to be borrowed periodically during the remaining construction period of the Chicago Metro Area IBX Expansion Project until completion by the end of 2007.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The Loan Payable has a maturity date of January 31, 2010, with options to extend for up to an additional two years, in one-year increments, upon satisfaction of certain extension conditions. The Loan Payable bears interest at a floating rate (one, three or six month LIBOR plus 2.75%) with interest payable monthly, which commenced March 1, 2007. As of September 30, 2007, the Loan Payable had an effective interest rate of 8.375% per annum. The Chicago IBX Financing has no specific financial covenants and contains a limited parent company guaranty.

The debt issuance costs related to the Chicago IBX Financing were capitalized and are being amortized to interest expense using the effective interest method through January 31, 2010. Debt issuance costs related to the Chicago IBX Financing, net of amortization, were \$2,064,000 as of September 30, 2007.

Asia-Pacific Financing

In August 2007, two wholly-owned subsidiaries of the Company, located in Singapore and Tokyo, Japan, entered into an approximately \$40,000,000 multi-currency credit facility agreement (the “Asia-Pacific Financing”). The Asia-Pacific Financing has a four-year term that allows these two subsidiaries to borrow up to 23,000,000 Singapore dollars and 2,932,500,000 Japanese yen, respectively, during the first 12-month period with repayment to occur over the remaining three years in twelve 12 quarterly installments (collectively, the “Loans Payable”). Amounts undrawn at the end of the 12-month period shall be cancelled. The Asia-Pacific Financing has a commitment fee of 0.3% on unutilized amounts during the 12-month draw period and bears interest at a floating rate (the relevant three-month local cost of funds for Singapore and Japan), as applicable, plus 1.85%-2.50% depending on the ratio of the Company’s senior indebtedness to its earnings before interest, taxes, depreciation and amortization, or EBITDA, with interest payable quarterly. The Asia-Pacific Financing may be used by these two subsidiaries to fund capital expenditures on leasehold improvements, equipment, and other installation costs related to expansion plans in Singapore and Tokyo. The Asia-Pacific Financing is guaranteed by the parent, Equinix Inc., is secured by the assets of these two subsidiaries and has several financial covenants, with which the Company must comply quarterly. As of September 30, 2007, the Company had borrowed 18,282,000 Singapore dollars at an initial interest rate per annum of 4.66% and 1,476,833,000 Japanese yen at an initial interest rate per annum of 2.69%. Collectively the amounts borrowed equal \$25,033,000 leaving \$14,967,000 available to borrow under the Asia-Pacific Financing. As of September 30, 2007, the Company was in compliance with all financial covenants in connection with the Asia-Pacific Financing.

The debt issuance costs related to the Asia-Pacific Financing were capitalized and are being amortized to interest expense using the effective interest method over the four-year life of the Asia-Pacific Financing. Debt issuance costs related to the Asia-Pacific Financing, net of amortization, were \$636,000 as of September 30, 2007.

European Financing

In September 2007, as a result of the IXEurope Acquisition (see Note 2), a wholly-owned subsidiary of the Company acquired a senior facilities agreement totaling 82,000,000 British pounds (or approximately \$166,116,000 as translated using effective exchange rates as of September 30, 2007) (the “European Financing”). The European Financing is comprised of three facilities: (i) Facility A, which is available to draw upon through March 2008, provides for a term loan of up to 40,000,000 British pounds and bears a floating interest rate per annum of between 0.75% and 2.0% above LIBOR or EURIBOR; (ii) Facility B, which is available to draw upon through June 2010, provides for a term loan of up to 40,000,000 British pounds and bears a floating interest rate per annum of between 0.75% and 2.25% above LIBOR or EURIBOR and (iii) Facility C, which is available to draw upon through May 2014, provides for a revolving credit facility of up to 2,000,000 British pounds and bears a floating interest rate per annum of between 0.75% and 2.0% above LIBOR or EURIBOR (collectively, the “Loans Payable”). The European Financing has a final maturity date of June 30, 2014 and interest is payable in periods of one, two, three or six months at the choice of the Company’s European subsidiary. Facility A will be repaid in 13 semi-annual installments commencing June 30, 2008. Facility B will be repaid in nine semi-annual installments commencing June 30, 2010. Facility C will be repaid at the final maturity date. The European Financing is available to fund the Company’s subsidiary’s current or future operations in Europe, including capital expenditures, for certain pre-approved

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

subsidiaries in Europe. The European Financing is collateralized by certain of the Company's assets in Europe and contains several financial covenants with which the Company must comply quarterly. As of September 30, 2007, the Company was in compliance with all financial covenants in connection with the European Financing.

Upon a written request from the Company at any time after December 31, 2007 and through the final maturity date, and upon approval by the lenders, an additional term loan of up to 15,000,000 British pounds (or approximately \$30,387,000 as translated using effective exchange rates as of September 30, 2007) may be made available to the Company. The European Financing requires the Company to hedge the floating interest rates inherent in the European Financing. As a result, the Company has two interest rate swaps outstanding in connection with the European Financing, which are accounted for under the provisions of SFAS No., 133 "Accounting for Derivative Instruments and Hedging Activities", as amended (see Note 1).

As of September 30, 2007, the Company had borrowed a total of 32,596,000 British pounds (or approximately \$66,032,000 as translated using effective exchange rates as of September 30, 2007) under the European Financing at a blended interest rate per annum of 7.65% leaving 49,404,000 British pounds (or approximately \$100,084,000 as translated using effective exchange rates as of September 30, 2007) available to borrow under the European Financing.

Silicon Valley Bank Credit Line

In March 2007, the Company amended certain provisions of the Silicon Valley Bank Credit Line which related to certain financial covenants, the addition of a liquidity covenant and the revision of the definition of "Approved Subordinated Debt" in order to allow the Company to proceed with the 2.50% Convertible Subordinated Notes offering (see Footnote 11). The liquidity covenant requires the Company to maintain total liquidity of at least \$75,000,000. The liquidity covenant is defined as the sum of cash, cash equivalents, short-term investments, 80% of long-term investments and 10% of net accounts receivable. In the event of a default, Silicon Valley Bank has the right to exercise a notice of control to give Silicon Valley Bank the sole right to control, direct or dispose of the assets as it deems necessary to satisfy the Company's obligations under the Silicon Valley Bank Credit Line, if any. In September 2007, the Company further amended certain provisions of the Silicon Valley Bank Credit Line which related to certain financial covenants and the definition of "Designation of Obligations" to include the Company's 3.00% Convertible Subordinated Notes offering that closed on September 26, 2007. As of September 30, 2007, the Company was in compliance with all financial covenants in connection with the amended Silicon Valley Bank Credit Line.

Borrowings under the Silicon Valley Bank Credit Line continue to bear interest at variable interest rates, plus the applicable margins, in effect prior to the amendment, based on either prime rates or LIBOR rates. The Silicon Valley Bank Credit Line matures on September 15, 2008 and remains secured by substantially all of the Company's domestic personal property assets and certain of the Company's real property leases.

As of September 30, 2007, letters of credit totaling \$14,919,000 had been issued and were outstanding under the Silicon Valley Bank Credit Line. However, no borrowings were outstanding under the Silicon Valley Bank Credit Line. As a result, the amount of borrowings available to the Company was \$60,081,000. These letters of credit automatically renew in successive one-year periods until the final termination. If the beneficiaries for any of these letters of credit decide to draw down on these letters of credit, the Company will be required to fund these letters of credit either through cash collateral or borrowings under the Silicon Valley Bank Credit Line. As of September 30, 2007, had the Company borrowed against the Silicon Valley Bank Credit Line, it would have had an effective interest rate of 7.87% per annum.

Senior Bridge Loan

In June 2007, the Company entered into a Senior Bridge Loan Credit Agreement (the "Senior Bridge Loan") with Citibank, N.A., as Lender, and as agent for the Lender, for a principal amount of \$500,000,000, to secure temporary financing for the IXEurope Acquisition.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

The Senior Bridge Loan had an initial maturity of 12 months and, at the initial maturity date, would have been converted into a seven-year term loan that would have been exchangeable by the Lenders at any time into fixed-rate exchange notes with registration rights to the extent the Company drew down on the Senior Bridge Loan and any amounts outstanding under the Senior Bridge Loan were not repaid within one year. The Senior Bridge Loan bore interest at floating rates during the first three months at an initial rate of LIBOR plus 3.50% per annum and the interest was payable quarterly. The rate for each subsequent three-month period increased by 0.5% over the floating rate in effect for the immediate preceding three-month period. The interest rate for each three-month period would have been equal to the greater of the interest rate applicable for such period or 9.0% per annum but would not have exceeded 11.25% per annum.

The Company incurred \$2,554,000 of debt issuance costs in securing the Senior Bridge Loan. In September 2007, the Senior Bridge Loan was terminated unused and, as a result, the Company recorded a loss on debt extinguishment totaling \$2,554,000 reflecting the immediate write-off of all such debt issuance costs previously capitalized.

13. Debt Maturities

Combined aggregate maturities for the Company's various debt facilities and other financing obligations as of September 30, 2007 were as follows (in thousands) (unaudited):

	Convertible debt	Mortgage and loans payable	Capital lease and other financing obligations	Total
2007 (three months remaining)	\$ —	\$ 2,541	\$ 2,939	\$ 5,480
2008	—	13,901	11,585	25,486
2009	32,250	26,763	11,666	70,679
2010	—	120,484	11,686	132,170
2011	—	26,327	11,760	38,087
2012 and thereafter	645,986	181,636	118,024	945,646
	<u>678,236</u>	<u>371,652</u>	<u>167,660</u>	<u>1,217,548</u>
Less amount representing interest	—	(89,544)	(75,949)	(165,493)
Plus amount representing residual property value	—	—	6,555	6,555
	<u>678,236</u>	<u>282,108</u>	<u>98,266</u>	<u>1,058,610</u>
Less current portion of principal	—	(3,162)	(3,765)	(6,927)
	<u>\$678,236</u>	<u>\$ 278,946</u>	<u>\$ 94,501</u>	<u>\$1,051,683</u>

14. Commitments and Contingencies

Legal Matters Relating to Stock Option Granting Practices

On June 29, 2006 and September 18, 2006, shareholder derivative actions were filed in the Superior Court of the State of California, County of San Mateo, naming Equinix as a nominal defendant and several of Equinix's current and former officers and directors as individual defendants. These actions were consolidated, and the consolidated complaint was filed in January 2007. In March 2007, the state court stayed this action in deference to a federal shareholder derivative action filed in the United States District Court for the Northern District of California in October 2006. The federal action named Equinix as a nominal defendant and several current and former officers and directors as individual defendants. This complaint alleged that the individual defendants breached their fiduciary duties and violated California and federal securities laws as a result of purported backdating of stock options, insider trading and the dissemination of false statements. On April 12, 2007, the federal action was voluntarily dismissed without prejudice pursuant to a joint stipulation entered as an order by the court. On May 3, 2007, the state court lifted the stay on proceedings in the state court action and set a briefing schedule permitting the Company to file a motion to dismiss on the grounds that plaintiffs lack standing to sue on its behalf. The Company filed its motion to dismiss on June 4, 2007 and appeared for a hearing on the motion on August 6, 2007. The state court granted the Company's motion to dismiss and granted plaintiffs leave to amend their consolidated complaint. On October 1, 2007, plaintiffs filed an amended consolidated complaint. The amended consolidated complaint alleges that the individual defendants breached their fiduciary duties and violated

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

California securities law as a result of purported backdating of stock option grants, insider trading and the preparation and approval of inaccurate financial results. Plaintiffs seek to recover, on behalf of Equinix, unspecified monetary damages, corporate governance changes, equitable and injunctive relief, restitution and fees and costs. A motion to dismiss the amended consolidated complaint is pending. In addition to the pending state court derivative action, the Company may be subject to additional derivative or other lawsuits that may be presented on an individual or class basis alleging claims based on its stock option granting practices.

Responding to, investigating and/or defending against civil litigations and government inquiries regarding the Company's stock option grants and practices will present a substantial cost to the Company in both cash and the attention of certain management and may have a negative impact on the Company's operations. In addition, in the event of any negative finding or assertion by a court of law or any third-party claim related to the Company's stock option granting practices, the Company may be liable for damages, fines or other civil or criminal remedies, or be required to restate its prior period financial statements or adjust its current period financial statements. Any such adverse action could have a material adverse effect on the Company's business and current market value.

The Company believes that while an unfavorable outcome to any or all of the above-mentioned inquiries, cases or complaints is reasonably possible, it is not probable. As a result, the Company has not accrued for any settlements in connection with these legal matters as of September 30, 2007.

Other Legal Actions

On July 30, 2001 and August 8, 2001, putative shareholder class action lawsuits were filed against the Company, certain of its officers and directors (the "Individual Defendants"), and several investment banks that were underwriters of the Company's initial public offering (the "Underwriter Defendants"). The cases were filed in the United States District Court for the Southern District of New York, purportedly on behalf of investors who purchased the Company's stock between August 10, 2000 and December 6, 2000. In addition, similar lawsuits were filed against approximately 300 other issuers and related parties. The purported class action alleges violations of Sections 11 and 15 of the Securities Act of 1933 and Sections 10(b), Rule 10b-5 and 20(a) of the Securities Exchange Act of 1934 against the Company and the Individual Defendants. The plaintiffs have since dismissed the Individual Defendants without prejudice. The suits allege that the Underwriter Defendants agreed to allocate stock in the Company's initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases in the aftermarket at pre-determined prices. The plaintiffs allege that the prospectus for the Company's initial public offering was false and misleading and in violation of the securities laws because it did not disclose these arrangements. The action seeks damages in an unspecified amount. On February 19, 2003, the Court dismissed the Section 10(b) claim against the Company, but denied the motion to dismiss the Section 11 claim. On December 5, 2006, the Second Circuit vacated a decision by the district court granting class certification in six "focus" cases, which are intended to serve as test cases. Plaintiffs selected these six cases, which do not include Equinix. On April 6, 2007, the Second Circuit denied a petition for rehearing filed by plaintiffs, but noted that plaintiffs could ask the district court to certify more narrow classes than those that were rejected.

Prior to the Second Circuit's decision, a majority of issuers, including Equinix, and their insurers had submitted a settlement agreement to the district court for approval. In light of the Second Circuit opinion, the parties agreed that the settlement could not be approved because the defined settlement class, like the litigation class, cannot be certified. On June 25, 2007, the Court approved a stipulation filed by the plaintiffs and the issuers which terminated the proposed settlement. On August 14, 2007, plaintiffs filed amended complaints in the six focus cases. On September 27, 2007, plaintiffs filed a motion for class certification in the six focus cases. If plaintiffs are successful in obtaining class certification, they are expected to amend the complaint against Equinix in the same manner that they amended the complaints against the focus case issuers and to seek certification of a class in the Equinix case. The amended complaints against the focus case issuers include a number of changes, such as changes to the definition of the purported class of investors, and the elimination of the Individual Defendants as defendants. Due to the inherent uncertainties of litigation, the Company cannot accurately predict the ultimate outcome of the matter. The Company cannot predict whether it will be able to renegotiate a settlement that complies with the Second Circuit's mandate, nor can the Company predict the amount of any such settlement.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

While the Company is unable at this time to determine whether the outcome of the litigation would have a material impact on its results of operations, financial condition or cash flows, the Company has insurance coverage that it believes is sufficient to cover any reasonably possible liability resulting from this litigation. The Company and its officers and directors intend to continue to defend the actions vigorously.

Estimated and Contingent Liabilities

The Company estimates exposure on certain liabilities, such as income and property taxes, based on the best information available at the time of determination. With respect to real and personal property taxes, the Company records what it can reasonably estimate based on prior payment history, current landlord estimates or estimates based on current or changing fixed asset values in each specific municipality, as applicable. However, there are circumstances beyond the Company's control whereby the underlying value of the property or basis for which the tax is calculated on the property may change, such as a landlord selling the underlying property of one of the Company's IBX center leases or a municipality changing the assessment value in a jurisdiction and, as a result, the Company's property tax obligations may vary from period to period. Based upon the most current facts and circumstances, the Company makes the necessary property tax accruals for each of its reporting periods. However, revisions in the Company's estimates of the potential or actual liability could materially impact the financial position, results of operations or cash flows of the Company.

From time to time, the Company may have certain contingent liabilities that arise in the ordinary course of its business activities. The Company accrues contingent liabilities when it is probable that future expenditures will be made and such expenditures can be reasonably estimated. In the opinion of management, there are no pending claims for which the outcome is expected to result in a material adverse effect in the financial position, results of operations or cash flows of the Company.

Other Purchase Commitments

Primarily as a result of the Company's various IBX expansion projects, as of September 30, 2007, the Company was contractually committed for \$136,471,000 of unaccrued capital expenditures, primarily for IBX equipment not yet delivered and labor not yet provided, in connection with the work necessary to open these IBX centers and make them available to customers for installation. In addition, the Company had numerous other, non-capital purchase commitments in place as of September 30, 2007, such as commitments to purchase power in select locations, primarily in the U.S., Singapore and the United Kingdom, through 2007 and thereafter, and other open purchase orders for goods or services to be delivered or provided during 2007. Such other miscellaneous purchase commitments totaled \$33,609,000 as of September 30, 2007.

15. Other Comprehensive Income and Loss

The components of other comprehensive income and loss are as follows (in thousands) (unaudited):

	Three months ended		Nine months ended	
	September 30,		September 30,	
	2007	2006	2007	2006
Net income (loss)	\$ 4,124	\$(5,168)	\$ 885	\$(15,508)
Unrealized gain on available for sale securities	271	308	269	289
Foreign currency translation gain (loss)	6,732	(3)	6,634	1,376
Comprehensive income (loss)	<u>\$11,127</u>	<u>\$(4,863)</u>	<u>\$7,788</u>	<u>\$(13,843)</u>

There were no significant tax effects on comprehensive income (loss) for the three and nine months ended September 30, 2007 and 2006.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

16. Segment Information

The Company and its subsidiaries are principally engaged in a single operational segment: the design, build-out and operation of network neutral IBX centers. All revenues result from the operation of these IBX centers. However, the Company operates in three distinct geographic segments, comprised of the U.S., Asia-Pacific and Europe. The Company's chief operating decision-maker evaluates performance, makes operating decisions and allocates resources based on financial data consistent with the presentation in the accompanying condensed consolidated financial statements and based on these three geographic segments.

The Company provides the following geographic statement of operations disclosures as follows (in thousands) (unaudited):

	Three months ended September 30,		Nine months ended September 30,	
	2007	2006	2007	2006
Total revenues:				
United States	\$ 83,685	\$ 63,654	\$ 234,461	\$ 178,394
Asia-Pacific	14,643	10,072	40,813	28,749
Europe	5,454	—	5,454	—
	<u>\$ 103,782</u>	<u>\$ 73,726</u>	<u>\$ 280,728</u>	<u>\$ 207,143</u>
Cost of revenues:				
United States	\$ 49,695	\$ 43,529	\$ 143,123	\$ 121,507
Asia-Pacific	9,165	5,608	24,111	16,538
Europe	4,031	—	4,031	—
	<u>\$ 62,891</u>	<u>\$ 49,137</u>	<u>\$ 171,265</u>	<u>\$ 138,045</u>
Income (loss) from operations:				
United States	\$ 6,386	\$ (3,967)	\$ 8,000	\$ (9,619)
Asia-Pacific	312	896	1,951	524
Europe	(619)	—	(619)	—
	<u>\$ 6,079</u>	<u>\$ (3,071)</u>	<u>\$ 9,332</u>	<u>\$ (9,095)</u>

The Company's long-lived assets are located in the following geographic areas (in thousands) (unaudited):

	September 30, 2007 (unaudited)	December 31, 2006
United States	\$ 896,195	\$ 553,619
Asia-Pacific	84,858	51,952
Europe	666,391	—
	<u>\$ 1,647,444</u>	<u>\$ 605,571</u>

The Company's goodwill totaling \$430,277,000 as of September 30, 2007 was comprised of \$412,862,000 attributable to the Company's Europe reporting unit and \$17,415,000 attributable to the Company's Singapore reporting unit.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

Revenue information on a services basis is as follows (in thousands) (unaudited):

	Three months ended September 30,		Nine months ended September 30,	
	2007	2006	2007	2006
Colocation	\$ 75,282	\$ 51,678	\$ 200,682	\$ 145,235
Interconnection	18,798	13,862	53,171	38,310
Managed infrastructure	4,830	4,066	13,214	12,045
Rental	378	312	1,011	1,169
Recurring revenues	99,288	69,918	268,078	196,759
Non-recurring revenues	4,494	3,808	12,650	10,384
	<u>\$ 103,782</u>	<u>\$ 73,726</u>	<u>\$ 280,728</u>	<u>\$ 207,143</u>

No single customer accounted for 10% or greater of the Company's revenues for the three and nine months ended September 30, 2007 and 2006. No accounts receivables accounted for 10% or greater of the Company's gross accounts receivable as of September 30, 2007. Accounts receivable from one customer accounted for 10% of the Company's gross accounts receivable as of September 30, 2006. No other single customer accounted for more than 10% of the Company's gross accounts receivable as of September 30, 2006.

17. Restructuring Charges***2004 Restructuring Charges***

In December 2004, in light of the availability of fully built-out data centers in select markets at costs significantly below those costs the Company would incur in building out new space, the Company made the decision to exit leases for excess space adjacent to one of the Company's New York metro area IBXs, as well as space on the floor above its original Los Angeles IBX. As a result of the Company's decision to exit these spaces, the Company recorded restructuring charges totaling \$17,685,000, which represents the present value of the Company's estimated future cash payments, net of any estimated subrental income and expense, through the remainder of these lease terms, as well as the write-off of all remaining property and equipment attributed to the partial build-out of the excess space on the floor above its Los Angeles IBX as outlined below. Both lease terms run through 2015.

The Company estimated the future cash payments required to exit these two leased spaces, net of any estimated subrental income and expense, through the remainder of these lease terms and then calculated the present value of such future cash flows in order to determine the appropriate restructuring charge to record. The Company records accretion expense to accrete its accrued restructuring liability up to an amount equal to the total estimated future cash payments necessary to complete the exit of these leases. Should the actual lease exit costs differ from the Company's estimates, the Company may need to adjust its restructuring charges associated with the excess lease spaces, which would impact net income in the period such determination was made.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

A summary of the movement in the 2004 accrued restructuring charge from December 31, 2006 to September 30, 2007 is outlined as follows (in thousands) (unaudited):

	Accrued restructuring charge as of December 31, 2006	Accretion expense	Restructuring charge adjustment	Cash payments	Accrued restructuring charge as of September 30, 2007
Estimated lease exit costs	\$ 13,857	\$ 613	\$ 407	\$(2,247)	\$ 12,630
	13,857	\$ 613	\$ 407	\$(2,247)	12,630
Less current portion	(3,096)				(3,778)
	<u>\$ 10,761</u>				<u>\$ 8,852</u>

During the three months ended June 30, 2007, the Company recorded an additional restructuring charge of \$407,000 as a result of revised sublease assumptions on one of these two excess space leases as new information became available. As the Company currently has no plans to enter into lump sum lease terminations with either of the landlords associated with these two excess space leases, the Company has reflected its accrued restructuring liability as both current and non-current on the accompanying condensed consolidated balance sheets as of September 30, 2007 and December 31, 2006. The Company is contractually committed to these two excess space leases through 2015.

2005 Restructuring Charges

In October 2005, in light of the availability of fully or partially built-out data centers in the Silicon Valley, including the possibility of expansion among some of the four IBX centers the Company currently has in the Silicon Valley, the Company made the decision that retaining the approximately 40 acre San Jose Ground Lease for future expansion was no longer economical. In conjunction with this decision, the Company entered into an agreement with the landlord of this property for the early termination of the San Jose Ground Lease property whereby the Company would pay \$40,000,000 over the next four years plus property taxes, which commenced on January 1, 2006, to terminate this lease, which would otherwise require significantly higher cumulative lease payments through 2020 (the "San Jose Ground Lease Termination"). As a result of the San Jose Ground Lease Termination, the Company recorded a \$33,814,000 restructuring charge in the fourth quarter of 2005, which represents the present value of the Company's estimated future cash payments to exit this property, as well as the write-off of all remaining property and equipment attributed to the development of this property.

The Company estimated the future cash payments required to exit the San Jose Ground Lease, net of any estimated subrental income and expense, through the remainder of these lease terms and then calculated the present value of such future cash flows in order to determine the appropriate restructuring charge to record. The Company's right to occupy this property terminates on December 31, 2007 and can be terminated at any time prior to December 31, 2007 upon the landlord providing the Company at least 10 days prior written notice; however, even if the landlord early terminates, the Company is still required to pay the full \$40,000,000 of payments due. The Company records accretion expense to accrete its accrued restructuring liability up to an amount equal to the total estimated future cash payments necessary to complete the exit of the San Jose Ground Lease.

EQUINIX, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS – (Continued)

A summary of the movement in the 2005 accrued restructuring charge from December 31, 2006 to September 30, 2007 is outlined as follows (in thousands) (unaudited):

	Accrued restructuring charge as of December 31, 2006	Accretion expense	Cash payments	Accrued restructuring charge as of September 30, 2007
Estimated lease exit costs	\$ 27,715	\$ 1,321	\$(7,853)	\$ 21,183
	27,715	<u>1,321</u>	<u>\$(7,853)</u>	21,183
Less current portion	<u>(10,373)</u>			<u>(10,364)</u>
	<u>\$ 17,342</u>			<u>\$ 10,819</u>

18. Recent Accounting Pronouncements

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements" ("SFAS No. 157"). SFAS No. 157 defines fair value, establishes a framework for measuring fair value under GAAP, and expands disclosures about fair value measurements. SFAS No. 157 is effective for fiscal years beginning after December 15, 2007. The Company is currently in the process of evaluating the impact that the adoption of SFAS No. 157 will have on its financial position, results of operations and cash flows.

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities" ("SFAS No. 159"). SFAS No. 159 permits companies to choose to measure, on an instrument-by-instrument basis, many financial instruments and certain other assets and liabilities at fair value that are not currently required to be measured at fair value. SFAS No. 159 is effective as of the beginning of a fiscal year that begins after November 15, 2007. The Company is currently in the process of evaluating the impact that the adoption of SFAS No. 159 will have on its financial position, results of operations and cash flows.

19. Subsequent Events

In October 2007, the Company amended certain provisions of the \$75,000,000 Silicon Valley Bank Credit Line which primarily related to the modification of certain financial covenants as a result of the issuance of 3.00% Convertible Subordinated Notes.

In October 2007, the Company received additional advances related to the Chicago IBX Financing (see Note 12) totaling \$4,787,000, bringing the cumulative Loan Payable to date to \$98,508,000 with a blended interest rate of 7.94% per annum. As a result, the amount available to borrow from the Chicago IBX Financing totals \$11,492,000.

In October 2007, the Company received additional advances related to the European Financing (see Note 12) totaling 6,000,000 British pounds or approximately \$12,308,000, bringing the cumulative Loan Payable to date to 38,621,000 British pounds or approximately \$79,226,000 with a blended interest rate of 7.62% per annum. As a result, the amount available to borrow from the European Financing totals 43,379,000 British pounds or approximately \$86,890,000.

Item 2.

**MANAGEMENT'S DISCUSSION AND ANALYSIS
OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The information in this discussion contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Such statements are based upon current expectations that involve risks and uncertainties. Any statements contained herein that are not statements of historical fact may be deemed to be forward-looking statements. For example, the words "believes," "anticipates," "plans," "expects," "intends" and similar expressions are intended to identify forward-looking statements. Our actual results and the timing of certain events may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such a discrepancy include, but are not limited to, those discussed in "Liquidity and Capital Resources" below and "Risk Factors" in Item 1A of Part II of this Quarterly Report on Form 10-Q. All forward-looking statements in this document are based on information available to us as of the date of this Report and we assume no obligation to update any such forward-looking statements.

Overview

Equinix provides network neutral colocation, interconnection and managed services to enterprises, content companies, systems integrators and the world's largest network providers. In September 2007, we completed the acquisition of IXEurope Plc, or IXEurope, headquartered in London, U.K., whereby IXEurope became our wholly-owned subsidiary. We refer to this transaction as the IXEurope acquisition. IXEurope, a similar business to ours, operates network neutral data centers in the United Kingdom, France, Germany and Switzerland and provides us with an immediate entry into the European data center market, supplementing our existing U.S. and Asia-Pacific operations. As of September 30, 2007, we operate IBX centers in the Chicago, Dallas, Los Angeles, New York, Silicon Valley and Washington, D.C. metro areas in the United States, Hong Kong, Singapore, Australia and Japan in the Asia-Pacific region, and the United Kingdom, France, Germany and Switzerland in the Europe region.

Direct interconnection to our aggregation of networks, which serve more than 90% of the world's Internet routes, allows our customers to increase performance while significantly reducing costs. Based on our network neutral model and the quality of our IBX centers, we believe we have established a critical mass of customers. As more customers locate in our IBX centers, it benefits their suppliers and business partners to do so as well to gain the full economic and performance benefits of direct interconnection. These partners, in turn, pull in their business partners, creating a "network effect" of customer adoption. Our interconnection services enable scalable, reliable and cost-effective interconnection and traffic exchange thus lowering overall cost and increasing flexibility. Our focused business model is based on our critical mass of customers and the resulting network effect. This critical mass and the resulting network effect, combined with our strong financial position, continue to drive new customer growth and bookings.

Historically, our market has been served by large telecommunications carriers who have bundled their telecommunications products and services with their colocation offerings. A number of these telecommunications carriers have eliminated or reduced their colocation footprint to focus on their core businesses. In 2003, as an example, one major telecommunications company, Sprint, announced its plans to exit the colocation and hosting market in order to focus on its core service offerings, while another telecommunications company, Cable & Wireless Plc, sold its U.S. assets to another telecommunications company, Savvis Communications Corp, in a bankruptcy auction. In 2005 and 2006, other providers, such as Abovenet and Verio, have selectively sold off certain of their colocation centers. Each of these colocation providers own and operate a network. We do not own or operate a network, yet have greater than 200 networks operating out of our IBX centers. As a result, we are able to offer our customers a substantial choice of networks given our network neutrality thereby allowing our customers to choose from numerous network service providers. We believe this is a distinct and sustainable competitive advantage, especially when the telecommunications industry is experiencing many business challenges and changes as evidenced by the numerous bankruptcies and consolidations within this industry during the past several years. Furthermore, this industry consolidation has constrained the supply of suitable data center space and has had a positive effect on industry pricing.

Table of Contents

Excluding the impact of the IXEurope acquisition, our customer count increased to 1,453 as of September 30, 2007 versus 1,260 as of September 30, 2006, an increase of 15%. Our utilization rate represents the percentage of our cabinet space billing versus total cabinet space available. Excluding the impact of the IXEurope acquisition, our utilization rate was 61% as of September 30, 2007 and 54% as of September 30, 2006; however, further excluding the impact of our recent IBX center openings in the Los Angeles, Chicago, Silicon Valley and Washington, D.C. metro areas, our utilization rate would have been 62% as of September 30, 2007. Our utilization rate varies from market to market among our IBX centers in our markets across the U.S., Asia-Pacific and Europe. We continue to monitor the available capacity in each of our selected markets. To the extent we have limited capacity available in a given market, it may limit our ability for growth in that market. Once capacity becomes limited, we will perform demand studies to determine if future expansion is warranted. In addition, power and cooling requirements for most customers are growing on a per unit basis. As a result, customers are consuming an increasing amount of power per cabinet. Although we generally do not control the amount of draw our customers take from installed circuits, we have negotiated power consumption limitations with certain of our high power demand customers. This increased power consumption has driven the requirement to build out our new IBX centers to support power and cooling needs twice that of previous IBX centers. We could face power limitations in our centers even though we may have additional physical capacity available within a specific IBX center. This could have a negative impact on the available utilization capacity of a given center, which could have a negative impact on our ability to grow revenues, affecting our financial performance, operating results and cash flows. As a result of these power limitations in our IBX centers that were opened before 2007, the maximum utilization rate that we expect to achieve for most IBX centers until we consider an IBX center full or sold-out is approximately 75-80% depending on the building configurations. Due to these power limitations, commencing with the first quarter of 2007, we began to track the utilization of our centers on a net sellable cabinet capacity basis. Therefore, our utilization rate as of September 30, 2007 on a net sellable cabinet capacity basis, excluding the impact of IXEurope acquisition, was 79% versus the 61% noted above under our previous utilization rate methodology, which does not factor in these power limitations.

Strategically, we will continue to look at attractive opportunities to grow our market share and selectively improve our footprint and service offerings, such as our 2005 expansions in the Silicon Valley, Chicago and Los Angeles metro area markets, our 2006 expansions in the Washington, D.C., Chicago, New York and Tokyo, Japan metro area markets, which opened in 2007 (see "Recent Developments" below), and our 2007 San Jose and Los Angeles property acquisitions and expansions in the Singapore, Washington, D.C., Silicon Valley and Los Angeles metro area markets, as well as the IXEurope acquisition. However, we will continue to be very selective with any similar opportunities. As was the case with these recent expansions in our existing markets in the Washington, D.C., Silicon Valley, Chicago, Los Angeles, Tokyo and Singapore metro area markets or our expansion in new markets, such as Europe with the IXEurope acquisition, our expansion criteria will be dependent on demand from new and existing customers, quality of the design, power capacity, access to networks, capacity availability in current market location, amount of incremental investment required by us in the targeted property, lead-time to break-even and in-place customers. Like our recent expansions, the right combination of these factors may be attractive to us. Dependent on the particular deal, these acquisitions may require upfront cash payments and additional capital expenditures or may be funded through long-term financing arrangements in order to bring these properties up to Equinix standards. Property expansion may be in the form of a purchase of real property, long-term leasing arrangements or acquisitions. Future purchases, construction or acquisitions may be completed by us or with partners or potential customers to minimize the outlay of cash, which can be significant.

Our business is based on a recurring revenue model comprised of colocation, interconnection and managed infrastructure services. We consider these services recurring as our customers are billed on a fixed and recurring basis each month for the duration of their contract, which is generally one to three years in length. Our recurring revenues are a significant component of our total revenues comprising greater than 90% of our total revenues. Over the past few years, greater than half of our then existing customers order new services in any given quarter representing greater than half of the new orders received in each quarter.

Our non-recurring revenues are primarily comprised of installation services related to a customer's initial deployment and professional services that we perform. These services are considered to be non-recurring as they are billed typically once and only upon completion of the installation or professional services work performed. The majority of these non-recurring revenues are typically billed on the first invoice distributed to the customer in connection with their initial installation. As a percentage of total revenues, we expect non-recurring revenues to represent less than 10% of total revenues for the foreseeable future.

Table of Contents

The largest cost components of our cost of revenues are depreciation, rental payments related to our leased IBX centers, utility costs including electricity and bandwidth, IBX employees' salaries and benefits, including stock-based compensation, supplies and equipment and security services. A substantial majority of our cost of revenues is fixed in nature and should not vary significantly from period to period. However, there are certain costs, which are considered more variable in nature, including utilities and supplies, that are directly related to growth in our existing and new customer base. We expect the cost of our utilities, specifically electricity, will increase in the future on a per unit or fixed basis in addition to on a customer growth or variable basis. In addition, the cost of electricity is generally higher in the summer months as compared to other times of the year.

Sales and marketing expenses consist primarily of compensation and related costs for sales and marketing personnel, including stock-based compensation, sales commissions, marketing programs, public relations, promotional materials and travel.

General and administrative expenses consist primarily of salaries and related expenses, including stock-based compensation, accounting, legal and other professional service fees, other general corporate expenses such as our corporate headquarter office lease and some depreciation expense.

Recent Developments

In January 2007, we entered into a conditional purchase agreement to purchase the building and property where our original Silicon Valley IBX center is located for \$65.2 million, including closing costs, which was paid in full in a cash transaction during July 2007 following an initial \$6.5 million cash deposit paid in January 2007. Furthermore, in August 2007, we purchased an adjacent piece of land for \$6.2 million, including closing costs, for potential future expansion. We refer to these transactions as the Silicon Valley property acquisition.

In February 2007, one of our wholly-owned subsidiaries obtained a loan of up to \$110.0 million to finance up to 60% of the development and construction costs of our Chicago metro area IBX expansion project. We refer to this transaction as the Chicago IBX financing. We periodically receive advances of funds in conjunction with costs incurred for the construction of our Chicago metro area IBX expansion project, which we refer to as our loan payable. As of September 30, 2007, we had received advances totaling \$93.7 million. As a result, up to \$16.3 million remained available for borrowing from the Chicago IBX financing and is expected to be borrowed periodically during the remaining construction period of the Chicago metro area IBX expansion project until its completion by the end of 2007. The loan payable has a maturity date of January 31, 2010, with options to extend for up to an additional two years, in one-year increments, upon satisfaction of certain extension conditions. The loan payable bears interest at a floating rate (one, three or six month LIBOR plus 2.75%) with interest payable monthly, which commenced March 1, 2007. In October 2007, we received additional advances totaling \$4.8 million, bringing the cumulative loan payable to date to \$98.5 million with a blended interest rate of 7.94% per annum.

In March and July 2007, we entered into long-term leases for new space in the same building in which our existing Singapore IBX center is located. Minimum payments under these leases, which qualify as operating leases, total 5.0 million Singapore dollars (approximately \$3.3 million as translated using effective exchange rates at September 30, 2007) in cumulative lease payments with monthly payments commencing in the third quarter of 2007. We are building out this new space in multiple phases and plan to invest approximately \$15.9 million in total, of which approximately \$12.2 million was incurred as of September 30, 2007.

In March 2007, we extended an offer of employment to Stephen M. Smith to serve as our Chief Executive Officer and President. Mr. Smith commenced his employment with us on April 2, 2007. Prior to joining us, Mr. Smith served as senior vice president at HP Services, an operating segment of Hewlett-Packard Co., from January 2005 to October 2006. Prior to joining Hewlett-Packard Co., Mr. Smith served as vice president of global professional and managed services at Lucent Technologies Inc. from September

Table of Contents

2003 to January 2005. From October 1987 to September 2003, he spent 17 years with Electronic Data Systems Corporation in a variety of positions, including chief sales officer, president of EDS Asia-Pacific, and president of EDS Western Region. Mr. Smith earned a Bachelor of Science degree in engineering from the U.S. Military Academy at West Point.

In March 2007, we entered into agreements with certain holders of our convertible subordinated debentures due February 15, 2024, pursuant to which we agreed to exchange an aggregate of 1.4 million newly issued shares of our common stock for such holders' \$54.0 million of \$86.3 million principal amount of the convertible subordinated debentures. The number of shares of common stock issued equaled the amount issuable upon conversion of the convertible subordinated debentures in accordance with their original terms. In addition, each holder received cash consideration equal to accrued and unpaid interest through the redemption date totaling \$110,000, as well as the present value of future interest due through February 15, 2009 and an incremental fee, totaling \$3.4 million, which was recorded as loss on conversion of debt during the three months ended March 31, 2007.

In March 2007, we announced our intention to build out a new IBX center within the Ashburn campus, which will be the fifth IBX center in the Washington, D.C. metro area, in order to further expand our existing Washington, D.C. metro area IBX center. We refer to this project as the Washington, D.C. metro area IBX expansion project. We plan to spend approximately \$70.0 million for the Washington, D.C. metro area IBX expansion project, of which \$9.3 million was incurred as of September 30, 2007.

In March 2007, we issued \$250.0 million in aggregate principal amount of 2.50% convertible subordinated notes due 2012. The initial conversion rate is 8.9259 shares of common stock per \$1,000 principal amount of convertible subordinated notes, subject to adjustment. This represents an initial conversion price of approximately \$112.03 per share of common stock or 2.2 million shares of our common stock. Upon conversion, holders will receive, at our election, cash, shares of our common stock or a combination of cash and shares of our common stock. We have used or intend to use the net proceeds from this offering for general corporate purposes, including the funding of our expansion activities and working capital requirements. We refer to this transaction as the 2.50% convertible subordinated notes offering.

In June 2007, we purchased a new property, comprised of land and an empty building, located in El Segundo, California, for \$49.1 million, including closing costs, which we paid in full in a cash transaction during June 2007. We refer to this project as the Los Angeles metro area IBX expansion project. We plan to spend approximately \$95.0 million for the Los Angeles metro area IBX expansion project, of which \$1.1 million was incurred as of September 30, 2007.

In June 2007, we announced our plan to invest approximately \$41.0 million on an existing IBX center in the Silicon Valley metro area. We intend to expand this IBX center for customer availability during the second quarter of 2008. We refer to this project as the Silicon Valley metro area IBX expansion project.

In June 2007, we entered into a senior bridge loan credit agreement with Citibank, N.A., as lender, and as agent for the lender, for a principal amount of \$500.0 million, to finance the IXEurope acquisition. We refer to this transaction as the senior bridge loan. The senior bridge loan had an initial maturity of 12 months and, at the initial maturity date, would have been converted into a seven-year term loan that would have been exchangeable by the lenders at any time into fixed-rate exchange notes with registration rights to the extent we drew down on the senior bridge loan and any amounts outstanding under the senior bridge loan were not repaid within one year. The senior bridge loan bore interest at floating rates during the first three months at an initial rate of LIBOR plus 3.50% per annum and the interest was payable quarterly. The rate for each subsequent three-month period increased by 0.5% over the floating rate in effect for the immediate preceding three-month period. The interest rate for each three-month period our have been equal to the greater of the interest rate applicable for such period or 9.0% per annum but would not have exceeded 11.25% per annum. We incurred \$2.5 million of debt issuance costs in securing the senior bridge loan. In September 2007, the senior bridge loan was terminated unused and, as a result, we recorded a loss on debt extinguishment totaling \$2.5 million reflecting the immediate write-off of all such debt issuance costs previously capitalized.

Table of Contents

In July 2007, Christopher Paisley was elected to our board of directors and our audit committee. Mr. Paisley will serve as the audit committee's chair and as its financial expert. Mr. Paisley has been the Dean's Executive Professor of Accounting and Finance at the Leavey School of Business at Santa Clara University since January 2001. From September 1985 until May 2000, Mr. Paisley was the Senior Vice President of Finance and Chief Financial Officer of 3Com Corporation. Mr. Paisley currently serves as a director of Electronics for Imaging, Inc. and Volterra Semiconductor Corporation, both public companies.

In August 2007, our two wholly-owned subsidiaries, located in Singapore and Tokyo, Japan, entered into an approximately \$40.0 million multi-currency credit facility agreement. We refer this transaction as the Asia-Pacific financing. The Asia-Pacific financing has a four-year term that allows these two subsidiaries to borrow up to 23.0 million Singapore dollars and 2.9 billion Japanese yen, respectively, during the first 12-month period with repayment to occur over the remaining three years in 12 equal quarterly installments. Amounts undrawn at the end of the first 12-month period shall be cancelled. The Asia-Pacific financing has a commitment fee of 0.3% on unutilized amounts during the 12-month draw period and bears interest at a floating rate (the relevant three-month local cost of funds for Singapore and Japan), as applicable, plus 1.85%-2.50% depending on the ratio of our senior indebtedness to our earnings before interest, taxes, depreciation and amortization, or EBITDA, with interest payable quarterly. The Asia-Pacific financing may be used by these two subsidiaries to fund capital expenditures on leasehold improvements, equipment, and other installation costs related to expansion plans in Singapore and Tokyo. The Asia-Pacific financing is guaranteed by us, is secured by the assets of these two subsidiaries and has several financial covenants, with which we must comply quarterly. As of September 30, 2007, we had borrowed 18.3 million Singapore dollars at an initial interest rate per annum of 4.66% and 1.5 billion Japanese yen at an initial interest rate per annum of 2.69%. Collectively the amounts borrowed equal to approximately \$25.0 million leaving approximately \$15.0 million remaining to borrow under the Asia-Pacific financing.

On September 14, 2007, a wholly-owned subsidiary of ours purchased the entire issued and to be issued share capital of IXEurope, a publicly-held company headquartered in London, U.K. Under the final terms of the IXEurope acquisition, IXEurope shareholders received 140 British pence in cash for each IXEurope share. The purchase price, including direct transaction costs, totaled 271.1 million British pounds or \$549.2 million. IXEurope, a similar business to ours, operates data centers in the United Kingdom, France, Germany and Switzerland and provides us with an immediate entry into the European data center market, supplementing our existing U.S. and Asia-Pacific operations. The IXEurope acquisition was accounted for using the purchase method of accounting in accordance with Statement of Financial Accounting Standard No. 141, "Business Combinations" ("SFAS 141"). In July and August 2007, we entered into forward contracts to purchase 265.2 million British pounds at an average forward rate of 2.020007, or the equivalent of \$535.6 million, to be delivered in September 2007, for purposes of hedging a portion of the purchase price of the IXEurope acquisition. Upon cash payment in September 2007, we recorded a foreign exchange gain of \$1.5 million, which is reflected within other income (expense) on our statement of operations for the three and nine months ended September 30, 2007.

In September 2007, we closed an offering of 4.2 million shares of our common stock at \$84.05 per share (the last reported sale price of our common stock on September 20, 2007). We refer to this transaction as the common stock offering. We received total proceeds of \$339.9 million, net of the underwriting discount and other offering expenses. In September 2007, we issued \$396.0 million in aggregate principal amount of 3.00% convertible subordinated notes due 2014. The initial conversion rate is 7.4360 shares of common stock per \$1,000 principal amount of convertible subordinated notes, subject to adjustment. This represents an initial conversion price of approximately \$134.48 per share of common stock or 2.9 million shares of our common stock. We refer to this transaction as the 3.00% convertible subordinated notes offering.

In October 2007, we amended certain provisions of the \$75.0 million Silicon Valley Bank revolving credit line which primarily related to the modification of certain financial covenants as a result of the 3.00% convertible subordinated notes offering.

In October 2007, we received additional advances related to the European financing totaling 6.0 million British pounds or approximately \$12.3 million, bringing the cumulative loan payable to date to 38.6 million British pounds or approximately \$79.2 million with a blended interest rate of 7.62% per annum. As a result, the amount available to borrow from the European financing totals 43.4 million British pounds or approximately \$86.9 million.

[Table of Contents](#)

Critical Accounting Policies and Estimates

Equinix's financial statements and accompanying notes are prepared in accordance with generally accepted accounting principles in the United States of America. Preparing financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, sales and expenses. These estimates and assumptions are affected by management's application of accounting policies. Critical accounting policies for Equinix include revenue recognition and allowance for doubtful accounts, accounting for income taxes, estimated and contingent liabilities, accounting for property and equipment, impairment of long-lived assets, accounting for asset retirement obligations, accounting for leases and IBX acquisitions, accounting for restructuring charges and accounting for stock-based compensation, which are discussed in more detail under the caption "Critical Accounting Policies and Estimates" in our 2006 Annual Report on Form 10-K.

Results of Operations

Our results of operations for the three and nine months ended September 30, 2007 include the operations of IXEurope from September 14 to September 30, 2007 as a result of the IXEurope acquisition, which closed on the morning of September 14, 2007. As a result, only 17 days of operations are reported from our Europe operations. The fourth quarter of 2007 will represent the first quarter that will include full quarterly results from our Europe operations.

Three Months Ended September 30, 2007 and 2006

Revenues. Our revenues for the three months ended September 30, 2007 and 2006 were split between the following revenue classifications (dollars in thousands):

	Three months ended September 30,			
	2007	%	2006	%
Recurring revenues	\$ 99,288	96%	\$69,918	95%
Non-recurring revenues	4,494	4%	3,808	5%
Total revenues	<u>\$103,782</u>	<u>100%</u>	<u>\$73,726</u>	<u>100%</u>

Our revenues for the three months ended September 30, 2007 and 2006 were geographically comprised of the following (dollars in thousands):

	Three months ended September 30,			
	2007	%	2006	%
U.S. revenues	\$ 83,685	81%	\$63,654	86%
Asia-Pacific revenues	14,643	14%	10,072	14%
Europe revenues	5,454	5%	—	0%
Total revenues	<u>\$103,782</u>	<u>100%</u>	<u>\$73,726</u>	<u>100%</u>

We recognized revenues of \$103.8 million for the three months ended September 30, 2007 as compared to revenues of \$73.7 million for the three months ended September 30, 2006, a 41% increase. We analyze our business geographically between the U.S., Asia-Pacific and Europe as further discussed below.

U.S. Revenues. We recognized U.S. revenues of \$83.7 million for the three months ended September 30, 2007 as compared to \$63.6 million for the three months ended September 30, 2006. U.S. revenues consisted of recurring revenues of \$80.6 million and \$60.4 million, respectively, for the three months ended September 30, 2007 and 2006, a 33% increase. U.S. recurring revenues consist primarily of colocation and interconnection services plus a nominal amount of managed infrastructure services and rental income. The period over period growth in recurring revenues was primarily the result of an increase in orders from both

Table of Contents

our existing customers and new customers acquired during the period as reflected in the growth in our customer count and utilization rate, as discussed above, in both our new and existing IBX centers, as well as selective price increases in each of our IBX markets. Most notably, we recorded \$6.1 million of revenues during the three months ended September 30, 2007 from our newly opened IBX centers in the Silicon Valley and Washington, D.C. metro areas. We expect our U.S. recurring revenues, particularly colocation and interconnection services, to continue to remain our most significant source of revenue for the foreseeable future.

In addition, U.S. revenues consisted of non-recurring revenues of \$3.1 million and \$3.2 million, respectively, for the three months ended September 30, 2007 and 2006. U.S. non-recurring revenues consisted of the recognized portion of deferred installation and professional services.

Asia-Pacific Revenues. We recognized Asia-Pacific revenues of \$14.6 million for the three months ended September 30, 2007 as compared to \$10.1 million for the three months ended September 30, 2006, a 45% increase. Asia-Pacific revenues consisted of recurring revenues of \$13.5 million and \$9.5 million, respectively, for the three months ended September 30, 2007 and 2006, consisting primarily of colocation and managed infrastructure services. Our Asia-Pacific colocation revenues are similar to the revenues that we generate from our U.S. IBX centers; however, our Singapore IBX center has additional managed infrastructure service revenue, such as mail service and managed platform solutions, which we do not currently offer in any other IBX center location. In addition, Asia-Pacific revenues consisted of non-recurring revenues of \$1.1 million and \$549,000, respectively, for the three months ended September 30, 2007 and 2006. Asia-Pacific revenues are generated from Hong Kong, Singapore, Sydney and Tokyo, with Singapore representing approximately 36% and 39%, respectively, of the regional revenues for the three months ended September 30, 2007 and 2006. The overall growth in our Asia-Pacific revenues is primarily the result of an increase in the customer base in this region during the past year, particularly in Hong Kong, Sydney and Tokyo. In addition, during the three months ended September 30, 2007, we recorded \$567,000 of revenues from our new IBX center in Tokyo, which we acquired in December 2006, and our Singapore IBX expansion. We expect our Asia-Pacific revenues to continue to grow.

Europe Revenues. As a result of the IXEurope acquisition that closed on September 14, 2004, we recognized revenues of \$5.5 million in Europe during the three months ended September 30, 2007.

Cost of Revenues. Cost of revenues were \$62.9 million for the three months ended September 30, 2007 as compared to \$49.1 million for the three months ended September 30, 2006, a 28% increase.

U.S. Cost of Revenues. U.S. cost of revenues was \$49.7 million for the three months ended September 30, 2007 as compared to \$43.5 million for the three months ended September 30, 2006. U.S. cost of revenues for the three months ended September 30, 2007 included (i) \$17.5 million of depreciation and amortization expense, (ii) \$749,000 of accretion expense for our asset retirement obligations and restructuring charges for certain leasehold interests recorded in 2004 and 2005 as we accrete the related liabilities to the total estimated future cash payments needed and (iii) \$774,000 of stock-based compensation expense. U.S. cost of revenues for the three months ended September 30, 2006 included (i) \$16.9 million of depreciation and amortization expense, (ii) \$895,000 of accretion expense for our asset retirement obligations and restructuring charges for certain leasehold interests recorded in 2004 and 2005 as we accrete the related liabilities to the total estimated future cash payments needed and (iii) \$563,000 of stock-based compensation expense. Our U.S. cost of revenues for the three months ended September 30, 2007 also included \$3.3 million of incremental cash operating costs not incurred in the prior year associated with the recently opened IBX centers in the Silicon Valley and Washington, D.C. metro areas, and the IBX centers under construction in the Chicago, New York, Washington D.C. and Los Angeles metro areas. Excluding depreciation and amortization expense, accretion expense, stock-based compensation expense and the incremental cash costs associated with operating our new IBX centers, U.S. cost of revenues increased period over period to \$27.4 million for the three months ended September 30, 2007 from \$21.8 million for the three months ended September 30, 2006, an 26% increase. This increase is primarily the result of higher compensation costs and increasing utility costs in line with increasing customer installations and revenues attributed to customer growth. We continue to anticipate that our cost of revenues will increase in the foreseeable future to the extent that the occupancy levels in our U.S. IBX centers increase and as newly-opened IBX centers in the Silicon Valley, Chicago, Los Angeles and Washington, D.C. metro areas commence operations more fully in 2007. However, a portion of our expected increase in U.S. cost of

Table of Contents

revenues will be partially offset by a reduction in rent expense as a result of our Silicon Valley property acquisition. We expect that this savings in rent expense will be approximately \$2.0 million annually; however, part of the rent savings will be offset by increases in depreciation and property tax expense.

Asia-Pacific Cost of Revenues. Asia-Pacific cost of revenues was \$9.2 million for the three months ended September 30, 2007 as compared to \$5.6 million for the three months ended September 30, 2006. Asia-Pacific cost of revenues for the three months ended September 30, 2007 and 2006 included \$2.5 million and \$923,000, respectively, of depreciation and amortization expense. Our Asia-Pacific cost of revenues for the three months ended September 30, 2007 also included \$1.2 million of incremental cash operating costs not incurred in the prior year associated with our new IBX center in Tokyo and our Singapore IBX expansion project. Excluding depreciation and amortization expense, stock-based compensation expense and the incremental cash costs associated with operating our new IBX centers in the Tokyo and Singapore metro areas, Asia-Pacific cost of revenues increased period over period to \$5.4 million for the three months ended September 30, 2007 from \$4.6 million for the three months ended September 30, 2006, a 17% increase. This increase is primarily the result of an increase in compensation, repair and maintenance, and increasing utility and bandwidth costs in line with increasing customer installations and revenues attributed to customer growth, as well as service offerings that are more labor intensive than the U.S. We anticipate that our Asia-Pacific cost of revenues will increase in the foreseeable future in connection with overall revenue growth and our expansions in the Tokyo and Singapore metro areas.

Europe Cost of Revenues. As a result of the IXEurope acquisition that closed on September 14, 2004, we incurred additional cost of revenues of \$4.0 million from our Europe operations during the three months ended September 30, 2007. Europe cost of revenues for the three months ended September 30, 2007 included \$1.0 million of depreciation and amortization expense.

Sales and Marketing. Sales and marketing expenses were \$9.6 million for the three months ended September 30, 2007 and \$7.5 million for the three months ended September 30, 2006.

U.S. Sales and Marketing Expenses. U.S. sales and marketing expenses increased to \$7.4 million for the three months ended September 30, 2007 from \$6.5 million for the three months ended September 30, 2006. Included in U.S. sales and marketing expenses for the three months ended September 30, 2007 and 2006 was \$2.0 million and \$1.5 million, respectively, of stock-based compensation expense. Excluding stock-based compensation expense, U.S. sales and marketing expenses increased to \$5.5 million for the three months ended September 30, 2007 as compared to \$5.0 million for the three months ended September 30, 2006, a 10% increase. This increase is primarily attributable to increased sales compensation as a result of revenue growth. Going forward, we expect to see U.S. sales and marketing spending to increase nominally in absolute dollars as we continue to grow our business.

Asia-Pacific Sales and Marketing Expenses. Asia-Pacific sales and marketing expenses increased to \$1.5 million for the three months ended September 30, 2007 as compared to \$1.0 million for the three months ended September 30, 2006, a 46% increase. This increase was primarily due to general salary increases and sales compensation over the prior period associated with the overall growth in this region. We expect that our Asia-Pacific sales and marketing expenses will experience some growth in the foreseeable future as we continue to grow our business.

Europe Sales and Marketing Expenses. As a result of the IXEurope acquisition that closed on September 14, 2004, we incurred additional sales and marketing expenses of \$698,000 from our Europe operations during the three months ended September 30, 2007. Included in Europe sales and marketing expenses for the three months ended September 30, 2007 was \$299,000 of intangible asset amortization and stock-based compensation expense.

General and Administrative. General and administrative expenses increased to \$25.2 million for the three months ended September 30, 2007 from \$18.6 million for the three months ended September 30, 2006.

Table of Contents

U.S. General and Administrative Expenses. U.S. general and administrative expenses increased to \$20.2 million for the three months ended September 30, 2007 as compared to \$16.1 million for the three months ended September 30, 2006. Included in U.S. general and administrative expenses for the three months ended September 30, 2007 were \$6.1 million of stock-based compensation expense and \$1.9 million of depreciation expense. Included in U.S. general and administrative expenses for the three months ended September 30, 2006 were \$4.0 million of stock-based compensation expense and \$780,000 of depreciation expense. Excluding stock-based compensation expense and depreciation expense, U.S. general and administrative expenses increased to \$12.1 million for the three months ended September 30, 2007, as compared to \$11.3 million for the three months ended September 30, 2006, a 7% increase. This increase is primarily due to higher compensation costs, including general salary increases, benefits and headcount growth (218 U.S. general and administrative employees as of September 30, 2007 versus 168 as of September 30, 2006), partially offset by a decrease in professional services. Going forward, we expect U.S. general and administrative spending to increase as we continue to scale our operations to support our growth.

Asia-Pacific General and Administrative Expenses. Asia-Pacific general and administrative expenses increased to \$3.7 million for the three months ended September 30, 2007 as compared to \$2.5 million for the three months ended September 30, 2006. Included in Asia-Pacific general and administrative expenses for the three months ended September 30, 2007 and 2006 was \$1.1 million and \$583,000, respectively, of stock-based compensation expense. Excluding stock-based compensation and depreciation expense, Asia-Pacific general and administrative expenses increased to \$2.5 million for the three months ended September 30, 2007, as compared to \$1.9 million for the three months ended September 30, 2006, a 32% increase. This increase is primarily due to higher compensation costs, including general salary increases, benefits and headcount growth (92 Asia-Pacific general and administrative employees as of September 30, 2007 versus 85 as of September 30, 2006). Our Asia-Pacific headquarter office is located in Singapore. We expect that our Asia-Pacific general and administrative expenses will experience some moderate growth in the foreseeable future.

Europe General and Administrative Expenses. As a result of the IXEurope acquisition that closed on September 14, 2004, we incurred additional general and administrative expenses of \$1.3 million from our Europe operations during the three months ended September 30, 2007. Included in Europe general and administrative expenses for the three months ended September 30, 2007 was \$358,000 of stock-based compensation and depreciation expense.

Interest Income. Interest income increased to \$3.3 million from \$1.7 million for the three months ended September 30, 2007 and 2006, respectively. The increase was primarily due to higher invested balances and higher yields on cash and cash equivalent balances held in interest-bearing accounts. The average yield for the three months ended September 30, 2007 was 5.22% versus 4.74% for the three months ended September 30, 2006. We expect our interest income to decrease for the foreseeable future due to the utilization of our cash to finance our expansion activities.

Interest Expense. Interest expense increased to \$5.7 million from \$3.6 million for the three months ended September 30, 2007 and 2006, respectively. The increase in interest expense was primarily due to new financings entered into during 2006 and 2007: (i) an additional financing of \$40.0 million under the Ashburn campus mortgage payable during the three months ended December 31, 2006, which bears interest at 8.0% per annum, (ii) our \$110.0 million Chicago IBX financing, which is drawn down during the construction period of the Chicago metro area IBX expansion project, of which \$93.7 million was outstanding as of September 30, 2007 with an effective interest rate of 8.375% per annum, (iii) our \$250.0 million 2.50% convertible subordinated notes offering in March 2007, (iv) our approximately \$40.0 million Asia-Pacific financing, of which approximately \$25.0 million was outstanding as of September 30, 2007 with a blended effective interest rate of 3.65% per annum, (v) our \$396.0 million 3.00% convertible subordinated notes offering in September 2007 and (vi) our approximately \$166.1 million European financing, of which \$66.0 million was outstanding as of September 30, 2007 with a blended effective interest rate of 7.65% per annum. This increase was partially offset by the \$54.0 million partial conversion of our 2.50% convertible subordinated debentures in March 2007 that resulted in a decrease in interest expense. Although we now have higher debt balances, we are also capitalizing more interest in connection with various construction projects related to our IBX expansion efforts. During the three months ended September 30, 2007 and 2006, we capitalized \$3.0 million and \$354,000, respectively, of interest expense to construction in progress. Going forward, we expect to incur higher interest expense as we fully utilize or recognize the full impact of our existing financings to fund our expansion efforts and as we complete expansion efforts and cease to capitalize interest expense.

Table of Contents

Other Income (Expense). Other income increased to \$3.2 million from \$53,000 for the three months ended September 30, 2007 and 2006, respectively. The increase is primarily due to foreign currency exchange gains including a foreign exchange gain of \$1.5 million as a result of hedging a portion of the IXEurope acquisition purchase price with forward contracts and a \$621,000 foreign exchange gain related to the substantial liquidation of a dormant subsidiary of ours in the Netherlands. As a result, this historical foreign exchange gain of \$621,000 accumulated within other comprehensive income associated with this dormant subsidiary was recognized in our results of operations.

Loss on Debt Conversion and Extinguishment. In September 2007, the senior bridge loan was terminated unused and, as a result, during the three months ended September 2007, we recorded a \$2.5 million loss on debt extinguishment reflecting the immediate write-off of debt issuance costs previously capitalized to secure the senior bridge loan. During the three months ended September 30, 2006, we did not record any loss on conversion and extinguishment of debt in our statement of operations.

Income Taxes. For the three months ended September 30, 2007 and 2006, we recorded \$215,000 and \$270,000, respectively, of income tax expense. The tax provision recorded in the three months ended September 30, 2007 is primarily attributable to our foreign operations. The tax provision recorded in the three months ended September 30, 2006 is primarily attributable to federal alternative minimum tax and foreign jurisdictions. A full valuation allowance is recorded against our net deferred tax assets in all jurisdictions other than Singapore and Switzerland as management cannot conclude, based on available objective evidence including recurring historical losses, that it is more likely than not that the net value of our deferred tax assets will be realized. We have not incurred any significant income tax expense since inception and we do not expect to incur any significant income tax expense during 2007 other than foreign income and domestic alternative minimum tax.

Nine Months Ended September 30, 2007 and 2006

Revenues. Our revenues for the nine months ended September 30, 2007 and 2006 were split between the following revenue classifications (dollars in thousands):

	Nine months ended September 30,			
	2007	%	2006	%
Recurring revenues	\$268,078	95%	\$196,759	95%
Non-recurring revenues	12,650	5%	10,384	5%
Total revenues	<u>\$280,728</u>	<u>100%</u>	<u>\$207,143</u>	<u>100%</u>

Our revenues for the nine months ended September 30, 2007 and 2006 were geographically comprised of the following (dollars in thousands):

	Nine months ended September 30,			
	2007	%	2006	%
U.S. revenues	\$234,461	84%	\$178,394	86%
Asia-Pacific revenues	40,813	14%	28,749	14%
Europe revenues	5,454	2%	—	0%
Total revenues	<u>\$280,728</u>	<u>100%</u>	<u>\$207,143</u>	<u>100%</u>

We recognized revenues of \$280.7 million for the nine months ended September 30, 2007 as compared to revenues of \$207.1 million for the nine months ended September 30, 2006, a 36% increase. We analyze our business geographically between the U.S., Asia-Pacific and Europe as further discussed below.

Table of Contents

U.S. Revenues. We recognized U.S. revenues of \$234.4 million for the nine months ended September 30, 2007 as compared to \$178.4 million for the nine months ended September 30, 2006, a 31% increase. U.S. revenues consisted of recurring revenues of \$225.4 million and \$169.8 million, respectively, for the nine months ended September 30, 2007 and 2006, a 33% increase. The period over period growth in recurring revenues was primarily the result of an increase in orders from both our existing customers and new customers acquired during the period as reflected in the growth in our customer count and utilization rate, as discussed above, in both our new and existing IBX centers, as well as selective price increases in each of our IBX markets. Most notably, we recorded \$24.5 million of revenues during the nine months ended September 30, 2007 from our newly opened IBX centers in the Chicago, Los Angeles, Silicon Valley and Washington, D.C. metro areas. In addition, we recorded a net adjustment of \$775,000 to our U.S. recurring revenues as a result of correcting billing errors attributable to prior periods, the net impact of which increased our U.S. recurring revenues for the nine months ended September 30, 2007. We concluded that the cumulative credit to recurring revenues, totaling \$775,000, was not material to any previously-reported historical period and expected results of operations for the current fiscal year. As such, this cumulative credit was recorded during the three months ended June 30, 2007 and is included in the statement of operations for the nine months ended September 30, 2007. We expect our U.S. recurring revenues, particularly colocation and interconnection services, to continue to remain our most significant source of revenue for the foreseeable future.

In addition, U.S. revenues consisted of non-recurring revenues of \$9.1 million and \$8.6 million, respectively, for the nine months ended September 30, 2007 and 2006. U.S. non-recurring revenues increased 5% period over period, primarily due to strong existing and new customer growth during the year.

Asia-Pacific Revenues. We recognized Asia-Pacific revenues of \$40.8 million for the nine months ended September 30, 2007 as compared to \$28.7 million for the nine months ended September 30, 2006, a 42% increase. Asia-Pacific revenues consisted of recurring revenues of \$37.5 million and \$27.0 million, respectively, for the nine months ended September 30, 2007 and 2006, consisting primarily of colocation and managed infrastructure services. In addition, Asia-Pacific revenues consisted of non-recurring revenues of \$3.3 and \$1.8 million, respectively, for the nine months ended September 30, 2007 and 2006. Asia-Pacific revenues are generated from Hong Kong, Singapore, Sydney and Tokyo, with Singapore representing approximately 35% and 40%, respectively, of the regional revenues for the nine months ended September 30, 2007 and 2006. The overall growth in our Asia-Pacific revenues is primarily the result of an increase in the customer base in this region during the past year, particularly in Hong Kong, Sydney and Tokyo. In addition, during the nine months ended September 30, 2007, we recorded \$1.2 million of revenues from our new IBX center in Tokyo, which we acquired in December 2006, and our Singapore IBX expansion. We expect our Asia-Pacific revenues to continue to grow.

Europe Revenues. As a result of the IXEurope acquisition that closed on September 14, 2004, we recognized revenues of \$5.5 million in Europe during the nine months ended September 30, 2007.

Cost of Revenues. Cost of revenues were \$171.3 million for the nine months ended September 30, 2007 as compared to \$138.0 million for the nine months ended September 30, 2006, a 24% increase.

U.S. Cost of Revenues. U.S. cost of revenues was \$143.2 million for the nine months ended September 30, 2007 as compared to \$121.5 million for the nine months ended September 30, 2006. U.S. cost of revenues for the nine months ended September 30, 2007 included (i) \$53.1 million of depreciation and amortization expense, (ii) \$2.4 million of accretion expense for our asset retirement obligations and restructuring charges for certain leasehold interests recorded in 2004 and 2005 as we accrete the related liabilities to the total estimated future cash payments needed and (iii) \$2.6 million of stock-based compensation expense. U.S. cost of revenues for the nine months ended September 30, 2006 included (i) \$48.3 million of depreciation and amortization expense, (ii) \$2.8 million of accretion expense for our asset retirement obligations and restructuring charges for certain leasehold interests recorded in 2004 and 2005 as we accrete the related liabilities to the total estimated future cash payments needed and (iii) \$2.0 million of stock-based compensation expense. Our U.S. cost of revenues for the nine months ended September 30, 2007 also included \$10.5 million of incremental cash operating costs not incurred in the prior year associated with the recently opened IBX centers in the Silicon Valley, Chicago, Los Angeles and Washington, D.C. metro areas, and the IBX centers under construction in the Chicago, New York, Washington, D.C. and Los Angeles metro areas. Excluding depreciation and amortization expense, accretion expense, stock-based compensation expense and the incremental cash costs associated with operating our new IBX centers, U.S. cost of revenues increased period over period to \$74.6 million for the

Table of Contents

nine months ended September 30, 2007 from \$61.5 million for the nine months ended September 30, 2006, a 21% increase. This increase is primarily the result of higher compensation costs and increasing utility costs in line with increasing customer installations and revenues attributed to customer growth. We continue to anticipate that our cost of revenues will increase in the foreseeable future to the extent that the occupancy levels in our U.S. IBX centers increase and as newly-opened IBX centers in the Silicon Valley, Chicago, Los Angeles and Washington, D.C. metro areas commence operations more fully in 2007. However, a portion of our expected increase in U.S. cost of revenues will be partially offset by a reduction in rent expense as a result of our Silicon Valley property acquisition. We expect that this savings in rent expense will be approximately \$2.0 million annually; however, part of the rent savings will be offset by increases in depreciation and property tax expense.

Asia-Pacific Cost of Revenues. Asia-Pacific cost of revenues was \$24.1 million for the nine months ended September 30, 2007 as compared to \$16.5 million for the nine months ended September 30, 2006. Asia-Pacific cost of revenues for the nine months ended September 30, 2007 and 2006 included \$5.8 million and \$2.7 million, respectively, of depreciation and amortization expense. Our Asia-Pacific cost of revenues for the nine months ended September 30, 2007 also included \$2.6 million of incremental cash operating costs not incurred in the prior year associated with our new IBX centers in the Tokyo and Singapore metro areas. Excluding depreciation and amortization expense, stock-based compensation expense and the incremental cash costs associated with operating our new Tokyo IBX center and our Singapore IBX expansion project, Asia-Pacific cost of revenues increased period over period to \$15.3 million for the nine months ended September 30, 2007 from \$13.4 million for the nine months ended September 30, 2006, a 14% increase. This increase is primarily the result of an increase in compensation, repair and maintenance, and increasing utility and bandwidth costs in line with increasing customer installations and revenues attributed to customer growth. We anticipate that our Asia-Pacific cost of revenues will increase in the foreseeable future in connection with overall revenue growth and our expansions in the Tokyo and Singapore metro areas.

Europe Cost of Revenues. As a result of the IXEurope acquisition that closed on September 14, 2004, we incurred additional cost of revenues of \$4.0 million from our Europe operations during the nine months ended September 30, 2007. Europe cost of revenues for the nine months ended September 30, 2007 included \$1.0 million of depreciation and amortization expense.

Sales and Marketing. Sales and marketing expenses increased to \$27.6 million for the nine months ended September 30, 2007 from \$23.2 million for the nine months ended September 30, 2006.

U.S. Sales and Marketing Expenses. U.S. sales and marketing expenses increased to \$22.4 million for the nine months ended September 30, 2007 from \$20.1 million for the nine months ended September 30, 2006. Included in U.S. sales and marketing expenses was \$5.9 million and \$5.2 million of stock-based compensation expense for the nine months ended September 30, 2007 and 2006, respectively. Excluding stock-based compensation expense, U.S. sales and marketing expenses increased to \$16.5 million for the nine months ended September 30, 2007 as compared to \$14.8 million for the nine months ended September 30, 2006, a 12% increase. This increase is primarily attributable to increased sales compensation as a result of revenue growth. Going forward, we expect to see U.S. sales and marketing spending to increase nominally in absolute dollars as we continue to grow our business.

Asia-Pacific Sales and Marketing Expenses. Asia-Pacific sales and marketing expenses increased to \$4.5 million for the nine months ended September 30, 2007 as compared to \$3.1 million for the nine months ended September 30, 2006, a 43% increase. This increase was primarily due to general salary increases and sales compensation of approximately \$1.0 million over the prior period associated with the overall growth in this region. We expect that our Asia-Pacific sales and marketing expenses will experience some growth in the foreseeable future as we continue to grow our business.

Europe Sales and Marketing Expenses. As a result of the IXEurope acquisition that closed on September 14, 2004, we incurred additional sales and marketing expenses of \$698,000 from our Europe operations during the nine months ended September 30, 2007. Included in Europe sales and marketing expenses for the nine months ended September 30, 2007 was \$299,000 of intangible asset amortization and stock-based compensation expense.

Table of Contents

General and Administrative. General and administrative expenses increased to \$72.1 million for the nine months ended September 30, 2007 from \$53.5 million for the nine months ended September 30, 2006.

U.S. General and Administrative Expenses. U.S. general and administrative expenses increased to \$60.5 million for the nine months ended September 30, 2007 as compared to \$44.9 million for the nine months ended September 30, 2006. Included in U.S. general and administrative expenses for the nine months ended September 30, 2007 were \$18.3 million of stock-based compensation expense and \$4.7 million of depreciation expense. Included in U.S. general and administrative expenses for the nine months ended September 30, 2006 were \$13.7 million of stock-based compensation expense and \$1.8 million of depreciation expense. Excluding stock-based compensation expense and depreciation expense, U.S. general and administrative expenses increased to \$37.5 million for the nine months ended September 30, 2007, as compared to \$29.4 million for the nine months ended September 30, 2006, a 27% increase. This increase is primarily due to approximately \$5.4 million of higher compensation costs, including general salary increases, benefits and headcount growth (218 U.S. general and administrative employees as of September 30, 2007 versus 168 as of September 30, 2006), \$1.4 million as a result of a negotiated tax filing agreement with a former employee and an increase in professional fees of approximately \$770,000 due primarily to an increase in various consulting projects in connection with our growth strategies. Going forward, we expect U.S. general and administrative spending to increase as we continue to scale our operations to support our growth.

Asia-Pacific General and Administrative Expenses. Asia-Pacific general and administrative expenses increased to \$10.3 million for the nine months ended September 30, 2007 as compared to \$8.6 million for the nine months ended September 30, 2006. Included in Asia-Pacific general and administrative expenses for the nine months ended September 30, 2007 and 2006 was \$2.9 million and \$1.8 million, respectively, of stock-based compensation expense. Excluding stock-based compensation and depreciation expense, Asia-Pacific general and administrative expenses were \$7.2 million and \$6.6 million for the nine months ended September 30, 2007 and 2006, respectively. We expect that our Asia-Pacific general and administrative expenses will experience some moderate growth in the foreseeable future.

Europe General and Administrative Expenses. As a result of the IXEurope acquisition that closed on September 14, 2004, we incurred additional general and administrative expenses of \$1.3 million from our Europe operations during the nine months ended September 30, 2007. Included in Europe general and administrative expenses for the nine months ended September 30, 2007 was \$358,000 of stock-based compensation and depreciation expense.

Restructuring Charges. During the nine months ended September 30, 2007, we recorded an increase in a restructuring charge of \$407,000 as a result of revised sublease assumptions for our excess space lease in the Los Angeles metro area as a result of new information becoming available. During the nine months ended September 30, 2006, we recorded an increase in restructuring charges of \$1.5 million as a result of revised sublease assumptions on two of our excess space leases in the New York and Los Angeles metro areas as a result of new information becoming available. The original restructuring charge for these leases was recorded in the fourth quarter of 2004 and totaled \$17.7 million. We are contractually committed to these two excess space leases through 2015.

Interest Income. Interest income increased to \$10.3 million from \$5.1 million for the nine months ended September 30, 2007 and 2006, respectively. The increase was primarily due to higher invested balances and higher yields on cash and cash equivalent balances held in interest-bearing accounts. The average yield for the nine months ended September 30, 2007 was 5.22% versus 4.47% for the nine months ended September 30, 2006. We expect our interest income to decrease for the foreseeable future due to the utilization of our cash to finance our expansion activities.

Interest Expense. Interest expense increased to \$15.2 million from \$10.8 million for the nine months ended September 30, 2007 and 2006, respectively. The increase in interest expense was primarily due to new financings entered into during 2006 and 2007: (i) an additional financing of \$40.0 million under the Ashburn campus mortgage payable during the three months ended December 31, 2006, which bears interest at 8.0% per annum, (ii) our \$110.0 million Chicago IBX financing, which is drawn down during the construction period of the Chicago metro area IBX expansion project, of which \$93.7 million was outstanding as of September 30, 2007 with an effective interest rate of 8.375% per annum, (iii) our \$250.0

Table of Contents

million 2.50% convertible subordinated notes offering in March 2007, (iv) our approximately \$40.0 million Asia-Pacific financing, of which approximately \$25.0 million was outstanding as of September 30, 2007 with a blended effective interest rate of 3.65% per annum, (v) our \$396.0 million 3.00% convertible subordinated notes offering in September 2007 and (vi) our approximately \$166.1 million European financing, of which \$66.0 million was outstanding as of September 30, 2007 with a blended effective interest rate of 7.65% per annum. This increase was partially offset by the \$54.0 million partial conversion of our 2.5% convertible subordinated debentures in March 2007 that resulted in a decrease in interest expense. Although we now have higher debt balances, we are also capitalizing more interest in connection with various construction projects related to our IBX expansion efforts. During the nine months ended September 30, 2007 and 2006, we capitalized \$6.1 million and \$1.0 million, respectively, of interest expense to construction in progress. Going forward, we expect to incur higher interest expense as we fully utilize or recognize the full impact of our existing financings to fund our expansion efforts and as we complete expansion efforts and cease to capitalize interest expense.

Other Income (Expense). For the nine months ended September 30, 2007, we recorded \$3.2 million of other income, primarily consisting of a foreign exchange gain of \$1.5 million as a result of hedging a portion of the IXEurope acquisition purchase price with forward contracts and a \$621,000 foreign exchange gain related to the substantial liquidation of a subsidiary of ours in the Netherlands. As a result, this historical foreign exchange gain of \$621,000 accumulated within other comprehensive income associated with this dormant subsidiary was recognized in our results of operations. For the nine months ended September 30, 2006, we recorded \$164,000 of other expense, which is primarily attributable to foreign currency losses during the period.

Loss on Conversion and Extinguishment of Debt. During the three months ended March 31, 2007, we retired \$54.0 million of our convertible subordinated debentures in exchange for approximately 1.4 million newly issued shares of our common stock. As a result, we recorded a \$3.4 million loss on debt conversion in accordance with FASB No. 84, "Induced Conversions of Convertible Debt," due to the inducement fee. In September 2007, the senior bridge loan was terminated unused and, as a result, we recorded a \$2.5 million loss on debt extinguishment reflecting the immediate write-off of debt issuance costs previously capitalized to secure the senior bridge loan. During the nine months ended September 30, 2007, we recognized a total of \$5.9 million of loss on debt conversion and extinguishment. During the nine months ended September 30, 2006, we did not record any loss on conversion and extinguishment of debt in our statement of operations.

Income Taxes. For the nine months ended September 30, 2007 and 2006, we recorded \$766,000 and \$870,000, respectively, of income tax expense. The tax provision recorded in the nine months ended September 30, 2007 is primarily attributable to our foreign operations. The tax provision recorded in the nine months ended September 30, 2006 is primarily attributable to federal alternative minimum tax and foreign jurisdictions. A full valuation allowance is recorded against our net deferred tax assets in all jurisdictions other than Singapore and Switzerland as management cannot conclude, based on available objective evidence including recurring historical losses, that it is more likely than not that the net value of our deferred tax assets will be realized. We have not incurred any significant income tax expense since inception and we do not expect to incur any significant income tax expense during 2007 other than foreign income and domestic alternative minimum tax.

Cumulative Effect of a Change in Accounting Principle. As a result of our adoption of SFAS No. 123(R), "Share-Based Payment," during the three months ended March 31, 2006, we recorded a reduction of expense totaling \$376,000, which is reflected as a cumulative effect of a change in accounting principle on our statement of operations for this period. This amount reflects the application of an estimated forfeiture rate to partially vested employee equity awards as of January 1, 2006 that we accounted for under APB 25, which was primarily for restricted stock awards to our executive officers that were granted during the first quarter of 2005. During the nine months ended September 30, 2007, no cumulative effect of a change in accounting principle was recorded in our statement of operations.

Table of Contents

Liquidity and Capital Resources

As of September 30, 2007, our total indebtedness was comprised of (i) convertible debt totaling \$678.2 million from our convertible subordinated debentures, our 2.50% convertible subordinated notes and our 3.00% convertible subordinated notes as outlined below and (ii) non-convertible debt and financing obligations totaling \$380.4 million from our Washington D.C. metro area IBX capital lease, San Jose IBX equipment and fiber financing, Chicago IBX equipment financing, Los Angeles IBX financing, Ashburn campus mortgage payable, Chicago IBX financing, Asia-Pacific financing, European financing and other financing obligations.

We believe we have sufficient cash, coupled with anticipated cash generated from operating activities and anticipated cash from financings, to meet our operating requirements for at least the next 12 months. As of September 30, 2007, we had \$436.4 million of cash, cash equivalents and short-term and long-term investments. As of September 30, 2007, we had a total of \$191.5 million of additional liquidity available to us in the event we need additional cash to fund expansion activities, fund working capital requirements or pursue attractive strategic opportunities that may become available in the future, which was comprised of (i) \$16.3 million under the Chicago IBX financing for the Chicago metro area IBX expansion project, (ii) \$60.1 million under the \$75.0 million Silicon Valley bank revolving credit line, (iii) \$15.0 million under the Asia-Pacific financing for expansion projects in Singapore and Tokyo and (iv) \$100.1 million under the European financing for general working capital and expansion projects in Europe. In addition, from time to time we assess external financing opportunities, both debt and equity, as alternative sources for financing such activities and opportunities, including any acquisition plans. While we expect that our cash flow from operations will continue to increase, we expect our cash flow used in investing activities, primarily as a result of our expected purchases of property and equipment to complete our announced expansion projects, will also increase and we expect our cash flow used in investing activities to be greater than our cash flows generated from operating activities. Given our limited operating history, additional potential expansion opportunities that we may decide to pursue and other business risks that may cause our operating results to fluctuate, we may not achieve our desired levels of profitability or cash requirements in the future. For further information, refer to "Risk Factors" in Item 1A of Part II of this Quarterly Report on Form 10-Q below.

Sources and Uses of Cash

Net cash provided by our operating activities was \$106.1 million and \$49.6 million for the nine months ended September 30, 2007 and 2006, respectively. This increase was primarily due to improved operating results; however, this increase was also impacted by favorable net working capital improvements, primarily an increase in accounts payable and accrued expenses. Even with the payment of certain of these accrued expenses in the remainder of 2007, we expect that we will continue to generate cash from our operating activities throughout the remainder of 2007 and beyond.

Net cash used in our investing activities was \$951.2 million and \$121.7 million for the nine months ended September 30, 2007 and 2006, respectively. Net cash used in investing activities for the nine months ended September 30, 2007 was primarily the result of the capital expenditures required to bring our recently announced and current IBX expansion projects to Equinix standards, and to support our growing customer base, the purchase of our San Jose IBX property and an adjacent piece of land in July and August 2007 totaling \$71.5 million, the purchase of our Los Angeles IBX property in June 2007 for \$49.1 million and the IXEurope acquisition in September 2007 for \$541.7 million, partially offset by net maturities and sales of our short-term investments. Net cash used in investing activities for the nine months ended September 30, 2006 was primarily the result of the capital expenditures required to bring our recently acquired IBX centers in the Chicago, Los Angeles and Silicon Valley metro areas to Equinix standards, the Washington, D.C. and the Chicago metro area IBX expansion projects and to support our growing customer base, as well as the net purchases of our short-term and long-term investments and the purchase of our Chicago IBX property in June 2006 for \$9.8 million. For the remainder of 2007 and beyond, we anticipate that our cash used in investing activities, excluding the purchases, maturities and sales of short-term and long-term investments, will primarily be for our capital expenditures, which we expect to be substantial, as well as additional purchases of real estate that we may undertake in the future.

Net cash provided by financing activities was \$1.1 billion and \$37.4 million for the nine months ended September 30, 2007 and 2006, respectively. Net cash provided by financing activities for the nine months ended September 30, 2007, was primarily the result of \$646.0 million in gross proceeds from our convertible debt offerings, \$118.8 million in gross proceeds from our loans payable in connection with the Chicago IBX financing and the Asia-Pacific financing, \$339.9 million in net proceeds from our common

Table of Contents

stock offering and \$27.6 million in proceeds from our various employee stock plans, partially offset by debt issuance costs and principal payments for our capital leases and other financing obligations and the Ashburn campus mortgage payable. Net cash provided by financing activities for the nine months ended September 30, 2006, was primarily due to \$28.8 million in proceeds from our various employee stock plans and \$10.0 million in net proceeds from our \$75.0 million Silicon Valley Bank revolving credit line partially offset by debt issuance costs and principal payments for our capital lease and other financing obligations and the Ashburn campus mortgage payable.

Debt Obligations –Convertible Debt

Convertible Subordinated Debentures. During February 2004, we sold \$86.3 million in aggregate principal amount of 2.5% convertible subordinated debentures due 2024, convertible into 2.2 million shares of our common stock, to qualified institutional buyers. The interest on the convertible subordinated debentures is payable semi-annually every February and August, which commenced August 2004, and is payable in cash. In March 2007, we entered into agreements with certain holders of these convertible subordinated debentures to exchange an aggregate of 1.4 million newly issued shares of our common stock for such holders' \$54.0 million of \$86.3 million principal amount of the convertible subordinated debentures. The number of shares of common stock issued equals the amount issuable upon conversion of the convertible subordinated debentures in accordance with their original terms. In addition, each holder received cash consideration equal to accrued and unpaid interest through the redemption date totaling \$110,000, as well as the present value of future interest due through February 15, 2009 and an incremental fee, totaling \$3.4 million as an inducement fee.

Holders of the convertible subordinated debentures that remain outstanding may require us to purchase all or a portion of their debentures on February 15, 2009, February 15, 2014 and February 15, 2019, in each case at a price equal to 100% of the principal amount of the debentures plus any accrued and unpaid interest. In addition, holders of the convertible subordinated debentures may convert their debentures into shares of our common stock upon certain defined circumstances, including during any calendar quarter if the closing price of our common stock is greater than or equal to 120% of \$39.50 per share of our common stock, or approximately \$47.40 per share, for twenty consecutive trading days during the period of thirty consecutive trading days ending on the last day of the previous calendar quarter. We may redeem all or a portion of the debentures at any time after February 15, 2009 at a redemption price equal to 100% of the principal amount of the debentures plus any accrued and unpaid interest.

As of September 30, 2007, a total of \$32.3 million convertible subordinated debentures remained outstanding and were convertible into 816,457 shares of our common stock.

2.50% Convertible Subordinated Notes. In March 2007, we issued \$250.0 million in aggregate principal amount of 2.50% convertible subordinated notes due 2012. The initial conversion rate is 8.9259 shares of common stock per \$1,000 principal amount of convertible subordinated notes, subject to adjustment. This represents an initial conversion price of approximately \$112.03 per share of common stock or 2.2 million shares of our common stock. Upon conversion, holders will receive, at our election, cash, shares of our common stock or a combination of cash and shares of our common stock. We have used or intend to use the net proceeds from this offering for general corporate purposes, including the funding of our expansion activities and working capital requirements.

Holders of the 2.50% convertible subordinated notes may convert their notes upon certain defined circumstances, including during any fiscal quarter (and only during that fiscal quarter) ending after June 30, 2007, if the sale price of our common stock, for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the previous fiscal quarter, is greater than 130% of the conversion price per share of common stock on such last trading day, presently \$145.64 per share. In addition, holders of the 2.50% convertible subordinated notes may convert their individual notes at any time on or after March 15, 2012 regardless of the satisfaction of any conditions.

We may redeem all or a portion of the 2.50% convertible subordinated notes at any time after April 16, 2010 for cash but only if the closing sale price of our common stock for at least 20 of the 30 consecutive trading days immediately prior to the day we give notice of redemption is greater than 130% of the applicable conversion price per share of common stock on the date of the notice, presently \$145.64 per share. The redemption price will equal 100% of the principal amount of the convertible subordinated notes, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption.

Table of Contents

Upon conversion, due to the conversion formulas associated with the 2.50% convertible subordinated notes, if our stock is trading at levels exceeding 130% of the conversion price per share of common stock, and if we elect to pay any portion of the consideration in cash, additional consideration beyond the \$250.0 million of gross proceeds received would be required. However, in no event would the total number of shares issuable upon conversion of the 2.50% convertible subordinated notes exceed 11.6036 per \$1,000 principal amount of convertible subordinated notes, subject to anti-dilution adjustments, or the equivalent of \$86.18 per share of common stock or a total of 2.9 million shares of our common stock. As of September 30, 2007, the 2.50% convertible subordinated notes were convertible into 2.2 million shares of our common stock.

3.00% Convertible Subordinated Notes. In September 2007, we issued \$396.0 million aggregate principal amount of 3.00% Convertible Subordinated Notes due October 15, 2014. Interest is payable semi-annually on April 15 and October 15 of each year, commencing April 15, 2008.

Holders of the 3.00% convertible subordinated notes may convert their notes at their option on any day up to and including the business day immediately preceding the maturity date into shares of our common stock. The base conversion rate is 7.4360 shares of common stock per \$1,000 principal amount of 3.00% convertible subordinated notes, subject to adjustment. This represents a base conversion price of approximately \$134.48 per share of common stock. If, at the time of conversion, the applicable stock price of our common stock exceeds the base conversion price, the conversion rate will be determined pursuant to a formula resulting in the receipt of up to 4.4616 additional shares of common stock per \$1,000 principal amount of the 3.00% convertible subordinated notes, subject to adjustment. However, in no event would the total number of shares issuable upon conversion of the 3.00% convertible subordinated notes exceed 11.8976 per \$1,000 principal amount of 3.00% convertible subordinated notes, subject to anti-dilution adjustments, or the equivalent of \$84.05 per share of our common stock or a total of 4.7 million shares of our common stock. As of September 30, 2007, the 3.00% convertible subordinated notes were convertible into 2.9 million shares of our common stock.

Debt Obligations – Non-Convertible Debt

Chicago IBX Financing. In February 2007, our wholly-owned subsidiary obtained a loan of up to \$110.0 million to finance up to 60% of the development and construction costs of the Chicago metro area IBX expansion project, which we refer to as the Chicago IBX financing. Funds are advanced at up to 60% of project costs incurred. As of September 30, 2007, we had received advances representing a loan payable totaling \$93.7 million. As a result, up to \$16.3 million remained available for borrowing from the Chicago IBX financing and is expected to be borrowed periodically during the remaining construction period of the Chicago metro area IBX expansion project until completion by the end of 2007. The loan payable has a maturity date of January 31, 2010, with options to extend for up to an additional two years, in one-year increments, upon satisfaction of certain extension conditions. The loan payable bears interest at a floating rate (one, three or six month LIBOR plus 2.75%) with interest payable monthly, which commenced March 1, 2007. As of September 30, 2007, the loan payable had an effective interest rate of 8.375% per annum. The Chicago IBX financing has no specific financial covenants and contains a limited parent company guaranty. In October 2007, we received additional advances totaling \$4.8 million, bringing the cumulative loan payable to date to \$98.5 million with a blended interest rate of 7.94% per annum.

Asia-Pacific Financing. In August 2007, our two wholly-owned subsidiaries, located in Singapore and Tokyo, Japan, entered into an approximately \$40.0 million multi-currency credit facility agreement. The Asia-Pacific financing has a four-year term that allows these two subsidiaries to borrow up to 23.0 million Singapore dollars and 2.9 billion Japanese yen, respectively, during the first 12-month period with repayment to occur over the remaining three years in 12 equal quarterly installments. Amounts undrawn at the end of the first 12-month period shall be cancelled. The Asia-Pacific financing has a commitment fee of 0.3% on unutilized amounts during the 12-month draw period and bears interest at a floating rate (the relevant three-month local cost of funds for Singapore and Japan), as applicable, plus 1.85%-2.50% depending on the ratio of our senior indebtedness to our earnings before interest, taxes, depreciation and amortization, or EBITDA, with interest payable quarterly. The Asia-Pacific financing may be used by these

Table of Contents

two subsidiaries to fund capital expenditures on leasehold improvements, equipment, and other installation costs related to expansion plans in Singapore and Tokyo. The Asia-Pacific Financing is guaranteed by us and is secured by the assets of these two subsidiaries and has several financial covenants, with which we must comply quarterly. As of September 30, 2007, we borrowed 18.3 million Singapore dollars at an initial interest rate per annum of 4.66% and 1.5 billion Japanese yen at an initial interest rate per annum of 2.69%. Collectively the amounts borrowed equal \$25.0 million leaving \$15.0 million available to borrow under the Asia-Pacific financing. As of September 30, 2007, we were in compliance with all financial covenants in connection with the Asia-Pacific financing.

European Financing. In September 2007, as a result of the IXEurope acquisition, our wholly-owned subsidiary acquired a senior facilities agreement totaling 82.0 million British pounds (or approximately \$166.1 million as translated using effective exchange rates as of September 30, 2007). The European financing is comprised of three facilities: (i) Facility A, which is available to draw upon through March 2008, provides for a term loan of up to 40.0 million British pounds and bears a floating interest rate per annum of between 0.75% and 2.0% above LIBOR or EURIBOR; (ii) Facility B, which is available to draw upon through June 2010, provides for a term loan of up to 40.0 million British pounds and bears a floating interest rate per annum of between 0.75% and 2.25% above LIBOR or EURIBOR and (iii) Facility C, which is available to draw upon through May 2014, provides for a revolving credit facility of up to 2.0 million British pounds and bears a floating interest rate per annum of between 0.75% and 2.0% above LIBOR or EURIBOR. The European financing has a final maturity date of June 30, 2014 and interest is payable in periods of one, two, three or six months at the choice of the Company. Facility A will be repaid in 13 semi-annual installments commencing June 30, 2008. Facility B will be repaid in nine semi-annual installments commencing June 30, 2010. Facility C will be repaid at the final maturity date. The European financing is available to fund our subsidiary's current or future operations in Europe, including capital expenditures, for certain pre-approved subsidiaries in Europe. The European financing is collateralized by certain of our assets in Europe and contains several financial covenants with which we must comply quarterly. As of September 30, 2007, we were in compliance with all financial covenants in connection with the European financing. In October 2007, we received additional advances totaling 6.0 million British pounds or approximately \$12.3 million, bringing the cumulative loan payable to date to 38.6 million British pounds or approximately \$79.2 million with a blended interest rate of 7.62% per annum.

Upon a written request from us at any time after December 31, 2007 and through the final maturity date, and upon approval by the lenders, an additional term loan of up to 15.0 million British pounds (or approximately \$30.4 million as translated using effective exchange rates as of September 30, 2007) may be made available to us. The European financing requires us to hedge the floating interest rates inherent in the European financing. As a result, we have two interest rate swaps outstanding in connection with the European financing, which are accounted for under the provisions of SFAS No., 133 "Accounting for Derivative Instruments and Hedging Activities", as amended. As of September 30, 2007, we had borrowed a total of 32.6 million British pounds (or approximately \$66.0 million as translated using effective exchange rates as of September 30, 2007) under the European financing at a blended interest rate of 7.65% per annum leaving 49.4 million British pounds (or approximately \$100.1 million as translated using effective exchange rates as of September 30, 2007) available to borrow under the European financing.

\$75.0 Million Silicon Valley Bank Revolving Credit Line In March 2007, we amended certain provisions of the Silicon Valley Bank revolving credit line which related to certain financial covenants, the addition of a liquidity covenant and the revision of the definition of "Approved Subordinated Debt" in order to allow us to proceed with the convertible subordinated notes offering. The liquidity covenant requires us to maintain total liquidity of at least \$75.0 million. The liquidity covenant is defined as the sum of cash, cash equivalents, short term investments, 80% of long term investments and 10% of net accounts receivable. In the event of a default, Silicon Valley Bank has the right to exercise a notice of control to give Silicon Valley Bank the sole right to control, direct or dispose of the assets as it deems necessary to satisfy our obligations under the Silicon Valley Bank Credit Line, if any. In September 2007, we further amended certain provisions of the Silicon Valley Bank revolving credit line which related to certain financial covenants and the definition of "Designation of Obligations" to include our 3.00% convertible subordinated notes offering that closed on September 26, 2007. As of September 30, 2007, we were in compliance with all financial covenants in connection with the \$75.0 million Silicon Valley Bank revolving credit line. Borrowings under the \$75.0 million Silicon Valley Bank revolving credit line will continue to bear interest at variable interest rates, plus the applicable margins, which were in effect prior to the amendment, based on either prime rates or LIBOR

Table of Contents

rates. The \$75.0 million Silicon Valley Bank revolving credit line matures on September 15, 2008 and remains secured by substantially all of our domestic personal property assets and certain of our real property leases. As of September 30, 2007, we had a total of \$14.9 million of outstanding letters of credit under the letters of credit sublimit of the \$75.0 million Silicon Valley Bank revolving credit line reducing the amount of borrowings available to us to \$60.1 million. These letters of credit automatically renew in successive one-year periods until the final termination. If the beneficiaries of these letters of credit decide to draw down on these letters of credit, we will be required to fund these letters of credit either through cash collateral or borrowings under the \$75.0 million Silicon Valley Bank revolving credit line. However, no borrowings were outstanding under the \$75.0 million Silicon Valley Bank revolving credit line. As of September 30, 2007, if we had borrowed against the Silicon Valley Bank revolving credit line, our borrowings would have had an effective interest rate of 7.87% per annum.

Senior Bridge Loan. In June 2007, we entered into a senior bridge loan with Citibank, N.A., as lender, and as agent for the lender, for a principal amount of \$500.0 million, to finance our IXEurope acquisition. We incurred \$2.5 million of debt issuance costs to secure the senior bridge loan. In September 2007, the senior bridge loan was terminated unused and, as a result, we incurred a loss on debt extinguishment of \$2.5 million reflecting the immediate write-off of debt issuance costs previously capitalized.

Debt Maturities, Financings, Leases and Other Contractual Commitments

We lease our IBX centers and certain equipment under non-cancelable lease agreements expiring through 2027. The following represents our debt maturities, financings, leases and other contractual commitments as of September 30, 2007 (in thousands):

	Convertible debt	Mortgage and loans payable	Capital lease and other financing obligations	Operating leases covered under accrued restructuring charges	Operating leases (1)	Other contractual commitments (1)	Total
2007 (three months)	\$ —	\$ 2,541	\$ 2,939	\$ 3,593	\$ 11,257	\$ 124,822	\$ 145,152
2008	—	13,901	11,585	13,957	44,354	36,559	120,356
2009	32,250	26,763	11,666	14,025	43,933	4,321	132,958
2010	—	120,484	11,686	4,094	41,521	4,378	182,163
2011	—	26,327	11,760	4,224	37,197	—	79,508
2012 and thereafter	645,986	181,636	118,024	15,997	214,476	—	1,176,119
	678,236	371,652	167,660	55,890	392,738	170,080	1,836,256
Less amount representing interest	—	(89,544)	(75,949)	—	—	—	(165,493)
Plus amount representing residual property value	—	—	6,555	—	—	—	6,555
Less amount representing estimated subrental income and expense	—	—	—	(17,609)	—	—	(17,609)
Less amount representing accretion	—	—	—	(4,468)	—	—	(4,468)
	<u>\$ 678,236</u>	<u>\$ 282,108</u>	<u>\$ 98,266</u>	<u>\$ 33,813</u>	<u>\$ 392,738</u>	<u>\$ 170,080</u>	<u>\$ 1,655,241</u>

(1) Represents off-balance sheet arrangements. Other contractual commitments are described below.

Primarily as a result of our various IBX expansion projects, as of September 30, 2007, we were contractually committed for \$136.5 million of unaccrued capital expenditures, primarily for IBX equipment not yet delivered and labor not yet provided, in connection with the work necessary to open these IBX centers prior to making them available to customers for installation. This amount, which is expected to be paid during the remainder of 2007, is reflected in the table above as “other contractual commitments.”

Table of Contents

We have other, non-capital purchase commitments in place as of September 30, 2007, such as commitments to purchase power in select locations, primarily in the U.S., Singapore and the United Kingdom, through 2007 and thereafter and other open purchase orders, which contractually bind us for goods or services to be delivered or provided during the remainder of 2007. Such other purchase commitments as of September 30, 2007, which total \$33.6 million, are also reflected in the table above as “other contractual commitments.”

In addition, although we are not contractually obligated to do so, we expect to incur additional capital expenditures beyond the \$136.5 million contractually committed as of September 30, 2007 in our various IBX expansion projects during the remainder of 2007 and 2008 of approximately \$170.0 million to \$200.0 million in order to complete the work needed to open these IBX centers. These non-contractual capital expenditures are not reflected in the table above.

As previously discussed above, in connection with six of our IBX operating leases and one utilities contract, we have entered into seven irrevocable letters of credit totaling \$14.9 million with Silicon Valley Bank, provided in lieu of cash deposits under the letters of credit sublimit provision of the \$75.0 million Silicon Valley Bank revolving credit line. If the beneficiaries of these letters of credit decide to draw down on these letters of credit, we will be required to fund these letters of credit either through cash collateral or borrowings under the Silicon Valley Bank revolving credit line. This contingent commitment is not reflected in the table above.

Recent Accounting Pronouncements

In September 2006, the FASB issued SFAS No. 157, “Fair Value Measurements” (“SFAS No. 157”). SFAS No. 157 defines fair value, establishes a framework for measuring fair value under GAAP, and expands disclosures about fair value measurements. SFAS No. 157 is effective for fiscal years beginning after December 15, 2007. We are currently in the process of evaluating the impact that the adoption of SFAS No. 157 will have on our financial position, results of operations and cash flows.

In February 2007, the FASB issued SFAS No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities” (“SFAS No. 159”). SFAS No. 159 permits companies to choose to measure, on an instrument-by-instrument basis, many financial instruments and certain other assets and liabilities at fair value that are not currently required to be measured at fair value. SFAS No. 159 is effective as of the beginning of a fiscal year that begins after November 15, 2007. We are currently in the process of evaluating the impact that the adoption of SFAS No. 159 will have on our financial position, results of operations and cash flows.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Market Risk

The following discussion about market risk disclosures involves forward-looking statements. Actual results could differ materially from those projected in the forward-looking statements. We may be exposed to market risks related to changes in interest rates and foreign currency exchange rates and fluctuations in the prices of certain commodities, primarily electricity.

Interest Rate Risk

Our exposure to market risk resulting from changes in interest rates relates primarily to our investment portfolio. All of our cash equivalents and marketable securities are designated as available-for-sale and are therefore recorded at fair market value on our condensed consolidated balance sheets with the unrealized gains or losses reported as a separate component of other comprehensive income or loss. The fair market value of our marketable securities could be adversely impacted due to a rise in interest rates, but we do not believe such impact would be material. Securities with longer maturities are subject to a greater interest rate risk than those with shorter maturities and as of September 30, 2007 our portfolio maturity was relatively short. If current interest rates were to increase or decrease by 10% from their position as of September 30, 2007, the fair market value of our investment portfolio could increase or decrease by approximately \$383,000.

Table of Contents

An immediate 10% increase or decrease in current interest rates from their position as of September 30, 2007 would furthermore not have a material impact on our debt obligations due to the fixed nature of the majority of our debt obligations. However, the interest expense associated with our \$75.0 million revolving credit line, which bears interest at floating rates based on either the prime rate or LIBOR, could be affected. Accordingly, any borrowings from our \$75.0 million Silicon Valley Bank revolving credit line are subject to interest rate risk. Assuming \$75.0 million was outstanding under the \$75.0 million Silicon Valley Bank revolving credit line, for every 100 basis point change in interest rates, our interest expense could increase or decrease by \$750,000. The interest expense associated with our Chicago IBX financing, Asia-Pacific financing and European financing, which bear interest at floating rates tied to local cost of funds or LIBOR/EURIBOR, could also be affected.

The fair market value of our long-term fixed interest rate debt is subject to interest rate risk. Generally, the fair market value of fixed interest rate debt will increase as interest rates fall and decrease as interest rates rise. These interest rate changes may affect the fair market value of the fixed interest rate debt but do not impact our earnings or cash flows. The fair market value of our convertible subordinated debentures and convertible subordinated notes is based on quoted market prices. The estimated fair value of our convertible subordinated debentures at September 30, 2007 was approximately \$75.1 million. The estimated fair value of our 2.50% convertible subordinated notes at September 30, 2007 was approximately \$256.6 million. The estimated fair value of our 3.00% convertible subordinated notes at September 30, 2007 was approximately \$402.5 million.

We acquired interest rate swaps in connection with the European financing. Interest incurred for the European financing is based on variable LIBOR and EURIBOR interest rates and exposes us to interest rate risk. To mitigate the interest rate exposure, IXEurope had entered into two interest rate swap agreements to hedge a portion of the European financing in order to transfer floating rate exposure to the counterparty in exchange for fixed payments by us. Upon the date of the IXEurope acquisition and through September 30, 2007, these interest rate swaps were considered not to be effective hedges under the provisions of SFAS No. 133. As a result, the change in fair value of these two interest rate swaps totaling a gain of \$24,000 was recorded as a reduction of interest expense in our statements of operations for the three and nine months ended September 30, 2007.

We may enter into additional hedging agreements in the future to mitigate our exposure to interest rate risk.

Foreign Currency Risk

The majority of our revenues and costs is denominated in U.S. dollars, generated mostly from customers and vendors in the U.S. Prior to the IXEurope acquisition, approximately 15% of our revenues and 14% of our costs were outside the U.S., and a large portion of those revenues and costs were denominated in a currency other than the U.S. dollar, primarily the Singapore dollar, Japanese yen, Hong Kong and Australian dollars. As a result of the IXEurope acquisition, a greater percentage of our business will be outside of the U.S. in the additional non-U.S. currencies of the British pound, Euro and Swiss franc. We anticipate that commencing in the fourth quarter of 2007, approximately 30-40% of our revenues and costs will be generated and incurred outside of the U.S. in currencies other than the U.S. dollar. As a result, our operating results and cash flows are impacted by currency fluctuations relative to the U.S. dollar.

Furthermore, to the extent that our international sales are denominated in U.S. dollars, an increase in the value of the U.S. dollar relative to foreign currencies could make our services less competitive in the international markets. Although we will continue to monitor our exposure to currency fluctuations, and when appropriate, may use financial hedging techniques in the future to minimize the effect of these fluctuations, there can be no assurance that exchange rate fluctuations will not adversely affect our financial results in the future.

In July and August 2007, we entered into forward contracts to purchase 265.2 million British pounds at an average forward rate of 2.020007, or the equivalent of \$535.6 million, for purposes of hedging a portion of the purchase price of the IXEurope acquisition. Upon cash payment in September 2007, we recorded a foreign exchange gain of \$1.5 million, which is reflected within other income (expense) on our statement of operations for the three and nine months ended September 30, 2007.

Table of Contents

We may enter into additional hedging agreements in the future to mitigate our exposure to foreign currency risk.

Commodity Price Risk

Certain operating costs incurred by us are subject to price fluctuations caused by the volatility of underlying commodity prices. The commodities most likely to have an impact on our results of operations in the event of price changes are electricity and supplies and equipment used in our IBX centers. We are closely monitoring the cost of electricity at all of our locations.

In addition, as we are now building new, “greenfield” IBX centers, we are subject to commodity price risk for building materials related to the construction of these IBX centers, such as steel and copper. In addition, the lead-time to procure certain pieces of equipment is substantial, such as generators. Any delays in procuring the necessary pieces of equipment for the construction of our IBX centers could delay the anticipated openings of these new IBX centers and, as a result, increase the cost of these projects.

We currently do not employ forward contracts or other financial instruments to hedge commodity price risk.

Item 4. Controls and Procedures

(a) *Evaluation of Disclosure Controls and Procedures.* Our Chief Executive Officer and our Chief Financial Officer, after evaluating the effectiveness of our “disclosure controls and procedures” (as defined in the Securities Exchange Act of 1934 (the “Exchange Act”) Rules 13a-15(e) or 15d-15(e)) as of the end of the period covered by this quarterly report, have concluded that our disclosure controls and procedures are effective based on their evaluation of these controls and procedures required by paragraph (b) of Exchange Act Rules 13a-15 or 15d-15.

(b) *Changes in Internal Control over Financial Reporting.* There were no changes in our internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of Exchange Act Rules 13a-15 or 15d-15 that occurred during our last fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. Following the completion of the IXEurope acquisition on September 14, 2007, we have begun the process of integrating IXEurope and incorporating our internal control over financial reporting into this acquired business.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

On July 30, 2001 and August 8, 2001, putative shareholder class action lawsuits were filed against us, certain of our officers and directors (the “Individual Defendants”), and several investment banks that were underwriters of our initial public offering (the “Underwriter Defendants”). The cases were filed in the United States District Court for the Southern District of New York, purportedly on behalf of investors who purchased our stock between August 10, 2000 and December 6, 2000. In addition, similar lawsuits were filed against approximately 300 other issuers and related parties. The purported class action alleges violations of Sections 11 and 15 of the Securities Act of 1933 and Sections 10(b), Rule 10b-5 and 20(a) of the Securities Exchange Act of 1934 against us and the Individual Defendants. The plaintiffs have since dismissed the Individual Defendants without prejudice. The suits allege that the Underwriter Defendants agreed to allocate stock in our initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases in the aftermarket at pre-determined prices. The plaintiffs allege that the prospectus for our initial public offering was false and misleading and in violation of the securities laws because it did not disclose these arrangements. The action seeks damages in an unspecified amount. On February 19, 2003, the Court dismissed the Section 10(b) claim against us, but denied the motion to dismiss the Section 11 claim. On December 5, 2006, the Second Circuit vacated a decision by the district court granting class certification in six “focus” cases, which are intended to serve as test cases. Plaintiffs selected these six cases, which do not include Equinix. On April 6, 2007, the Second Circuit denied a petition for rehearing filed by plaintiffs, but noted that plaintiffs could ask the district court to certify more narrow classes than those that were rejected.

Table of Contents

Prior to the Second Circuit's decision, a majority of issuers, including Equinix, and their insurers had submitted a settlement agreement to the district court for approval. In light of the Second Circuit opinion, the parties agreed that the settlement could not be approved because the defined settlement class, like the litigation class, cannot be certified. On June 25, 2007, the Court approved a stipulation filed by the plaintiffs and the issuers which terminated the proposed settlement. On August 14, 2007, plaintiffs filed amended complaints in the six focus cases. On September 27, 2007, plaintiffs filed a motion for class certification in the six focus cases. If plaintiffs are successful in obtaining class certification, they are expected to amend the complaint against Equinix in the same manner that they amended the complaints against the focus case issuers and to seek certification of a class in the Equinix case. The amended complaints against the focus case issuers include a number of changes, such as changes to the definition of the purported class of investors, and the elimination of the Individual Defendants as defendants. Due to the inherent uncertainties of litigation, we cannot accurately predict the ultimate outcome of the matter. We cannot predict whether we will be able to renegotiate a settlement that complies with the Second Circuit's mandate, nor can we predict the amount of any such settlement.

While we are unable at this time to determine whether the outcome of the litigation would have a material impact on our results of operations, financial condition or cash flows, we have insurance coverage that we believe is sufficient to cover any reasonably possible liability resulting from this litigation. We and our officers and directors intend to continue to defend the actions vigorously.

On June 29, 2006 and September 18, 2006, shareholder derivative actions were filed in the Superior Court of the State of California, County of San Mateo, naming Equinix as a nominal defendant and several of Equinix's current and former officers and directors as individual defendants. These actions were consolidated, and the consolidated complaint was filed in January 2007. In March 2007, the state court stayed this action in deference to a federal shareholder derivative action filed in the United States District Court for the Northern District of California in October 2006. The federal action named Equinix as a nominal defendant and several current and former officers and directors as individual defendants. This complaint alleged that the individual defendants breached their fiduciary duties and violated California and federal securities laws as a result of purported backdating of stock options, insider trading and the dissemination of false statements. On April 12, 2007, the federal action was voluntarily dismissed without prejudice pursuant to a joint stipulation entered as an order by the court. On May 3, 2007, the state court lifted the stay on proceedings in the state court action and set a briefing schedule permitting us to file a motion to dismiss on the grounds that plaintiffs lack standing to sue on our behalf. We filed our motion to dismiss on June 4, 2007 and appeared for a hearing on the motion on August 6, 2007. The state court granted our motion to dismiss and granted plaintiffs leave to amend their consolidated complaint. On October 1, 2007, plaintiffs filed an amended consolidated complaint. The amended consolidated complaint alleges that the individual defendants breached their fiduciary duties and violated California securities law as a result of purported backdating of stock option grants, insider trading and the preparation and approval of inaccurate financial results. Plaintiffs seek to recover, on behalf of Equinix, unspecified monetary damages, corporate governance changes, equitable and injunctive relief, restitution and fees and costs. A motion to dismiss the amended consolidated complaint is pending. In addition to the pending state court derivative action, we may be subject to additional derivative or other lawsuits that may be presented on an individual or class basis alleging claims based on our stock option granting practices.

Responding to, investigating and/or defending against civil litigations and government inquiries regarding our stock option grants and practices will present a substantial cost to us in both cash and the attention of certain management and may have a negative impact on our operations. In addition, in the event of any negative finding or assertion by a court of law or any third-party claim related to our stock option granting practices, we may be liable for damages, fines or other civil or criminal remedies, or be required to restate our prior period financial statements or adjust our current period financial statements. Any such adverse action could have a material adverse effect on our business and current market value.

[Table of Contents](#)

Item 1A. Risk Factors

In addition to the other information contained in this report, the following risk factors should be considered carefully in evaluating our business and us:

Risks Related to Our Business

We may not be able to successfully integrate IXEurope and achieve the benefits we expect from the IXEurope acquisition.

We will only achieve the benefits that are expected to result from the IXEurope acquisition if we can successfully integrate its administrative, finance, operations, sales and marketing organizations, and implement appropriate systems and controls.

The success of the IXEurope acquisition and integration into our operations will involve a number of risks, including:

- the possible diversion of our management's attention from other business concerns, including our previously announced expansion plans in the U.S. and Asia-Pacific regions;
- the potential inability to successfully pursue some or all of the anticipated revenue opportunities associated with the IXEurope acquisition;
- the possible loss of IXEurope's key employees;
- the potential inability to achieve expected operating efficiencies in IXEurope's operations;
- the increased complexity and diversity of our operations after the IXEurope acquisition compared to our prior operations;
- the impact on our internal controls and compliance with the regulatory requirements under the Sarbanes-Oxley Act of 2002; and
- unanticipated problems, expenses or liabilities.

If we fail to integrate IXEurope successfully and/or fail to realize the intended benefits of the IXEurope acquisition, our results of operations could be materially and adversely affected. In addition, the IXEurope acquisition resulted in a substantial goodwill asset, which will be subject to an annual impairment analysis. If this goodwill were to be impaired in the future, it could have a significant negative impact on our results of operations.

Our substantial debt could adversely affect our cash flows and limit our flexibility to raise additional capital.

We have a significant amount of debt. As of September 30, 2007, our total indebtedness was approximately \$1.1 billion and stockholders' equity was \$808.7 million.

Our substantial amount of debt could have important consequences. For example, it could:

- require us to dedicate a substantial portion of our cash flow from operations to make payments on our debt, reducing the availability of our cash flow to fund future capital expenditures, working capital, execution of our expansion strategy and other general corporate requirements;
- make it more difficult for us to satisfy our obligations under our various debt instruments;

Table of Contents

- increase our vulnerability to general adverse economic and industry conditions and adverse changes in governmental regulations;
- limit our flexibility in planning for, or reacting to, changes in our business and industry, which may place us at a competitive disadvantage compared with our competitors;
- limit our ability to borrow additional funds, even when necessary to maintain adequate liquidity; and
- make us more vulnerable to increases in interest rates because of the variable interest rates on some of our borrowings.

The occurrence of any of the foregoing factors could have a material adverse effect on our business, results of operations and financial condition. In addition, the performance of our stock price may trigger the write-off of a significant portion of our debt issuance costs in connection with our convertible debt, which may have a material adverse effect on our results of operations and financial condition.

We have incurred substantial losses in the past and may continue to incur additional losses in the future.

Although we have generated cash from operations since the quarter ended September 30, 2003, for the years ended December 31, 2006, 2005 and 2004, we incurred net losses of \$6.4 million, \$42.6 million and \$68.6 million, respectively. Although we have generated some net income in our two most recent quarters, we are also currently investing heavily in our future growth through the build-out of several additional IBX centers and IBX center expansions. As a result, we will incur higher depreciation and other operating expenses that will negatively impact our ability to achieve and sustain profitability unless and until these new IBX centers generate enough revenue to exceed their operating costs and cover our additional overhead needed to scale our business for this anticipated growth. In addition, costs associated with the IXEurope acquisition and the integration of the two companies, as well as the additional interest expense associated with debt financing we have undertaken to fund our growth initiatives, may also negatively impact our ability to achieve and sustain profitability. Although our goal is to achieve profitability, there can be no guarantee that we will become profitable, and we may continue to incur additional losses. Even if we achieve profitability, given the competitive and evolving nature of the industry in which we operate, we may not be able to sustain or increase profitability on a quarterly or annual basis.

We are continuing to invest in our expansion efforts but may not have sufficient customer demand in the future to realize expected returns on these investments.

We are considering the acquisition or lease of additional properties, including construction of new IBX centers beyond those expansion projects already announced. We will be required to commit substantial operational and financial resources to these IBX centers, generally 12–18 months in advance of securing customer contracts, and we may not have sufficient customer demand in those markets to support these centers once they are built. In addition, unanticipated technological changes could affect customer requirements for data centers and we may not have built such requirements into our new IBX centers. Any of these contingencies, if they were to occur, could make it difficult for us to realize expected or reasonable returns on these investments.

We have begun construction of new IBX centers, and may begin construction of additional new IBX centers, which could involve significant risks to our business.

We believe that most of the pre-existing built-out data centers have already been acquired, and that there are few if any viable distressed assets available for us to acquire in our key markets today. In order to sustain our growth in these markets, we must acquire suitable land with or without structures to build our new IBX centers from the ground up, a “greenfield build.” Greenfield builds are currently underway in the Chicago, Los Angeles, Washington D.C. and New York metro areas. A greenfield build involves substantial planning and lead-time, much longer time to completion than we have currently experienced in our recent IBX retrofits of existing data centers, and significantly higher costs of construction, equipment and materials, which could have a negative impact on our returns. A greenfield build also requires us to carefully select and rely on the experience of one or several general contractors and associated subcontractors during the construction process. Should a general contractor or significant subcontractor experience

Table of Contents

financial or other problems during the construction process, we could experience significant delays, increased costs to complete the project and other negative impacts to our expected returns. Site selection is also a critical factor in our expansion plans, and there may not be suitable properties available in our markets with the necessary combination of high power capacity and fiber connectivity.

While we may prefer to locate new IBX centers adjacent to our existing locations, we may be limited by the inventory and location of suitable properties as well as the need for adequate power and fiber to the site. In the event we decide to build new IBX centers separate from our existing IBX centers, we may provide services to interconnect these two centers. Should these services not provide the necessary reliability to sustain service, this could result in lower interconnection revenue, lower margins and could have a negative impact on customer retention over time.

If we are not able to generate sufficient operating cash flows or obtain external financing, our ability to fund capital expenditures or fulfill our obligations or execute expansion plans may be limited.

Our capital expenditures, together with ongoing operating expenses and obligations to service our debts, will be a substantial drain on our cash flow and may decrease our cash balances. We regularly assess markets for external financing opportunities, including debt and equity. Additional debt or equity financing may not be available when needed or, if available, may not be available on satisfactory terms. Our inability to obtain needed debt and/or equity financing or to generate sufficient cash from operations may require us to abandon projects or curtail capital expenditures. If we curtail capital expenditures or abandon projects, we could be materially adversely affected.

Any failure of our physical infrastructure or services could lead to significant costs and disruptions that could reduce our revenue and harm our business reputation and financial results.

Our business depends on providing customers with highly reliable service. We must protect our customers' IBX infrastructure and their equipment located in our IBX centers. We continue to acquire IBX centers not built by us. If these IBX centers and their infrastructure assets are not in the condition we believe them to be in, we may be required to incur substantial additional costs to repair or upgrade the centers. The services we provide in each of our IBX centers are subject to failure resulting from numerous factors, including:

- human error;
- physical or electronic security breaches;
- fire, earthquake, flood, tornados and other natural disasters;
- extreme temperatures;
- water damage;
- fiber cuts;
- power loss;
- terrorist acts;
- sabotage and vandalism; and
- failure of business partners who provide our resale products.

Problems at one or more of our IBX centers, whether or not within our control, could result in service interruptions or significant equipment damage. For example, in the event of an unusually long period of extreme heat, we may not be able to keep certain of our centers in compliance with our stated cooling objectives or the center's cooling units could fail under the strain. The extreme temperatures could also lead

Table of Contents

to our suppliers experiencing electrical power outages or shortages. We have service level commitment obligations to certain of our customers, including our significant customers. As a result, service interruptions or significant equipment damage in our IBX centers could result in difficulty maintaining service level commitments to these customers and potential claims related to such failures. For example, for the year ended December 31, 2005, we recorded \$457,000 in service level credits to various customers, primarily associated with two separate power outages that affected our Chicago and Washington, D.C. metro area IBX centers.

If we incur significant financial commitments to our customers in connection with a loss of power, or our failure to meet other service level commitment obligations, our liability insurance may not be adequate. In addition, any loss of services, equipment damage or inability to meet our service level commitment obligations could reduce the confidence of our customers and could consequently impair our ability to obtain and retain customers, which would adversely affect both our ability to generate revenues and our operating results.

Furthermore, we are dependent upon Internet service providers, telecommunications carriers and other website operators in the U.S., Asia, Europe and elsewhere, some of which have experienced significant system failures and electrical outages in the past. Users of our services may in the future experience difficulties due to system failures unrelated to our systems and services. If for any reason, these providers fail to provide the required services, our business, financial condition and results of operations could be materially adversely impacted.

A portion of our managed services business in Singapore involves the processing and storage of confidential customer information. Inappropriate use of those services could jeopardize the security of customers' confidential information causing losses of data or financially impacting our customers or us and subjecting us to the risk of lawsuits. Efforts to alleviate problems caused by computer viruses or other inappropriate uses or security breaches may lead to interruptions, delays or cessation of our managed services.

There is no known prevention or defense against denial of service attacks. During a prolonged denial of service attack, Internet service may not be available for several hours, thus negatively impacting hosted customers' on-line business transactions. Affected customers might file claims against us under such circumstances. Our property and liability insurance may not be adequate to cover these customer claims.

We expect our operating results to fluctuate.

We have experienced fluctuations in our results of operations on a quarterly and annual basis. The fluctuations in our operating results may cause the market price of our common stock to decline. We expect to experience significant fluctuations in our operating results in the foreseeable future due to a variety of factors, including, but not limited to:

- financing or other expenses related to the acquisition, purchase or construction of additional IBX centers;
- mandatory expensing of employee stock-based compensation, including restricted shares and units;
- financing or other expenses related to the IXEurope acquisition;
- demand for space, power and services at our IBX centers;
- changes in general economic conditions and specific market conditions in the telecommunications and Internet industries;
- costs associated with the write-off or exit of unimproved or underutilized property;
- the provision of customer discounts and credits;
- the mix of current and proposed products and services and the gross margins associated with our products and services;

Table of Contents

- the timing required for new and future centers to open or become fully utilized;
- competition in the markets in which we operate;
- conditions related to international operations;
- increasing repair and maintenance expenses in connection with aging IBX centers;
- lack of available capacity in our existing IBX centers to book new revenue or delays in opening up new or acquired IBX centers may delay our ability to book new revenue in markets which have otherwise reached capacity;
- the timing and magnitude of other operating expenses, including taxes, capital expenditures and expenses related to the expansion of sales, marketing, operations and acquisitions, if any, of complementary businesses and assets; and
- the cost and availability of adequate public utilities, including power.

Any of the foregoing factors, or other factors discussed elsewhere in this report, could have a material adverse effect on our business, results of operations and financial condition. Although we have experienced growth in revenues in recent quarters, this growth rate is not necessarily indicative of future operating results. We have generated net losses every fiscal year since inception. It is possible that we may not be able to generate positive net income on a quarterly or annual basis in the future. In addition, a relatively large portion of our expenses are fixed in the short-term, particularly with respect to lease and personnel expenses, depreciation and amortization and interest expenses. Therefore, our results of operations are particularly sensitive to fluctuations in revenues. As such, comparisons to prior reporting periods should not be relied upon as indications of our future performance. In addition, our operating results in one or more future quarters may fail to meet the expectations of securities analysts or investors. If this occurs, we could experience an immediate and significant decline in the trading price of our stock.

Our inability to use our tax net operating losses will cause us to pay taxes at an earlier date and in greater amounts, which may harm our operating results.

We believe that our ability to use our pre-2003 tax net operating losses, or NOLs, in any taxable year is subject to limitations under Section 382 of the United States Internal Revenue Code of 1986, as amended, or the Code, as a result of the significant change in the ownership of our stock that resulted from our combination with i-STT Pte Ltd and Pihana Pacific, Inc. in 2002, which we call the combination. We expect that a significant portion of our NOLs that accrued prior to December 31, 2002 will expire unused as a result of this limitation. In addition to the limitations on NOL carry-forward utilization described above, we believe that Section 382 of the Code will also significantly limit our ability to use the depreciation and amortization on our assets, as well as certain losses on the sale of our assets, to the extent that such depreciation, amortization and losses reflect unrealized depreciation that was inherent in such assets as of the date of the combination. These limitations will cause us to pay taxes at an earlier date and in greater amounts than would occur absent such limitations.

We are exposed to potential risks from legislation requiring companies to evaluate controls under Section 404 of the Sarbanes-Oxley Act of 2002.

Although we received an unqualified opinion regarding the effectiveness of our internal controls over financial reporting as of December 31, 2006, in the course of our ongoing evaluation of our internal controls over financial reporting, we have identified certain areas which we would like to improve and are in the process of evaluating and designing enhanced processes and controls to address these areas identified during our evaluation, none of which we believe constitutes or will constitute a material change. However, we cannot be certain that our efforts will be effective or sufficient for us, or our independent registered public accounting firm, to issue unqualified reports in the future, especially as our business continues to grow and evolve.

Table of Contents

It may be difficult to design and implement effective financial controls for combined operations, and differences in existing controls of any acquired businesses, including IxEurope, may result in weaknesses that require remediation when the financial controls and reporting are combined.

Our ability to manage our operations and growth will require us to improve our operational, financial and management controls, as well as our internal reporting systems and controls. We may not be able to implement improvements to our internal reporting systems and controls in an efficient and timely manner and may discover deficiencies in existing systems and controls.

If we cannot effectively manage our international operations and successfully implement our international expansion plans, our revenues may not increase and our business and results of operations would be harmed.

For the years ended December 31, 2004, 2005 and 2006, we recognized 13%, 13% and 14%, respectively, of our revenues outside North America. For the nine months ended September 30, 2007, we recognized 16% of our revenues outside North America. We anticipate that the acquisition of IxEurope will increase the percentage of our revenues derived from sources outside North America.

To date, the neutrality of our IBX centers and the variety of networks available to our customers has often been a competitive advantage for us. In certain of our acquired IBX centers, in Singapore in particular, the limited number of carriers available reduces that advantage. As a result, we may need to adapt our key revenue-generating services and pricing to be competitive in that market.

We may experience gains and losses resulting from fluctuations in foreign currency exchange rates. To date, the majority of our revenues and costs have been denominated in U.S. dollars; however, the majority of revenues and costs in our international operations have been denominated in Singapore dollars, Japanese yen and Australia and Hong Kong dollars. With the completion of the IxEurope acquisition, certain of our revenues and costs will also be denominated in the British pound sterling, the euro and the Swiss franc. Although we have in the past and may decide to undertake foreign exchange hedging transactions in the future to reduce foreign currency transaction exposure, we do not currently intend to eliminate all foreign currency transaction exposure. Where our prices are denominated in U.S. dollars, our sales could be adversely affected by declines in foreign currencies relative to the U.S. dollar, thereby making our products and services more expensive in local currencies.

We are currently undergoing expansions or evaluating expansion opportunities in Europe and in the Asia-Pacific region. Undertaking and managing expansions in foreign jurisdictions may present unanticipated challenges to us. In addition, any expansion requires substantial operational and financial resources, and we may not have sufficient customer demand to support the expansion once complete. Unanticipated technological changes could also affect customer requirements for data centers and we may not have built such requirements into our expanded IBX centers. We are also exposed to risks resulting from fluctuations in foreign currency exchange rates in connection with our international expansions. To the extent we are paying contractors in foreign currencies, our expansions could cost more than anticipated from declines in the U.S. dollar relative to foreign currencies.

Our international operations are generally subject to a number of additional risks, including:

- the costs of customizing IBX centers for foreign countries;
- protectionist laws and business practices favoring local competition;
- greater difficulty or delay in accounts receivable collection;
- difficulties in staffing and managing foreign operations, including negotiating with foreign labor unions or workers' councils;
- political and economic instability;
- our ability to obtain, transfer, or maintain licenses required by governmental entities with respect to our business; and
- compliance with evolving governmental regulation with which we have little experience.

The increased use of high power density equipment may limit our ability to fully utilize our IBX centers.

Customers are increasing their use of high-density electrical power equipment, such as blade servers, in our IBX centers which has significantly increased the demand for power on a per cabinet basis. Because most of our centers were built several years ago, the current demand for electrical power may exceed the designed electrical capacity in these centers. As electrical power, not space, is typically the limiting factor in our IBX data centers, our ability to fully utilize those IBX centers may be limited. The availability of sufficient power may also pose a risk to the successful operation of our new IBX centers. The ability to increase the power capacity of an IBX, should we decide to, is dependent on several factors including, but not limited to, the local utility's ability to provide additional power; the length of time required to provide such power; and/or whether it is feasible to upgrade the electrical infrastructure of an IBX to deliver additional power to customers. Although we are currently designing and building to a much higher power specification, there is a risk that demand will continue to increase and our IBX centers could become obsolete sooner than expected.

We have made, and may continue to make, acquisitions which pose integration and other risks that could harm our business.

We have recently acquired several new IBX centers, and we may seek to acquire additional IBX centers, real estate for development of new IBX centers, or complementary businesses, such as IXEurope, products, services or technologies. As a result of these acquisitions, we may be required to incur additional debt and expenditures and issue additional shares of our common stock to pay for the acquired businesses, products, services or technologies, which may dilute our stockholders' ownership interest and may delay, or prevent, our profitability. These acquisitions may also expose us to risks such as:

- the possibility that we may not be able to successfully integrate acquired businesses or achieve the level of quality in such businesses to which our customers are accustomed;
- the possibility that additional capital expenditures may be required;
- the possibility that senior management may be required to spend considerable time negotiating agreements and integrating acquired businesses;
- the possible loss or reduction in value of acquired businesses;
- the possibility that our customers may not accept either the existing equipment infrastructure or the "look-and-feel" of a new or different IBX center;
- the possibility that carriers may find it cost-prohibitive or impractical to bring fiber and networks into a new IBX center;
- the possibility of pre-existing undisclosed liabilities regarding the property or IBX center, including but not limited to environmental or asbestos liability, of which our insurance may be insufficient or for which we may be unable to secure insurance coverage; and
- the possibility that the concentration of our IBX centers in the Silicon Valley, Los Angeles and Tokyo, Japan metro areas may increase our exposure to seismic activity, especially if these centers are located on or near fault zones.

We cannot assure you that the price for any future acquisitions will be similar to prior IBX acquisitions. In fact, we expect acquisition costs, including capital expenditures required to build or render new IBX centers operational, to increase in the future. If our revenue does not keep pace with these potential acquisition and expansion costs, we may not be able to maintain our current or expected margins as we absorb these additional expenses. There is no assurance we would successfully overcome these risks or any other problems encountered with these acquisitions.

Table of Contents

Our business could be harmed by prolonged electrical power outages or shortages, increased costs of energy or general lack of availability of electrical resources.

Our IBX centers are susceptible to regional costs of power, electrical power shortages, planned or unplanned power outages and limitations, especially internationally, on the availability of adequate power resources.

Power outages, such as those that occurred in California during 2001, the Northeast in 2003, and from the tornados on the U.S. east coast in 2004, could harm our customers and our business. We attempt to limit exposure to system downtime by using backup generators and power supplies; however, we may not be able to limit our exposure entirely even with these protections in place, as was the case with the power outages we experienced in our Chicago and Washington, D.C. metro area IBX centers in 2005.

In addition, global fluctuations in the price of power can increase the cost of energy, and although contractual price increase clauses may exist in some of our customer agreements, we may not be able to pass these increased costs on to our customers.

In each of our markets, we rely on third parties to provide a sufficient amount of power for current and future customers. At the same time, power and cooling requirements are growing on a per unit basis. As a result, some customers are consuming an increasing amount of power per cabinet. We generally do not control the amount of electric power our customers draw from their installed circuits. This means that we could face power limitations in our centers. This could have a negative impact on the effective available capacity of a given center and limit our ability to grow our business, which could have a negative impact on our financial performance, operating results and cash flows.

We may also have difficulty obtaining sufficient power capacity for potential expansion sites in new or existing markets. We may experience significant delays and substantial increased costs demanded by the utilities to provide the level of electrical service required by our current IBX center designs.

We may be forced to take steps, and may be prevented from pursuing certain business opportunities, to ensure compliance with certain tax-related covenants agreed to by us in connection with the combination.

We agreed to a covenant in connection with the combination (which we refer to as the FIRPTA covenant) that we would use all commercially reasonable efforts to ensure that at all times from and after the closing of the combination none of our capital stock issued to STT Communications would constitute "United States real property interests" within the meaning of Section 897(c) of the Code. Under Section 897(c) of the Code, our capital stock issued to STT Communications would generally constitute "United States real property interests" at such point in time that the fair market value of the "United States real property interests" owned by us equals or exceeds 50% of the sum of the aggregate fair market values of (a) our "United States real property interests," (b) our interests in real property located outside the United States and (c) any other assets held by us which are used or held for use in our trade or business. Currently, the fair market value of our "United States real property interests" is significantly below the 50% threshold. However, in order to ensure compliance with the FIRPTA covenant, we may be limited with respect to the business opportunities we may pursue, particularly if the business opportunities would increase the amounts of "United States real property interests" owned by us or decrease the amount of other assets owned by us. In addition, we may take proactive steps to avoid our capital stock being deemed a "United States real property interest," including, but not limited to, (a) a sale-leaseback transaction with respect to some or all of our real property interests, or (b) 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 of our outstanding stock (which would require the submission of that transaction to our stockholders for their approval and the consummation of that exchange). We will take these actions only if such actions are commercially reasonable for our stockholders and us. We have entered into an agreement with STT Communications and its affiliate pursuant to which we will no longer be bound by the FIRPTA covenant as of September 30, 2009. If we were to breach this covenant, we may be liable for damages to STT Communications.

Table of Contents

Increases in property taxes could adversely affect our business, financial condition and results of operations.

Our IBX centers are subject to state and local real property taxes in the U.S. and certain of our European jurisdictions. The state and local real property taxes on our IBX centers may increase as property tax rates change and as the value of the properties are assessed or reassessed by taxing authorities. Many state and local governments are facing budget deficits, which may cause them to increase assessments or taxes. If property taxes increase, our business, financial condition and operating results could be adversely affected.

STT Communications has voting control over a substantial portion of our stock and has influence over matters requiring stockholder consent.

As of September 30, 2007, STT Communications, through its subsidiary, i-STT Investments (Bermuda) Ltd., had voting control over approximately 11.8% of our outstanding common stock. In addition, STT Communications is not prohibited from buying shares of our stock in public or private transactions. As a result, STT Communications is able to exercise significant control over all matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions, which could prevent or delay a third party from acquiring or merging with us.

Our non-U.S. customers include numerous related parties of STT Communications.

We continue to have contractual and other business relationships and may engage in material transactions with affiliates of STT Communications. Circumstances may arise in which the interests of STT Communications' affiliates may conflict with the interests of our other stockholders. In addition, entities affiliated with STT Communications make investments in various companies. They have invested in the past, and may invest in the future, in entities that compete with us. In the context of negotiating commercial arrangements with affiliates, conflicts of interest have arisen in the past and may arise, in this or other contexts, in the future. We cannot assure you that any conflicts of interest will be resolved in our favor.

If regulated materials are discovered at centers leased or owned by us, we may be required to remove or clean-up such materials, the cost of which could be substantial.

We are subject to various environmental and health and safety laws and regulations, including those relating to the generation, storage, handling and disposal of hazardous substances and wastes. Certain of these laws and regulations also impose joint and several liability, without regard to fault, for investigation and cleanup costs on current and former owners and operators of real property and persons who have disposed of or released hazardous substances into the environment. Our operations involve the use of hazardous substances and materials such as petroleum fuel for emergency generators, as well as batteries, cleaning solutions and other materials. In addition, we lease, own or operate real property at which hazardous substances and regulated materials have been used in the past. At some of our locations, hazardous substances or regulated materials are known to be present in soil or groundwater and there may be additional unknown hazardous substances or regulated materials present at sites we own, operate or lease. At some of our locations, there are land use restrictions in place relating to earlier environmental cleanups that do not materially limit our use of the sites. To the extent any hazardous substances or any other substance or material must be cleaned up or removed from our property, we may be responsible under applicable laws, regulations or leases for the removal or cleanup of such substances or materials, the cost of which could be substantial. In addition, noncompliance with existing, or adoption of more stringent, environmental or health and safety laws and regulations or the discovery of previously unknown contamination could require us to incur costs or become the basis of new or increased liabilities that could be material.

We depend on a number of third parties to provide Internet connectivity to our IBX centers; if connectivity is interrupted or terminated, our operating results and cash flow could be materially adversely affected.

The presence of diverse telecommunications carriers' fiber networks in our IBX centers is critical to our ability to retain and attract new customers. We are not a telecommunications carrier, and as such we rely on third parties to provide our customers with carrier services. We believe that the availability of carrier capacity will directly affect our ability to achieve our projected results. We rely primarily on revenue

Table of Contents

opportunities from the telecommunications carriers' customers to encourage them to invest the capital and operating resources required to connect from their centers to our IBX centers. Carriers will likely evaluate the revenue opportunity of an IBX center based on the assumption that the environment will be highly competitive. We cannot assure you that any carrier will elect to offer its services within our IBX centers or that once a carrier has decided to provide Internet connectivity to our IBX centers that it will continue to do so for any period of time. Further, many carriers are experiencing business difficulties or announcing consolidations. As a result, some carriers may be forced to downsize or terminate connectivity within our IBX centers, which could have an adverse effect on our operating results.

Our new IBX centers require construction and operation of a sophisticated redundant fiber network. The construction required to connect multiple carrier facilities to our IBX centers is complex and involves factors outside of our control, including regulatory processes and the availability of construction resources. If the establishment of highly diverse Internet connectivity to our IBX centers does not occur, is materially delayed or is discontinued, or is subject to failure, our operating results and cash flow will be adversely affected. Any hardware or fiber failures on this network may result in significant loss of connectivity to our new IBX expansion centers. This could affect our ability to attract new customers to these IBX centers or retain existing customers.

Our networks may be vulnerable to unauthorized persons accessing our systems, which could disrupt our operations and result in the theft of our proprietary information.

A party who is able to breach the security measures on our networks could misappropriate either our proprietary information or the personal information of our customers, or cause interruptions or malfunctions in our operations. We may be required to expend significant capital and resources to protect against such threats or to alleviate problems caused by breaches in security, which could have a material adverse effect on our financial performance and operating results.

A small number of customers, including IBM, account for a significant portion of our revenues, and the loss of any of these customers could significantly harm our business, financial condition and results of operations.

While no single customer accounted for 10% of our revenues for the year ended December 31, 2006 or the nine months ended September 30, 2007, our top ten customers accounted for 25% and 24%, respectively, of our revenues during these periods. As of September 30, 2007, we had 1,453 customers, excluding the impact of IXEurope acquisition. Notwithstanding our acquisition of IXEurope and the integration of its customer base with ours, we expect that a small percentage of our customers will continue to account for a significant portion of our revenues for the foreseeable future. We cannot guarantee that we will retain these customers or that they will maintain their commitments in our IBX centers at current levels. For example, although the term of our contract with IBM, our single largest customer, runs through 2011, IBM currently has the right to reduce its commitment to us pursuant to the terms and requirements of its customer agreement. If we lose any of these key customers, or if any of them decide to reduce the level of their commitment to us, our business, financial condition and results of operations could be adversely affected.

We resell products and services of third parties that may require us to pay for such products and services even if our customers fail to pay us for the products and services, which may have a negative impact on our operating results.

In order to provide resale services such as bandwidth, managed services and other network management services, we contract with third party service providers. These services require us to enter into fixed term contracts for services with third party suppliers of products and services. If we experience the loss of a customer who has purchased a resale product, we will remain obligated to continue to pay our suppliers for the term of the underlying contracts. The payment of these obligations without a corresponding payment from customers will reduce our financial resources and may have a material adverse effect on our operating and financial results and cash flows.

We may not be able to compete successfully against current and future competitors.

Our IBX centers and other products and services must be able to differentiate themselves from those of other providers of space and services for telecommunications companies, web-hosting companies and other colocation providers. In addition to competing with neutral colocation providers, we must compete with

Table of Contents

traditional colocation providers, including local phone companies, long distance phone companies, Internet service providers and web-hosting facilities. Similarly, with respect to our other products and services, including managed services, bandwidth services and security services, we must compete with more established providers of similar services. Most of these companies have longer operating histories and significantly greater financial, technical, marketing and other resources than us.

Because of their greater financial resources, some of our competitors have the ability to adopt aggressive pricing policies, especially if they have been able to restructure their debt or other obligations. As a result, in the future, we may suffer from pricing pressure that would adversely affect our ability to generate revenues and adversely affect our operating results. In addition, these competitors could offer colocation on neutral terms, and may start doing so in the same metropolitan areas in which we have IBX centers. Some of these competitors may also provide our target customers with additional benefits, including bundled communication services, and may do so in a manner that is more attractive to our potential customers than obtaining space in our IBX centers. If these competitors were able to adopt aggressive pricing policies together with offering colocation space, our ability to generate revenues would be materially adversely affected.

We may also face competition from persons seeking to replicate our IBX concept by building new centers or converting existing centers that some of our competitors are in the process of divesting. We may continue to see increased competition for data center space and customers from large REITS who also operate in our market. We may experience competition from our landlords, some of which are REITS, in this regard. Rather than leasing available space in our buildings to large single tenants, they may decide to convert the space instead to smaller square foot units designed for multi-tenant colocation use. Landlords/REITS may enjoy a cost effective advantage in providing services similar to those provided by our IBXs, and in addition to the risk of losing customers to these parties this could also reduce the amount of space available to us for expansion in the future. Competitors may operate more successfully or form alliances to acquire significant market share. Furthermore, enterprises that have already invested substantial resources in outsourcing arrangements may be reluctant or slow to replace, limit or compete with their existing systems by becoming a customer. Customers may also decide it is cost effective for them to build out their own data centers which could have a negative impact on our results of operations. In addition, other companies may be able to attract the same potential customers that we are targeting. Once customers are located in competitors' facilities, it may be extremely difficult to convince them to relocate to our IBX centers.

Because we depend on the retention of key employees, failure to maintain competitive compensation packages, including equity incentives, may be disruptive to our business.

Our success in retaining key employees and discouraging them from moving to a competitor is an important factor in our ability to remain competitive. As is common in our industry, our employees are typically compensated through grants of equity awards in addition to their regular salaries. In addition to granting equity awards to selected new hires, we periodically grant new equity awards to certain employees as an incentive to remain with us. To the extent we are unable to offer competitive compensation packages to our employees and adequately maintain equity incentives due to equity expensing or otherwise, and should employees decide to leave us, this may be disruptive to our business and may adversely affect our business, financial condition and results of operations.

Because we depend on the development and growth of a balanced customer base, failure to attract and retain this base of customers could harm our business and operating results.

Our ability to maximize revenues depends on our ability to develop and grow a balanced customer base, consisting of a variety of companies, including network service providers, site and performance management companies, and enterprise and content companies. The more balanced the customer base within each IBX center, the better we will be able to generate significant interconnection revenues, which in turn increases our overall revenues. Our ability to attract customers to our IBX centers will depend on a variety of factors, including the presence of multiple carriers, the mix of products and services offered by us, the overall mix of customers, the IBX center's operating reliability and security and our ability to effectively market our services. In addition, some of our customers are, and are likely to continue to be, Internet companies that face many competitive pressures and that may not ultimately be successful. If these customers do not succeed, they will not continue to use the IBX centers. This may be disruptive to our business and may adversely affect our business, financial condition and results of operations.

[Table of Contents](#)

Our products and services have a long sales cycle that may materially adversely affect our business, financial condition and results of operations.

A customer's decision to license cabinet space in one of our IBX centers and to purchase additional services typically involves a significant commitment of resources. In addition, some customers will be reluctant to commit to locating in our IBX centers until they are confident that the IBX center has adequate carrier connections. As a result, we have a long sales cycle. Furthermore, we may expend significant time and resources in pursuing a particular sale or customer that does not result in revenue. Delays due to the length of our sales cycle may materially adversely affect our business, financial condition and results of operations.

The failure to obtain favorable terms when we renew our IBX center leases could harm our business and results of operations.

While we own certain of our IBX centers, others are leased under long-term arrangements with lease terms expiring at various dates ranging from 2010 to 2027. These leased centers have all been subject to significant development by us in order to convert them from, in most cases, vacant buildings or warehouses into IBX centers. All of our IBX center leases have renewal options available to us. However, these renewal options provide for rent set at then-prevailing market rates. To the extent that then-prevailing market rates are higher than present rates, these higher costs may adversely impact our business and results of operations.

If the market price of our stock continues to be highly volatile, the value of an investment in our common stock may decline.

Since January 1, 2006, the closing sale price of our common stock on the NASDAQ Global Select Market ranged from \$41.43 to \$116.66 per share. The market price of the shares of our common stock has been and may continue to be highly volatile. Actual sales, or the market's perception with respect to possible sales, of a substantial number of shares of our common stock within a narrow period of time could cause our stock price to fall. Announcements by others or us may also have a significant impact on the market price of our common stock. These announcements may include:

- our operating results;
- new issuances of equity, debt or convertible debt;
- developments in our relationships with corporate customers;
- announcements by our customers or competitors;
- changes in regulatory policy or interpretation;
- governmental investigations;
- changes in the ratings of our stock by securities analysts;
- purchase or development of real estate and/or additional IBX centers;
- acquisitions of complementary businesses;
- announcements with respect to the operational performance of our IBX centers;
- market conditions for telecommunications stocks in general; and
- general economic and market conditions.

Table of Contents

The stock market has from time to time experienced extreme price and volume fluctuations, which have particularly affected the market prices for emerging telecommunications companies, and which have often been unrelated to their operating performance. These broad market fluctuations may adversely affect the market price of our common stock.

We are subject to securities class action and derivative litigation, which may harm our business and results of operations.

In the past, securities class action litigation has often been brought against a company following periods of volatility in the market price of its securities. During the quarter ended September 30, 2001, putative shareholder class action lawsuits were filed against us, a number of our officers and directors, and several investment banks that were underwriters of our initial public offering. Similar complaints were filed against more than 300 other issuers, their officers and directors, and investment banks. The suits allege that the underwriter defendants agreed to allocate stock in our initial public offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases in the aftermarket at pre-determined prices. Plaintiffs allege that the prospectus for our initial public offering was false and misleading and in violation of the securities laws because it did not disclose these arrangements. A previously agreed upon settlement with the plaintiffs has been terminated. On August 14, 2007, the plaintiffs filed amended complaints in six cases selected as test, or “focus,” cases and moved for class certification on September 27, 2007. If plaintiffs are successful in obtaining class certification in the “focus” cases, they will also likely file an amended complaint against us. We are continuing to participate in the defense of this litigation, which may increase our expenses and divert management’s attention and resources. In addition, we may, in the future, be subject to other securities class action or similar litigation.

On June 29, 2006 and September 18, 2006, shareholder derivative actions were filed in the Superior Court of the State of California, County of San Mateo, naming Equinix as a nominal defendant and several of Equinix’s current and former officers and directors as individual defendants. These actions were consolidated, and the consolidated complaint was filed in January 2007. In March 2007, the state court stayed this action in deference to a federal shareholder derivative action filed in the United States District Court for the Northern District of California in October 2006. The federal action named Equinix as a nominal defendant and several current and former officers and directors as individual defendants. This complaint alleged that the individual defendants breached their fiduciary duties and violated California and federal securities laws as a result of purported backdating of stock options, insider trading and the dissemination of false statements. On April 12, 2007, the federal action was voluntarily dismissed without prejudice pursuant to a joint stipulation entered as an order by the court. On May 3, 2007, the state court lifted the stay on proceedings in the state court action and set a briefing schedule permitting us to file a motion to dismiss on the grounds that plaintiffs lack standing to sue on our behalf. We filed our motion to dismiss on June 4, 2007 and appeared for a hearing on the motion on August 6, 2007. The state court granted our motion to dismiss and granted plaintiffs leave to amend their consolidated complaint. On October 1, 2007, plaintiffs filed an amended consolidated complaint. The amended consolidated complaint alleges that the individual defendants breached their fiduciary duties and violated California securities law as a result of purported backdating of stock option grants, insider trading and the preparation and approval of inaccurate financial results. Plaintiffs seek to recover, on behalf of Equinix, unspecified monetary damages, corporate governance changes, equitable and injunctive relief, restitution and fees and costs. A motion to dismiss the amended consolidated complaint is pending. In addition to the pending state court derivative action, we may be subject to additional derivative or other lawsuits that may be presented on an individual or class basis alleging claims based on our stock option granting practices. Responding to, investigating and/or defending against these complaints will present a substantial cost to us in both cash and the attention of certain management. Any adverse outcome in litigation could seriously harm our business and results of operations.

Risks Related to Our Industry

If the use of the Internet and electronic business does not grow, our revenues may not grow.

Acceptance and use of the Internet may not continue to develop at historical rates and a sufficiently broad base of consumers may not adopt or continue to use the Internet and other online services as a medium of commerce. Demand for Internet services and products are subject to a high level of uncertainty and are subject to significant pricing pressure, especially in Asia-Pacific. As a result, we cannot be certain that a viable market for our IBX centers will materialize. If the market for our IBX centers grows more slowly than we currently anticipate, our revenues may not grow and our operating results could suffer.

[Table of Contents](#)

Government regulation may adversely affect the use of the Internet and our business.

Various laws and governmental regulations governing Internet related services, related communications services and information technologies and electronic commerce remain largely unsettled, even in areas where there has been some legislative action. This is true both in the U.S. and the various foreign countries in which we operate. It may take years to determine whether and how existing laws, such as those governing intellectual property, privacy, libel, telecommunications services and taxation, apply to the Internet and to related services such as ours. We have limited experience with such international regulatory issues and substantial resources may be required to comply with regulations or bring any non-compliant business practices into compliance with such regulations. In addition, the development of the market for online commerce and the displacement of traditional telephony service by the Internet and related communications services may prompt an increased call for more stringent consumer protection laws or other regulation both in the U.S. and abroad that may impose additional burdens on companies conducting business online and their service providers. The compliance with, adoption or modification of, laws or regulations relating to the Internet, or interpretations of existing laws, could have a material adverse effect on our business, financial condition and results of operation.

Industry consolidation may have a negative impact on our business model.

The telecommunications industry is currently undergoing consolidation. As customers combine businesses, they may require less colocation space, and there may be fewer networks available to choose from. Given the competitive and evolving nature of this industry, further consolidation of our customers and/or our competitors may present a risk to our network neutral business model and have a negative impact on our revenues. In addition, increased utilization levels industry-wide could lead to a reduced amount of attractive expansion opportunities available to us.

Terrorist activity throughout the world and military action to counter terrorism could adversely impact our business.

The September 11, 2001 terrorist attacks in the U.S., the ensuing declaration of war on terrorism and the continued threat of terrorist activity and other acts of war or hostility appear to be having an adverse effect on business, financial and general economic conditions internationally. These effects may, in turn, increase our costs due to the need to provide enhanced security, which would have a material adverse effect on our business and results of operations. These circumstances may also adversely affect our ability to attract and retain customers, our ability to raise capital and the operation and maintenance of our IBX centers. We may not have adequate property and liability insurance to cover catastrophic events or attacks.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Submission of Matters to a Vote of Security Holders

None.

Item 5. Other Information

None.

Table of Contents

Item 6. Exhibits

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date/ Period End Date	Exhibit	
2.1	Combination Agreement, dated as of October 2, 2002, by and 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.	Def. Proxy 14A	12/12/02		
3.1	Amended and Restated Certificate of Incorporation of the Registrant, as amended to date.	10-K/A	12/31/02	3.1	
3.2	Certificate of Designation of Series A and Series A-1 Convertible Preferred Stock.	10-K/A	12/31/02	3.3	
3.3	Bylaws of the Registrant.	10-K	12/31/02	3.2	
3.4	Certificate of Amendment of the Bylaws of the Registrant.	10-Q	6/30/03	3.4	
4.1	Reference is made to Exhibits 3.1, 3.2, 3.3 and 3.4.				
4.2	Registration Rights Agreement (see Exhibit 10.15).				
4.3	Indenture dated February 11, 2004 by and between Equinix, Inc. and U.S. Bank National Association, as trustee.	10-Q	3/31/04	10.99	
4.4	Indenture dated March 30, 2007 by and between Equinix, Inc. and U.S. Bank National Association, as trustee.	8-K	3/30/07	4.4	
4.5	Form of 2.50% Convertible Subordinated Note Due 2012 (see Exhibit 4.4).				
4.6	Indenture dated September 26, 2007 by and between Equinix, Inc. and U.S. Bank National Association, as trustee.	8-K	9/26/07	4.4	
4.7	Form of 3.00% Convertible Subordinated Note Due 2014 (see Exhibit 4.6).				
10.1	Warrant Agreement, dated as of December 1, 1999, by and among the Registrant and State Street Bank and Trust Company of California, N.A. (as warrant agent).	S-4 (File No. 333-93749)	12/29/99	10.2	
10.2	Form of Indemnification Agreement between the Registrant and each of its officers and directors.	S-4 (File No. 333-93749)	12/29/99	10.5	

Table of Contents

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Incorporated by Reference</u>			<u>Filed Herewith</u>
		<u>Form</u>	<u>Filing Date/ Period End Date</u>	<u>Exhibit</u>	
10.3+	Lease Agreement with Carlyle-Core Chicago LLC, dated as of September 1, 1999.	S-4/A (File No. 333-93749)	5/9/00	10.9	
10.4	2000 Equity Incentive Plan.	S-1 (File No. 333-39752)	6/21/00	10.24	
10.5	2000 Director Option Plan.	S-1/A (File No. 333-39752)	7/19/00	10.25	
10.6	Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated June 21, 2000.	S-1/A (File No. 333-39752)	8/9/00	10.27	
10.7+	Lease Agreement with Burlington Associates III Limited Partnership, dated as of July 24, 2000.	10-Q	9/30/00	10.31	
10.8	First Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated September 26, 2001.	10-Q	9/30/01	10.46	
10.9	2001 Supplemental Stock Plan.	10-Q	9/30/01	10.48	
10.10	Second Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated May 20, 2002.	10-Q	6/30/02	10.53	
10.11+	Second Amendment to Lease Agreement with Burlington Realty Associates III Limited Partnership, dated as of October 1, 2002.	10-Q	9/30/02	10.56	
10.12	Form of Severance Agreement entered into by the Company and each of the Company's executive officers.	10-Q	9/30/02	10.58	
10.13	Third Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of September 30, 2002.	10-K	12/31/02	10.74	
10.14	Registration Rights Agreement by and among Equinix and the Initial Purchasers, dated as of December 31, 2002.	10-K	12/31/02	10.75	
10.15	Securities Purchase and Admission Agreement, dated April 29, 2003, among Equinix, certain of Equinix's subsidiaries, i-STT Investments Pte Ltd, STT Communications Ltd and affiliates of Crosslink Capital.	8-K	5/1/03	10.1	

Table of Contents

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date/ Period End Date	Exhibit	
10.16	Fourth Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc., dated as of November 21, 2003.	10-K	12/31/03	10.94	
10.17+	Sublease Agreement between Sprint Communications Company, L.P. and Equinix Operating Co., Inc. dated as of October 24, 2003.	10-K	12/31/03	10.95	
10.18+	Lease Agreement dated as of April 21, 2004 between Eden Ventures LLC and Equinix, Inc.	10-Q	6/30/04	10.103	
10.19	Equinix, Inc. 2004 International Employee Stock Purchase Plan effective as of June 3, 2004.	10-Q	6/30/04	10.105	
10.20	Equinix, Inc. Employee Stock Purchase Plan effective as of June 3, 2004.	10-Q	6/30/04	10.106	
10.21	First Amendment to Sublease Agreement dated as of June 21, 2004 between Equinix Operating Co. Inc. and Sprint Communications Company L.P.	10-K	12/31/04	10.107	
10.22+	Assignment and Assumption of Lease and First Amendment to Lease dated as of December 6, 2004, between Equinix Operating Company, Inc., Abovenet Communications, Inc., and Brokaw Interests; and Lease dated December 29, 1999 between Abovenet Communications, Inc., and Brokaw Interests.	10-K	12/31/04	10.109	
10.23	Form of Restricted Stock Agreement for Equinix's executive officers under the Company's 2000 Equity Incentive Plan.	10-K	12/31/05	10.115	
10.24	Lease Agreement dated June 9, 2005 between Equinix Operating Co., Inc. and Mission West Properties L.P. and associated Guaranty of Equinix, Inc.	10-Q	6/30/05	10.117	
10.25	Letter Agreement dated October 6, 2005 among Equinix, Inc., STT Communications Ltd. and I-STT Investments Pte. Ltd.	8-K	10/6/05	99.1	
10.26	Lease Agreement dated December 21, 2005 between Equinix Operating Co., Inc. and iStar El Segundo, LLC and associated Guaranty of Equinix, Inc.	10-K	12/31/05	10.126	

Table of Contents

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Incorporated by Reference</u>			<u>Filed Herewith</u>
		<u>Form</u>	<u>Filing Date/ Period End Date</u>	<u>Exhibit</u>	
10.27+	Loan and Security Agreement and Note between Equinix RP II, LLC and SFT I, Inc. dated December 21, 2005 and associated Guaranty of Equinix, Inc.	10-K	12/31/05	10.127	
10.28	Lease Agreement dated as of December 21, 2005 between Equinix RP II, LLC and Equinix, Inc.	10-K	12/31/05	10.128	
10.29	Fifth Modification to Ground Lease by and between iStar San Jose, LLC and Equinix, Inc. dated January 1, 2006 and associated Guaranty of Equinix, Inc.	10-K	12/31/05	10.129	
10.30	Lease Agreement dated September 14, 2006 between 777 Sinatra Drive Corp. and Equinix, Inc.	10-Q	9/30/06	10.135	
10.31+	Second Amended and Restated Loan and Security Agreement dated August 10, 2006 between Silicon Valley Bank, General Electric Capital Corporation, Equinix, Inc. and Equinix Operating Co., Inc.	10-Q	9/30/06	10.136	
10.32	2007 Equinix Annual Incentive Plan	10-K	12/31/06	10.35	
10.33	First Omnibus Modification Agreement dated December 27, 2006 by and among SFT I, Inc. ("SFT I"), Equinix RP II, LLC ("RP II") and Equinix, Inc. ("Equinix"), Amended and Restated Promissory Note dated December 27, 2006 by RP II in favor of SFT I and Reaffirmation of Guaranty dated December 27, 2006 by RP II and Equinix in favor of SFT I.	10-K	12/31/06	10.37	
10.34	First Amendment to Deed of Lease dated December 27, 2006 by and between Equinix RP II, LLC and Equinix Operating Co., Inc.	10-K	12/31/06	10.38	
10.35	Development Loan and Security Agreement dated February 2, 2007 by and between CHI 3, LLC and SFT I, Inc. and related Promissory Notes One through Four.	10-Q	3/31/07	10.37	
10.36	Guaranty dated February 2, 2007 by and between Equinix, Inc. and SFT I, Inc.	10-Q	3/31/07	10.38	

Table of Contents

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Incorporated by Reference</u>			<u>Filed Herewith</u>
		<u>Form</u>	<u>Filing Date/Period End Date</u>	<u>Exhibit</u>	
10.37	Completion and Payment Guaranty dated February 2, 2007 by and between Equinix, Inc. and SFT I, Inc.	10-Q	3/31/07	10.39	
10.38	Master Lease dated February 2, 2007 by and between CHI 3, LLC and Equinix Operating Co., Inc. and associated Guaranty of Lease by Equinix, Inc.	10-Q	3/31/07	10.40	
10.39	Offer of employment dated March 16, 2007 to Stephen M. Smith by Equinix Operating Co., Inc., accepted by Stephen M. Smith.	10-Q	3/31/07	10.43	
10.40	Severance Agreement dated March 16, 2007 by and between Stephen M. Smith and Equinix, Inc.	10-Q	3/31/07	10.44	
10.41	Form of Restricted Stock Agreements for Stephen M. Smith under the Equinix, Inc. 2000 Equity Incentive Plan.	10-Q	3/31/07	10.45	
10.42	Amendment No. 1 to Second Amended and Restated Loan and Security Agreement dated March 26, 2007 by and among Equinix, Inc., Equinix Operating Co., Inc., General Electric Capital Corporation and Silicon Valley Bank.	10-Q	3/31/07	10.46	
10.43	Facility Agreement dated August 31, 2007 by and among Equinix Singapore Pte. Ltd., Equinix Japan K.K., the Additional Borrowers (as defined therein), the Lenders (as defined therein), and ABN AMRO BANK N.V., and related Guarantee dated August 31, 2007 by Equinix, Inc.				X
10.44	Agreement for Lease dated June 12, 2006 by and between Slough Trading Estate Limited and Interconnect Exchange Europe Limited.				X
10.45	£82,000,000 Senior Facilities Agreement dated June 29, 2007 by and among IXEurope plc, CIT Bank Limited, as arranger, CIT Capital Finance (UK) Limited, as administrative agent and security trustee and the Lenders (as defined therein).				X

Table of Contents

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		<u>Form</u>	<u>Filing Date/ Period End Date</u>	<u>Exhibit</u>	
10.46	Amendment No. 2 to Second Amended and Restated Loan and Security Agreement dated October 1, 2007 by and among Equinix, Inc., Equinix Operating Co., Inc., General Electric Capital Corporation and Silicon Valley Bank.	8-K	10/5/07	10.1	
21.1	Subsidiaries of Equinix.				X
31.1	Chief Executive Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X
31.2	Chief Financial Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				X
32.1	Chief Executive Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				X
32.2	Chief Financial Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				X
+	Confidential treatment has been requested for certain portions which are omitted in the copy of the exhibit electronically filed with the Securities and Exchange Commission. The omitted information has been filed separately with the Securities and Exchange Commission pursuant to Equinix's application for confidential treatment.				

INDEX TO EXHIBITS

Exhibit Number	Description of Document
10.43	Facility Agreement dated August 31, 2007 by and among Equinix Singapore Pte. Ltd., Equinix Japan K.K., the Additional Borrowers (as defined therein), the Lenders (as defined therein), and ABN AMRO BANK N.V., and related Guarantee dated August 31, 2007 by Equinix, Inc.
10.44	Agreement for Lease dated June 12, 2006 by and between Slough Trading Estate Limited and Interconnect Exchange Europe Limited.
10.45	£82,000,000 Senior Facilities Agreement dated June 29, 2007 by and among IXEurope plc, CIT Bank Limited, as arranger, CIT Capital Finance (UK) Limited, as administrative agent and security trustee and the Lenders (as defined therein).
21.1	Subsidiaries of Equinix.
31.1	Chief Executive Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Chief Financial Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Chief Executive Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Chief Financial Officer Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

SGD23,000,000 and ¥2,932,500,000

FACILITY AGREEMENT

dated as of August 31, 2007

among

**EQUINIX SINGAPORE PTE. LTD.,
EQUINIX JAPAN K.K.,**

and

**ADDITIONAL BORROWERS PARTY HERETO,
as Borrowers,**

THE LENDERS PARTY HERETO,

and

**ABN AMRO BANK N.V.,
as Facility Agent, Arranger and Collateral Agent**

TABLE OF CONTENTS

<u>Section</u>		<u>Page</u>
ARTICLE I DEFINITIONS		1
SECTION 1.01	Defined Terms	1
SECTION 1.02	Terms Generally	20
SECTION 1.03	Accounting Terms; GAAP	21
SECTION 1.04	Resolution of Drafting Ambiguities	21
ARTICLE II THE CREDITS		21
SECTION 2.01	Commitments	21
SECTION 2.02	Loans	22
SECTION 2.03	Additional Loans	22
SECTION 2.04	Borrowing Procedure	24
SECTION 2.05	Evidence of Debt; Repayment of Loans	24
SECTION 2.06	Fees	25
SECTION 2.07	Interest on Loans	26
SECTION 2.08	Termination of Commitments	27
SECTION 2.09	Repayment	27
SECTION 2.10	Optional and Mandatory Prepayments of Loans	27
SECTION 2.11	Alternate Rate of Interest	28
SECTION 2.12	Yield Protection	29
SECTION 2.13	Breakage Costs	30
SECTION 2.14	Payments Generally; Pro Rata Treatment; Sharing of Setoffs	30
SECTION 2.15	Taxes	32
SECTION 2.16	Mitigation Obligations; Replacement of Lenders	34
ARTICLE III REPRESENTATIONS AND WARRANTIES		35
SECTION 3.01	Organization; Powers	35
SECTION 3.02	Authorization; Enforceability	35
SECTION 3.03	No Conflicts	35
SECTION 3.04	Financial Statements; Projections	36
SECTION 3.05	Properties	37
SECTION 3.06	Intellectual Property; Ownership/No Claims	37
SECTION 3.07	Ownership of the Borrowers and Subsidiaries	38
SECTION 3.08	Litigation; Compliance with Laws	38
SECTION 3.09	Agreements	38
SECTION 3.10	Investment Company Act	38
SECTION 3.11	Use of Proceeds	39
SECTION 3.12	Taxes	39
SECTION 3.13	No Material Misstatements	39
SECTION 3.14	Labor Matters	39
SECTION 3.15	Solvency	40
SECTION 3.16	Employee Benefit Plans	40
SECTION 3.17	Environmental Matters	40
SECTION 3.18	Insurance	41

SECTION 3.19	Security Documents; Ranking of Loans	41
SECTION 3.20	Permits, etc.	42
ARTICLE IV CONDITIONS TO FUNDING		42
SECTION 4.01	Conditions to Initial Funding	42
SECTION 4.02	Conditions to All Borrowings	44
SECTION 4.03	Other Conditions to Borrowing.	45
ARTICLE V AFFIRMATIVE COVENANTS		45
SECTION 5.01	Financial Statements, Reports, etc.	45
SECTION 5.02	Litigation and Other Notices	47
SECTION 5.03	Existence; Businesses and Properties	47
SECTION 5.04	Insurance	47
SECTION 5.05	Obligations and Taxes	48
SECTION 5.06	Maintaining Records; Access to Properties and Inspections; Annual Meetings	48
SECTION 5.07	Use of Proceeds	48
SECTION 5.08	Compliance with Laws; Material Agreements and Loan Documents	49
SECTION 5.09	After-acquired Collateral; Collateral Book Value	49
SECTION 5.10	Security Interests; Further Assurances	49
SECTION 5.11	Information Regarding Collateral	50
SECTION 5.12	Ranking of Loans	50
SECTION 5.13	Pledge of Shares of Borrowers	50
SECTION 5.14	Guarantee	51
SECTION 5.15	Process Agent	51
ARTICLE VI NEGATIVE COVENANTS		51
SECTION 6.01	Indebtedness	51
SECTION 6.02	Liens	51
SECTION 6.03	Sale and Leaseback Transactions	53
SECTION 6.04	Investment, Loan and Advances	53
SECTION 6.05	Mergers and Consolidations	54
SECTION 6.06	Asset Sales	54
SECTION 6.07	Acquisitions	55
SECTION 6.08	Restricted Payments	55
SECTION 6.09	Transactions with Affiliates	56
SECTION 6.10	Financial Covenants	56
SECTION 6.11	Prepayments of Other Indebtedness; Modifications of Organizational Documents and Other Documents, etc.	57
SECTION 6.12	Limitation on Creation of Subsidiaries	57
SECTION 6.13	Limitation on Accounting Changes	57
SECTION 6.14	Business	57
SECTION 6.15	Fiscal Year	57
ARTICLE VII EVENTS OF DEFAULT		58
SECTION 7.01	Events of Default	58
SECTION 7.02	Application of Proceeds	60
SECTION 7.03	Remedies in Japan	61

ARTICLE VIII THE FACILITY AGENT AND THE COLLATERAL AGENT		62
SECTION 8.01	Appointment and Authority	62
SECTION 8.02	Rights as a Lender	62
SECTION 8.03	Exculpatory Provisions	62
SECTION 8.04	Reliance by Agent	63
SECTION 8.05	Delegation of Duties	63
SECTION 8.06	Resignation of Agent	63
SECTION 8.07	Non-Reliance on Agent and Other Lenders	64
ARTICLE IX NATURE OF BORROWERS' OBLIGATIONS		64
SECTION 9.01	Nature of Obligations	64
SECTION 9.02	Independent Obligation	65
SECTION 9.03	Authorization	65
SECTION 9.04	Reliance	65
SECTION 9.05	Contribution; Subrogation	65
SECTION 9.06	Waiver	65
SECTION 9.07	Subordinations	66
SECTION 9.08	Effective	66
ARTICLE X MISCELLANEOUS		66
SECTION 10.01	Notices	66
SECTION 10.02	Waivers; Amendment	69
SECTION 10.03	Expenses; Indemnity; Damage Waiver	71
SECTION 10.04	Successors and Assigns	73
SECTION 10.05	Survival of Agreement	75
SECTION 10.06	Counterparts; Integration; Effectiveness	76
SECTION 10.07	Severability	76
SECTION 10.08	Right of Setoff	76
SECTION 10.09	Governing Law; Jurisdiction; Consent to Service of Process	77
SECTION 10.10	Waiver of Jury Trial	77
SECTION 10.11	Headings	78
SECTION 10.12	Confidentiality	78
SECTION 10.13	USA PATRIOT Act Notice	79
SECTION 10.14	Interest Rate Limitation	79
SECTION 10.15	Obligations Absolute	79
SECTION 10.16	Judgment Currency	80
SECTION 10.17	Administrative Borrower as Agent for the Borrowers	80

SCHEDULES

Schedule 1.01(a)	List of Singapore Dollars Lenders
Schedule 1.01(b)	Terms of Subordination
Schedule 1.01(c)	List of Yen Lenders
Schedule 3.03	Governmental Approvals; Compliance with Laws
Schedule 3.05(b)	Real Property
Schedule 3.06(a)	Intellectual Property Claims
Schedule 3.07(b)	Subsidiaries of Borrowers
Schedule 3.08	Litigation
Schedule 3.09	Material Agreements
Schedule 3.11	Capital Expenditure Budget
Schedule 3.14	Labor Matters
Schedule 3.17	Environmental Matters
Schedule 3.18	Insurance
Schedule 4.01(f)	Local and International Counsel
Schedule 5.04(a)	Required Insurance
Schedule 6.01	Existing Indebtedness
Schedule 6.02(c)	Existing Liens
Schedule 6.04(a)	Existing Investments

EXHIBITS

Exhibit A	Form of Assignment and Assumption
Exhibit B	Form of Borrowing Request
Exhibit C	Form of Compliance Certificate
Exhibit D-1	Form of Singapore Dollar Note
Exhibit D-2	Form of Yen Note
Exhibit E	Form of Assignment of Movables for Security Purposes
Exhibit F	Form of Debenture

FACILITY AGREEMENT

This FACILITY AGREEMENT (this “**Agreement**”) dated as of August 31, 2007, among EQUINIX SINGAPORE PTE. LTD., a Singaporean corporation (“**Equinix Singapore**”), EQUINIX JAPAN K.K., a Japanese corporation (“**Equinix Japan**”), Additional Borrowers (as defined below) (Equinix Singapore, Equinix Japan and such Additional Borrowers, each individually, a “**Borrower**” and collectively, “**Borrowers**”), the Lenders party hereto, ABN AMRO BANK N.V., as facility agent (in such capacity, “**Facility Agent**”), as arranger (in such capacity, “**Arranger**”) and as collateral agent (in such capacity, “**Collateral Agent**”) for the Secured Parties (as defined below).

WITNESSETH:

WHEREAS, the Borrowers have requested the Lenders to extend credit in the form of Loans (as defined below) during the Availability Period (as defined below), up to the aggregate of SGD23,000,000 and ¥2,932,500,000, and such other term loans for such amounts as may be agreed by the parties from time to time.

WHEREAS, the proceeds of the Loans are to be used in accordance with Section 3.11.

WHEREAS, the Guarantor (as defined below) is agreeing to guarantee all the obligations of the Borrowers hereunder in accordance with that certain Guarantee of even date herewith.

NOW, THEREFORE, the Lenders are willing to extend such credit to Borrowers on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01 **Defined Terms**. As used in this Agreement and the Exhibits and Schedules hereto, the following terms shall have the meanings specified below:

“**Act**” shall have the meaning assigned to such term in Section 10.13.

“**Additional Borrower**” means a Subsidiary or Affiliate of either Equinix Singapore or Equinix Japan or the Guarantor who avails of an Additional Loan permitted by Section 2.03 of this Agreement.

“**Additional Commitment**” shall have the meaning assigned to such term in Section 2.03(a).

“**Additional Loan**” means a term loan facility in addition to the Loans provided by an existing Lender or new Lender to any of the Borrowers pursuant to Section 2.03.

“**Administrative Borrower**” shall mean Equinix Singapore, in its capacity as Administrative Borrower on behalf of itself, Equinix Japan and the Additional Borrowers pursuant to its appointment in Section 10.17 hereof, and its successors and assigns in such capacity.

“**Affiliate**” shall mean, when used with respect to a specified Person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified; provided, however, that for purposes of Section 6.09, the term “Affiliate” shall also include any Person that directly or indirectly owns more than 10% of any class of Equity Interests of the Person specified. For the purposes of the Loan Documents, Temasek Holdings Pte. Ltd. and its controlled subsidiaries and investments shall not be considered “Affiliates” of the Borrowers or the Guarantor.

“**Agents**” shall mean the Facility Agent and the Collateral Agent; and “**Agent**” shall mean either of them.

“**Agreement**” shall have the meaning assigned to such term in the preamble hereto.

“**Applicable Margin**” shall mean (a) 1.85% per annum if the ratio of Guarantor Senior Debt to Guarantor EBITDA is less than or equal to 2.5, (b) 2.00% per annum if the ratio of Guarantor Senior Debt to Guarantor EBITDA is greater than 2.5 and less than or equal to 3.25, (c) 2.25% per annum if the ratio of Guarantor Senior Debt to Guarantor EBITDA is greater than 3.25 and less than or equal to 4, and (d) 2.50% per annum if the ratio of Guarantor Senior Debt to Guarantor EBITDA is greater than 4, in each case as determined in accordance with Section 2.07(a).

“**Approved Currency**” shall mean, with respect to (i) the Singapore Dollar Borrower, Singapore Dollars, and (ii) the Yen Borrower, Yen.

“**Approved Fund**” shall mean any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“**Arranger**” shall have the meaning assigned to such term in the preamble hereto.

“**Asset Sale**” shall mean (a) any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any Sale and Leaseback Transaction) that does not arise in the normal course of business of the Borrowers and exceeds a threshold amount of the US Dollar Equivalent of US\$5,000,000 of any property excluding sales of Inventory and dispositions of cash and Cash Equivalents, in each case, in the ordinary course of business, by the Borrowers or any of their respective Subsidiaries and (b) any issuance or sale of any Equity Interests of any Subsidiary of the Borrowers, in each case, to any Person other than the Borrowers or a Subsidiary of a Borrower.

“**Assignment and Assumption**” shall mean an assignment and assumption entered into by a Lender and an Eligible Assignee, and accepted by the Facility Agent, in substantially the form of Exhibit A, or any other form approved by the Facility Agent.

“**Assignment of Movables**” shall mean the assignment of movables for security purposes substantially in the form of Exhibit E between Equinix Japan and ABN AMRO Bank N.V., Tokyo Branch for the benefit of the Secured Parties.

“**Authorized Officer**” shall mean with respect to any Borrower, any Director of such Borrower. Any Authorized Officer of a Borrower shall for all purposes of the Loan Documents, be deemed authorized to execute on behalf of such Borrower, any documents and certificates or give notices and other communications in connection with this Agreement and the other Loan Documents and the transactions contemplated hereunder and thereunder, unless a Loan Document specifically requires execution by a different officer, and provided that any Authorized Officer of the Administrative Borrower shall for all purposes of the Loan Documents, be deemed authorized to execute on behalf of all Borrowers, any documents and certificates or give notices and other communications in connection with this Agreement and the other Loan Documents and the transactions contemplated hereunder and thereunder, unless a Loan Document specifically requires execution by a different officer.

“**Availability Period**” shall mean the period commencing on the date that all conditions precedent to the making of the initial Loans under Section 4.01 and Section 4.02 have been satisfied or waived and ending on the date twelve (12) months after the date of this Agreement.

“**Basel II**” shall have the meaning assigned to such term in Section 2.12(e).

“**Board of Directors**” shall mean, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person, (b) in the case of any manager-managed limited liability company, the manager or board of managers, as the case may be, of such Person, (c) in the case of any member-managed limited liability company, the members of such Person, (d) in the case of any partnership, the board of directors of the general partner of such Person and (e) in any other case, the functional equivalent of the foregoing.

“**Borrowing**” shall mean a Singapore Dollar Borrowing or a Yen Borrowing.

“**Borrowing Request**” shall mean a request by the Administrative Borrower on behalf of a Borrower in accordance with the terms of Section 2.04 and substantially in the form of Exhibit B, or such other form as shall be approved by the Facility Agent.

“**Breakage Costs**” shall have the meaning assigned to such term in Section 2.13.

“**Business Day**” shall mean any day other than a Saturday, Sunday or other day on which banks in Hong Kong, Tokyo or Singapore are authorized or required by law to close.

“**Capital Expenditures**” means, with respect to any Person for any period, the aggregate of all expenditures by such Person and its Subsidiaries during such period that in accordance with GAAP are or should be included in “construction in progress,” “property, plant and equipment” or in a similar fixed asset account on its balance sheet, whether such expenditures are paid in cash or financed and including all Capitalized Lease Obligations paid or payable during such period.

“Capitalized Lease” means, with respect to any Person, any lease of real or personal property by such Person as lessee which is (a) required under GAAP to be capitalized on the balance sheet of such Person or (b) a transaction of a type commonly known as a “synthetic lease” (i.e., a lease transaction that is treated as an operating lease for accounting purposes but with respect to which payments of rent are intended to be treated as payments of principal and interest on a loan for federal income tax purposes).

“Capitalized Lease Obligations” means, with respect to any Person, obligations of such Person and its Subsidiaries under Capitalized Leases, and, for purposes hereof, the amount of any such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Equivalents” shall mean (a) marketable direct obligations issued or unconditionally guaranteed by the United States government or its agencies or any State of the United States maturing within one (1) year from its acquisition, (b) commercial paper maturing no more than one (1) year after its acquisition and issued by a Person having an A-1/P-1 or better rating from either Standard & Poor’s Rating Services or Moody’s Investors Service, Inc., (c) certificates of deposit issued by any Lender or commercial bank or trust company having capital and surplus aggregating in excess of US\$500,000,000 and a rating of “A” (or such other similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) maturing no more than one (1) year after issue, (d) floating rate securities with a rating of Aaa/AAA (or such other similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act), (e) corporate bonds or notes with a credit rating of Aa/AA (or such other similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act), and (f) shares in money market funds whose assets are primarily comprised of securities of types described in clauses (a) through (e) above.

“Casualty Event” with respect to a Borrower, shall mean any involuntary loss of, damage to or destruction of, or any condemnation or other taking (including by any Governmental Authority) of, the Internet Data Center of such Borrower where such damage, destruction, condemnation or taking results in a loss of US\$5,000,000 or more. “Casualty Event” shall include, but not be limited to, any taking of all or any part of the Internet Data Center of such Borrower, in or by condemnation or other eminent domain proceedings pursuant to any Requirement of Law, or by reason of the temporary requisition of the use or occupancy of such Internet Data Center of such Borrower by any Governmental Authority, civil or military where such condemnation, taking or eminent domain proceeding results in a loss of US\$5,000,000 or more.

“Change in Control” with respect to a Borrower, shall mean each occurrence of any of the following:

(a) any change in the ownership of the Equity Interests of such Borrower if, after giving effect thereto, any Person or group (within the meaning of Section 13(d) (3) of the Exchange Act), other than the Guarantor (or any person directly controlled by Guarantor), will have the direct or indirect power to elect a majority of the members of the Board of Directors of such Borrower or to control a majority of the voting power of the Equity Interests of such Borrower; or

(b) any sale or other disposition of all or substantially all of the assets of such Borrower in one or a series of transactions to another person or group (within the meaning of Section 13(d)(3) of the Exchange Act) (such person or group being a “**Change of Control Transferee**”), if after giving effect thereto, any person or group, other than the Guarantor (or any person directly controlled by Guarantor) will have the power to elect a majority of the members of the Board of Directors of the Change of Control Transferee or to control a majority of the voting power of the Equity Interests of the Change of Control Transferee.

“**Change in Law**” shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking into effect of any law, treaty, order, policy, rule or regulation, (b) any change in any law, treaty, order, policy, rule or regulation or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

“**Charges**” shall have the meaning assigned to such term in Section 10.14.

“**Closing Date**” shall mean the date of the initial Borrowing hereunder.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended.

“**Collateral**” shall have the meaning assigned to such term in the Debenture and shall include the “Movables” as the term is defined and used in the Assignment of Movables.

“**Collateral Agent**” shall have the meaning assigned to such term in the preamble hereto.

“**Commitment**” shall mean, with respect to any Lender, such Lender’s Singapore Dollar Loan Commitment, Yen Loan Commitment and/or Additional Commitment.

“**Commitment Fee**” shall have the meaning assigned to such term in Section 2.06(a).

“**Communications**” shall have the meaning assigned to such term in Section 10.01(d).

“**Competitor**” shall mean a Person for whom all or a substantial portion of its business, directly or indirectly through one or more Affiliates is providing and operating network-neutral and internet exchange services.

“**Compliance Certificate**” shall mean a certificate of a Financial Officer substantially in the form of Exhibit C.

“**Consolidated EBITDA**” means, with respect to any Person for any period, such Person’s and its Subsidiaries’ consolidated profit or loss from operations for such period (with respect to either Borrower, calculation of “consolidated profit or loss from operations” includes all cash expenses relating to the business of such Borrower, including management fees paid by such Borrower to Equinix Asia Pacific Private, Ltd.) plus depreciation, amortization, accretion, stock-based compensation expense, non-cash restructuring charges, and such other cash restructuring charges as agreed by the Facility Agent in writing, in each case for such period.

“**Consolidated Indebtedness**” shall mean, as at any date of determination, the aggregate amount of all Indebtedness of the Borrowers and their Subsidiaries, determined on a consolidated basis in accordance with GAAP.

“**Consolidated Interest Coverage Ratio**” shall mean, for any Test Period, the ratio of (x) Consolidated EBITDA of the Borrowers (taken as a whole) for such Test Period to (y) Consolidated Net Interest Expense (taken as a whole) for such Test Period.

“**Consolidated Net Interest Expense**” means, for any period, as to the Borrowers, as determined in accordance with GAAP, the amount equal to total interest expense of each Borrower and their respective Subsidiaries on a consolidated basis whether paid or accrued for such period and as reported on such Borrower’s books for consolidation in the financial statements of the Guarantor.

“**Control**” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms “**Controlling**” and “**Controlled**” shall have meanings correlative thereto.

“**Debenture**” shall mean the debenture substantially in the form of Exhibit F between Equinix Singapore and the Collateral Agent on behalf of the Secured Parties.

“**Debt Issuance**” shall mean the incurrence by the Borrowers or any of their respective Subsidiaries of any Indebtedness after the Closing Date (other than Permitted Indebtedness).

“**Default**” shall mean any event, occurrence or condition which, upon notice, lapse of time or both would constitute an Event of Default.

“**Default Rate**” shall have the meaning assigned to such term in Section 2.07(d).

“**Dividend**” with respect to any Person, shall mean that such Person has declared or paid a dividend or returned any equity capital to the holders of its Equity Interests or authorized or made any other distribution, payment or delivery of property or cash to the holders of its Equity Interests as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for consideration any of its Equity Interests outstanding (or any options or warrants issued by such Person with respect to its Equity Interests), or set aside any funds for any of the foregoing purposes, or shall have permitted any of its Subsidiaries to purchase or otherwise acquire for consideration any of the Equity Interests of such Person outstanding (or any options or warrants issued by such Person with respect to its Equity Interests).

“**Drawdown Date**” shall mean with respect to any Borrowing, the date on which such Borrowing is funded by a Lender.

“**Eligible Assignee**” shall mean (a) any Lender, (b) an Affiliate of any Lender, (c) an Approved Fund and (d) any other Person approved by the Facility Agent (such approval not to be unreasonably withheld or delayed); provided that “Eligible Assignee” shall

not include (x) any Borrowers or any of their Affiliates or Subsidiaries or any natural person, (y) any Person that is either (i) not regularly engaged in making, purchasing or investing in loans, securities or other financial assets in the ordinary course of business or (ii) a Competitor or (z) Temasek Holdings Pte. Ltd. or any of its controlled subsidiaries and investments.

“**EMS Business**” shall mean the Enterprise Messaging Services line of managed services currently comprising a part of the business of Equinix Singapore.

“**Enforcement Action**” shall mean the exercise by the Facility Agent (or its assignee or designee) in good faith and in a commercially reasonable manner of any of its material enforcement rights and remedies as a secured creditor hereunder or under the other Loan Documents, applicable law or otherwise, in respect of any of the Collateral, at any time following the occurrence of an Event of Default (including, without limitation, the demand for the immediate payment of all or any portion of the Obligations, the solicitation of bids from third parties to conduct the liquidation of any of the Collateral, the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers or other third parties for the purposes of valuing, marketing, promoting and selling any of the Collateral, the opposition of the sale of assets constituting Collateral in any bankruptcy or insolvency proceeding, the commencement of any action to foreclose on the security interests or liens of the Facility Agent in all or any material portion of the Collateral or commencement of any legal proceedings or actions against any Borrower or with respect to all or any portion of the Collateral).

“**Environment**” shall mean ambient air, indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources, the workplace or as otherwise defined in any Environmental Law.

“**Environmental Claim**” shall mean any claim, notice, demand, order, action, suit, proceeding or other communication alleging liability for or obligation with respect to any investigation, remediation, removal, cleanup, response, corrective action, damages to natural resources, personal injury, property damage, fines, penalties or other costs resulting from, related to or arising out of (a) the presence, release or threatened release in or into the Environment of Hazardous Material at any location or (b) any violation or alleged violation of any Environmental Law, and shall include any claim seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from, related to or arising out of the presence, release or threatened release of Hazardous Material or alleged injury or threat of injury to health, safety or the Environment.

“**Environmental Law**” shall mean any and all present and future treaties, laws, statutes, ordinances, regulations, rules, decrees, orders, judgments, consent orders, consent decrees, code or other binding requirements, and the common law, relating to protection of public health or the Environment, the release or threatened release of Hazardous Material, natural resources or natural resource damages, or occupational safety or health, and any and all Environmental Permits.

“**Environmental Permit**” shall mean any permit, license, approval, registration, notification, exemption, consent or other authorization required by or from a Governmental Authority under Environmental Law.

“**Equinix Japan**” shall have the meaning assigned to such term in the introductory paragraph of this Agreement.

“**Equinix Singapore**” shall have the meaning assigned to such term in the introductory paragraph of this Agreement

“**Equity Interest**” shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of property of, such partnership, whether outstanding on the date hereof or issued after the Closing Date.

“**Equity Issuance**” shall mean, without duplication, (a) any issuance or sale by any Borrower after the Closing Date of any Equity Interests in such Borrower (including any Equity Interests issued upon exercise of any warrant or option) or any warrants or options to purchase Equity Interests (other than any warrants and options issued to directors, officers or employees of such Borrower or its Subsidiaries pursuant to employee benefit plans established in the ordinary course of business and any Equity Interests issued upon the exercise of such warrants or options) or (b) any contribution to the capital of any Borrower.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974.

“**Event of Default**” shall have the meaning assigned to such term in Section 7.01.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934.

“**Exchange Rate**” means the prevailing spot rate of exchange specified by the Facility Agent for the purpose of conversion of one currency to another, at or around 11:00 a.m. Hong Kong, Singapore or Tokyo time, on the date on which any such conversion of currency is to be made under this Agreement and taking into account any costs of such conversion.

“**Excluded Taxes**” shall mean, with respect to the Facility Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), franchise taxes imposed on it (in lieu of net income taxes) and branch profits taxes imposed on it, by a jurisdiction (or any political subdivision thereof) as a result of the recipient being organized or having its principal office or, in the case of any Lender, its applicable lending office in such jurisdiction, and (b) penalties and interest on the foregoing taxes.

“**Existing Lien**” shall have the meaning assigned to such term in Section 6.02(c).

“**Facility Agent**” shall have the meaning assigned to such term in the preamble hereto and includes each other Person appointed as the successor pursuant to Article VIII.

“**Facility Set-up Fee**” shall have the meaning assigned to such term in Section 2.06(b).

“**Fees**” shall mean the Commitment Fee and the Facility Set-up Fee.

“**Final Maturity Date**” shall mean the date which is four (4) years after the date of this Agreement or, if such date is not a Business Day, the Business Day immediately preceding such date.

“**Financial Officer**” of any Person shall mean the financial director, chief financial officer, treasurer, controller or such other officer familiar with or responsible for the financial operations of such Person.

“**Fiscal Quarter**” shall mean the three-month period ending on March 31, June 30, September 30 and December 31 of each calendar year.

“**Fiscal Year**” shall mean the twelve-month period ending on December 31 of each calendar year.

“**Free Cash Flow**” shall mean the operating cash flow of a Borrower determined in accordance with GAAP less Capital Expenditures of such Borrower.

“**Fund**” shall mean any Person that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

“**GAAP**” shall mean generally accepted accounting principles in the United States applied on a consistent basis; provided that, at the option of the relevant Borrower, (i) GAAP shall mean generally accepted accounting principles in Singapore applied on a consistent basis, in relation to the annual financial reports to be delivered by the Singapore Dollar Borrower in accordance with this Agreement, and (ii) GAAP shall mean generally accepted accounting principles in Japan applied on a consistent basis in relation to the annual financial reports to be delivered by the Yen Dollar Borrower in accordance with this Agreement.

“**Governmental Authority**” shall mean the government of the United States or any other nation, or of any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory or administrative body, court, tribunal, commission, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Guarantee**” shall mean the guarantee of even date herewith issued by the Guarantor guaranteeing all the Secured Obligations of the Borrowers under the Loans.

“**Guarantee Obligation**” shall mean as to any Person (the “**guaranteeing person**”), any obligation, including a reimbursement, counterindemnity or similar obligation, of the guaranteeing person that guarantees or in effect guarantees, or which is given to induce the creation of a separate obligation by another Person (including any bank under any bank guarantee or letter of credit) that guarantees or in effect guarantees, any Indebtedness, leases, dividends or other obligations (the “**primary obligations**”) of any other third Person (the “**primary obligor**”) in any manner, whether directly or indirectly, including any obligation of

the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof.

“Guarantor” shall mean Equinix, Inc., a Delaware corporation.

“Guarantor EBITDA” shall mean, as of any date, (a) the sum of the Consolidated EBITDA of Guarantor for the period of two (2) Fiscal Quarters ending on such date, multiplied by (b) two.

“Guarantor Senior Debt” means the principal amount of all consolidated funded Indebtedness of the Guarantor, but excluding the principal amount of outstanding convertible subordinated debentures or notes issued by the Guarantor outstanding as of the date hereof.

“Hazardous Materials” means (a) any pollutants, toxic pollutants, oil, gasoline, petroleum products, asbestos, materials or substances containing asbestos, explosives, chemical liquids or solids, radioactive materials, polychlorinated biphenyls or related or similar materials, or any other solid, liquid or other emission, substance, material, product or by-product defined, listed or regulated as a hazardous, noxious, toxic or solid substance, material or waste or defined, listed or regulated as causing cancer or reproductive toxicity, or otherwise defined, listed or regulated as hazardous or toxic in, pursuant to, or by any federal, state or local law, ordinance, rule, or regulation, now or hereafter enacted, amended or modified, in each case to the extent applicable to the Collateral including the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601, *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, *et seq.*); the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, *et seq.*); Sections 25117, 25281, 25316 or 25501 of the California Health & Safety Code; any so-called “Superfund” or “Superlien” law; the Toxic Substance Control Act of 1976 (15 U.S.C. Section 2601 *et seq.*); the Clean Water Act (33 U.S.C. Section 1251 *et seq.*); and the Clean Air Act (42 U.S.C. Section 7901 *et seq.*) or the equivalent laws of Japan or Singapore as relevant to each Borrower; (b) any substance which is or contains asbestos, radon, polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, lead paint, motor fuel or other petroleum hydrocarbons; (c) fungus, mold, mildew, or other biological agents the presence of which may adversely affect the health of

individuals or other animals or materially adversely affect the value or utility of the Collateral; (d) any other substance which causes or poses a threat to cause a contamination or nuisance with respect to all or any portion of the Collateral or any adjacent property or a hazard to the Environment or to the health or safety of Persons; and (e) any other pollutant or contaminant or chemicals, waste, materials, compounds, constituents or substances, subject to regulation or which can give rise to liability under any Environmental Laws.

“**Hedging Agreement**” shall mean any swap, cap, collar, forward purchase or similar agreements or arrangements dealing with interest rates, currency exchange rates or commodity prices, either generally or under specific contingencies.

“**Hedging Obligations**” shall mean obligations under or with respect to Hedging Agreements.

“**Increased Commitment**” shall have the meaning assigned to such term in Section 2.03(a).

“**Indebtedness**” shall mean, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person for the deferred purchase price of property or services (other than any such balance of a trade payable created, incurred, assumed or guaranteed by such Person in the ordinary course of business of such Person in connection with obtaining goods, materials or services); (c) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; (d) all reimbursement, payment or other obligations and liabilities of such Person created or arising under any conditional sales or other title retention agreement with respect to property used and/or acquired by such Person, even though the rights and remedies of the lessor, seller and/or lender thereunder may be limited to repossession or sale of such property and all obligations and liabilities arising in connection with factoring arrangements or other arrangements with respect to the sale of receivables; (e) all Capitalized Lease Obligations of such Person, including synthetic or other off-balance sheet lease obligations (unless in each case cash collateralized, and then only to the extent such obligations exceed the cash collateral); (f) all obligations and liabilities, contingent or otherwise, of such Person, in respect of letters of credit, acceptances and similar facilities (excluding any letter of credit or similar instrument issued for the benefit of any Borrower with respect to trade accounts that are payable in the ordinary course of business and included in current liabilities); (g) all net obligations and liabilities, calculated by such Person on a basis satisfactory to the Facility Agent and in accordance with accepted practice, of such Person under Hedging Agreements; (h) all Guarantee Obligations of such Person in respect of obligations of the kind referred to in clauses (a) through (g) above; and (i) all obligations referred to in clauses (a) through (h) of this definition of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. The Indebtedness of any Person shall include the Indebtedness of any partnership of or joint venture in which such Person is a general partner or a joint venture to the extent such Person is liable therefor as a result of such Person’s ownership interest in such entity, except to the extent the terms of such Indebtedness expressly provide that such Person is not liable therefor or such Person has no liability therefor as a matter of law.

“**Indemnified Taxes**” shall mean all Taxes other than Excluded Taxes.

“**Indemnitee**” shall have the meaning assigned to such term in Section 10.03(b).

“**Insurance Policies**” shall mean the insurance policies and coverage required to be maintained by each Borrower which is an owner of the Collateral with respect to the applicable Collateral pursuant to Section 5.04 and all renewals and extensions thereof.

“**Insurance Requirements**” shall mean, collectively, all the provisions of the Insurance Policies and all requirements of the issuer of any of the Insurance Policies.

“**Intellectual Property**” shall have the meaning assigned to such term in Section 3.06(a).

“**Interest Payment Date**” shall mean the last day of November, February, May and August of each year, from the date of this Agreement until the Final Maturity Date; provided that if any Interest Payment Date shall fall on a day other than a Business Day, such Interest Payment Date shall be on the next preceding Business Day.

“**Interest Period**” shall mean with respect to any Borrowing the period commencing on the day after the immediately preceding Interest Payment Date and ending on the next Interest Payment Date, until the Final Maturity Date; provided that the first Interest Period in respect of any Borrowing shall be the period commencing on the Drawdown Date for such Borrowing and ending on the next Interest Payment Date.

“**Interest Rate Setting Date**” shall mean two (2) Business Days before the start of any Interest Period.

“**Internet Data Center**” shall mean the equipment and improvements to be developed, designed, and constructed with the proceeds of the Loans and other funds and generally described as an internet business exchange co-location facility and data center and ancillary administrative or other support services or any facility that as a result of technological changes is substantially equivalent, or a technological successor, to an Internet Data Center.

“**Inventory**” means, as to the Borrowers and each of their Subsidiaries, all of Borrowers’ or such Subsidiary’s now owned and hereafter existing or acquired goods, wherever located, which (a) are leased by Borrower or such Subsidiary as lessor; (b) are held by Borrower or such Subsidiary for sale or lease or to be furnished under a contract of service; (c) are furnished by Borrower or such Subsidiary under a contract of service; or (d) consist of raw materials, work-in-process, finished goods or materials used or consumed in its business.

“**Investments**” shall have the meaning assigned to such term in Section 6.04.

“**Judgment Currency**” shall have the meaning assigned to such term in Section 10.16(a).

“**Judgment Currency Conversion Date**” shall have the meaning assigned to such term in Section 10.16(a).

“**Kajima Construction Contract**” shall mean the Design/Build Contract dated February 13, 2007 between Equinix Japan and the Kajima Corporation for the design and construction of the Equinix Japan Internet Data Center, as may be supplemented, amended or modified from time to time.

“**Leases**” shall mean any and all leases, subleases, tenancies, options, rental agreements, occupancy agreements, and any other agreements (including all amendments, extensions, replacements, renewals, and/or modifications thereof), whether or not of record and whether now in existence or hereafter entered into, affecting the use or occupancy of all or any portion of any Real Property.

“**Lenders**” shall mean each financial institution listed on the signature pages hereof, as well as any financial institution that has become a “Lender” hereto (including additional Lenders who become a party hereto pursuant to Section 2.03) pursuant to an Assignment and Assumption, other than, in each case, any such financial institution that has ceased to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, each reference in this Agreement to a Lender includes each Singapore Dollar Lender and Yen Lender.

“**Lien**” shall mean, with respect to any property, (a) any mortgage, deed of trust, lien, pledge, charge, collateral assignment, hypothecation, security interest or other encumbrance of any kind or any filing of any financing statement under any recording statute of any Governmental Authority, including any easement, right-of-way or other encumbrance on title to Real Property, in each of the foregoing cases whether voluntary or imposed by law, and any agreement to give any of the foregoing; (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such property; and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“**Loan**” shall mean, as the context may require, a Singapore Dollar Loan or a Yen Loan or any Additional Loan, and “**Loans**” shall mean the Singapore Dollar Loans, the Yen Loans and the Additional Loans.

“**Loan Commitment**” shall mean the aggregate amount of all Lenders’ Singapore Dollar Loan Commitments, Yen Loan Commitments and/or Additional Commitments.

“**Loan Documents**” shall mean this Agreement, the Guarantee, the Notes, and the Security Documents.

“**Material Adverse Effect**” shall mean (a) a material adverse effect on the business, property, assets, results of operations, condition, financial or otherwise, of the Borrowers or the Guarantor; (b) material impairment of the ability of the Borrowers to fully and timely perform any of their material obligations under any Loan Document; (c) material impairment of the rights of or benefits or remedies available to the Lenders or the Collateral Agent under any Loan Document; (d) a material adverse effect on the Collateral or the Liens in favor of the Collateral Agent (for its benefit and for the benefit of the other Secured Parties) on the Collateral or the priority of such Liens; (e) a material adverse effect on the legality, validity on enforceability of this Agreement or any other Loan Document; or (f) a material impairment of the ability of the Guarantor to fully and timely perform its obligations under the Guarantee.

“Material Agreement” shall mean (a) any agreement or contract listed in Schedule 3.09, and (b) any other agreement or contract (other than the Loan Documents), whether written or oral, to which any Borrower or any of their respective Subsidiaries is a party or by which its or its properties is bound as to which the breach, nonperformance, cancellation or failure to renew by any party thereto would have a Material Adverse Effect.

“Material Indebtedness” shall mean any Indebtedness (other than the Indebtedness under the Loan Documents) of either Borrower or any of their Subsidiaries in an aggregate outstanding principal amount exceeding the US Dollar Equivalent of US\$2,000,000.

“Maximum Rate” shall have the meaning assigned to such term in Section 10.14.

“Net Cash Proceeds” shall mean:

(a) with respect to any Asset Sale, the cash proceeds received by a Borrower or any of its Subsidiaries (including cash proceeds subsequently received in respect of non-cash consideration initially received) net of (i) selling expenses (including reasonable brokers’ fees or commissions, legal, accounting and other professional and transactional fees, transfer and similar taxes and Borrowers’ good faith estimate of income taxes paid or payable in connection with such sale); (ii) amounts provided as a reserve, in accordance with GAAP, against (x) any liabilities under any indemnification obligations associated with such Asset Sale or (y) any other liabilities retained by a Borrower or any of its Subsidiaries associated with the properties sold in such Asset Sale (provided that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds); (iii) payments required to be made with respect to unassumed liabilities relating to the properties sold within ninety (90) days of such Asset Sale (provided that, to the extent such cash proceeds are not used to make payments in respect of such unassumed liabilities within ninety (90) days of such Asset Sale, such cash proceeds shall constitute Net Cash Proceeds); (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which is secured by a Lien on the properties sold in such Asset Sale (so long as such Lien was permitted to encumber such properties under the Loan Documents at the time of such sale); and (v) taxes paid (directly or indirectly) to any taxing authorities by Borrowers, in connection with, or directly attributable to, such sale;

(b) with respect to any Debt Issuance, any Equity Issuance or any other issuance or sale of Equity Interests by a Borrower or any of its Subsidiaries, the cash proceeds thereof, net of customary fees, commissions, costs and other expenses incurred in connection therewith; and

(c) with respect to any Casualty Event, the cash insurance proceeds, condemnation awards and other compensation received in respect thereof, net of all reasonable costs and expenses, transfer and other taxes incurred in connection with such Casualty Event.

“Notes” shall mean any notes evidencing the Singapore Dollar Loans or the Yen Loans issued pursuant to this Agreement, if any, substantially in the form of Exhibits D-1 and D-2.

“**Obligation Currency**” shall have the meaning assigned to such term in Section 10.16(a).

“**Obligations**” shall mean (a) obligations of each Borrower from time to time arising under or in respect of the due and punctual payment of (i) the principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, and (ii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of each Borrower under this Agreement and the other Loan Documents, and (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of each Borrower under or pursuant to this Agreement and the other Loan Documents.

“**Organizational Documents**” shall mean, with respect to any Person, (a) in the case of any corporation, the certificate of incorporation and by-laws (or similar documents) of such Person, (b) in the case of any limited liability company, the certificate of formation and operating agreement (or similar documents) of such Person, (c) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar documents) of such Person, (d) in the case of any general partnership, the partnership agreement (or similar document) of such Person and (e) in any other case, the functional equivalent of the foregoing.

“**Other Expansion Costs**” shall mean costs and expenses for Capital Expenditures directly relating to the expansion of either Borrower’s Internet Data Centers, set forth in a Borrowing Request to be delivered in accordance with Section 2.04.

“**Other Taxes**” shall mean all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to the exercise by a Facility Agent or a Lender of its rights under, this Agreement or any other Loan Document.

“**Participant**” shall have the meaning assigned to such term in Section 10.04(d).

“**Participant Register**” shall have the meaning assigned to such term in Section 10.04(d).

“**Payment Office**” means (i) with respect to Singapore Dollar Borrowings, the Facility Agent’s office located at One Raffles Quay (ORQ) South Tower, Level 26, Singapore 048583, (ii) with respect to Yen Borrowings, the Facility Agent’s office located at Atago Green Hills Mori Tower 31F, 5-1 Atago 2-Chome, Minato-Ku, Tokyo, Japan or (iii) at such other office or offices of the Facility Agent as may be designated in writing from time to time by the Facility Agent to Borrowers.

“**Permitted Indebtedness**” shall have the meaning assigned to that term in Section 6.01.

“**Permitted Investments**” shall have the meaning assigned to that term in Section 6.04.

“**Permitted Liens**” shall have the meaning assigned to such term in Section 6.02.

“**Person**” shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“**Platform**” shall have the meaning assigned to such term in Section 10.01(d).

“**Principal Repayment Date**” shall mean each Interest Payment Date after the end of the Availability Period.

“**property**” shall mean any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including Equity Interests or other ownership interests of any Person and whether now in existence or owned or hereafter entered into or acquired, including all Real Property.

“**Purchase Money Obligation**” shall mean, for any Person, the obligations of such Person in respect of Indebtedness (including Capital Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any property (including Equity Interests of any Person) or the cost of installation, construction or improvement of any property and any refinancing thereof; provided, however, that (a) such Indebtedness is incurred within one (1) year after such acquisition, installation, construction or improvement of such property by such Person and (b) the amount of such Indebtedness does not exceed 100% of the cost of such acquisition, installation, construction or improvement, as the case may be.

“**Real Property**” shall mean, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“**Reference Bank**” shall mean any of (i) ABN AMRO Bank N.V., (ii) The Hongkong and Shanghai Banking Corporation Ltd., or (iii) Citibank, N.A.

“**Register**” shall have the meaning assigned to such term in Section 10.04(c).

“**Related Parties**” shall mean, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“**Required Lenders**” shall mean Lenders having more than 50% of the sum of all Loans outstanding and unused Loan Commitments.

“Requirements of Law” shall mean, collectively, any and all requirements of any Governmental Authority including any and all laws, judgments, orders, decrees, ordinances, rules, regulations, statutes or case law.

“Restricted Payments” shall mean (a) any payment by any Borrower on interest, principal or any other sum in relation to any Subordinated Indebtedness (except as expressly permitted under the terms of subordination as set forth in Schedule 1.01(b)) and (b) any Dividend or other distribution or any other payment by any Borrower by way of return on capital of or other investment in such Borrower or participation in the income or profits of such Borrower or any repayment, redemption, repurchase or return by such Borrower of its capital or any such other investment, except for dividends payable solely in such Borrower’s Equity Interests.

“Sale and Leaseback Transaction” has the meaning assigned to such term in Section 6.03.

“Secured Obligations” shall mean (a) the Obligations and (b) the due and punctual payment and performance of all obligations of Borrowers under each Hedging Agreement entered into with any counterparty that is a Secured Party.

“Secured Parties” shall mean, collectively, the Facility Agent, the Collateral Agent, the Lenders and each counterparty to a Hedging Agreement if at the date of entering into such Hedging Agreement such person was a Lender or an Affiliate of a Lender and such person executes and delivers to the Facility Agent a letter agreement in form and substance acceptable to the Facility Agent pursuant to which such person (a) appoints the Collateral Agent as its agent under the applicable Loan Documents and (b) agrees to be bound by the provisions of Sections 10.03 and 10.09 as if it were a Lender.

“Securities Act” shall mean the Securities Act of 1933.

“Security” shall mean the security interest vested by the Security Documents.

“Security Agreements” shall mean the (a) Assignment of Movables, (b) Debenture and (c) the share pledge agreements or such other agreements to be entered into in accordance with Section 5.13.

“Security Documents” shall mean the Security Agreements and each other security document or pledge agreement or guaranty delivered in accordance with applicable law to grant a valid, perfected security interest in any property as collateral for the Secured Obligations, and all financing statements or instruments of perfection required by this Agreement, the Security Agreement or any other such security document or pledge agreement to be filed with respect to the security interests in property and fixtures created pursuant to the Security Agreement and any guaranty under applicable law with respect to the Secured Obligations and any other document or instrument utilized to pledge or grant or purport to pledge or grant a security interest or Lien on any property as collateral for the Secured Obligations.

“SIBOR” shall mean, with respect to any Singapore Dollar Borrowing for any Interest Period, the rate per annum for deposits in Singapore Dollars for a period equal to or that most closely approximates the duration of such Interest Period which appears on Reuters page ABSIRFIX01 (or such other page(s) as may replace that page as determined by the

Facility Agent) as of 11:00 a.m., Singapore time on the relevant Interest Rate Setting Date; provided that if such rate does not appear on that page, “SIBOR” shall mean the rate expressed as a percentage to be the arithmetic mean (rounded upwards, if necessary, to the nearest four decimal places) as supplied to the Facility Agent at its request quoted by at least two reference banks that are leading banks as the rate at which it is offered deposits in Singapore Dollars and for the required period in the Singapore interbank market at or about 11:00 a.m., Singapore time.

“**Singapore**” means the Republic of Singapore.

“**Singapore Dollar Borrower**” shall mean, in its capacity as the borrower of Singapore Dollar Loans, Equinix Singapore.

“**Singapore Dollar Borrowing**” shall mean a borrowing comprised of Singapore Dollar Loans made by the Singapore Lenders pursuant to a Borrowing Request.

“**Singapore Dollar Lenders**” shall mean each financial institution listed on Schedule 1.01(a) (as amended from time to time), as well as any financial institution that has become a “Singapore Dollar Lender” hereto pursuant to Section 2.03 or by the execution of an Assignment and Assumption in accordance with this Agreement, other than, in each case, any such financial institution that has ceased to be a party hereto pursuant to an Assignment and Assumption. For purposes of this Agreement, “Lender” includes each Singapore Dollar Lender unless the contract otherwise requires.

“**Singapore Dollar Loan Commitment**” shall mean, with respect to each Lender, the commitment, if any, of such Lender to make Singapore Dollar Loans hereunder during the Availability Period in the amount set forth opposite such Lender’s name on Schedule 1.01(a), or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Singapore Dollar Loan Commitment, as applicable, as the same may be (a) increased pursuant to any Increased Commitment made by such Lender pursuant to Section 2.03 or (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04. The initial aggregate amount of the Lenders’ Singapore Dollar Loan Commitments is SGD23,000,000.

“**Singapore Dollar Loans**” shall mean the term loans made by the Singapore Dollar Lenders to the Singapore Dollar Borrower pursuant to Section 2.01(b).

“**Singapore Dollars**” or “**SGD**” shall mean lawful money of Singapore.

“**Site Leases**” shall mean the lease of Equinix Japan over the following premises: (i) TRC-C Building, B-Block, 4th & 5th Floors & one-half of 1st floor, 1-1 Heiwajima, 6-chome, Oota-ku, Tokyo 143-0006 Japan and (ii) 8-21, Higashi-Shinagawa 3-chome, Shinagawa-ku, Tokyo, Shinshuu Meitetsu Shinagawa Building; and the lease of Equinix Singapore over the following premises: (i) Blk 20 Ayer Rajah Crescent #06-01, #06-05/06/07/08, #05-05/06/06A/07/07A/08, #03-05/06/07/08 and #05-01/02/02A/03/03A/04 Singapore 139964, (ii) Blk 20 Ayer Rajah Crescent, #03-01 to #03-04, Singapore 139964, (iii) Blk 20 Ayer Rajah Crescent #04-05/06/06A/07/07A/08 Singapore 139964, (iv) Blk 20 Ayer Rajah Crescent #06-04 Singapore 139964, (v) Blk 20 Ayer Rajah Crescent #02-03/04 Singapore 139964, (vi) Blk 20 Ayer Rajah Crescent #06-02/03 Singapore 139964, (vii) Rooftop, Blk 20 Ayer Rajah Crescent Singapore 139964 and (viii) Cargo Lift Shafts G and H, Blk 20 Ayer Rajah Crescent Singapore 139964.

“**Subordinated Indebtedness**” shall mean Indebtedness of a Borrower that is by its terms subordinated in right of payment to the Obligations of such Borrower in accordance with the terms of subordination set forth in Schedule 1.01(b).

“**Subsidiary**” shall mean, with respect to any Person (the “**parent**”) at any date, (a) any Person the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, (b) any other corporation, limited liability company, association or other business entity of which securities or other ownership interests representing more than 50% of the voting power of all Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors thereof are, as of such date, owned, controlled or held by the parent and/or one or more subsidiaries of the parent, (c) any partnership (i) the sole general partner or the managing general partner of which is the parent and/or one or more subsidiaries of the parent or (ii) the only general partners of which are the parent and/or one or more subsidiaries of the parent and (d) any other Person that is otherwise Controlled by the parent and/or one or more subsidiaries of the parent.

“**Substitute Base Rate**” has the meaning assigned to such term in Section 2.11.

“**Tax Return**” shall mean all returns, statements, filings, attachments and other documents or certifications required under the laws of the jurisdiction of incorporation of a corporate entity to be filed in respect of Taxes.

“**Taxes**” shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Test Period**” shall mean any period consisting of two (2) consecutive Fiscal Quarters of Borrowers (in each case taken as one (1) accounting period).

“**TIBOR**” means (a) the interest rate offered for Yen deposits for a period equal to or that most closely approximates the applicable Interest Period which appears on the screen display designated as “Reuters Screen TIBM” under the caption “Average of 10 Banks” on the Reuters Service (or such other screen display or service as may replace it for the purpose of displaying Tokyo interbank offered rates of prime banks for Yen deposits) at or about 11:00 am (Tokyo time) on the relevant Interest Rate Setting Date or (b) if no such interest rate is available on the Reuters Service (or such replacement), the interest rate offered for Yen deposits for a period equal to or that most closely approximates the applicable Interest Period which appears on the screen display designated as “Euro-Yen TIBOR” on page 23070 of the Telerate Service published by the Japanese Bankers Association (or such other screen display or service as may replace it for the purpose of displaying Tokyo interbank offered rates of prime banks for Yen deposits) at or about 11:00 am (Tokyo time) on the relevant Interest Rate Setting Date.

“**Total Leverage Ratio**” shall mean, at any date of determination, the ratio of Consolidated Indebtedness of the Borrowers on such date (excluding any Subordinated Indebtedness owed to the Guarantor or to Affiliates of Guarantor or Borrowers) to annualized Consolidated EBITDA of the Borrowers for the Test Period then most recently ended.

“United States” shall mean the United States of America.

“US Dollar Equivalent” shall mean at any time (a) as to any amount denominated in US Dollars, the amount thereof at such time, and (b) as to any amount denominated in any other currency, the equivalent amount in US Dollars calculated by the Facility Agent at such time using the Exchange Rate in effect on the Business Day of determination.

“US Dollars” or “US\$” shall mean lawful money of the United States of America.

“Wah Loon Construction Contract” shall mean the Articles and Conditions of Building Contract dated March 2, 2007 between Equinix Singapore and Wah Loon Electrical Engineering Pte. Ltd., as may be supplemented, amended or modified from time to time.

“Yen” or “¥” shall mean lawful money of Japan.

“Yen Borrower” shall mean, in its capacity as the borrower of Yen Loans, Equinix Japan.

“Yen Borrowing” shall mean a borrowing comprised of Yen Loans made by the Yen Lenders pursuant to a Borrowing Request.

“Yen Lenders” shall mean each financial institution listed on Schedule 1.01(c) (as amended from time to time), as well as any financial institution that has become a “Yen Lender” hereto pursuant to Section 2.03 or by the execution of an Assignment and Assumption in accordance with this Agreement, other than, in each case, any such financial institution that has ceased to be a party hereto pursuant to an Assignment and Assumption. For purposes of this Agreement, “Lender” includes each Yen Lender unless the contract otherwise requires.

“Yen Loan Commitment” shall mean, with respect to each Lender, the commitment, if any, of such Lender to make Yen Loans hereunder during the Availability Period in the amount set forth opposite such Lender’s name on Schedule 1.01(c), as the same may be (a) increased by any Increased Commitment made by such Lender pursuant to Section 2.03 or (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 10.04. The initial aggregate amount of the Lenders’ Yen Loan Commitments is ¥2,932,500,000.

“Yen Loans” shall mean the term loans made by the Yen Lenders to the Yen Borrower pursuant to Section 2.01(b).

SECTION 1.02 **Terms Generally.** Terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (a) any definition of or reference to any Loan Document, agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended,

supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in such agreement, instrument or other document), (b) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall refer to such law or regulation as amended, modified or supplemented from time to time, (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (g) "on," when used with respect to the premises covered by a Site Lease or any property adjacent to the premises covered by a Site Lease, means "on, in, under, above or about."

SECTION 1.03 **Accounting Terms; GAAP.** Except as otherwise expressly provided herein, all financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with GAAP as in effect from time to time. If GAAP changes during the term of this Agreement such that any covenants contained herein would then be calculated in a different manner or with different components, Borrowers, the Lenders and the Facility Agent agree to negotiate in good faith to amend this Agreement in such respects as are necessary to conform those covenants as criteria for evaluating Borrowers' financial condition to substantially the same criteria as were effective prior to such change in GAAP; provided, however, that, until Borrowers, the Lenders and the Facility Agent so amend this Agreement, all such covenants shall be calculated in accordance with GAAP, as in effect immediately prior to such change.

SECTION 1.04 **Resolution of Drafting Ambiguities.** Each Borrower acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of the Loan Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

ARTICLE II

THE CREDITS

SECTION 2.01 **Commitments.** Subject to the terms and conditions and relying upon the representations and warranties herein set forth:

(a) each Singapore Dollar Lender agrees, severally and not jointly, to make Singapore Dollar Loans to the Singapore Dollar Borrower during the Availability Period in the principal amount not to exceed such Singapore Dollar Lender's Singapore Dollar Loan Commitment;

(b) each Yen Lender agrees, severally and not jointly, to make Yen Loans to the Yen Borrower during the Availability Period in the principal amount not to exceed such Yen Lender's Yen Loan Commitment; and

Amounts paid or prepaid in respect of Loans may not be reborrowed.

SECTION 2.02 Loans.

(a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Commitments; provided that the failure of any Lender to make its Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). Each Borrowing shall be in an aggregate principal amount that is (i) an integral multiple of the Approved Currency equivalent of US\$250,000 and not less than the Approved Currency equivalent of US\$1,000,000 or (ii) equal to the remaining available balance of the applicable Commitments. Each Borrower may make up to two Borrowings per month during the Availability Period, which Borrowings shall be made in accordance with the conditions set forth in Article IV of this Agreement.

(b) (i) Each Singapore Dollar Lender shall make each Singapore Dollar Loan to be made by it hereunder by wire transfer of immediately available funds to such account in Singapore as the Facility Agent may designate not later than 11:00 a.m., Singapore time, and (ii) each Yen Lender shall make each Yen Loan to be made by it hereunder by wire transfer of immediately available funds to such account in Tokyo as the Facility Agent may designate not later than 11:00 a.m., Tokyo time, in each case on the proposed date, and the Facility Agent shall promptly credit the amounts so received to an account as directed by the Administrative Borrower in the applicable Borrowing Request or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met, return the amounts so received to the respective Lenders.

(c) Unless the Facility Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Facility Agent such Lender's portion of such Borrowing, the Facility Agent may assume that such Lender has made such portion available to the Facility Agent on the date of such Borrowing in accordance with paragraph (b) above, and the Facility Agent may, in reliance upon such assumption, make available to Borrowers on such date a corresponding amount. If the Facility Agent shall have so made funds available, then, to the extent that such Lender shall not have made such portion available to the Facility Agent, each of such Lender and Borrowers severally agree to repay to the Facility Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to Borrowers until the date such amount is repaid to the Facility Agent at (i) in the case of Borrowers, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, the rate determined by the Facility Agent in accordance with banking industry rules on interbank compensation. If such Lender shall repay to the Facility Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement, and Borrowers' obligation to repay the Facility Agent such corresponding amount pursuant to this Section 2.02(c) shall cease.

SECTION 2.03 Additional Loans.

(a) At any time prior to the Final Maturity Date, (i) any Borrower shall have the right to request an increase in the amount of the Loan Commitments then in effect

under this Agreement for such Borrower (each, an “**Increased Commitment**”) or (ii) any Additional Borrower shall have the right to request commitments of Additional Loans (each, an “**Additional Commitment**”), in each case by providing at least thirty (30) days prior written notice to the Facility Agent, which notice shall be irrevocable once given; provided, however, that after giving effect to all such Increased Commitments and/or Additional Commitments, the aggregate amount of all Loan Commitments shall not cause the relevant Borrower to breach the financial covenants set forth in Section 6.10. The Facility Agent shall promptly notify each Lender of any such request. No Lender shall be obligated in any way whatsoever to provide any Increased Commitment or Additional Commitment, provided that the existing Lenders shall be given the initial opportunity (in such time period as the Facility Agent may reasonably determine) to provide Increased Commitments or Additional Commitments, and if more than one existing Lender desires to provide Increased Commitments or Additional Commitments, then the Increased Commitments or Additional Commitments, as the case may be, shall be provided on a pro rata basis based on the respective Commitments of all such existing Lenders that so desire to provide such Increased Commitments or Additional Commitments. If, in the case of any Increased Commitments, a new Lender becomes a party to this Agreement, or if any existing Lender agrees to provide any such Increased Commitment, such Lender shall on the date it becomes a Lender hereunder (or in the case of an existing Lender, provides such Increased Commitment) (and as a condition thereto) purchase from the other Lenders its applicable proportionate share or (in the case of an increasing Lender), the increase in its applicable proportionate share (determined with respect to the Lenders’ relative Commitments and after giving effect to the Increased Commitments), of any outstanding Loans made under such Commitments, by making available to the Facility Agent for the account of such other Lenders, in same day funds, an amount equal to the sum of (x) the portion of the outstanding principal amount of such Loans to be purchased by such Lender plus (y) interest accrued and unpaid to and as of such date on such portion of the outstanding principal amount of such Loans. The Borrowers shall pay to the Lenders amounts payable, if any, to such Lenders under Section 2.13 as a result of the purchase of any such Loans (which purchases shall be deemed prepayments for purposes of Section 2.13).

(b) No Increased Commitment or Additional Commitment may be effected under this Section 2.03 if (i) a Default or Event of Default shall be in existence on the effective date of such Increased Commitment or Additional Commitment, or (ii) any representation or warranty made or deemed made by Guarantor or any Borrower in any Loan Document to which such Guarantor or Borrower is a party is not (or would not be) true or correct in all material respects on the effective date of such increase except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and accurate in all material respects on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted hereunder.

(c) In connection with any Increased Commitment or Additional Commitment effected pursuant to this Section 2.03, (i) any Lender becoming a party hereto shall execute such documents and agreements as the Facility Agent may reasonably request and (ii) each Borrower shall make appropriate arrangements so that each new Lender, and any existing Lender providing an Increased Commitment or Additional Commitment, receives new or replacement Notes, as appropriate, in the amount of such Lender’s Commitment at the time of the effectiveness of the Increased Commitment or Additional Commitment.

(d) Notwithstanding anything contained in this Section 2.03 to the contrary, any Increased Commitment or Additional Commitment effected pursuant to this Section 2.03 shall be subject to (i) prior approval of all Lenders, unless the Increased Commitment or Additional Commitment shall be for Loans to be made available to either Equinix Singapore or Equinix Japan, and (ii) the payment of any fees or charges mutually agreed by the relevant Borrower and the relevant Lender for the provision of such Increased Commitment or Additional Commitment.

SECTION 2.04 Borrowing Procedure. To request a Borrowing, the Administrative Borrower shall deliver to the Facility Agent, by hand delivery or telecopier, a duly completed and executed Borrowing Request executed by an Authorized Officer of the Administrative Borrower (i) in the case of a Singapore Dollar Borrowing, not later than 11:00 a.m., Singapore time, three (3) Business Days before the date of the proposed Borrowing, or (ii) in the case of a Yen Borrowing, not later than 11:00 a.m., Tokyo time, three (3) Business Days before the date of the proposed Borrowing. The Borrowers hereby waive the right to dispute any such Borrowing Request that purports to be executed by an Authorized Officer of the Administrative Borrower. The Facility Agent and Lenders shall have no duty to verify the authenticity of the signature appearing on any written Borrowing Request. Each Borrowing Request shall be irrevocable and shall specify the following information in compliance with Section 2.02:

(a) whether the requested Borrowing is to be a Singapore Dollar Borrowing or a Yen Borrowing; provided, however, that the Singapore Dollar Borrower and the Yen Borrower may request only Singapore Dollar Borrowings and Yen Borrowings, respectively;

(b) the aggregate amount of such Borrowing;

(c) the date of such Borrowing, which shall be a Business Day;

(d) the location and number of the relevant Borrower's account to which funds are to be disbursed; and

(e) that the conditions set forth in Sections 4.02(b) to 4.02(c) shall have been satisfied as of the date of the proposed Borrowing.

Promptly following receipt of a Borrowing Request in accordance with this Section 2.04, the Facility Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

SECTION 2.05 Evidence of Debt; Repayment of Loans.

(a) Promise to Repay. Borrowers hereby unconditionally promise to pay (i) to the Facility Agent for the account of each Singapore Dollar Lender, the principal amount of each Singapore Dollar Loan of such Singapore Dollar Lender as provided in Section 2.09, and (ii) to the Facility Agent for the account of each Yen Lender, the principal amount of each Yen Loan of such Yen Lender as provided in Section 2.09. All payments or repayments of Loans made pursuant to this Section 2.05(a) shall be made in the Approved Currency in which such Loan is denominated.

(b) Lender and Facility Agent Records. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of each Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. The Facility Agent shall maintain accounts in which it will record (i) the amount and Approved Currency of each Loan made hereunder; (ii) the amount of any principal or interest due and payable or to become due and payable from each Borrower to each Lender hereunder; and (iii) the amount of any sum received by the Facility Agent hereunder for the account of the Lenders and each Lender's share thereof. The entries made in the accounts maintained pursuant to this paragraph shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded; provided that the failure of any Lender or the Facility Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of Borrowers to repay the Loans made to any Borrower by such Lender in accordance with the terms of this Agreement.

(c) Promissory Notes. Any Lender by written notice to any Borrower (with a copy to the Facility Agent) may request that Loans made by it be evidenced by a promissory note. In such event, such Borrower shall prepare, execute and deliver to such Lender a promissory note payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in the form of Exhibits D-1 or D-2 as the case may be. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 10.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.06 **Fees**.

(a) Commitment Fee. Borrowers agree to pay to the Facility Agent for the account of each Lender a commitment fee (a "**Commitment Fee**") equal to 0.30% per annum on the average daily unused amount of each Commitment of such Lender during the period from and including the date hereof to but excluding the date on which such Commitment terminates in accordance with Section 2.08. Accrued Commitment Fees shall be payable in arrears (i) on each Interest Payment Date (without regard to whether interest is due on such date), and (ii) on the date on which such Commitment terminates. Commitment Fees shall be computed on the basis of a year of three hundred and sixty (360) days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) Facility Set-up Fee. Borrowers agree to pay to the Arranger for its own account, the administrative fees payable in the amounts and at the times separately agreed upon between Borrowers and the Arranger (the "**Facility Set-up Fee**").

(c) All Commitment Fees shall be paid on the dates due, in immediately available funds in US Dollars or any Approved Currency requested by the Facility Agent, to the Facility Agent for distribution, if and as appropriate, among the Lenders. The Facility Set-up Fee shall be paid to the Arranger for its own account within five (5) Business Days from the date of this Agreement. Once paid, none of the Fees shall be refundable under any circumstances.

SECTION 2.07 Interest on Loans.

(a) Determination of Applicable Margin. On every Interest Rate Setting Date, the Facility Agent shall determine the Applicable Margin for the relevant Interest Period based on information with respect to Guarantor EBITDA and Guarantor Senior Debt, which shall be included in a Compliance Certificate delivered by the Borrowers for the most recently-ended Fiscal Quarter prior to such Interest Rate Setting Date (or for the initial Interest Setting Date, the certificate delivered pursuant to Section 4.01(p)). If the Borrowers fail to deliver or delay in delivering a Compliance Certificate, the Facility Agent shall make its own computations of Guarantor Senior Debt and Guarantor EBITDA based on the most recent quarterly report of the Guarantor submitted to the Securities and Exchange Commission of the United States pursuant to the Securities Exchange Act of 1934 or such other information as the Facility Agent decides as appropriate. Upon the determination of the Facility Agent of the Applicable Margin pursuant to this Agreement, the Facility Agent shall promptly communicate the Applicable Margin to the Borrowers.

(b) Singapore Dollar Loans. Subject to the provisions of Section 2.07(d), the Singapore Dollar Loans comprising each Singapore Dollar Borrowing shall bear interest (in Singapore Dollars) at a rate per annum equal to SIBOR for the Interest Period in effect for such Borrowing plus the Applicable Margin in effect from time to time.

(c) Yen Loans. Subject to the provisions of Section 2.07(d), the Yen Loans comprising each Yen Borrowing shall bear interest (in Yen) at a rate per annum equal to TIBOR for the Interest Period in effect for such Borrowing plus the Applicable Margin in effect from time to time.

(d) Default Rate. Notwithstanding the foregoing, during an Event of Default as described in Sections 7.01(a) or 7.01(b) (but, in the case of Section 7.01(b), only as a result of failure to pay interest), such unpaid amounts giving rise to such Event of Default, at the election of the Required Lenders, upon written notice, to the Administrative Borrower, to the extent permitted by applicable law, bear interest, after as well as before judgment, at a per annum rate equal to 2% plus the rate otherwise applicable to such amounts as provided in the preceding paragraphs of this Section 2.07 (the “**Default Rate**”).

(e) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to Section 2.07(d) shall be payable on demand and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(f) Interest Calculation. All interest hereunder shall be computed on the basis of a year of three hundred and sixty (360) days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable interest rate shall be determined by the Facility Agent in accordance with the provisions of this Agreement, and upon determining the interest rate for any Loan, the Facility Agent shall promptly notify the Administrative Borrower and the relevant Lenders thereof. Each such determination shall be conclusive absent manifest error.

(g) Currency for Payment of Interest. All interest paid or payable pursuant to this Section 2.07 shall be paid in the Approved Currency in which the Loan giving rise to such interest is denominated.

SECTION 2.08 Termination of Commitments. The Singapore Dollar Loan Commitments shall automatically terminate at 5:00 p.m., Singapore time, on the last day of the Availability Period. The Yen Loan Commitments shall automatically terminate at 5:00 p.m., Tokyo time, on the last day of the Availability Period. The Borrowers may, upon ten (10) Business Days' prior written notice to the Facility Agent, terminate in its entirety (but not in part) either or both the Singapore Dollar Loan Commitment or the Yen Loan Commitment prior to the end of the Availability Period, subject to the receipt of evidence by the Facility Agent reasonably satisfactory to it demonstrating the availability of cash or alternative funding to the Borrowers (which may include cash or funding available to the Guarantor that the Guarantor can use for such purpose) sufficient to complete construction and equipping of the Internet Data Centers.

SECTION 2.09 Repayment. Borrowers shall pay to the Facility Agent, for the account of the Lenders, on each Principal Repayment Date, a principal amount of (a) each Singapore Dollar Loan equal to 1/12 of the aggregate principal amount (in Singapore Dollars) of such Singapore Dollar Loan outstanding as of the last day of the Availability Period, and (b) each Yen Loan equal to 1/12 of the aggregate principal amount (in Yen) of such Yen Loan outstanding as of the last day of the Availability Period, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment. All principal repayments shall be made in the Approved Currency of the Loan being repaid.

SECTION 2.10 Optional and Mandatory Prepayments of Loans.

(a) **Optional Prepayments.** Each Borrower may, at its option and upon at least five (5) Business Days' prior written notice to the Facility Agent, prepay any Borrowing in whole or in part; provided, that (i) the amount of such prepayment shall be in an amount that is an integral multiple of the Approved Currency equivalent of US\$250,000 and not less than the Approved Currency equivalent of US\$1,000,000 or, if less, the outstanding principal amount of such Borrowing, (ii) such prepayment shall not violate any applicable law, and (iii) such prepayment is accompanied by all sums due and payable under this Agreement and the other Loan Documents, including but not limited to Breakage Costs, if any, and all of Lenders' costs and expenses (including reasonable attorney's fees and disbursements) incurred by the Lenders in connection with such prepayment.

(b) **Mandatory Prepayments.**

(i) Not later than fifteen (15) Business Days following the receipt by a Borrower of the Net Cash Proceeds with respect to: (A) any Asset Sale by such Borrower (other than Asset Sales permitted under Section 6.06) of assets that form part of the Collateral, or (B) a Casualty Event, such Borrower shall apply 100% of such Net Cash Proceeds received with respect thereto to prepay the Loans made to such Borrower.

(ii) Not later than the fifth (5th) Business Day after occurrence of a Change in Control with respect to a Borrower, such Borrower shall prepay its Borrowings in full.

(iii) Any prepayment under this Section 2.10(b) shall be accompanied by all sums due and payable under this Agreement, and the other Loan Documents, including but not limited to Breakage Costs.

(iv) Notwithstanding the foregoing, Borrowers shall not be required to make a prepayment pursuant to this sub-clause (b) with the Net Cash Proceeds from any Asset Sale as provided in paragraph (i) above or Casualty Event if the Borrowers advise the Facility Agent in writing within fifteen (15) Business Days after the time such Net Cash Proceeds are received that the applicable Borrower intends to reinvest all or any portion of such Net Cash Proceeds in replacement assets to the extent (A) such Net Cash Proceeds are in fact committed to be reinvested by such Borrower pursuant to a purchase contract providing for the acquisition of such replacement assets that is executed by such Borrower and the related seller within one hundred and eighty (180) days after the date of such Asset Sale or Casualty Event and (B) the acquisition of such replacement assets occurs within two hundred and seventy (270) days after the date of such Asset Sale or Casualty Event. If, at any time after the occurrence of such Asset Sale as provided in paragraph (i) above or Casualty Event and prior to the acquisition of the related replacement assets, the 180- or 270-day period provided in clause (A) or (B) of the preceding sentence shall elapse without execution of the related purchase contract (in the case of clause (A)) or the occurrence of the related acquisition (in the case of clause (B)) or an Event of Default shall occur, then Borrowers shall, upon request, immediately prepay the outstanding Loans made to the applicable Borrower.

(c) **Notice of Prepayment.** The Administrative Borrower shall notify the Facility Agent by written notice of any prepayment hereunder (i) in the case of prepayment of a Singapore Dollar Borrowing, not later than 11:00 a.m., Singapore time, of the relevant Business Day, or (ii) in the case of prepayment of Yen Borrowing, not later than 11:00 a.m., Tokyo time, of the relevant Business Day in accordance with clause (a) or (b) above, as the case may be. Each such notice shall be irrevocable. Each such notice shall specify the prepayment date, the principal amount of each Borrowing or portion thereof and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the Facility Agent shall advise the Lenders of the contents thereof. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing and otherwise in accordance with this Section 2.10. All prepayments shall be made in the Approved Currency of the Loan being prepaid.

SECTION 2.11 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Borrowing:

(a) the Facility Agent determines (which determination shall be final and conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining SIBOR or TIBOR for such Interest Period; or

(b) the Facility Agent is advised in writing by the Required Lenders that SIBOR or TIBOR for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Facility Agent shall give written notice thereof to the Administrative Borrower and the Lenders as promptly as practicable thereafter. The Facility Agent shall, as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, request from any Reference Bank a rate which expresses as a percentage rate per annum the

cost to an affected Lender of funding its participation in that Loan ("**Substitute Base Rate**"). During such period when the circumstances described in paragraphs (a) or (b) are in effect, the rate of interest of an affected Lender's share of a Loan for the relevant Interest Period shall be the rate per annum which is the sum of (X) the Applicable Margin and (Y) the Substitute Base Rate.

SECTION 2.12 Yield Protection.

(a) **Increased Costs Generally.** If any Change in Law shall:

- (i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in, by any Lender;
- (ii) subject any Lender to any tax of any kind whatsoever with respect to this Agreement, any participation in a Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by [Section 2.15](#) and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or
- (iii) impose on any of the Lenders, the Singapore interbank market or the Japan interbank market any other condition, cost or expense affecting this Agreement or Loans made by such Lender or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount), then, upon request of such Lender (but subject to paragraph (d) of this [Section 2.12](#)), Borrowers will pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) **Capital Requirements.** If any Lender determines (in good faith, but in its sole absolute discretion) that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time (but subject to paragraph (d) of this [Section 2.12](#)) Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this [Section 2.12](#) and delivered to the Administrative Borrower shall be conclusive absent manifest error. Borrowers shall pay such Lender, as the case may be, the amount shown as due on any such certificate within five (5) Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrowers shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than twelve (12) months prior to the date that such Lender notifies Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the twelve-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Exceptions to Borrowers' Liability for Increased Costs. Borrowers shall have no obligation to compensate any Lender for any increased costs under Sections 2.12(a) and (b) to the extent such increased costs are: (i) attributable to the willful breach by the relevant Lender of any Requirement of Law; (ii) attributable to the implementation or application of or compliance with the "International Convergence of Capital Measurement and Capital Standards, a Revised Framework" published by the Basel Committee on Banking Supervision in June 2004 in the form existing on the date of this Agreement ("**Basel II**") or any Requirement of Law which implements Basel II (whether such implementation, application or compliance is by a Governmental Authority, Lender or any of its Affiliates), except for any increase of costs which are unforeseeable; and (iii) in respect of a Lender's capital adequacy or reserve requirements by which it is bound as a matter of internal policy, to the extent that such requirements exceed those by which it is bound as a Requirement of Law or general application.

SECTION 2.13 Breakage Costs. In the event of (a) the payment or prepayment, whether optional or mandatory, of any principal of any Loan earlier than the last day of an Interest Period applicable thereto (including as a result of an Event of Default) or without the requisite notice period under this Agreement, (b) the failure to borrow, pay, continue or prepay any Loan on the date specified in any notice delivered pursuant hereto or (c) the assignment of any Loan earlier than the last day of the Interest Period applicable thereto as a result of a request by Borrowers pursuant to Section 2.16(b), then, in any such event, Borrowers shall compensate each Lender for the loss, cost and expense (excluding loss of Applicable Margin) attributable to such event (such amounts, "**Breakage Costs**"). A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section 2.13 shall be delivered to the Administrative Borrower (with a copy to the Facility Agent) and shall be conclusive and binding absent manifest error. Borrowers shall pay such Lender the amount shown as due on any such certificate within five (5) days after receipt thereof.

SECTION 2.14 Payments Generally; Pro Rata Treatment; Sharing of Setoffs

(a) Payments Generally. Borrowers shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest or fees, or of amounts payable under Sections 2.12, 2.13, 2.15 or 10.03, or otherwise) on or before the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m., Singapore time), on the

date when due, in immediately available funds, without setoff, deduction or counterclaim. Any amounts received after such time on any date may, in the discretion of the Facility Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Facility Agent at its offices at the Payment Office except that payments pursuant to Sections 2.12, 2.13, 2.15 and 10.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Persons specified therein. The Facility Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, unless specified otherwise, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in US Dollars (other than with respect to principal or interest under the Singapore Dollar Loans and Yen Loans which shall be made in Singapore Dollars and Yen, respectively), except as expressly specified otherwise.

(b) Pro Rata Treatment

(i) Each payment by a Borrower of interest in respect of the Loans shall be applied to the amounts of such obligations owing to the Lenders *pro rata* according to the respective amounts then due and owing to the Lenders.

(ii) Each payment on account of principal of the Singapore Dollar Loans shall be allocated among the Singapore Dollar Lenders *pro rata* based on the principal amount of the Singapore Dollar Loans held by the Singapore Dollar Lenders. Each payment on account of principal of the Yen Loans shall be allocated among the Yen Lenders *pro rata* based on the principal amount of the Yen Loans held by the Yen Lenders.

(c) Insufficient Funds. If at any time insufficient funds are received by and available to the Facility Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied with respect to the intended Loan (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(d) Sharing of Set-Off. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other Obligations resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other Obligations greater than its *pro rata* share thereof as provided herein, then the Lender receiving such greater proportion shall (1) notify the Facility Agent of such fact, and (2) purchase (for cash at face value) participations in the appropriate Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the appropriate Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by a Borrower pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to Borrowers (as to which the provisions of this paragraph shall apply).

Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Requirements of Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation. If under applicable bankruptcy, insolvency or any similar law any Secured Party receives a secured claim in lieu of a setoff or counterclaim to which this Section 2.14(d) applies, such Secured Party shall to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights to which the Secured Party is entitled under this Section 2.14(d) to share in the benefits of the recovery of such secured claim. Each Lender agrees to promptly notify the Facility Agent and Administrative Borrower after any such set off and application made by such Lender.

(c) Borrower Default. Unless the Facility Agent shall have received notice from the Administrative Borrower prior to the date on which any payment is due to the Facility Agent for the account of the Lenders hereunder that such Borrower will not make such payment, the Facility Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if such Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Facility Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Facility Agent, at the rate determined by the Facility Agent in accordance with banking industry rules on interbank compensation.

(f) Lender Default. If any Lender shall fail to make any payment required to be made by it pursuant to Sections 2.02(b), 2.14(e) or 10.03(c), then the Facility Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Facility Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.15 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrowers hereunder or under any other Loan Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes; provided that, if the Borrowers shall be required by applicable Requirements of Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i)

the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.15) the Facility Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable Borrower shall make such deductions and (iii) the applicable Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(b) Payment of Other Taxes by Borrowers. Without limiting the provisions of paragraph (a) above, Borrowers shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(c) Indemnification by Borrowers. Borrowers shall indemnify the Facility Agent and each Lender, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15) paid by the Facility Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate identifying in reasonable detail the amount and nature of such payment or liability (including such other evidence thereof as has been received by a Lender or the Facility Agent) delivered to a Borrower by a Lender (with a copy to the Facility Agent), or by the Facility Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. If Taxes were not correctly or legally asserted, the Facility Agent or such Lender shall, at the expense of the Borrowers, provide such documents to the Administrative Borrower in form and substance satisfactory to the Facility Agent, as the Administrative Borrower may reasonably request, to enable the applicable Borrower to contest such Taxes pursuant to appropriate proceedings then available to such Borrower (so long as providing such documents shall not, in the good faith determination of the Facility Agent or the Lender, have a reasonable likelihood of resulting in any liability of the Facility Agent or such Lender and doing so is otherwise permitted under applicable law as determined by the Facility Agent or such Lender). This Section 2.15(c) shall not be construed to require the Facility Agent or any Lender to make available its Tax Returns (or any other information relating to its taxes that it deems confidential) to the Borrowers or any other Person.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Borrower to a Governmental Authority, such Borrower shall deliver to the Facility Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Facility Agent.

(e) Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which a Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall, to the extent it may lawfully do so, deliver to the Administrative Borrower (with a copy to the Facility Agent), at the time or times prescribed by applicable Requirements of Law and reasonably requested by the Administrative Borrower or the Facility Agent, such properly completed and executed documentation prescribed by applicable Requirements of Law as will permit such payments to be made without withholding or at a reduced rate of withholding.

(f) Treatment of Certain Refunds. If the Facility Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by Borrowers or with respect to which Borrowers have paid additional amounts pursuant to this Section 2.15, it shall pay to Borrowers an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Borrowers under this Section 2.15 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Facility Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that Borrowers, upon the request of the Facility Agent or such Lender, agrees to repay the amount paid over to Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Facility Agent or such Lender in the event the Facility Agent or such Lender is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require the Facility Agent or any Lender to make available its Tax Returns (or any other information relating to its taxes that it deems confidential) to Borrowers or any other Person.

SECTION 2.16 Mitigation Obligations; Replacement of Lenders

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.12, or requires Borrowers to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.12 or 2.15, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment. A certificate setting forth such costs and expenses submitted by such Lender to Borrowers shall be conclusive absent manifest error.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.12, or if Borrowers are required to pay any amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, or if any Lender defaults in its obligation to fund Loans hereunder, then Borrowers may, at their sole expense and effort, upon notice to such Lender and the Facility Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 10.04), all of its interests, rights and obligations under this Agreement and the other Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) Borrowers shall have paid to the Facility Agent the processing and recordation fee specified in Section 10.04(b)(iv);

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 2.13) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the applicable Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.15, such assignment will result in a reduction in such compensation or payments thereafter; and

(iv) such assignment does not conflict with applicable Requirements of Law.

Notwithstanding the foregoing, a Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrowers to require such assignment and delegation cease to apply.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Each Borrower represents and warrants to the Facility Agent, the Collateral Agent and each of the Lenders that:

SECTION 3.01 Organization; Powers. Each Borrower (a) is duly organized and validly existing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to carry on its business as now conducted and as presently contemplated to be conducted and to make the Borrowings hereunder, and to execute and deliver each Loan Document to which it is a party, and to consummate the transactions contemplated thereby and to own and lease its property and (c) is qualified and in good standing (to the extent such concept is applicable in the applicable jurisdiction) to do business in every jurisdiction where such qualification is required, except in such jurisdictions where the failure to so qualify or be in good standing, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.02 Authorization; Enforceability. The transactions to be entered into by each Borrower under this Agreement and the other Loan Documents are within such Borrower's powers and have been duly authorized by all necessary action on the part of such Borrower. This Agreement has been duly executed and delivered by each Borrower and constitutes, and each other Loan Document to which any Borrower is to be a party, when executed and delivered by such Borrower, will constitute, a legal, valid and binding obligation of such Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03 No Conflicts. Except as set forth on Schedule 3.03, the execution, delivery and performance of this Agreement and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby by the Borrowers (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) filings necessary to perfect Liens created by the Loan Documents and (iii)

consents, approvals, registrations, filings, permits or actions the failure to obtain or perform which could not reasonably be expected to result in a Material Adverse Effect, (b) will not violate the Organizational Documents of any Borrower, (c) will not violate any Requirement of Law, (d) will not violate or result in a default or require any consent or approval under any indenture, agreement or other instrument binding upon any Borrower or its property, or give rise to a right thereunder to require any payment to be made by any Borrower, except such violation, default, requirement of consent or requirement of payment that could not reasonably be expected to result in a Material Adverse Effect and (e) will not result in the creation or imposition of any Lien on any property of any Borrower, except Liens created by the Loan Documents and Permitted Liens.

SECTION 3.04 Financial Statements; Projections.

(a) Historical Financial Statements.

(i) Yen Borrower has heretofore delivered to the Lenders its and its subsidiaries' consolidated balance sheets, related statements of income and stockholders' equity (A) as of and for the Fiscal Year ended December 31, 2006, and (B) as of and for the six-month period ended June 30, 2007 and for the comparable period of the preceding Fiscal Year, in each case, certified by a Financial Officer of such Borrower.

(ii) Singapore Dollar Borrower has heretofore delivered to the Lenders its and its subsidiaries' consolidated balance sheets, related statements of income, cash flow and stockholders' equity (A) as of and for the Fiscal Year ended December 31, 2006, and (B) as of and for the six-month period ended June 30, 2007 and for the comparable period of the preceding Fiscal Year, in each case, certified by a Financial Officer of such Borrower.

Such financial statements and all financial statements delivered pursuant to this Agreement have been prepared in accordance with GAAP and present fairly in all material respects the financial condition and results of operations and cash flows (to the extent applicable) of such Borrower as of the dates and for the periods to which they relate (subject, in the case of any unaudited financial statements, to year-end audit adjustments and the absence of footnotes).

(b) No Liabilities. Except as set forth in the financial statements referred to in Section 3.04(a), there are no liabilities of any Borrower of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, which could reasonably be expected to result in a Material Adverse Effect, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such a liability, other than liabilities under the Loan Documents. Since December 31, 2006, there has been no event, change, circumstance or occurrence that, individually or in the aggregate, has had or could reasonably be expected to result in a Material Adverse Effect.

(c) Forecasts. The forecasts of financial performance of the Borrowers furnished to the Lenders have been prepared in good faith by the Borrowers and are based on assumptions believed by the Borrowers to be reasonable at the time made, it being recognized by the Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results.

SECTION 3.05 Properties.

(a) Generally. Each Borrower has good title to, or valid leasehold interests in, all its property material to its business, including its Internet Data Center(s), free and clear of all Liens except for Permitted Liens. The property of the Borrowers, taken as a whole, (i) is in good operating order, condition and repair (ordinary wear and tear excepted) and (ii) constitutes all the property which is required for the business and operations of the Borrowers as presently conducted.

(b) Real Property. Schedule 3.05(b) contains a true and complete list of each interest in Real Property owned, leased, subleased or otherwise occupied or utilized by each Borrower, as of the date hereof and describes the type of interest therein held by such Borrower and, in each of the cases described in this Section 3.05(b), whether any Lease requires the consent of the landlord or tenant thereunder, or other party thereto, to the transactions contemplated hereby.

(c) No Casualty Event. No Borrower has received any notice of, nor has any knowledge of, the occurrence or pendency or contemplation of any Casualty Event.

(d) Collateral. Each Borrower owns or has rights to use all of the Collateral, necessary for or material to each Borrower's business as currently conducted. The use by each Borrower of such Collateral and all such rights with respect to such Collateral do not infringe on the rights of any Person other than such infringement which could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No claim has been made and remains outstanding that any Borrower's use of any Collateral does or may violate the rights of any third party that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

SECTION 3.06 Intellectual Property; Ownership/No Claims.

(a) Each Borrower owns, or is validly licensed to use, all patents, patent applications, industrial designs, invention disclosures, trademarks, trade names, corporate names, service marks, copyrights, technology, trade secrets, proprietary information, domain names, know-how, processes, and other intellectual property and general intangibles of like nature necessary for the conduct of its business as currently conducted, together with all goodwill, registrations and applications relating to the foregoing, and all rights to sue for past, present, and future infringement or other impairment of the foregoing (the "**Intellectual Property**"), except for those the failure to own or license which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Except as set forth on Schedule 3.06(a), no claim has been asserted and is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does any Borrower know of any valid basis for any such claim. The use of such Intellectual Property by each Borrower does not infringe the rights of any Person, except for such claims and infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) The operation of the Internet Data Centers does not require the use of any Intellectual Property other than (i) "off-the-shelf" software and any customizations permitted under the terms of the license agreements for such software, in each case that has been or will be paid for in full by the Borrowers and (ii) Intellectual Property for which the absence of a license or ownership would not reasonably be expected to have a material adverse effect on the operation of the Internet Data Centers.

SECTION 3.07 Ownership of the Borrowers and Subsidiaries

(a) Equity Interests. All Equity Interests of each Borrower are duly and validly issued and are fully paid and non-assessable, and are owned, directly or indirectly, by the Guarantor.

(b) Subsidiaries. As of the date hereof, neither Borrower has any Subsidiaries other than as listed in Schedule 3.07(b).

SECTION 3.08 Litigation: Compliance with Laws. Except as set forth on Schedule 3.08, there are no actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending or, to the best knowledge of any Borrower after due inquiry, threatened against or affecting any Borrower or any business, property or rights of any Borrower (a) that involve any Loan Document or (b) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. Except for matters covered by Section 3.18, no Borrower or any of its property is in violation of, nor will the continued operation of its property as currently conducted violate, any Requirements of Law (including any zoning or building ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting any Borrowers' property or is in default with respect to any Requirement of Law, where such violation or default, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.09 Agreements

(a) Generally. No Borrower is a party to any agreement or instrument or subject to any corporate or other constitutional restriction that has resulted or could reasonably be expected to result in a Material Adverse Effect. No Borrower is in default in any manner under any provision of any indenture or other agreement or instrument evidencing Indebtedness, or any other agreement or instrument to which it is a party or by which it or any of its property is or may be bound, and no condition exists which, with the giving of notice or the lapse of time or both, would constitute such a default, except for such defaults or conditions that could not reasonably be expected to result in a Material Adverse Effect. Schedule 3.09 accurately and completely lists all Material Agreements to which any Borrower is a party which are in effect on the date hereof and the Borrowers have delivered to the Facility Agent complete and correct copies of all such Material Agreements, including any amendments, supplements or modifications with respect thereto, and all such agreements are in full force and effect except as such have expired or terminated by their terms.

(b) Wah Loon and Kajima Construction Contracts. The Wah Loon Construction Contract and the Kajima Construction Contract are in full force and effect and Equinix Singapore and Equinix Japan are not in breach of their respective obligations pursuant to such contracts where such breach or default would result in or could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10 Investment Company Act. The Guarantor is not an "investment company" or a company "controlled" by an "investment company," as defined in, or subject to regulation under, the Investment Loan Party Act of 1940.

SECTION 3.11 Use of Proceeds. The Borrowers will use the proceeds of the Loans to fund the capital expenditures on leasehold improvements, equipment, fittings, other facilities and related installation costs to expand their respective Internet Data Centers in accordance with the budget set forth in Schedule 3.11, as updated from time to time pursuant to Section 5.01(e) and other proper corporate purposes not prohibited hereunder.

SECTION 3.12 Taxes. Each Borrower has (a) timely filed or caused to be timely filed (taking into account any extension of time to file granted or obtained) all national and local tax returns required to have been filed by it and all such tax returns are true and correct in all material respects and (b) duly and timely paid, collected, withheld or remitted or caused to be duly and timely paid, collected, withheld or remitted all Taxes due and payable, collectible, required to be withheld or remittable by it, except Taxes (i) that are being diligently contested in good faith by appropriate proceedings and for which such Borrower has set aside on its books adequate reserves in accordance with GAAP and (ii) which could not, individually or in the aggregate, have a Material Adverse Effect. Each Borrower has made adequate provision in accordance with GAAP for all Taxes not yet due and payable. No Borrower has knowledge of any proposed or pending tax assessments, deficiencies or audits that could be reasonably expected to, individually or in the aggregate, result in a Material Adverse Effect.

SECTION 3.13 No Material Misstatements. Each Borrower has disclosed to the Facility Agent all agreements, instruments and corporate or other restrictions to which such Borrower is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No information, report, financial statement, certificate, Borrowing Request, exhibit or schedule furnished by or on behalf of any Borrower to the Facility Agent or any Lender in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto, taken as a whole, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were or are made, not misleading as of the date such information is dated or certified; provided that, to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, each Borrower represents only that it acted in good faith and utilized reasonable assumptions at the time of such forecast or projection and due care in the preparation of such information, report, financial statement, exhibit or schedule. There is no contingent liability or fact that could reasonably be expected to have a Material Adverse Effect which has not been set forth in a footnote included in the financial statements described in Section 3.04 or a Schedule hereto.

SECTION 3.14 Labor Matters. Except as set forth on Schedule 3.14:

(a) As of the Closing Date, there are no arbitrations, strikes, lockouts, work stoppages or slowdowns against any Borrower pending or, to the best knowledge of any Borrower after due inquiry, threatened.

(b) (i) No Borrower is party to, or bound by, any labor agreement, collective bargaining agreement, work rules or practices, or any other labor-related agreements or arrangements with any labor union, labor organization or works council; (ii) there are no labor agreements, collective bargaining agreements, work rules or practices, or any other labor-related agreements or arrangements that pertain to any of the employees of any Borrower; and (iii) no employees of any Borrower are represented by any labor organization with respect to their employment with any Borrower.

(c) All payments due from any Borrower, or for which any claim may be made against any Borrower, on account of taxes, assessments, penalties, fines, wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Borrower except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

(d) To the best knowledge of the Borrowers after due inquiry, there is no complaint, inquiry or other investigation by any Governmental Authority with regard to or in relation to any employee of any Borrower or the termination of any employee of any Borrower which could reasonably be expected to result in a Material Adverse Effect.

(e) Each Borrower is in compliance with all Requirements of Law applicable to employees in respect of employment standards, labor relations, health and safety, employment insurance, workers compensation, language of work, protection of personal information and human rights laws, except where the failure to be in compliance could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.15 Solvency. Immediately following the making of each Loan and after giving effect to the application of the proceeds of each Loan, (a) the fair value of the assets of each Borrower (individually and on a consolidated basis with its Subsidiaries) will exceed its debts and liabilities, subordinated, contingent or otherwise; (b) each Borrower (individually and on a consolidated basis with its Subsidiaries) will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become due; and (c) each Borrower (individually and on a consolidated basis with its Subsidiaries) will have sufficient capital with which to conduct its business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date.

SECTION 3.16 Employee Benefit Plans. Each Borrower does not sponsor, is not obligated to contribute to and is not itself an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of such Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3 101. In addition, (a) such Borrower is not a “governmental plan” within the meaning of Section 3(32) of ERISA and (b) transactions by or with such Borrower are not subject to any statute regulating investments of, or fiduciary obligations with respect to, governmental plans similar to the provisions of Section 406 of ERISA or Section 4975 of the Code currently in effect, which prohibit or otherwise restrict the transactions contemplated by this Agreement, including, but not limited to the exercise by Lender of any of its rights under the Loan Documents.

SECTION 3.17 Environmental Matters.

Except as set forth in Schedule 3.17 or as could not reasonably be expected to result in a Material Adverse Effect:

(a) The Borrowers and their businesses, operations and Real Property are in compliance with, and the Borrowers have no liability under, any applicable Environmental Law; and under the currently effective business plan of the Borrowers, no expenditures or operational adjustments will be required in order to comply with applicable Environmental Laws;

(b) There is no Environmental Claim pending or, to the best knowledge of the Borrowers after due inquiry, threatened against the Borrowers, or relating to the Real Property currently or formerly owned, leased or operated by the Borrowers or to the best knowledge of Borrowers after due inquiry their predecessors in interest or relating to the operations of the Borrowers, and there are no actions, activities, circumstances, conditions, events or incidents that could form the basis of such an Environmental Claim;

(c) No Borrower is obligated to perform any action or otherwise incur any expense under Environmental Law pursuant to any order, decree, judgment or agreement by which it is bound or has assumed by contract, agreement or operation of law with respect to any Real Property or any other location;

(d) No Lien has been recorded or, to the best knowledge of any Borrower after due inquiry, threatened under any Environmental Law with respect to any Real Property or other assets of the Borrowers; and

(e) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not require any notification, registration, filing, reporting, disclosure, investigation, remediation or cleanup pursuant to any applicable Environmental Law.

SECTION 3.18 **Insurance.** Schedule 3.18 sets forth a true, complete and correct description of all insurance maintained by each Borrower as of the Closing Date. All insurance maintained by the Borrowers is in full force and effect, all premiums have been duly paid, no Borrower has received notice of violation or cancellation thereof, the Real Property, and the use, occupancy and operation thereof, comply in all material respects with all Insurance Requirements, and there exists no material default under any Insurance Requirement. Each Borrower has insurance that satisfies the requirements of Section 5.04.

SECTION 3.19 Security Documents; Ranking of Loans.

(a) Valid Liens. Each Security Document delivered pursuant hereto will, upon execution and delivery thereof, be effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, legal, valid and enforceable first priority Liens on, and security interests in, all of the Borrowers' right, title and interest in and to the Collateral thereunder, and (i) when all appropriate filings or recordings are made in the appropriate offices as may be required under applicable law and (ii) upon the taking of possession or control by the Collateral Agent of such Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to the Collateral Agent to the extent required by any Security Document), such Security Document will constitute fully perfected first priority Liens on, and security interests in, all right, title and interest of the Borrowers in such Collateral, in each case subject to no Liens other than the applicable Permitted Liens.

(b) Ranking of Loans. The Loans and all other claims of the Secured Parties against the Borrower under the Loan Documents constitute direct, unconditional, unsubordinated and secured obligations of the Borrowers and rank at least *pari passu* in right of payment with all other Indebtedness of the Borrower and:

(i) *pari passu* in right of security with the other secured obligations; and

(ii) senior in right of security to all other Permitted Indebtedness; in each case except for Indebtedness mandatorily preferred by law.

SECTION 3.20 **Permits, etc.** Each Borrower has obtained, and is in compliance with, all permits, licenses, authorizations, approvals, entitlements and accreditations required for such person lawfully to own, lease, manage or operate, or to acquire, each business currently owned, leased, managed or operated, or to be acquired, by such Borrower, where the failure to have or be in compliance with such permits, licenses, authorizations, entitlements and accreditations has or could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, and there is no claim that any thereof is not in full force and effect.

ARTICLE IV

CONDITIONS TO FUNDING

SECTION 4.01 **Conditions to Initial Funding.** The obligation of each Lender to fund its Loans comprising the initial Borrowings requested hereunder shall be subject to the prior or concurrent satisfaction of each of the conditions precedent set forth in this Section 4.01.

(a) Loan Documents. The Facility Agent shall have received an executed counterpart of each of the Loan Documents.

(b) Corporate Documents. The Facility Agent shall have received:

(i) a certificate of the corporate secretary or assistant corporate secretary of the Guarantor and a Director of each Borrower dated the Closing Date, certifying (A) that attached thereto is a true and complete copy of each Organizational Document of Guarantor or such Borrower, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of Guarantor or such Borrower or authorizing the execution, delivery and performance of the Loan Documents to which Guarantor or such Borrower is a party and, the Borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect and (C) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of Guarantor or such Borrower;

(ii) a certificate as to the good standing of Guarantor and each Borrower as of a recent date, from the applicable Governmental Authority to the extent such certification is customarily provided by such Governmental Authority; and

(iii) such other documents as the Lenders or the Facility Agent may reasonably request.

(c) Financial Officers' Certificate. The Facility Agent shall have received a certificate, dated the Closing Date from each Borrower and Guarantor signed by a Financial Officer of such Borrower or Guarantor, confirming compliance with the conditions precedent set forth in this Section 4.01 and Sections 4.02(b) to 4.02(e).

(d) Financial Statements; Projections. The Lenders shall have received and shall be satisfied with the form and substance of the financial statements described in Section 3.04 and with the forecasts of the financial performance of the Borrowers.

(e) Indebtedness. No Borrower shall have outstanding any Indebtedness other than (i) the Loans hereunder or (ii) Permitted Indebtedness.

(f) Opinions of Counsel. The Facility Agent shall have received, on behalf of itself, the Collateral Agent, the Arranger and the Lenders, a favorable written opinion of each local and international counsel listed on Schedule 4.01(f), in each case (i) dated the Closing Date, (ii) addressed to the Agents and the Lenders and (iii) in form and substance reasonably satisfactory to the Facility Agent.

(g) Requirements of Law. The Lenders shall be satisfied that Guarantor and each Borrower shall be in full compliance with all material Requirements of Law, and shall have received satisfactory evidence of such compliance reasonably requested by them.

(h) Consents. The Lenders shall be satisfied that all requisite Governmental Authorities and third parties shall have approved or consented to the Transactions, and there shall be no governmental or judicial action, actual or threatened, that has or would have, singly or in the aggregate, a reasonable likelihood of restraining, preventing or imposing burdensome conditions on the Loan Documents or the other transactions contemplated thereby.

(i) Litigation. There shall be no litigation, public or private, or administrative proceedings, governmental investigation or other legal or regulatory developments, actual or threatened, that, singly or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or could materially and adversely affect the ability of Guarantor or the Borrowers to fully and timely perform their respective obligations under the Loan Documents, or the ability of the parties to consummate the financings contemplated thereby.

(j) Sources and Uses. The sources and uses of the Loans shall be as set forth in Section 3.11.

(k) Fees. The Arranger and Facility Agent shall have received the Facility Set-Up Fee and other amounts due and payable on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses (including the legal fees and expenses of any local counsel or international counsel) required to be reimbursed or paid by Borrowers hereunder or under any other Loan Document.

(l) Personal Property Requirements. The Collateral Agent shall have received:

(i) all certificates, agreements or instruments necessary to perfect the Collateral Agent's security interest in the Collateral as set forth in the Debenture and the Assignment of Movables; and

(ii) evidence reasonably acceptable to the Collateral Agent of payment or arrangements for payment by the Borrowers of all applicable recording taxes, fees, charges, costs and expenses required for the recording of the Security Documents as set forth in the Debenture and the Assignment of Movables.

(m) Insurance Documents. The Facility Agent shall have received a copy of, or a certificate as to coverage under, the insurance policies required by Section 5.04 and the applicable provisions of the Security Documents, each of which shall be endorsed or otherwise amended to include a "standard" Lender's loss payable or mortgagee endorsement (as applicable) and shall name the Collateral Agent, on behalf of the Secured Parties, as additional insured, in form and substance reasonably satisfactory to the Facility Agent (provided that if such endorsements cannot be delivered by the Closing Date, the Facility Agent may consent to such endorsements being delivered at such later date as it deems appropriate).

(n) Know Your Customer Requirements. The Lenders shall have received, sufficiently in advance of the Closing Date, all documentation and other information that may be required by the Lenders in order to enable compliance with applicable "know your customer" and anti-money laundering rules and regulations.

(o) Guarantor EBITDA Information. The Facility Agent shall have received a certificate signed by a Financial Officer of the Guarantor setting forth information for the computation of Guarantor EBITDA and Guarantor Senior Debt for the most recently-ended Fiscal Quarter prior to the date of this Agreement.

SECTION 4.02 Conditions to All Borrowings. The obligation of each Lender to make its Loan comprising any Borrowing (including the initial Borrowing) shall be subject to, and to the satisfaction of, each of the conditions precedent set forth below.

(a) Notice. The Facility Agent shall have received a Borrowing Request as required by Section 2.04.

(b) No Default. Borrowers shall be in compliance in all material respects with all the terms and provisions set forth herein and in each other Loan Document on its part to be observed or performed, and, at the time of and immediately after giving effect to such Borrowing and the application of the proceeds thereof, no Default shall have occurred and be continuing on such date.

(c) Representations and Warranties. Each of the representations and warranties made by any Borrower set forth in Article III hereof or in any other Loan Document shall be true and correct in all material respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects) on and as of the date of such Borrowing with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date.

(d) No Legal Bar. No order, judgment or decree of any Governmental Authority shall purport to restrain any Lender from making any Loans to be made by it. No injunction or other restraining order shall have been issued, shall be pending or noticed with respect to any action, suit or proceeding seeking to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated by this Agreement or the making of Loans hereunder.

(e) No Material Adverse Effect. No event which has or is reasonably likely to have a Material Adverse Effect has occurred.

Each of the delivery of a Borrowing Request and the acceptance by any Borrower of the proceeds of such Borrowing shall constitute a representation and warranty by each Borrower that on the date of such Borrowing (both immediately before and after giving effect to such Borrowing and the application of the proceeds thereof) the conditions contained in Sections 4.02(b) to 4.02(e) have been satisfied.

SECTION 4.03 **Other Conditions to Borrowing**. In addition to the conditions set forth in Sections 4.01 and 4.02, the obligation of each Lender to make its Loan comprising any Borrowing made after three months from the date of this Agreement shall be subject to the receipt by the Facility Agent of a duly executed pledge or share charge agreement covering the pledge of all the issued and outstanding shares of each Borrower in favor of the Facility Agent as security for the performance of the Secured Obligations.

ARTICLE V

AFFIRMATIVE COVENANTS

Each Borrower warrants, covenants and agrees with each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full, unless the Required Lenders shall otherwise consent in writing, each Borrower will:

SECTION 5.01 **Financial Statements, Reports, etc.** Furnish to the Facility Agent and each Lender:

(a) Annual Reports. As soon as available and in any event within ninety (90) days after the end of each Fiscal Year, beginning with the Fiscal Year ending December 31, 2007, the consolidated balance sheet of each Borrower as of the end of such Fiscal Year, related consolidated statements of income, stockholders' equity and cash flow (if customarily prepared) for such Fiscal Year, in comparative form with such financial statements as of the end of, and for, the preceding Fiscal Year, and notes thereto, and for the Singapore Borrower, within nine (9) months after the end of each Fiscal Year, such accounts audited by PricewaterhouseCoopers or other independent public accountants of recognized national standing satisfactory to the Facility Agent;

(b) Quarterly Reports. As soon as available and in any event within forty five (45) days after the end of each Fiscal Quarter of each Fiscal Year (other than each Fiscal Quarter ending December 31), beginning with the Fiscal Quarter ending September 30, 2007, the consolidated balance sheet of each Borrower as of the end of such Fiscal Quarter and related consolidated statements of income and cash flows (if customarily prepared) for such Fiscal Quarter and for the then elapsed portion of the Fiscal Year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous Fiscal Year, all prepared in accordance with the Securities Act and accompanied by a certificate of a Financial Officer of such Borrower stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows (if customarily prepared) of such Borrower as of the date and for the periods specified in accordance with GAAP consistently applied, and on a basis consistent with audited financial statements referred to in clause (a) of this Section 5.01, subject to year-end audit adjustments and the absence of footnotes;

(c) Financial Officer's Certificate. Concurrently with any delivery of financial statements under Sections 5.01(a) or 5.01(b), a Compliance Certificate (A) certifying that no Default has occurred or, if such a Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto and (B) beginning with the Fiscal Quarter ending September 30, 2007, setting forth computations in reasonable detail satisfactory to the Facility Agent demonstrating compliance with the covenants contained in Section 6.10;

(d) Financial Officer's Certificate Regarding Collateral. Concurrently with any delivery of financial statements under Section 5.01(b), for the Fiscal Quarters ending September 30 and March 31, a certificate from a Financial Officer of the Administrative Borrower (i) certifying that the ratio of the book value of the Collateral to the aggregate principal outstanding on the Loans as of the last day of the relevant Fiscal Quarter is at least 1.10 and (ii) setting forth computations in reasonable detail satisfactory to the Facility Agent demonstrating compliance with clause (i) above;

(e) Budgets. Within sixty (60) days after the beginning of each Fiscal Year, a budget for each Borrower in form reasonably satisfactory to the Facility Agent, but to include balance sheets, statements of income and sources and uses of cash, for each Fiscal Quarter of such Fiscal Year prepared in detail, prepared in summary form, in each case, with appropriate presentation and discussion of the principal assumptions upon which such budgets are based, accompanied by the statement of a Financial Officer of each Borrower to the effect that the budget of such Borrower is a reasonable estimate for the periods covered thereby and, promptly when available, any significant revisions of such budget;

(f) Organizational Documents. Promptly provide copies of any Organizational Documents of the Borrowers that have been amended or modified in accordance with the terms hereof; and

(g) Other Information. Promptly, from time to time, such other information regarding the operations, business affairs and financial condition of any Borrower, or compliance with the terms of any Loan Document, as the Facility Agent or any Lender may reasonably request, except to the extent that disclosure of the information would violate any Requirement of Law or breach any duty of confidentiality.

SECTION 5.02 **Litigation and Other Notices.** Furnish to the Facility Agent and each Lender written notice of the following promptly (and, in any event, within ten (10) Business Days after the occurrence thereof):

(a) any Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority, (i) against any Borrower or any Affiliate thereof that could reasonably be expected to result in a Material Adverse Effect or (ii) with respect to any Loan Document;

(c) any development that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect;

(d) the occurrence of a Casualty Event; and

(e) the incurrence of any material Lien (other than Permitted Liens) on, or claim asserted against any of the Collateral reasonably expected to have a Material Adverse Effect on the value of the Collateral taken as a whole.

SECTION 5.03 **Existence; Businesses and Properties.**

(a) Do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence.

(b) Do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Intellectual Property material to the conduct of its business;

(c) At all times maintain, preserve and protect all property material to the conduct of such business and keep such property in good repair, working order and condition (other than wear and tear occurring in the ordinary course of business) and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times, except where the failure to comply, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.04 **Insurance.**

(a) **Generally.** Procure and maintain all insurance policies required in Schedule 5.04(a).

(b) **Requirements of Insurance.** All such property insurance policies shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least fifteen (15) days after receipt by the Collateral Agent of written notice thereof, and (ii) if reasonably requested by the Collateral Agent, include a breach of warranty clause. All such insurance policies shall (i) name the Collateral Agent as mortgagee (in the case of property insurance) or additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance), as applicable, and (ii) be reasonably satisfactory in all other respects to the Collateral Agent.

(c) **Notice to Agents.** Notify the Facility Agent and the Collateral Agent immediately whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 5.04 is taken out by any Borrower; and promptly deliver to the Facility Agent and the Collateral Agent a duplicate original copy of such policy or policies.

(d) **Broker's Certificate.** Promptly upon every renewal of the insurance policies required under Schedule 5.04(a) but no less frequently than annually, deliver to the Facility Agent, the Collateral Agent and the Lenders a certificate from an insurance Broker of the Borrowers evidencing that all insurance policies required to be procured and maintained under this Agreement are in full force and effect.

SECTION 5.05 **Obligations and Taxes.**

(a) **Payment of Obligations.** Pay its Indebtedness and other obligations promptly and in accordance with their terms and pay and discharge promptly when due all Taxes, imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, services, materials and supplies or otherwise that, if unpaid, might give rise to a Lien or deemed trust other than a Permitted Lien upon such properties or any part thereof; provided that such payment and discharge shall not be required with respect to any such Tax so long as (i)(A) the validity or amount thereof shall be contested in good faith by appropriate proceedings timely instituted and diligently conducted and the applicable Borrower shall have set aside on its books adequate reserves or other appropriate provisions with respect thereto in accordance with GAAP and (B) such contest operates to suspend collection of the contested obligation, Tax and enforcement of a Lien or deemed trust other than a Permitted Lien and (ii) the failure to pay could not reasonably be expected to result in a Material Adverse Effect.

(b) **Filing of Returns.** Timely and correctly file all material Tax Returns required to be filed by it (taking into account any extension of time to file granted or obtained). Withhold, collect and remit all Taxes that it is required to collect, withhold or remit.

SECTION 5.06 **Maintaining Records; Access to Properties and Inspections; Annual Meetings.** Keep proper books of record and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law are made of all dealings and transactions in relation to its business and activities. Each Borrower will permit any representatives designated by the Facility Agent or any Lender to visit and inspect the financial records and the property of such Borrower at reasonable times and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives designated by the Facility Agent or any Lender to discuss the affairs, finances, accounts and condition of any Borrower with the officers and employees thereof and advisors therefor (including independent accountants), but no more frequently than annually and at a cost to Borrowers not exceed the US Dollar Equivalent of US\$5,000 per inspection, unless an Event of Default has occurred and is continuing.

SECTION 5.07 **Use of Proceeds.** Use the proceeds of the Loans only for the purposes set forth in Section 3.11.

SECTION 5.08 Compliance with Laws; Material Agreements and Loan Documents

(a) Comply with all applicable Requirements of Law (including any and all zoning, building, Environmental Law, ordinance, code or approval or any building permits or any restrictions of record or agreements affecting the Real Property) and decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted, except where the failure to comply, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; and

(b) Pay and perform its obligations, and enforce all its rights and remedies, under all Material Agreements, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.09 After-acquired Collateral; Collateral Book Value

(a) Subject to this Section 5.09, with respect to any property acquired after the Closing Date by any Borrower that is intended to be subject to the Lien created by any of the Security Documents but is not so subject, promptly (and in any event within thirty (30) days after the acquisition thereof) (i) execute and deliver to the Facility Agent and the Collateral Agent such amendments or supplements to the relevant Security Documents or such other documents as the Facility Agent or the Collateral Agent shall deem necessary or advisable to grant to the Collateral Agent, for its benefit and for the benefit of the other Secured Parties, a Lien on such property subject to no Liens other than Permitted Liens, and (ii) take all actions necessary to cause any such Lien on any Collateral to be duly perfected to the extent required by such Security Document in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Facility Agent. Borrowers shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents (other than the legal opinions) as the Facility Agent or the Collateral Agent shall reasonably require to confirm the validity, perfection and priority of the Lien of the Security Documents on any such after-acquired Collateral.

(b) Provide additional Collateral as may be required to cause the ratio of the book value of the Collateral to the aggregate principal outstanding on the Loans as of the last day of any Fiscal Quarter ending September 30 or March 31 to be at least 1.10. If any additional Collateral is required in order to satisfy the aforementioned ratio, Borrowers shall provide such additional collateral prior to the timely delivery of the Compliance Certificate in accordance with Section 5.01(d).

SECTION 5.10 Security Interests; Further Assurances. Promptly, upon the reasonable request of the Facility Agent, the Collateral Agent or any Lender, at Borrowers' expense, execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or recorded, in an appropriate governmental office, such documentation, consents, authorizations, approvals and orders in form and substance reasonably satisfactory to the Facility Agent and the Collateral Agent as the Facility Agent and the Collateral Agent shall reasonably deem necessary to perfect or maintain the Liens on the Perfection Collateral pursuant to the Security Documents. Upon the exercise by the Facility Agent, the Collateral Agent or any Lender of any power, right, privilege or remedy pursuant to any Loan

Document which requires any consent, approval, registration, qualification or authorization of any Governmental Authority execute and deliver all applications, certifications, instruments and other documents and papers that the Facility Agent, the Collateral Agent or such Lender may reasonably require.

SECTION 5.11 Information Regarding Collateral. Not effect any change (i) in any Borrower's legal name or (ii) in the location of any Borrower's registered office, until it shall have given the Collateral Agent and the Facility Agent not less than ten (10) days' prior written notice. And with respect to (i) any Borrower's identity or organizational structure, or (ii) in any Borrower's jurisdiction of organization (in each case, including by merging with or into any other entity, reorganizing, dissolving, liquidating, reorganizing or organizing in any other jurisdiction), not effect any change until (A) it shall have given the Collateral Agent and the Facility Agent not less than thirty (30) days' prior written notice, or such lesser notice period agreed to by the Collateral Agent, of its intention so to do, clearly describing such change and providing such other information in connection therewith as the Collateral Agent or the Facility Agent may reasonably request and (B) it shall have taken all action reasonably satisfactory to the Collateral Agent to maintain the perfection and priority of the security interest of the Collateral Agent for the benefit of the Secured Parties in the Collateral, if applicable. Each Borrower agrees to promptly provide the Collateral Agent with certified Organizational Documents reflecting any of the changes described in the preceding sentence. Each Borrower also agrees to promptly notify the Collateral Agent of any change in the location of any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral is located (including the establishment of any such new office or facility).

SECTION 5.12 Ranking of Loans.

(a) Ensure that at all times the Loans and all other claims of the Secured Parties against the Borrower under the Loan Documents constitute direct, unconditional, unsubordinated and secured obligations of the Borrowers and rank at least *pari passu* in right of payment with all other Indebtedness of the Borrowers and:

- (i) *pari passu* in right of security with the other secured obligations; and
- (ii) senior in right of security to all other Permitted Indebtedness,

in each case except for Indebtedness mandatorily preferred by law.

(b) If any Borrower receives a loan or inter-company advance from any of its Affiliates, the relevant Borrower shall cause such Affiliate to promptly execute a document under the terms of which such Affiliate confirms that the loan or inter-company advance extended by such Affiliate to the Borrower shall be considered as a "Subordinated Obligation" (as defined in Schedule 1.01(b)) and be subject to the terms of subordination as set forth in Schedule 1.01(b).

SECTION 5.13 Pledge of Shares of Borrowers. Within three (3) months of the date of this Agreement, take all action necessary and reasonably requested by the Facility Agent to grant the Collateral Agent, for the benefit of the Secured Parties, a first priority perfected legal mortgage (or equivalent) in all the issued and outstanding shares of the

Borrowers, as security for the performance of the Secured Obligations, together with customary opinions from counsel to the pledgors, evidence of the pledgors' authorization and such other certificates or documents as the Facility Agent may reasonably request.

SECTION 5.14 **Guarantee.** Take all action necessary or reasonably requested by the Facility Agent to cause the Guarantee to be in full force and effect.

SECTION 5.15 **Process Agent.** Within 30 days from the date of this Agreement, deliver to the Facility Agent proof of the appointment of a process agent pursuant to Section 10.09(e).

ARTICLE VI NEGATIVE COVENANTS

Each Borrower warrants, covenants and agrees with each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full, unless the Required Lenders shall otherwise consent in writing, no Borrower will:

SECTION 6.01 **Indebtedness.** Incur, create, assume or permit to exist, directly or indirectly, any Indebtedness (excluding Indebtedness outstanding on the Closing Date and listed in Schedule 6.01) which would cause the relevant Borrower to breach the financial covenants set forth in Section 6.10. For the purposes of this Agreement, "incur" means, with respect to any Indebtedness, to incur, create, issue, assume, guarantee or otherwise become liable for or with respect to, or become responsible for, the payment of, contingently or otherwise, such Indebtedness. Indebtedness not prohibited under this Section 6.01 is referred to as "**Permitted Indebtedness.**"

SECTION 6.02 **Liens.** Create, incur, assume or permit to exist, directly or indirectly, any Lien on any property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, whether part of the Collateral or otherwise, except the following (collectively, the "**Permitted Liens**"):

(a) inchoate Liens for Taxes not yet due and payable and Liens for Taxes which are being contested in good faith by appropriate proceedings diligently conducted for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(b) Liens in respect of property of any Borrower imposed by Requirements of Law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, materialmen's, landlords', workmen's, suppliers', repairmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, and which (i) do not in the aggregate materially detract from the value of the property of such Borrower, (ii) do not materially impair the use thereof in the operation of the business of such Borrower, and (iii) if they secure obligations that are then due and unpaid and are not overdue by more than ninety (90) days, are being contested in good faith by appropriate proceedings diligently conducted for which adequate

reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(c) any Lien in existence on the Closing Date and set forth on Schedule 6.02(c) and any Lien granted as a replacement or substitute therefor; provided that any such replacement or substitute Lien (i) does not secure an aggregate amount of Indebtedness, if any, greater than that secured on the Closing Date and (ii) does not encumber any property other than the property subject thereto on the Closing Date (any such Lien, an “**Existing Lien**”);

(d) easements, rights-of-way, restrictions (including zoning restrictions), covenants, licenses, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any Real Property, in each case whether now or hereafter in existence, not (i) securing Indebtedness, (ii) individually or in the aggregate materially impairing the value or marketability of such Real Property or (iii) individually or in the aggregate materially interfering with the ordinary conduct of the business of the relevant Borrower at such Real Property;

(e) Liens arising out of judgments, attachments or awards not resulting in a Default and in respect of which such Borrower shall in good faith be prosecuting an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution pending such appeal or proceedings;

(f) Leases of the properties of any Borrower, in each case entered into in the ordinary course of such Borrower’s business so long as such Leases are subordinate in all respects to any applicable mortgages and do not, individually or in the aggregate, (i) interfere in any material respect with the ordinary conduct of the business of any Borrower or (ii) materially impair the use (for its intended purposes) or the value of the property subject thereto;

(g) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by any Borrower in the ordinary course of business in accordance with the past practices of such Borrower;

(h) Liens securing Permitted Indebtedness consisting of Purchase Money Obligations; provided that any such Liens attach only to the property being financed pursuant to such Indebtedness and do not encumber any other property of any Borrower;

(i) bankers’ Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by any Borrower, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; provided that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(j) Liens on property of a person existing at the time such Person is acquired or merged with or into or consolidated with any Borrower to the extent permitted hereunder (and not created in anticipation or contemplation thereof); provided that such Liens do not extend to property not subject to such Liens at the time of acquisition (other than improvements thereon) and are no more favorable to the lienholders than such existing Lien;

(k) Liens granted pursuant to the Security Documents to secure the Secured Obligations;

(l) licenses of Intellectual Property granted by any Borrower in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Borrowers;

(m) Liens incurred in the ordinary course of business of any Borrower with respect to obligations that do not in the aggregate exceed the US Dollar Equivalent of US\$2,000,000 at any time outstanding, so long as such Liens, to the extent covering any Collateral, are junior to the Liens granted pursuant to the Security Documents; and

(n) co-location or similar agreements entered into in the ordinary course of business with Borrowers' customers for the use of Internet Data Centers.

SECTION 6.03 Sale and Leaseback Transactions. Enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "**Sale and Leaseback Transaction**") unless (i) such Borrower's lease obligations under such Sale and Leaseback Transaction constitute Permitted Indebtedness and (ii) any Liens arising in connection with its use of such property are permitted by Section 6.02.

SECTION 6.04 Investment, Loan and Advances. Directly or indirectly, lend money or credit (by way of guarantee or otherwise) or make advances to any Person (including, without limitation, intercompany loans), or purchase or acquire any stock, bonds, notes, debentures or other obligations or securities of, or any other interest in, or make any capital contribution to, any other Person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract (all of the foregoing, collectively, "**Investments**"), except that the following shall be permitted (collectively, "**Permitted Investments**"):

(a) Investments outstanding on the Closing Date and identified on Schedule 6.04(a), including any extensions or renewals of such investments (including the change to the form of any such Investments from loans to capital contributions or capital contributions to loans);

(b) the Borrowers may (i) acquire and hold accounts receivables owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms, (ii) invest in, acquire and hold cash and Cash Equivalents, (iii) endorse negotiable instruments held for collection in the ordinary course of business or (iv) make lease, utility and other similar deposits in the ordinary course of business;

(c) Hedging Obligations so long as the Indebtedness associated therewith is Permitted Indebtedness;

(d) Investments in securities of trade creditors or customers in the ordinary course of business received upon foreclosure or pursuant to any plan of reorganization or liquidation or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

(e) Investments made or held by any Borrower as a result of consideration received in connection with an Asset Sale made in compliance with Section 6.06; and

(f) Investments resulting from transactions not prohibited by Section 6.05 or Section 6.07 or Investments acquired in connection with such transactions;

(g) Investments consisting of travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business;

(h) Investments permitted by the investment policy adopted by Guarantor's Board of Directors in effect as of the date hereof;

(i) Investments by one Borrower in another Borrower (including intercompany loans from one Borrower to another Borrower) for the purpose of repaying the Loans;

(j) Investments consisting of intercompany loans (including advances for working capital) to Affiliates in an aggregate amount not to exceed the US Dollar Equivalent of US\$5,000,000 at any time outstanding; and

(k) other Investments in an aggregate amount not to exceed the US Dollar Equivalent of US\$5,000,000 at any time outstanding.

An Investment shall be deemed to be outstanding to the extent not returned in the same form as the original Investment or in the form of cash or Cash Equivalents to Borrowers.

SECTION 6.05 **Mergers and Consolidations.** Wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation (or agree to do any of the foregoing at any future time), except that the following shall be permitted:

(a) Asset Sales in compliance with Section 6.06; and

(b) acquisitions in compliance with Section 6.07.

SECTION 6.06 **Asset Sales.** Effect any Asset Sale, agree to effect any Asset Sale, or effect or agree to effect any conveyance, sale, lease, sublease, assignment, transfer or other disposition of any property outside the ordinary course of business, except that the following shall be permitted:

(a) (i) disposition of used, worn out, obsolete or surplus property by any Borrower in the ordinary course of business; (ii) any sales or other dispositions of worn-out or obsolete Equipment or Equipment no longer used by any Borrower in the ordinary course of Business; and (iii) the abandonment or other disposition of Intellectual Property that is, in the reasonable judgment of the applicable Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Borrowers;

- (b) the issuance of Equity Interests;
- (c) leases or sub-leases of real or personal property in the ordinary course of business and in accordance with the applicable Security Documents;
- (d) Investments in compliance with Section 6.04;
- (e) the sale by any Borrower of Inventory in the ordinary course of business, the sale by any Borrower of obsolete or discontinued Inventory;
- (f) sales or dispositions of property by one Borrower to another Borrower;
- (g) the sale of assets relating to the EMS Business of the Singapore Borrower for cash or Cash Equivalents; and
- (h) Sale and Leaseback Transactions pursuant to Section 6.03.

SECTION 6.07 **Acquisitions**. Purchase or otherwise acquire (in one or a series of related transactions) all or substantially all of the property (whether tangible or intangible) of any Person (or agree to do any of the foregoing at any future time), except that the following shall be permitted:

- (a) acquisitions of up to an aggregate amount of the US Dollar Equivalent of US\$5,000,000 for each Fiscal Year;
- (b) Investments in compliance with Section 6.04;
- (c) leases of real or personal property in the ordinary course of business and in accordance with the applicable Security Documents; and
- (d) mergers and consolidations in compliance with Section 6.05;

provided that the Lien on and security interest in such property granted or to be granted in favor of the Collateral Agent under the Security Documents shall be maintained or created in accordance with the provisions of Section 5.09 or Section 5.10, as applicable.

SECTION 6.08 **Restricted Payments**. Authorize, declare or pay, directly or indirectly, any Restricted Payments, provided that if no Event of Default shall have occurred and be continuing:

(a) principal and interest payments on loans received by a Borrower from an Affiliate of Borrowers prior to the date of this Agreement for the purpose of (i) bridging the funding of Capital Expenditures incurred by either Equinix Japan or Equinix Singapore in connection with the expansion of either Borrower's Internet Data Centers and pursuant to the Wah Loon Construction Contract and the Kajima Construction Contract, or (ii) bridging the funding of Other Expansion Costs may be made by such Borrower; and

(b) principal and interest payments on loans received by a Borrower from an Affiliate of Borrowers may be made by such Borrower if (i) no Default or Event of Default would occur or be reasonably likely to occur as a result of such payment, and (ii) the Free Cash Flow of the relevant Borrower from the most recently ended Fiscal Quarter (after adjustments for estimated Capital Expenditures and debt service payments for the next Fiscal Quarter) is positive.

SECTION 6.09 **Transactions with Affiliates.** Enter into, directly or indirectly, any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of any Borrower (excluding management services arrangements with Equinix Asia Pacific Private, Ltd.), other than on terms and conditions at least as favorable to such Borrower as would reasonably be obtained by such Borrower at that time in a comparable arm's-length transaction with a Person other than an Affiliate.

SECTION 6.10 **Financial Covenants.**

(a) **Maximum Total Leverage Ratio.** Permit the Total Leverage Ratio as of the end of any Fiscal Quarter during any period set forth in the table below, to exceed the ratio set forth opposite such period in the table below:

Period	Leverage Ratio
January 1, 2008 – December 31, 2008	4 to 1.0
January 1, 2009 – December 31, 2009	3.50 to 1.0
January 1, 2010 and thereafter	3.00 to 1.0

(b) **Minimum Interest Coverage Ratio.** Permit the Consolidated Interest Coverage Ratio, for any Test Period ending during any period set forth in the table below, to be less than the ratio set forth opposite such period in the table below:

Period	Interest Coverage Ratio
July 1, 2007 – December 31, 2008	5.00 to 1.0
January 1, 2009 and thereafter	10.00 to 1.0

(c) **Minimum Consolidated EBITDA.** Permit the Consolidated EBITDA of the Borrowers (taken as a whole), for any Test Period ending during any period set forth in the table below, to be less than the amount set forth opposite such period in the table below:

Period	Consolidated EBITDA (in US Dollar Equivalent)
July 1, 2007 – December 31, 2007	US\$1,900,000
January 1, 2008 – December 31, 2008	US\$4,200,000
January 1, 2009 – December 31, 2009	US\$8,000,000
January 1, 2010 and thereafter	US\$10,000,000

(d) **Testing.** Compliance by each of the Borrowers with the financial covenants set forth in this Section 6.10 shall be tested as of each Fiscal Quarter, as set forth in the Compliance Certificate to be delivered under Section 5.01(c).

SECTION 6.11 Prepayments of Other Indebtedness; Modifications of Organizational Documents and Other Documents, etc Directly or indirectly:

(a) make (or give any notice in respect thereof) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any Subordinated Indebtedness (excluding payments permitted in accordance with Section 6.08);

(b) amend or modify, or permit the amendment or modification of, any provision of any Material Agreement in any manner that is materially adverse to the interests of the Lenders; or

(c) terminate, amend or modify any of its Organizational Documents or any agreement to which it is a party with respect to its Equity Interests (including any stockholders' agreement), or enter into any new agreement with respect to its Equity Interests, other than any such amendments or modifications or such new agreements which are not adverse in any material respect to the interests of the Lenders.

SECTION 6.12 Limitation on Creation of Subsidiaries. Establish, create or acquire any additional Subsidiaries without the prior written consent of the Required Lenders, unless such Subsidiary is a Permitted Investment or acquisition permitted under Section 6.07.

SECTION 6.13 Limitation on Accounting Changes. Make or permit any change in accounting policies or reporting practices, without the consent of the Required Lenders, which consent shall not be unreasonably withheld, except changes that are required by GAAP.

SECTION 6.14 Business. Engage (directly or indirectly) in any business other than those businesses in which it is engaged on the Closing Date (or, in the good faith judgment of the Board of Directors, which are substantially related thereto or are reasonable extensions thereof).

SECTION 6.15 Fiscal Year. Change its Fiscal Year end to a date other than December 31 or the Fiscal Quarters to a date other than March 31, June 30, September 30 and December 31, except as required by GAAP.

ARTICLE VII

EVENTS OF DEFAULT

SECTION 7.01 **Events of Default.** Upon the occurrence and during the continuance of the following events (“**Events of Default**”):

(a) **Non-payment of Principal.** Default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof (including a Principal Repayment Date) or at a date fixed for prepayment (whether voluntary or mandatory) thereof or by acceleration thereof or otherwise;

(b) **Non-payment of Interest or Fees.** Default shall be made in the payment of any interest on any Loan or any Fee or any other amount (other than an amount referred to in paragraph (a) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of three (3) Business Days;

(c) **Misrepresentation.** Any representation or warranty made or deemed made in or in connection with any Loan Document or the Borrowings hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(d) **Specific Obligations.** Default shall be made in the due observance or performance by any Borrower of any covenant, condition or agreement contained in Sections 5.02, 5.03(a), 5.07, 5.08(b), 5.09(b), 5.13 or in Article VI;

(e) **Other Obligations.** Default shall be made in the due observance or performance by any Borrower of any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraphs (a), (b) or (d) immediately above) and such default shall continue unremedied or shall not be waived for a period of thirty (30) days after written notice thereof from the Facility Agent to any Borrower;

(f) **Cross-Default.** Any Borrower or the Guarantor shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Material Indebtedness, when and as the same shall become due and payable beyond any applicable grace period, or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any Material Indebtedness if the effect of any failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such Material Indebtedness or a trustee or other representative on its or their behalf to cause, such Material Indebtedness to become due prior to its stated maturity or become subject to a mandatory offer to purchase by the obligor;

(g) **Involuntary Insolvency.** An involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of any Borrower or the Guarantor or of a substantial part of the property of any Borrower or the Guarantor under any bankruptcy, insolvency, receivership or similar law; (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Borrower or the Guarantor or for a substantial part of the property of

any Borrower or the Guarantor; or (iii) the winding-up or liquidation of any Borrower or the Guarantor; and such proceeding or petition shall continue undismissed for forty-five (45) days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) Voluntary Insolvency. Any Borrower or the Guarantor shall (i) voluntarily commence any proceeding or file any petition seeking relief under bankruptcy, insolvency, receivership or similar law; (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (g) above; (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Borrower or the Guarantor or for a substantial part of the property of any Borrower or the Guarantor; (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding; (v) make a general assignment for the benefit of creditors; (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due; (vii) take any action for the purpose of effecting any of the foregoing; or (viii) wind up or liquidate;

(i) Judgments. One or more judgments, orders or decrees for the payment of money in an aggregate amount in excess of the US Dollar Equivalent of US\$2,000,000 (to the extent not covered by independent third-party insurance and if insurance coverage is claimed, the relevant Borrower delivers a certificate signed by a Financial Officer of such Borrower certifying that such Borrower reasonably believes that the judgment or order is covered by insurance and that the relevant insurer will pay such amounts in due course) shall be rendered against any Borrower or any combination thereof and the same shall remain undischarged, unvacated or unbonded for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon properties of any Borrower to enforce any such judgment;

(j) Non-completion of Construction. Failure to substantially complete construction of the Internet Data Centers by Wah Loon Electrical Engineering Pte. Ltd. and Kajima Corporation by December 31, 2008;

(k) Security. Any security interest and Lien purported to be created by any Security Document in any Collateral shall cease to be in full force and effect, or shall cease to give the Collateral Agent, for the benefit of the Secured Parties, the Liens, rights, powers and privileges purported to be created and granted under such Security Document (including a perfected first priority security interest in and Lien on all of the Collateral thereunder (except as otherwise expressly provided in such Security Document)) in favor of the Collateral Agent, or shall be asserted by any Borrower not to be a valid, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) security interest in or Lien on the Collateral;

(l) Loan Documents. Any Loan Document or any material provisions thereof shall at any time and for any reason cease to be in full force or effect, or a proceeding shall be commenced by any Borrower seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Borrower shall repudiate or deny any portion of its liability or obligation for the Obligations;

(m) Site Leases. Any Site Lease shall cease to be in full force or effect or is not renewed in a manner acceptable to the Facility Agent or any other Material Agreement shall cease to be in full force or effect and such circumstances can reasonably be expected to have a Material Adverse Effect;

(n) **Business Prohibition.** Any Borrower shall be prohibited or otherwise restrained from conducting the business theretofore conducted by it in any manner that has or could reasonably be expected to result in a Material Adverse Effect by virtue of any determination, ruling, decision, decree or order of any court or Governmental Authority of competent jurisdiction; or

(o) **Taking.** Any portion of the Collateral shall be taken through condemnation, nationalization, expropriation or seizure or the value of such property shall be impaired through condemnation, which taking, impairment, nationalization, expropriation or seizure could reasonably be expected to have a Material Adverse Effect;

then, and in every such event (other than an event with respect to Guarantor or any Borrower described in paragraph (g) or (h) above), and at any time thereafter during the continuance of such event, the Facility Agent may, and at the request of the Required Lenders shall, by notice to the Administrative Borrower, take either or both of the following actions, at the same or different times: (i) terminate forthwith the Commitments and (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other Obligations of Borrowers accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrowers, anything contained herein or in any other Loan Document to the contrary notwithstanding; and in any event, with respect to Guarantor or any Borrower described in paragraph (g) or (h) above, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other Obligations of Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrowers, anything contained herein or in any other Loan Document to the contrary notwithstanding.

Notwithstanding anything to the contrary contained herein, except as the Required Lenders shall otherwise agree, the Facility Agent shall demand payment of the Obligations and commence and pursue such other Enforcement Actions as the Facility Agent in good faith deems appropriate within one hundred and twenty (120) days (except with respect to Events of Default described in Sections 7.01(g) and 7.01(h), the Facility Agent shall take such Enforcement Actions as it deems appropriate under the circumstances promptly upon receipt of notice) after the date of the receipt by the Facility Agent of written notice executed and delivered by the Required Lenders of an Event of Default, and requesting that the Facility Agent commence Enforcement Actions.

SECTION 7.02 **Application of Proceeds.** The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Collateral Agent of its remedies shall be applied, in full or in part, together with any other sums then held by the Collateral Agent pursuant to this Agreement, promptly by the Collateral Agent as follows:

(a) First, to the payment of all of the Collateral Agent's and its agents' and counsel's reasonable costs and expenses, fees, commissions and taxes of such sale, collection or other realization, and all expenses, liabilities and advances made or incurred by the Collateral Agent in connection therewith and all amounts for which the Collateral Agent is entitled to indemnification pursuant to the provisions of any Loan Document, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(b) Second, to the payment of all of the other Secured Parties' and their agents' and counsel's reasonable costs and expenses of such sale, collection or other realization and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith, together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(c) Third, without duplication of amounts applied pursuant to clauses (a) and (b) above, to the indefeasible payment in full in cash *pro rata*, of interest and other amounts constituting Obligations (other than principal) and any fees, premiums and scheduled periodic payments due under Hedging Agreements constituting Secured Obligations and any interest accrued thereon, in each case equally and ratably in accordance with the respective amounts thereof then due and owing;

(d) Fourth, to the indefeasible payment in full in cash *pro rata*, of principal amount of the Obligations and any premium thereon and any breakage, termination or other payments under Hedging Agreements constituting Secured Obligations and any interest accrued thereon; and

(e) Fifth, the balance, if any, to the Person lawfully entitled thereto (including the Borrowers or any of them or their successors or assigns) or as a court of competent jurisdiction may direct.

In the event that any such proceeds are insufficient to pay in full the items described in clauses (a) through (e) of this Section 7.02, the Borrowers shall remain liable, jointly and severally, for any deficiency.

SECTION 7.03 Remedies in Japan. Notwithstanding anything contained in Section 10.04 to the contrary, in connection with the exercise of any remedies with respect to Collateral located in Japan, each Lender agrees that, upon request of the Collateral Agent, such Lender shall assign its respective Loan to the Collateral Agent for the purpose of exercising such remedies on behalf of all such Lenders. Any Lender which fails to make such assignment upon request shall be deemed to have waived its rights regarding such remedies. Upon completion of the exercise of such remedies, Collateral Agent shall re-assign to each such Lender their respective loans, including the pro-rata proceeds of such remedies. Borrowers hereby acknowledge and agree that, to the extent there is a revision in Japanese Requirements of Law which permits Collateral Agent to act as an agent, trustee or representative on behalf of all Lenders in the exercise of such remedies, Borrowers will consent to any reasonable revisions in this Agreement and the Loan Documents to permit Collateral Agent to act in such capacity.

ARTICLE VIII

THE FACILITY AGENT AND THE COLLATERAL AGENT

SECTION 8.01 **Appointment and Authority.** Each of the Lenders hereby irrevocably appoints ABN AMRO Bank N.V., to act on its behalf as the Facility Agent and, with respect to Collateral located in Japan, to the fullest extent permitted by existing or future Requirements of Law, and subject to the provisions of Section 7.03, the Collateral Agent hereunder and under the other Loan Documents and authorizes such Agents to take such actions on its behalf and to exercise such powers as are delegated to such Agents by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Facility Agent, the Collateral Agent and the Lenders, and no Borrower shall have rights as a third party beneficiary of any of such provisions.

SECTION 8.02 **Rights as a Lender.** Each person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include each person serving as an Agent hereunder in its individual capacity. Such person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with a Borrower or any Subsidiary or other Affiliate thereof as if such person were not an Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 8.03 **Exculpatory Provisions.** No Agent shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, no Agent:

(a) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that such Agent shall not be required to take any action that, in its judgment or the judgment of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable Requirements of Law; and

(c) shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to a Borrower or any of its Affiliates that is communicated to or obtained by the person serving as such Agent or any of its Affiliates in any capacity.

No Agent shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 10.02) or (ii) in the absence of its own gross negligence or willful misconduct. No Agent shall be deemed to have knowledge of any Default unless and until notice describing such Default is given to such Agent by a Borrower or a Lender.

No Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement with reference to the Facility Agent or the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties.

SECTION 8.04 Reliance by Agent. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Facility Agent may presume that such condition is satisfactory to such Lender unless the Facility Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. Each Agent may consult with legal counsel (who may be counsel for Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05 Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through, or delegate any and all such rights and powers to, any one or more sub-agents appointed by such Agent. Each Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

SECTION 8.06 Resignation of Agent. Each Agent may at any time give notice of its resignation to the Lenders. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with Borrowers, to appoint a successor, which shall be a bank with offices in the United States and Hong Kong, or an Affiliate of any such bank with offices in the United States and Hong Kong. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within

thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above provided that, if the Agent shall notify Borrowers and the Lenders that no qualifying person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Collateral Agent on behalf of the Lenders under any of the Loan Documents, the retiring Collateral Agent shall continue to hold such collateral security as nominee until such time as a successor Collateral Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through an Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this paragraph. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article VIII and Section 10.03 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

SECTION 8.07 **Non-Reliance on Agent and Other Lenders** Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender further represents and warrants that it has reviewed each document made available to it on the Platform in connection with this Agreement and has acknowledged and accepted the terms and conditions applicable to the recipients thereof. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

ARTICLE IX

NATURE OF BORROWERS' OBLIGATIONS

SECTION 9.01 **Nature of Obligations**. Notwithstanding anything to the contrary contained elsewhere in this Agreement, it is understood and agreed by the various parties to this Agreement that all Obligations to repay principal of, interest on, and all other amounts with respect to, outstanding Loans (including, without limitation, all fees, indemnities, taxes and other Obligations in connection therewith or in connection with the related Commitments) shall constitute the joint and several obligations of all of the Borrowers. In addition to the direct obligations of the respective Borrowers with respect to Obligations as described above, all of the Obligations referred to above shall be guaranteed

pursuant to, and in accordance with terms of, the Guarantee. Each Borrower acknowledges and agrees that it is receiving direct benefits as a result of the extensions of credit to them hereunder, and that the Lenders may proceed against any or all the Borrowers with respect to any Obligations hereunder for the payment in full thereof.

SECTION 9.02 **Independent Obligation.** With respect to the Obligations, the obligations of each Borrower with respect thereto are independent of the obligations of the other Borrower or the Guarantor, and a separate action or actions may be brought and prosecuted against each Borrower, whether or not the other Borrower or Guarantor is joined in any such action or actions. Each Borrower waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof. Any payment by any Borrower or other circumstance which operates to toll any statute of limitations as to such Borrower shall, to the fullest extent permitted by law, operate to toll the statute of limitations as to each Borrower.

SECTION 9.03 **Authorization.** With respect to the Obligations, each Borrower authorizes the Agents and the Lenders without notice or demand (except as shall be required by applicable statute and cannot be waived), and without affecting or impairing its liability hereunder, from time to time to: (a) exercise or refrain from exercising any rights against any other Borrower or any guarantor or others or otherwise act or refrain from acting; (b) release or substitute any other Borrower, endorsers, guarantors or other obligors; (c) settle or compromise any of the Obligations of any other Borrower or the Guarantor, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of any Borrower to its creditors other than the Lenders; (d) apply any sums paid by any other Borrower or any other Person, howsoever realized to any liability or liabilities of such Borrower or other Person regardless of what liability or liabilities of such Borrower or other Person remain unpaid; and/or (e) consent to or waive any breach of, or act, omission or default under, this Agreement or any of the instruments or agreements referred to herein, or otherwise, by any other Borrower of any other Person.

SECTION 9.04 **Reliance.** It is not necessary for any Agent or any other Lenders to inquire into the capacity or powers of any Borrower or any of its Subsidiaries or the officers, directors, partners or agent acting or purporting to act on its behalf, and any Obligations made or created in reliance upon the professed exercise of such powers shall constitute the obligations of the respective Borrower hereunder.

SECTION 9.05 **Contribution; Subrogation.** No Borrower shall have any rights of contribution or subrogation with respect to any other Borrower as a result of payments made by it hereunder, in each case unless and until all Obligations have been repaid in full.

SECTION 9.06 **Waiver.** Each Borrower waives any right to require any Agent or the Lenders to (a) proceed against any other Borrower, the Guarantor or any other party, (b) proceed against or exhaust any security held from other Borrower, the Guarantor or any other party or (c) pursue any other remedy in any Agent's or the Lender's power whatsoever. Each Borrower waives any defense based on or arising out of any defense of any other Borrower, the Guarantor or any other party other than payment in full in cash of the respective Obligations, including, without limitation, any defense based on or arising out of

the disability of any other Borrower, the Guarantor or any other party, or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Borrower, in each case other than as a result of the payment in full in cash of the respective Obligations. The Agents and the Lenders may, at their election, foreclose on any security held by any Agent or the Secured Parties by one or more judicial or non-judicial sales, whether or not every aspect of any such sale is commercially reasonable, or exercise any other right or remedy any Agent and the Lenders may have against any Borrower or any other party, or any security, without affecting or impairing in any way the liability of any Borrower hereunder except to the extent the respective Obligations have been paid in full in cash. Each Borrower hereunder, except to the extent of their respective Obligations, have been paid in full in cash. Each Borrower waives, to the fullest extent permitted by law, any defense arising out of any such election by any Agent and the Lenders even though such election operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of such Borrower against any other Borrower or the Guarantor or party or any security.

SECTION 9.07 **Subordinations.** Any claim which any Borrower may have against any other Borrower with respect to any payments to the Facility Agent or the Lenders, hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations.

SECTION 9.08 **Effective.** The provisions of this Article IX shall remain in effect until all of the Obligations shall have been paid in full.

ARTICLE X MISCELLANEOUS

SECTION 10.01 **Notices.**

(a) **Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows:

(i) if to Equinix Singapore or to Equinix Japan, to:

9 Temasek Boulevard #17-02
Suntec Tower Two Singapore 038989
Attention: General Counsel
Tel No: (65) 6622-0100
Fax: (65) 6820-5001

(ii) copy for Guarantor, to:

Equinix, Inc.
301 Velocity Way, 5th Floor
Foster City, California 94404
Attention: Treasurer
Fax: 1 (650) 513-7913
Email: mmock@equinix.com

with a copy to:

Equinix, Inc.
301 Velocity Way, 5th Floor
Foster City, California 94404
Attention: General Counsel
Fax: 1 (650) 513-7913

(iii) if to the Facility Agent or the Collateral Agent, to it at:

ABN AMRO Bank N.V.
One Raffles Quay (ORQ)
South Tower
Level 26
Singapore 048583
Attention: Yong Peck Yuen / Fessica Goh, Agency Asia
Fax: (65) 6518-6035 / (65) 6518-6012

(iv) if to a Lender, to it at its address (or telecopier number) set forth in Schedule 1.01(a) or Schedule 1.01(c) as applicable.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may (subject to Section 10.01(d)) be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Facility Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Facility Agent that it is incapable of receiving notices under such Article by electronic communication. The Facility Agent, the Collateral Agent or any Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it (including as set forth in Section 10.01(d)); provided that approval of such procedures may be limited to particular notices or communications.

Unless the Facility Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt

of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement); provided that, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

(d) Posting. (i) Each Borrower hereby agrees that it will provide to the Facility Agent all information, documents and other materials that it is obligated to furnish to the Facility Agent pursuant to this Agreement and any other Loan Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (A) relates to a request for a new Borrowing or other extension of credit (including any election of an interest rate or interest period relating thereto), (B) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (C) provides notice of any Default under this Agreement or (D) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any borrowing or other extension of credit hereunder (all such non-excluded communications, collectively, the “**Communications**”), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to the Facility Agent at karen.heng@sg.abnamro.com and yann.leng.chew@sg.abnamro.com or at such other e-mail address(es) provided to Administrative Borrower from time to time or in such other form, including hard copy delivery thereof, as the Facility Agent shall require. In addition, each Borrower agrees to continue to provide the Communications to the Facility Agent in the manner specified in this Agreement or any other Loan Document or in such other form, including hard copy delivery thereof, as the Facility Agent shall require. Nothing in this Section 10.01 shall prejudice the right of the Agents, any Lender or any Borrower to give any notice or other communication pursuant to this Agreement or any other Loan Document in any other manner specified in this Agreement or any other Loan Document or as any such Agent shall require.

(ii) To the extent consented to by the Facility Agent in writing from time to time, Facility Agent agrees that receipt of the Communications by the Facility Agent at its e-mail address(es) set forth above shall constitute effective delivery of the Communications to the Facility Agent for purposes of the Loan Documents; provided that Borrowers shall also deliver to the Facility Agent an executed original of each Compliance Certificate required to be delivered hereunder.

(iii) Notwithstanding the foregoing, Communications required to be delivered pursuant to Sections 5.01(a), (b) or (e) (to the extent any such documents are included in materials otherwise filed with the United States Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which the Guarantor post such documents, or provides a link thereto on the Guarantor’s website on the Internet at the Guarantor’s website address of www.equinix.com (or such other website address as Borrowers may provide to the Facility

Agent in writing from time to time); provided that: (x) to the extent the Facility Agent is otherwise unable to receive any such electronically delivered documents, Borrowers shall, upon request by the Facility Agent, deliver paper copies of such documents to the Facility Agent, in number sufficient for each Lender, until a written request to cease delivering paper copies is given by the Facility Agent and (y) Borrowers shall notify the Facility Agent (by telecopier or electronic mail) of the posting of any such documents or provide to the Facility Agent by electronic mail electronic versions (i.e., soft copies) of such documents.

(iv) Each Borrower further agrees that the Facility Agent may make the Communications available to the Lenders by posting the Communications on Intralinks or a substantially similar electronic transmission system (the “**Platform**”). The Platform is provided “as is” and “as available.” The Agents do not warrant the accuracy or completeness of the Communications, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Agent in connection with the Communications or the Platform. In no event shall the Facility Agent or any of its Related Parties have any liability to the Borrowers, any Lender or any other Person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Borrower’s or the Facility Agent’s transmission of communications through the Internet, except to the extent the liability of such Person is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Person’s gross negligence or willful misconduct.

SECTION 10.02 Waivers; Amendment.

(a) **Generally.** No failure or delay by any Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of each Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Borrower therefrom shall in any event be effective unless the same shall be permitted by this Section 10.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether any Agent, any Lender may have had notice or knowledge of such Default at the time. No notice or demand on a Borrower in any case shall entitle such Borrower or other Borrowers, to any other or further notice or demand in similar or other circumstances.

(b) **Required Consents.** Subject to Section 10.02(c) neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended, supplemented or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Borrowers and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Facility Agent, the Collateral Agent (in the case of any Security Document) and each Borrower that is a party thereto, in each case with the written consent of the Required Lenders; provided that no such agreement shall be effective if the effect thereof would:

(i) increase the Commitment of any Lender without the written consent of such Lender (it being understood that no amendment, modification, termination, waiver or consent with respect to any condition precedent, covenant, Default or Event of Default shall constitute an increase in the Commitment of any Lender);

(ii) reduce the principal amount of any Loan or reduce the rate of interest thereon (other than interest pursuant to Section 2.07(d)), or reduce any Fees payable hereunder, or change the form or currency of payment of any Obligation, without the written consent of each Lender directly affected thereby (it being understood that any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in the rate of interest for purposes of this clause (ii));

(iii) (A) change the scheduled final maturity of any Loan, or any scheduled date of payment of or the installment otherwise due on the principal amount of any Loan under Section 2.09, (B) change the amount of, waive or excuse any such payment (other than waiver of any increase in the interest rate pursuant to Section 2.07(d)), or (C) postpone the scheduled date of expiration of any Commitment beyond the end of the Availability Period, in any case, without the written consent of each Lender directly affected thereby;

(iv) increase the maximum duration of Interest Periods hereunder, without the written consent of each Lender directly affected thereby;

(v) permit the assignment or delegation by any Borrower of any of its rights or obligations under any Loan Document, without the written consent of each Lender;

(vi) release Guarantor, or limit its liability in respect of the Guarantee, without the written consent of each Lender;

(vii) release all or a substantial portion of the Collateral from the Liens of the Security Documents or alter the relative priorities of the Secured Obligations entitled to the Liens of the Security Documents, in each case without the written consent of each Lender;

(viii) change Sections 2.14(b), (c) or (d) in a manner that would alter the *pro rata* sharing of payments or setoffs required thereby or any other provision in a manner that would alter the *pro rata* allocation among the Lenders of Loan disbursements, including the requirements of Section 2.02(a), without the written consent of each Lender directly affected thereby;

(ix) change any provision of this Section 10.02(b) or Section 10.02(c), without the written consent of each Lender directly affected thereby;

(x) change the percentage set forth in the definition of "Required Lenders," or any other provision of any Loan Document (including this Section

10.02(b)) specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender, other than to increase such percentage or number or to give any additional Lender or group of Lenders such right to waive, amend or modify or make any such determination or grant any such consent; and

(xi) change or waive any provision of this Article X as the same applies to any Agent, or any other provision hereof as the same applies to the rights or obligations of any Agent, in each case without the written consent of such Agent;

provided, further, that any waiver, amendment or modification prior to the completion of the primary syndication of the Commitments and Loans (as determined by the Arranger) may not be effected without the written consent of the Arranger.

(c) Collateral. Without the consent of any other Person, the applicable Borrower and the Facility Agent and/or Collateral Agent may (in its or their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable Requirements of Law.

SECTION 10.03 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. Borrowers shall pay (i) all reasonable out of pocket expenses incurred by the Facility Agent, the Collateral Agent and their respective Affiliates (including the reasonable fees and charges of outside counsel (but not internal) and disbursements of any counsel for the Facility Agent and the Collateral Agent) in connection with the establishment of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendment, amendment and restatement, modification or waiver of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all out of pocket expenses incurred by the Facility Agent, the Collateral Agent or any Lender (including the fees and charges of outside counsel (but not internal) and disbursements of any counsel for the Facility Agent, the Collateral Agent or any Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 10.03, or (B) in connection with the Loans made hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans, and (iii) all documentary and similar taxes and charges in respect of the Loan Documents.

(b) Indemnification by Borrower. Each Borrower, jointly and severally, shall indemnify the Facility Agent (and any sub-agent thereof), the Collateral Agent (and any sub-agent thereof), and each Lender, and each Related Party of any of the foregoing persons (each such person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees,

charges and disbursements of any counsel for any Indemnitee, and also including (but subject to the limitations set forth in Section 2.15) Indemnified Taxes and Other Taxes in respect of all of the foregoing) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or the Guarantor arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document, or any amendment, amendment and restatement, modification or waiver of the provisions hereof or thereof, or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release or threatened release of Hazardous Materials on, at, under or from any property owned, leased or operated by any Borrower at any time, or any Environmental Claim related in any way to any Borrower, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by a Borrower or the Guarantor, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (B) result from a claim brought by a Borrower or the Guarantor against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if a Borrower or the Guarantor has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that any Borrower for any reason fails to indefeasibly pay any amount required under paragraphs (a) or (b) of this Section 10.03 to be paid by it to the Facility Agent (or any sub-agent thereof), the Collateral Agent, or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Facility Agent (or any such sub-agent), the Collateral Agent (or any sub-agent thereof) or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Facility Agent (or any such sub-agent) or the Collateral Agent (or any sub-agent thereof) in its capacity as such, or against any Related Party of any of the foregoing acting for the Facility Agent (or any such sub-agent) or the Collateral Agent (or any sub-agent thereof) in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Section 2.14. For purposes hereof, a Lender's "*pro rata* share" shall be determined based upon its share of the sum of the total outstanding Loans and unused Commitments at the time.

(d) Waiver of Consequential Damages, etc. To the fullest extent permitted by applicable Requirements of Law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section 10.03 shall be payable not later than five (5) Business Days after demand therefor.

SECTION 10.04 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Facility Agent, the Collateral Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of paragraph (b) of this Section 10.04, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section 10.04 or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section 10.04 (and any other attempted assignment or transfer by any Borrower or any Lender shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section 10.04 and, to the extent expressly contemplated hereby, the other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that:

(i) if no Default or event of Default has occurred, the assigning Lender shall provide the Administrative Borrower written notice of such assignment at least ten (10) days before any such assignment, which notice shall indicate the amount to be assigned and identify the relevant Eligible Assignee;

(ii) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Facility Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than the US Dollar Equivalent of US\$2,000,000, unless each of the Facility Agent and, so long as no Default has occurred and is continuing, Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed);

(iii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned; and

(iv) the parties to each assignment shall execute and deliver to the Facility Agent an Assignment and Assumption, together with a processing and recordation fee of US\$3,500 (provided however that such fee shall not be required with respect to an assignment to an Approved Fund). The Facility Agent and Lenders shall have no duty to verify the authenticity of the signature appearing on an Assignment and Assumption or any other written approval.

Subject to acceptance and recording thereof by the Facility Agent pursuant to paragraph (c) of this Section 10.04, from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.12, 2.13, 2.15 and 10.03 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section 10.04.

(c) Register. The Facility Agent, acting solely for this purpose as an agent of Borrowers, shall maintain at one of its offices in Singapore a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, and Borrowers, the Facility Agent, and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by any Borrower, the Collateral Agent, and any Lender (with respect to its own interest only), at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower, the Facility Agent, or any other Lender sell participations to any Person (other than a natural person or any Borrower or any of Borrowers' Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrowers, the Facility Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. In the event that any Lender sells participations in a Loan, such lender shall maintain a register on which it enters the name of all participants in the Loans held by it (the "**Participant Register**"). A Loan (and the Note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register. Any participant of such Loan (and the Note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. Any such Participant Register shall be available for inspection by the Administrative Borrower and the Facility Agent at any reasonable time and from time to time upon reasonable prior notice.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, modification or waiver of any provision of the Loan Documents; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clauses (i), (ii) or (iii) of the first proviso to Section 10.02(b) that affects such Participant. Subject to paragraph (e) of this Section, Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.15 (subject to the requirements of those Sections) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section.

(e) Limitations on Participant Rights. A Participant shall not be entitled to receive any greater payment under Sections 2.12, 2.13 and 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the selling Borrower's prior written consent.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a central monetary authority (including the Federal Reserve Bank); provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. In the case of any Lender that is a fund that invests in bank loans, such Lender may, without the consent of any Borrower or the Facility Agent, collaterally assign or pledge all or any portion of its rights under this Agreement, including the Loans and Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Requirement of Law.

SECTION 10.05 Survival of Agreement. All covenants, agreements, representations and warranties made by the Borrowers or the Guarantor in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agents, or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable

under this Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Sections 2.12, 2.13 and 2.15 and Article X shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.

SECTION 10.06 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Facility Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Facility Agent and when the Facility Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 10.07 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, and each of their respective Affiliates are hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, or any such Affiliate to or for the credit or the account of any Borrower or the Guarantor against any and all of the obligations of Borrowers or the Guarantor now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of a Borrower or the Guarantor may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender and their respective Affiliates under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, or their respective Affiliates may have. Each Lender agrees to notify the Administrative Borrower and the Facility Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 10.09 Governing Law; Jurisdiction; Consent to Service of Process

(a) Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

(b) Submission to Jurisdiction. Each Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Facility Agent, or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Borrower or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. Each Borrower hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable Requirements of Law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 10.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable Requirements of Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in any action or proceeding arising out of or relating to any Loan Document, in the manner provided for notices (other than telecopier) in Section 10.01. Nothing in this Agreement or any other Loan Document will affect the right of any party hereto to serve process in any other manner permitted by applicable Requirements of Law.

(e) Appointment of Process Agent. The Guarantor and each Borrower shall appoint, without power of revocation, CT Corporation with address at 818 West Seventh Street, Los Angeles, CA 90017 as their agent to accept and acknowledge on its behalf service of any and all process which may be served in any action, proceeding or counterclaim in any way relating to or arising out of this Agreement.

SECTION 10.10 Waiver of Jury Trial EACH BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE REQUIREMENTS OF LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO

REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10.

SECTION 10.11 **Headings**. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 10.12 **Confidentiality**.

(a) Each of the Facility Agent, Collateral Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to such party's Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and other representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over it, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iv) to any other party hereto, (v) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section 10.12, to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (B) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrowers and its obligations, (vii) with the consent of the other non-disclosing parties or (viii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section 10.12 or (B) becomes available to the Facility Agent, Collateral Agent or any Lender, or any of their respective Affiliates on a nonconfidential basis from a source other than Borrowers or Guarantor.

(b) For purposes of this Section 10.12, "Information" means information that is confidential, proprietary or otherwise not available to the public relating to any of the Borrowers, Guarantor or their respective Subsidiaries received from Borrowers, Guarantor or any of their respective Subsidiaries, other than any such information that is available on a nonconfidential basis prior to disclosure by Borrowers, Guarantor or any of their respective Subsidiaries, provided that, in the case of information received from Borrowers, Guarantor or any of their respective Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.12 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(c) Each Borrower agrees to maintain the confidentiality of the Loan Documents, related term sheets, agency letters, commitment letters, any separate letter agreements with respect to fees payable to the Facility Agent and such other information or document relating to the preparation, negotiation, execution, delivery and administration of the Loan Documents, unless otherwise required by applicable Requirements of Law.

SECTION 10.13 **USA PATRIOT Act Notice.** Each Lender that is subject to the Act (as hereinafter defined) and the Facility Agent (for itself and not on behalf of any Lender) hereby notifies each Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies each Borrower, which information includes the name, address and tax identification number of each Borrower and other information regarding each Borrower that will allow such Lender or the Facility Agent, as applicable, to identify each Borrower in accordance with the Act. This notice is given in accordance with the requirements of the Act and is effective as to the Lenders and the Facility Agent.

SECTION 10.14 **Interest Rate Limitation.** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable Requirements of Law (collectively, the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable Requirements of Law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Maximum Rate to the date of repayment, shall have been received by such Lender.

SECTION 10.15 **Obligations Absolute.** To the fullest extent permitted by applicable Requirements of Law, all obligations of the Borrowers hereunder shall be absolute and unconditional irrespective of:

- (a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Borrower;
- (b) any lack of validity or enforceability of any Loan Document or any other agreement or instrument relating thereto against any Borrower;
- (c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any Loan Document or any other agreement or instrument relating thereto;
- (d) any exchange, release or non-perfection of any other Collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Obligations;
- (e) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect hereof or any Loan Document; or

(f) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Borrowers.

SECTION 10.16 Judgment Currency.

(a) Each Borrower's obligation hereunder and under the other Loan Documents to make payments in the applicable Approved Currency (pursuant to such obligation, the "**Obligation Currency**") shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by the Facility Agent or the respective Lender of the full amount of the Obligation Currency expressed to be payable to the Facility Agent or such Lender under this Agreement or the other Loan Documents. If, for the purpose of obtaining or enforcing judgment against any Borrower in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than the Obligation Currency (such other currency being hereinafter referred to as the "**Judgment Currency**") an amount due in the Obligation Currency, the conversion shall be made at the rate of exchange (as quoted by the Facility Agent or if the Facility Agent does not quote a rate of exchange on such currency, by a known dealer in such currency designated by the Facility Agent) determined, in each case, as of the Business Day immediately preceding the day on which the judgment is given (such Business Day being hereinafter referred to as the "**Judgment Currency Conversion Date**").

(b) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion Date and the date of actual payment of the amount due, Borrowers covenant and agree to pay, or cause to be paid, such additional amounts, if any (but in any event not a lesser amount) as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate of exchange prevailing on the Judgment Currency Conversion Date.

(c) For purposes of determining the rate of exchange for this Section 10.16, such amounts shall include any premium and costs payable in connection with the purchase of the Obligation Currency.

SECTION 10.17 Administrative Borrower as Agent for the Borrowers.

(a) Appointment. Each Borrower, hereby irrevocably appoints Equinix Singapore as the borrowing agent and attorney-in-fact for each Borrower which appointment shall remain in full force and effect unless and until the Facility Agent shall have received prior written notice signed by all of the Borrowers that such appointment has been revoked and that another Borrower has been appointed as Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (i) to provide to the Facility Agent and receive from the Facility Agent all notices with respect to Loans obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and the other Loan Documents and (ii) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Loans and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement and the other Loan Documents.

(b) Reliance on Notices. The Facility Agent and each Lender shall be entitled to rely conclusively on the Administrative Borrower's authority to deliver on behalf of the Borrowers all documents, notices, requests or certificates required under or in connection with this Agreement until the Facility Agent receives written notice to the contrary in accordance with Section 10.17(a). The Borrowers hereby acknowledge and agree that the Facility Agent and each Lender may conclusively rely on any and all documents, notices, requests or certificates executed and delivered by the Administrative Borrower as if such notices, requests or certificates were executed and delivered by an Authorized Officer of the relevant Borrower.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

EQUINIX SINGAPORE PTE. LTD.

By: /s/ Ong Wee Gee

Name: Ong Wee Gee

Title: Director

EQUINIX JAPAN K.K.

By: /s/ Lee Yau Tat

Name: Lee Yau Tat

Title: Director

ABN AMRO BANK N.V., as Facility Agent

By: /s/ Daniel P. de Blocq van Scheltinga

Name: Daniel P. de Blocq van Scheltinga

Title: Executive Director
Head of Asset Based Finance, Asia

By: /s/ Krishna Suryanarayanan

Name: Krishna Suryanarayanan

Title: Director, Asset Based Finance
ABN Amro Bank N.V., Hong Kong

ABN AMRO BANK N.V., as Arranger

By: /s/ Daniel P. de Blocq van Scheltinga

Name: Daniel P. de Blocq van Scheltinga

Title: Executive Director
Head of Asset Based Finance, Asia

By: /s/ Krishna Suryanarayanan

Name: Krishna Suryanarayanan

Title: Director, Asset Based Finance
ABN Amro Bank N.V., Hong Kong

ABN AMRO BANK N.V., as Collateral Agent

By: /s/ Daniel P. de Blocq van Scheltinga

Name: Daniel P. de Blocq van Scheltinga

Title: Executive Director
Head of Asset Based Finance, Asia

By: /s/ Krishna Suryanarayanan

Name: Krishna Suryanarayanan

Title: Director, Asset Based Finance
ABN Amro Bank N.V., Hong Kong

ABN AMRO BANK N.V., TOKYO BRANCH, as a Lender

By: /s/ Shyong Lee

Name: Shyong Lee

Title: Director

By: /s/ Krishna Suryanarayanan

Name: Krishna Suryanarayanan

Title: Director, Asset Based Finance

ABN Amro Bank N.V., Hong Kong

ABN AMRO BANK N.V., SINGAPORE BRANCH, as a Lender

By: /s/ Daniel P. de Blocq van Scheltinga

Name: Daniel P. de Blocq van Scheltinga

Title: Executive Director

Head of Asset Based Finance, Asia

By: /s/ Krishna Suryanarayanan

Name: Krishna Suryanarayanan

Title: Director, Asset Based Finance

ABN Amro Bank N.V., Hong Kong

GUARANTEE

dated as of August 31, 2007

among

EQUINIX, INC. ("Guarantor")

**ABN AMRO BANK, N.V.,
as Facility Agent**

and

**ABN AMRO BANK, N.V.,
as Collateral Agent**

TABLE OF CONTENTS

ARTICLE I

DEFINITIONS

SECTION 1.01.	Facility Agreement	1
SECTION 1.02.	Other Defined Terms	1

ARTICLE II

GUARANTEE

SECTION 2.01.	Guarantee	2
SECTION 2.02.	Guarantee of Payment	2
SECTION 2.03.	No Limitations	3
SECTION 2.04.	Agreement To Pay; Subrogation	5
SECTION 2.05.	Warranties, Representations, Covenants and Agreements	6
SECTION 2.06.	Indebtedness or Other Secured Obligations of Guarantor	8
SECTION 2.07.	Senior Indebtedness	8
SECTION 2.08.	Application of Payments	8

ARTICLE III

INDEMNITY, SUBROGATION AND SUBORDINATION

SECTION 3.01.	Subrogation; Subordination	8
SECTION 3.02.	Impairment of Subrogation Rights; Waivers of Rights Under the Anti-Deficiency Rules	9
SECTION 3.03.	Subordination	10

ARTICLE IV

MISCELLANEOUS

SECTION 4.01.	Notices	11
SECTION 4.02.	Waivers; Amendment	11
SECTION 4.03.	Successors and Assigns	11
SECTION 4.04.	Survival of Agreement	12
SECTION 4.05.	Counterparts; Effectiveness; Several Agreement	12
SECTION 4.06.	Severability	12
SECTION 4.07.	Right of Set-Off	12
SECTION 4.08.	Governing Law; Jurisdiction; Consent to Service of Process	13
SECTION 4.09.	Waiver of Jury Trial	13
SECTION 4.10.	Headings	14
SECTION 4.11.	Termination or Release	14

RECITALS:

- (A) Equinix Singapore Pte Ltd. (“**Equinix Singapore**”) and Equinix Japan K.K. (“**Equinix Japan**”) and collectively with Equinix Singapore, and any “Additional Borrowers” (as defined in the Facility Agreement referred to below) the “**Borrowers**”), the financial institutions referred thereto as Lenders (the “**Lenders**”), the Facility Agent and the Collateral Agent have entered into a Facility Agreement dated as of August 31, 2007 (as amended, supplemented or otherwise modified from time to time, the “**Facility Agreement**”).
- (B) The Lenders have agreed to extend credit to the Borrowers subject to the terms and conditions set forth in the Facility Agreement. The obligations of the Lenders to extend such credit are conditioned upon, among other things, the execution and delivery of this Guarantee.
- (C) The Guarantor is the parent company of the Borrowers and will derive substantial benefits from the extension of credit to the Borrowers pursuant to the Facility Agreement.
- (D) The Guarantor is willing to execute and deliver this Guarantee in order to induce the Lenders to extend such credit.

Accordingly, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Facility Agreement.

(a) Capitalized terms used in this Guarantee and not otherwise defined herein have the meanings specified in the Facility Agreement.

(b) The rules of construction specified in Article I of the Facility Agreement also apply to this Guarantee.

SECTION 1.02. Other Defined Terms. As used in this Guarantee, the following terms have the meanings specified below:

“**Code**” means the United States Internal Revenue Code of 1986.

“**Controlled Group**” means any Person or Persons acting together which would constitute a “group” for purposes of Section 13(d) of the Securities Exchange Act of 1934, together with all affiliates and associates (as defined in Rule 12b-2 under the Securities Exchange Act of 1934) thereof.

“**Employee Benefit Plan**” means an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Part 3 of Title I of ERISA or Section 412 of the Code and is either (a) maintained by any Person or any member of a Controlled Group for employees of such Person or any member of such Controlled Group or (b) maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which such Person or any member of a Controlled Group is then making or has any obligation to make contributions or, within the preceding five plan years, has made or has had any obligation to make contributions.

“**ERISA Affiliate**” means with respect to any Person, any trade or business (whether or not incorporated) that, together with such person, is treated as a single employer under Section 414 of the Code.

“**Guarantee Parties**” means the Borrowers and the Guarantor.

“**Multiemployer Plan**” shall mean a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which any company or any ERISA Affiliate is then making or accruing an obligation to make contributions; (b) to which any Company or any ERISA Affiliate has within the preceding five plan years made contributions; or (c) with respect to which any company could incur liability.

ARTICLE II

GUARANTEE

SECTION 2.01. Guarantee. The Guarantor unconditionally guarantees, as a primary obligor and not merely as a surety, the due and punctual payment and performance of the Secured Obligations. The Guarantor further agrees that the Secured Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any extension or renewal of any Obligation. The Guarantor waives presentment to, demand of payment from and protest to the Borrowers of any of the Secured Obligations, and also waives notice of acceptance of its guarantee and notice of protest for non-payment.

SECTION 2.02. Guarantee of Payment. This is an irrevocable, absolute, continuing guarantee of payment and performance. This Guarantee may not be revoked by Guarantor and shall continue to be effective with respect to the Secured Obligations arising or created after any attempted revocation by Guarantor and after Guarantor’s dissolution (in which event this Guarantee shall be binding upon Guarantor’s successors and assigns). It is the intent of Guarantor that the obligations and liabilities of Guarantor hereunder are absolute and

unconditional under any and all circumstances and that until the Secured Obligations are fully, finally and indefeasibly satisfied, such obligations and liabilities shall not be discharged or released in whole or in part, by any act or occurrence which might, but for the provisions of this Guarantee, be deemed a legal or equitable discharge or release of Guarantor. Each and every default in payment of any amounts due or performance of any obligation required under this Guarantee shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises, or, in the discretion of the Facility Agent, may be brought as a consolidated suit or suits. The Guarantor further agrees that its guarantee hereunder constitutes a guarantee of payment when due and not merely of collection, and waives any right to require that any resort be had by the Facility Agent or any other Secured Party to any security held for the payment of the Secured Obligations, or to any balance of any deposit account or credit on the books of the Facility Agent or any other Secured Party in favor of the Borrowers or any other person.

SECTION 2.03. No Limitations.

(a) Except for termination of a Guarantor's obligations hereunder as expressly provided in Section 4.12, the obligations of the Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Secured Obligations, or otherwise. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be discharged or impaired or otherwise affected by:

(i) the failure of the Facility Agent or any other Secured Party to assert any claim or demand or to enforce any right or remedy under the provisions of any Loan Document or otherwise;

(ii) any and all rescissions, waivers, extensions, restatements, supplements, adjustments, indulgences, forbearances, compromises, amendments or modifications of, or any release from any of the terms or provisions of, any Loan Document or any other agreement;

(iii) the insolvency, bankruptcy, rearrangement, adjustment, composition, liquidation, disability, dissolution or lack of power of any of the Borrowers or any other party at any time liable for the payment of all or part of the indebtedness evidenced by the Facility Agreement or any Secured Obligations; or any dissolution, consolidation or merger of any of the Borrowers or Guarantor, or any sale, lease or transfer of any or all of the assets of any of the Borrowers or Guarantor, or any changes in the ownership, partners or members of any of the Borrowers or Guarantor;

(iv) the invalidity, illegality or unenforceability of all or any part of the indebtedness evidenced by the Facility Agreement or any Secured Obligations, or any document or agreement executed in connection with the indebtedness evidenced by the Notes or any Secured Obligations, for any reason whatsoever, including, without limitation, the fact that the indebtedness evidenced by the Notes, or any part thereof exceeds the amount permitted by law, the act of creating the indebtedness evidenced by the Notes or any Secured Obligations or any part thereof is ultra vires, the representatives executing the Notes or the other Loan Documents or otherwise creating the indebtedness evidenced by the Notes or any Secured Obligations acted in excess of their authority, the indebtedness evidenced by the Notes violates applicable usury laws, Borrowers have valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the indebtedness evidenced by the Notes or any Secured Obligations wholly or partially uncollectible from Borrower, the creation, performance or repayment of the indebtedness evidenced by the Notes or any Secured Obligations is illegal, uncollectible, legally impossible or unenforceable, or any of the other Loan Documents pertaining to the indebtedness evidenced by the Notes or any Secured Obligations are irregular or not genuine or authentic;

(v) the taking or accepting of any other security, collateral or guarantee, or other assurance of the payment or performance, for all or any of the indebtedness evidenced by the Notes or any of the Secured Obligations;

(vi) the release of any security held by the Facility Agent or any other Secured Party for the Secured Obligations;

(vii) the failure of any Lender or any other party to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such collateral, property or security;

(viii) the fact that any collateral, security, security interest or lien contemplated or intended to be given, created or granted as security for the repayment of the indebtedness evidenced by the Notes or the Secured Obligations shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or lien, it being recognized and agreed by Guarantor that Guarantor is not entering into this Guarantee in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the collateral for the indebtedness evidenced by the Notes or the Secured Obligations;

(ix) any payment by Borrowers to Lender held to constitute a preference under the Bankruptcy Code, or for any reason Lender is required to refund such payment or pay such amounts to such Borrowers, or any other person;

(x) any other action taken or omitted to be taken with respect to the Loan Documents, the indebtedness evidenced by the Notes or the Secured Obligations, the security and collateral therefor, whether or not such action or omission prejudices Guarantor or increases the likelihood that Guarantor will be required to pay the Secured Obligations;

(xi) any default, failure or delay, willful or otherwise, in the performance of the Secured Obligations; or

(xii) any other act or omission that may or might in any manner or to any extent vary the risk of the Guarantor or otherwise operate as a discharge of the Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of all the Secured Obligations). The Guarantor expressly authorizes the Secured Parties to take and hold security for the payment and performance of the Secured Obligations, to exchange, waive or release any or all such security (with or without consideration), to enforce or apply such security and direct the order and manner of any sale thereof in their sole discretion or to release or substitute any one or more other guarantors or obligors upon or in respect of the Secured Obligations, all without affecting the obligations of the Guarantor hereunder.

(b) It is the unambiguous and unequivocal intention of Guarantor that Guarantor shall be obligated to pay and perform the Secured Obligations when due, notwithstanding any occurrence, circumstance, event, action or omission whatsoever, whether contemplated or un contemplated, and whether or not otherwise or particularly described herein, except for the full and final payment and satisfaction of all Secured Obligations.

SECTION 2.04. Agreement To Pay; Subrogation. In furtherance of the foregoing and not in limitation of any other right that the Facility Agent or any other Secured Party has at law or in equity against the Guarantor by virtue hereof, upon the failure of the Borrowers to pay any Secured Obligation when and as the same shall become due, whether at maturity, by acceleration, after notice of prepayment or otherwise, the Guarantor hereby promises to and will forthwith pay, or cause to be paid, to the Facility Agent for distribution to the Secured Parties in cash the amount of such unpaid Secured Obligation. It shall not be necessary for any of the Lenders, in order to enforce such payment or performance by Guarantor, first to institute suit or exhaust its remedies against any of the Borrowers, or others liable to pay or perform such Secured Obligations, or to enforce its rights against any security which shall ever have been given to secure the Secured Obligations. The Lenders shall not be required to mitigate damages or take any other action to reduce, collect or enforce the indebtedness evidenced by the Notes or Secured Obligations. No set-off, counterclaim, reduction, or diminution of any obligations, or any defense of any kind or nature which Guarantor has or may hereafter have against Borrowers or any of the Lenders shall be available hereunder to Guarantor. Upon payment by the Guarantor of any sums to the Facility Agent as provided above, all rights of the Guarantor against the Borrowers arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subject to Article III.

SECTION 2.05. Warranties, Representations, Covenants and Agreements. Guarantor warrants and represents, as follows:

(i) It (a) is duly organized and validly existing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to carry on its business as now conducted and as presently contemplated to be conducted and to make the guarantee hereunder, and to execute and deliver each Loan Document to which it is a party, and to consummate the transactions contemplated thereby and to own and lease its property and (c) is qualified and in good standing (to the extent such concept is applicable in the applicable jurisdiction) to do business in every jurisdiction where such qualification is required, except in such jurisdictions where the failure to so qualify or be in good standing, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect;

(ii) The transactions contemplated by this Guarantee have been duly authorized by all necessary action on the part of the Guarantor. This Guarantee has been duly executed and delivered by the Guarantor and constitutes, and each other Loan Document to which the Guarantor is to be a party, when executed and delivered by the Guarantor, will constitute, a legal, valid and binding obligation of the Guarantor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law;

(iii) The transactions contemplated by this Guarantee (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect and (ii) consents, approvals, registrations, filings, permits or actions the failure to obtain or perform which could not reasonably be expected to result in a Material Adverse Effect, (b) will not violate the Organizational Documents of the Guarantor, (c) will not violate any Requirement of Law, (d) will not violate or result in a default or require any consent or approval under any indenture, agreement or other instrument binding upon the Guarantor or its property, or give rise to a right thereunder to require any payment to be made by the Guarantor, except those violations or defaults that could not reasonably be expected to result in a Material Adverse Effect and (e) will not result in the creation or imposition of any Lien on any property of the Guarantor, except Liens created by the Loan Documents and Permitted Liens;

(iv) Guarantor has received, or will receive, direct or indirect benefit from the making of this Guarantee, the making of the Loans and the entering into and execution of the Loan Documents in connection therewith;

(v) The Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances

bearing upon the risk of nonpayment of the Secured Obligations, and the nature, scope and extent of the risks that the Guarantor assumes and incurs hereunder, and agrees that none of the Facility Agent or the other Secured Parties will have any duty to advise the Guarantor of information known to it or any of them regarding such circumstances or risks;

(vi) All financial statements concerning Guarantor which have been or will hereafter be furnished by Guarantor or Borrowers to the Lenders pursuant to the Loan Documents, have been or will be (a) prepared in accordance with GAAP consistently applied (except as disclosed therein, to the extent Lender approves such disclosure and in the case of clauses (a) and (b) with respect to any unaudited quarterly financial statements, subject to the absence of footnotes and normal year-end adjustments) and, (b) in all material respects, present fairly the financial condition of the persons covered thereby as at the dates thereof and the results of their operations for the periods then ended;

(vii) Guarantor is not a party to any agreement or instrument or subject to any corporate or other constitutional restriction that has resulted or could reasonably be expected to result in a Material Adverse Effect. Guarantor is not in default under any provision of any indenture or other agreement or instrument evidencing Indebtedness, or any other agreement or instrument to which it is a party or by which it or any of its property is or may be bound, and no condition exists which, with the giving of notice or the lapse of time or both, would constitute such a default, except where such default could not reasonably be expected to result in a Material Adverse Effect.

(viii) Each ERISA Affiliate of Guarantor has operated and administered each Employee Benefit Plan in material compliance with ERISA. Guarantor is not an Employee Benefit Plan and Guarantor's assets do not constitute "plan assets" as defined in U.S. Department of Labor regulations under ERISA. No actions, suits or claims under any laws and regulations promulgated pursuant to ERISA are pending or, to Guarantor's knowledge, threatened against Guarantor. Guarantor has no knowledge of any material liability incurred by Guarantor which remains unsatisfied for any taxes or penalties with respect to any Employee Benefit Plan or any Multiemployer Plan, or of any lien which has been imposed on Guarantor's assets pursuant to section 412 of the Code or sections 302 or 4068 of ERISA. The Loans, the execution, delivery and performance of the Loan Documents and the transactions contemplated by this Guarantee are not a non-exempt prohibited transaction under ERISA. Guarantor is an "operating company" as defined in U.S. Department of Labor regulations under ERISA;

(ix) As of the date hereof, and after giving effect to this Guarantee and the contingent obligations evidenced hereby, Guarantor is and expects to be solvent at all times, and has and expects to have assets at all times which, fairly valued, exceed its obligations, liabilities and debts, and has and expects to have property and assets at all times sufficient to satisfy and repay its obligations and liabilities; and

(x) As of the date hereof, (a) there is no litigation, governmental investigation or arbitration pending or, to Guarantor's knowledge, threatened against Guarantor which seeks to enjoin the consummation of the matters contemplated hereby or, except as set forth on Schedule 3.08 of the Facility Agreement, if adversely determined, could reasonably be expected to have a Material Adverse Effect on Guarantor; (b) there are no judgments outstanding against Guarantor that could reasonably be expected to result, either individually or in the aggregate, in a Material Adverse Effect; and (c) no petition in bankruptcy, whether voluntary or involuntary, or assignment for the benefit of creditors, or any other action involving debtors' and creditors' rights has ever been filed under the laws of the United States of America or any state thereof, or to Guarantor's knowledge, threatened, by or against Guarantor.

SECTION 2.06. Indebtedness or Other Secured Obligations of Guarantor. If Guarantor is or becomes liable for any Indebtedness owed by Borrowers to any of the Lenders by endorsement or otherwise than under this Guarantee, such liability shall not be in any manner impaired or affected by this Guarantee, and the rights of the Lenders hereunder shall be cumulative of any and all other rights that each Lender may ever have against Guarantor. The exercise by any Lender of any right or remedy hereunder or under any other instrument or at law or in equity shall not preclude the concurrent or subsequent exercise of any other instrument or remedy at law or in equity and shall not preclude the concurrent or subsequent exercise of any other right or remedy.

SECTION 2.07. Senior Indebtedness. All the obligations and liabilities of the Guarantor hereunder constitute direct and unconditional obligations of the Guarantor, and such obligations and liabilities rank, and (unless the Required Lenders shall otherwise consent in writing) will rank, either *pari passu* in right of payment with or senior to all other unsubordinated Indebtedness of the Guarantor.

SECTION 2.08. Application of Payments. If, at any time, there is any Indebtedness (or any portion thereof) of Borrowers to any of the Lenders which is not guaranteed by Guarantor, any of the Lenders, without in any manner impairing its rights hereunder, may, at its option, apply all amounts realized by such Lender from collateral or security held by such Lender first to the payment of such unguaranteed Indebtedness, with the remaining amounts, if any, to then be applied to the payment of the Indebtedness guaranteed by Guarantor.

ARTICLE III

INDEMNITY, SUBROGATION AND SUBORDINATION

SECTION 3.01. Subrogation; Subordination. Guarantor hereby agrees that until the indefeasible payment and satisfaction in full in cash of all Secured Obligations and the expiration and termination of the Commitments of the Lenders under the Facility Agreement, Guarantor shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 2.01, whether by subrogation or otherwise, against any Borrower or any other guarantor of any of the Secured Obligations or any security for any of the Secured Obligations. Upon the indefeasible payment in full of the Notes, the Guarantor shall have all rights of subrogation available at law or in equity.

SECTION 3.02. Impairment of Subrogation Rights: Waivers of Rights Under the Anti-Deficiency Rules

(a) Guarantor agrees that upon an Event of Default under the Loan Documents, Lender may elect to foreclose either non-judicially or judicially against any real or personal property security (including, without limitation, the Collateral) it holds for the Secured Obligations, or any part thereof, or accept an assignment of any such security in lieu of foreclosure, or compromise or adjust any part of such obligations, or make any other accommodation with the Borrowers, or exercise any other remedy against Borrowers or any collateral or security. No such action by any Lender will release or limit the liability of Guarantor to the Lenders, who shall remain liable under this Guarantee after the action, even if the effect of that action is to deprive Guarantor of the right to collect reimbursement from Borrowers or any other person for any sums paid to Lender or Guarantor's rights of subrogation, contribution or indemnity against Borrowers or any other person. Without limiting the foregoing, it is understood and agreed that on any foreclosure or assignment in lieu of foreclosure of any collateral or security held by the Lenders, such security will no longer exist and that any right that Guarantor might otherwise have, on full payment of the Secured Obligations by Guarantor to the Lenders, to participate in any such security or to be subrogated to any rights of the Lenders with respect to any such security will be nonexistent; nor shall Guarantor be deemed to have any right, title, interest or claim under any circumstances in or to any real or personal property held by any Lender or any third party following any foreclosure or assignment in lieu of foreclosure of any such security.

(b) Guarantor understands and acknowledges that if any Lender forecloses judicially or non-judicially against any real property security for Borrowers' obligations, such foreclosure could impair or destroy any right or ability that Guarantor may have to seek reimbursement, contribution, or indemnification for any amounts paid by Guarantor under this Guarantee.

(c) Guarantor intentionally, freely, irrevocably and unconditionally waives and relinquishes all rights which may be available to it under any provision of applicable law to limit the amount of any deficiency judgment or other judgment which may be obtained against Guarantor under this Guarantee to not more than the amount by which the unpaid Secured Obligations plus all other indebtedness due from Borrowers under the Loan Documents exceeds the fair market value or fair value of any real or personal property securing said obligations and any other indebtedness due from Borrowers under the Loan Documents, including, without limitation, all rights to an appraisal of, judicial or other hearing on, or other determination of the value of said property. Guarantor acknowledges and agrees that, as a result of the foregoing waiver, Lenders may be entitled to recover from Guarantor an amount which, when combined with the value of any real or personal property foreclosed upon by the Lenders (or the proceeds of the sale of which have been received by the Lenders) and any sums collected by the Lenders from Borrowers or other persons, might exceed the amount of the Secured Obligations plus all other indebtedness due from Borrowers under the Loan Documents.

(d) Guarantor understands and agrees that the Lenders may have the ability to pursue Guarantor for a judgment on the Secured Obligations without having first foreclosed on the Collateral, that Lender may have the ability to sue Guarantor for a deficiency judgment on the Secured Obligations after a non-judicial foreclosure sale or, regardless of any election of remedies by Lender, if the Secured Obligations or any of the other indebtedness of Borrowers to the Lender under the Loan Documents is considered to have been provided by a vendor to a buyer and to evidence part of the purchase price for the Collateral, and that Lender may be able to recover from Borrowers an amount which, when combined with the fair market value of the property acquired by Lender in a foreclosure sale or the proceeds of the foreclosure sale received by Lender, might exceed the amount of the Secured Obligations due and owing by Guarantor and the amounts payable under the Loan Documents.

Notwithstanding the foregoing, nothing contained in this Guarantee shall in any way be deemed to imply that any other state's law other than the law of the State of New York shall govern this Guarantee or the Facility Agreement in any respect, including with respect to the exercise of Lender's remedies under the this Guarantee and the Facility Agreement, except as expressly set forth herein or therein.

SECTION 3.03. Subordination.

(a) Notwithstanding any provision of this Guarantee to the contrary, all rights of the Guarantor under Sections 3.01 and 3.02 and all other rights of indemnity, contribution or subrogation under applicable law or otherwise shall be fully subordinated to the indefeasible payment in full in cash of the Secured Obligations. No failure on the part of the Borrower to make the payments required by Sections 3.01 and 3.02 (or any other payments required under applicable law or otherwise) shall in any respect limit the obligations and liabilities of the Guarantor with respect to its obligations hereunder, and the Guarantor shall remain liable for the full amount of the obligations hereunder. Notwithstanding the foregoing, pursuant to Section 6.08 of the Facility Agreement, so long as no Event of Default shall have occurred and be continuing, Guarantor may receive from Borrowers payments or repayments of principal and interest in relation to intercompany loans made by Guarantors to Borrowers for the purpose of bridging the funding of Capital Expenditures incurred by either Borrower prior to the date of the Facility Agreement in connection with the expansion of either Borrower's Internet Data Center.

(b) The Guarantor hereby agrees (i) that all now existing and hereafter arising Indebtedness owing by either Borrower to the Guarantor is subordinated to the extent and in the manner set forth in the "Terms of Subordination" set forth on Schedule 1.01(b) to the Facility Agreement and (ii) to be bound by such "Terms of Subordination" as a "Subordinated Party" (as defined therein). The Facility Agent and the Collateral Agent agree that the indebtedness of the Borrowers to the Guarantor is "Subordinated Indebtedness" for purposes of and as defined in the Facility Agreement. Notwithstanding the foregoing, pursuant to Section 6.08 of the Facility Agreement, so long as no Event of Default shall have occurred and be continuing, Guarantor

may receive from Borrowers payments or repayments of principal and interest in relation to intercompany loans made by Guarantors to Borrowers for the purpose of bridging the funding of Capital Expenditures incurred by either Borrower prior to the date of the Facility Agreement in connection with the expansion of either Borrower's Internet Data Center.

ARTICLE IV

MISCELLANEOUS

SECTION 4.01. Notices. All communications and notices hereunder shall (except as otherwise expressly permitted herein) be in writing and given as provided in Section 10.01 of the Facility Agreement. All communications and notices hereunder to the Guarantor shall be given to it in care of the Borrowers as provided in Section 10.01 of the Facility Agreement.

SECTION 4.02. Waivers; Amendment.

(a) No failure or delay by the Facility Agent, the Collateral Agent or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Facility Agent, Collateral Agent, and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Guarantee or consent to any departure by any Guarantee Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section 4.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Facility Agent, the Collateral Agent or any Lender may have had notice or knowledge of such Default at the time. No notice or demand on any Guarantee Party in any case shall entitle any Guarantee Party to any other or further notice or demand in similar or other circumstances.

(b) Neither this Guarantee nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Facility Agent and the Guarantee Party or Guarantee Parties with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section [12.02] of the Facility Agreement.

SECTION 4.03. Successors and Assigns. Whenever in this Guarantee any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Guarantor or the Facility Agent that are contained in this Guarantee shall bind and inure to the benefit of their respective successors and assigns.

SECTION 4.04. Survival of Agreement. All covenants, agreements, representations and warranties made by the Guarantee Parties in the Loan Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Guarantee or any other Loan Document shall be considered to have been relied upon by the Lenders and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Notes, regardless of any investigation made by any Lender or on its behalf and notwithstanding that the Facility Agent, the Collateral Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended under the Facility Agreement, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under any Loan Document is outstanding and unpaid.

SECTION 4.05. Counterparts; Effectiveness; Several Agreement. This Guarantee may be executed in counterparts, each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Guarantee by facsimile transmission or other electronic communication shall be as effective as delivery of a manually signed counterpart of this Guarantee. This Guarantee shall become effective as to any Guarantee Party when a counterpart hereof executed on behalf of such Guarantee Party shall have been delivered to the Facility Agent and a counterpart hereof shall have been executed on behalf of the Facility Agent, and thereafter shall be binding upon such Guarantee Party and the Facility Agent and their respective permitted successors and assigns, and shall inure to the benefit of such Guarantee Party, the Facility Agent and the other Secured Parties and their respective successors and assigns, except that no Guarantee Party shall have the right to assign or transfer its rights or obligations hereunder or any interest herein (and any such assignment or transfer shall be void) except as expressly contemplated by this Guarantee or the Facility Agreement. This Guarantee shall be construed as a separate agreement with respect to each Guarantee Party and may be amended, modified, supplemented, waived or released with respect to any Guarantee Party without the approval of any other Guarantee Party and without affecting the obligations of any other Guarantee Party hereunder.

SECTION 4.06. Severability. Any provision of this Guarantee held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 4.07. Right of Set-Off. In addition to any rights and remedies of the Lenders provided by law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates is authorized at any time and from time to time, without prior notice to the Borrowers or any other Guarantee Party, any such notice being waived by the Borrowers and each Guarantee Party to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates to or for the credit or the account of the respective Guarantee Parties against any and all obligations

owing to such Lender and its Affiliates hereunder, now or hereafter existing, irrespective of whether or not such Lender or Affiliate shall have made demand under this Guarantee and although such obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. Each Lender agrees promptly to notify the Borrowers and the Facility Agent after any such set off and application made by such Lender; *provided*, that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section 4.07 are in addition to other rights and remedies (including other rights of setoff) that the Facility Agent and such Lender may have.

SECTION 4.08. Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Guarantee shall be governed by and construed in accordance with the laws of the State of New York.

(b) The Guarantor hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York City and of the United States District Court for the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Guarantee or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Guarantee or any other Loan Document shall affect any right that the Facility Agent or any Lender may otherwise have to bring any action or proceeding relating to this Guarantee or any other Loan Document against the Guarantor, or its properties in the courts of any jurisdiction.

(c) Each of the Guarantee Parties hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Guarantee or any other Loan Document in any court referred to in paragraph (b) of this Section 4.08. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Guarantee irrevocably consents to service of process in the manner provided for notices in Section 4.01. Nothing in this Guarantee or any other Loan Document will affect the right of any party to this Guarantee to serve process in any other manner permitted by law.

SECTION 4.09. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR

INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTEE, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS GUARANTEE BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 4.09.

SECTION 4.10. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Guarantee and are not to affect the construction of, or to be taken into consideration in interpreting, this Guarantee.

SECTION 4.11. Termination or Release.

(a) This Guarantee and the guarantee made herein shall terminate with respect to all Secured Obligations when all the outstanding Secured Obligations have been indefeasibly paid in full and the Lenders have no further commitment to lend under the Facility Agreement.

(b) The Guarantor shall automatically be released from its obligations hereunder upon the consummation of any transaction permitted by the Facility Agreement as a result of which the Guarantor ceases to be the parent company of the Borrowers; *provided* that the Lenders shall have consented to such transaction (to the extent required by the Facility Agreement) and the terms of such consent did not provide otherwise.

(c) In connection with any termination or release pursuant to paragraph (a), the Facility Agent shall execute and deliver to the Guarantor, at the Guarantor's expense, all documents that the Guarantor shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section 4.11 shall be without recourse to or warranty by the Facility Agent.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Guarantee as of the day and year first above written.

EQUINIX, INC., as Guarantor

By: /s/ Keith D. Taylor _____

Name: Keith D. Taylor

Title: Chief Financial Officer

ABN AMRO BANK N.V., as Facility Agent

By: /s/ Daniel P. de Blocq van Scheltinga _____

Name: Daniel P. de Blocq van Scheltinga

Title: Executive Director

Head of Asset Based Finance, Asia

By: /s/ Krishna Suryanarayanan _____

Name: Krishna Suryanarayanan

Title: Director, Asset Based Finance

ABN Amro Bank N.V., Hong Kong

ABN AMRO BANK N.V., as Collateral Agent

By: /s/ Daniel P. de Blocq van Scheltinga _____

Name: Daniel P. de Blocq van Scheltinga

Title: Executive Director

Head of Asset Based Finance, Asia

By: /s/ Krishna Suryanarayanan _____

Name: Krishna Suryanarayanan

Title: Director, Asset Based Finance

ABN Amro Bank N.V., Hong Kong

DATED 12th June 2006

SLOUGH TRADING ESTATE LIMITED

- and -

INTERCONNECT EXCHANGE EUROPE LIMITED

AGREEMENT FOR LEASE

- relating to –
Building 2 Buckingham Avenue
Trading Estate Slough
Berkshire

NABARRO NATHANSON

Lacon House
Theobald's Road
London
WC1X 8RW
Ref: PD/TNP/LM/S2884/

Tel: 020 7524 6000
Fax: 01753 512768

AN AGREEMENT made the 12th day of June the year Two thousand and six **BETWEEN**

- (1) SLOUGH TRADING ESTATE LIMITED (Company Registration Number 1184323) whose registered office is at 234 Bath Road Slough Berkshire SL1 4EE (“the Landlord”)
- (2) INTERCONNECT EXCHANGE EUROPE LIMITED (Company Registration Number 03672650) whose registered office is at Airport Gate Unit 1 Bath Road West Drayton Middlesex UB7 0NA (“the Tenant”)

WHEREBY IT IS AGREED as follows:-

1. ACCESS DEFINITIONS AND INTERPRETATION

“Access Certificate”

The certificate issued by the Architect in accordance with clause 3 (the Architect acting in a professional and independent manner and having regard to the interests of the parties pursuant to this Agreement) stating that the Premises have reached such a state of readiness as to enable the Tenant to enter the Premises for the purpose of carrying out the Tenant’s Warehouse Works provided always that the Landlord shall procure that the Access Certificate shall not be issued before sufficient of the Works shall have been completed so as to ensure that

- 1.1 the Tenant shall have reasonable pedestrian and vehicular access to and egress (including contractor’s access) from the Premises
- 1.2 the Works to the warehouse part of the Premises shall have been completed in all material respects
- 1.3 site temporary services relating to electricity and water are available to the warehouse part of the Premises subject only to service connections which require an occupier’s application to a service or statutory undertaker
- 1.4 the Tenant’s Warehouse Works can be carried out without any material interruption or delay by reason of any of the Works
- 1.5 the warehouse part of the Premises shall be wind and water tight.
- 1.6 the Tenant shall have reasonable pedestrian and vehicular access to and egress from the Premises to enable the plant machinery and equipment of the Tenant

its contractors and sub-contractors to be delivered and to remain on that part of the Premises shown edged red on the early access site plan in the form of Annexure 1 for the purposes of and in the course of carrying out the Tenant's Warehouse Works.

1.7 the concrete floor slab to the ground floor of the building on the Premises shall have been completed for a period of 28 days

1.8 the Premises shall comply with health and safety legislation allowing the Tenant's Warehouse Works to be undertaken legally

Provided that the Tenant shall be entitled to waive any one or more of the foregoing conditions as a condition precedent to the issue of the Access Certificate (but without prejudice to the obligation of the Landlord to procure fulfilment of any conditions so waived) by notice in writing to the Landlord provided always the Access Certificate shall not be issued as a result of conditions being waived in the event that access would impede to a material degree the carrying of the Works and/or result in a breach of health and safety regulations provided further the Landlord shall not be precluded from having access to the warehouse part of the Premises to complete any outstanding works thereto

“Access Date”

means the date of the Access Certificate

“Approvals”

means all approvals consents permissions and licences of any local or other competent authority or person which may from time to time be necessary to enable the Contractor lawfully to commence and to carry out and complete the Works

“Appointments”

means the deeds appointing the Professional Team to be substantially in the form of Annexure 2 with any amendments thereto approved by the Tenant such approval not to be unreasonably withheld or delayed

“the Architect”

means Langley Hall Associates Limited or the person appointed from time to time by the Landlord or the Contractor to act in the capacity of the Architect and approved by the Tenant such approval not to be unreasonably withheld or delayed

“Building Contract”

means a contract in form of JCT Standard Form of Building Contract with Contractors Design 1998 Edition incorporating amendments 1. (1999), 2. (2000), 3. (2001), 4. (2002) and 5. (2003) (with the amendments annexed hereto in the form of Annexure 3) subject to the prior approval of the Tenant such approval not to be unreasonably withheld or delayed

“Building Documents”

means the specification and drawings relating to the Works in the form of Annexure 4

“Certificate”

has the meaning specified in Schedule A

“Certificate Date”

has the meaning specified in paragraph 5.3 of Schedule A

“Critical Date”

means 11th August 2006

“Code of Measuring Practice”

means The Royal Institution of Chartered Surveyors Code of Measuring Practice relevant at the time of measurement of the Premises pursuant to clause 12 hereof Fifth Edition

“Completion Date”

means the fifth working day following the later of:-

1. Certificate Date
2. The date the Deeds of Warranty are available for completion
3. The date the Environmental Deed of Warranty is available for completion
4. The date the Contractors Warranty is available for completion
5. the date the Landlord approves any application for Tenant’s alterations as referred to and subject to the provisions of paragraph 3 of Schedule B made at least five working days prior to the Certificate Date
6. the date the Landlord and Tenant’s Representative agree the Gross External Area of the building part of the Premises under Clause 12 or the date of the Experts determination of any dispute over such area if appropriate

“Construction Documents”

means collectively the Appointments, the Building Contract, the Contractor Deed of Warranty, the Deeds of Warranty, the Environmental Deed of Warranty and the Sub-Contractor Warranty

“Contractor”

means the party appointed by the Landlord to be the contractor pursuant to the Building Contract

“the Contractor Deed of Warranty”

means a warranty substantially in the form of Annexure 5 to be granted to the Tenant by the Contractor

“Deposit Deed”

means the deed pursuant to which the Tenant shall deposit with the Landlord a sum equivalent to six months of the Rent together with a sum equivalent to Value Added Tax thereon such deed to be in the form of Annexure 6

“Deeds of Warranty”

means warranties substantially in the form of Annexure 7 to be granted to the Tenant by the Professional Team

“Environmental Consultant”

means WSP Environmental Limited of Buchanan House 24-30 Holborn London EC1N 2HS

“Environmental Deed of Warranty”

means a warranty substantially in the form of Annexure 8 to be granted to the Tenant by the Environmental Consultant

“Landlord’s Solicitors”

means Nabarro Nathanson of Lacon House 84 Theobald’s Road London WC1X 8RW (Ref: JP/TNP/S2884/959)

“Lease”

means the Lease of the Premises for a term (“the Term”) of twenty years commencing on the Certificate Date at the Rent payable from the Rent Commencement Date with five yearly rent reviews at the expiration of every consecutive fifth year of the said term such lease to be in the form of Annexure 9

“Licence to Alter”

means the licence authorising the Tenant to make the Tenant Fit Out Works to the Premises such licence to be in the form of Annexure 10

“Long Stop Date”

means 22nd September 2007

“Other Rent”

means all sums payable as rent pursuant to the Lease other than the Rent

“Mechanical and Electrical Engineer”

means Kier Building Services Engineers or the person appointed by the Landlord or the Contractor to act in the capacity of Mechanical and Electrical Engineer and approved by the Tenant such approval not to be unreasonably withheld or delayed

“Power Supply Agreement”

means the agreement for the supply of power to the Premises of even date and made between Slough Heat and Power Limited (1) and the Tenant (2)

“Premises”

means the land and building known as Building 2 Buckingham Avenue Trading Estate Slough Berkshire as the same are more particularly described in the Lease

“Professional Team

means the Architect the Structural Engineer the Mechanical and Electrical Engineer

“Project Manager”

means an employee appointed by the Landlord to act in the capacity of a project manager

“Rent”

means the yearly rent determined pursuant to clause 12 of this agreement and payable under the Lease

“Rent Commencement Date”

means the date being sixteen months from and including the Certificate Date in respect of the Rent and the Certificate Date in respect of the Other Rent

“Report”

means the environmental report Ref: 12040267/002 dated April 2004 undertaken by the Environmental Consultant

“Representative”

means the person or persons appointed from time to time by the Tenant to be its project manager for the purposes of this Agreement and whose identity shall have been notified in writing to the Landlord

“Structural Engineer”

means John Tooke & Partners Limited or the person appointed from time to time by the Landlord or the Contractor to act in the capacity of the Structural Engineer and approved by the Tenant such approval not to be unreasonably withheld or delayed

“Sub-Contractor Warranty”

means a warranty substantially in the form of Annexure 11 to be granted to the Tenant by a sub-contractor undertaking a design obligation pursuant to clause 3.3

“Target Area”

means 77,737 square feet (7,221.9 square metres)

“Target Date”

means 21st May 2007

“Tenant’s Solicitors”

means Druces & Attlee of Salisbury House London Wall London EC2M 5PS (Reference 61/55/10432.5)

“Tenant’s Variation Form”

means the form recording a Variation (as defined in paragraph 3 to Schedule A) to the Works in the form of Annexure 12

“Tenants Fit Out Works”

means the works to be carried out by the Tenant at its own expense in accordance with the provisions of Schedule B

“Tenant’s Warehouse Works”

Means the works to be carried out to the warehouse part of the Premises by the Tenant at its own expense in accordance with the provisions of Schedule B

“Value Added Tax”

means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it

“Works”

means the works which are to be carried out at the Premises by the Contractor and which are briefly described in the Building Documents and which are to be carried out pursuant to and with regard to the provisions of Schedule A to provide a warehouse with ancillary offices of approximately 77,737 square feet gross external area (excluding the gross external area of the second floor plant room and the gross external area of the staircase from the first floor to the said plant room)

-
- 1.1 The clause headings in this Agreement (except for the definitions) are for ease of reference and are not to be used for the purposes of construing this agreement.
 - 1.2 References in this Agreement to clause numbers or schedules or paragraphs in schedules mean the clauses of or schedules to or paragraphs in schedules to this agreement.
 - 1.3 Obligations undertaken by more than one person are joint and several obligations.
 - 1.4 Words importing persons include firms, companies and corporations and vice versa.
 - 1.5 Words importing one gender will be construed as importing any other gender.
 - 1.6 Words importing the singular will be construed as importing the plural and vice versa.
 - 1.7 Unless otherwise specified, a reference to legislation is to that legislation as consolidated, amended or re-enacted from time to time and includes all orders, regulations, consents, licences and bye-laws made or granted under such legislation and references to legislation generally are to all legislation (local, national and supra-national) having effect in relation to the Premises.
 - 1.8 Where any act is prohibited no party will permit or omit to do anything which will allow that act to be done.
 - 1.9 Where any party agrees to do something it will be deemed to fulfil that obligation if it procures that it is done.
 - 1.10 Where any notice, consent, approval, permission or certificate is required to be given by any party to this agreement such notice, consent, approval, permission or certificate must be in writing and will not constitute a valid notice, consent, approval, permission or certificate for the purpose of this agreement unless it is in writing.
 - 1.11 References in this agreement to the Standard Conditions are to the Standard Commercial Property Conditions (First Edition).

2. DEPOSIT

The Tenant shall pay to the Landlord on the date hereof the sum of £248,904.15 which the Landlord shall hold in accordance with and subject to the terms and conditions of the Deposit Deed notwithstanding the Deposit Deed will not be completed until the Completion Date but provided that the said sum shall be returned to the Tenant with interest if this agreement is terminated under clause 12.4 or 16

3. WORKS AND ACCESS

- 3.1 Subject to obtaining all Approvals the Landlord shall procure the execution of the Construction Documents in substantially the forms annexed hereto and to procure the carrying out of the Works in accordance with the provisions relating thereto as specified in Schedule A. In the event of any material alteration to the Construction Documents being

requested, the Landlord shall submit written particulars thereof to the Tenant for its approval, such approval not to be unreasonably withheld. Such approval or notice that approval is withheld shall be given to the Landlord within 10 working days after written particulars are submitted. Any dispute as to whether or not such approval is unreasonably withheld shall be referred for determination in accordance with clause 15

- 3.2 The Landlord will procure that the Works until the Certificate Date are insured against the Insured Risks (as defined in the Lease) and in such manner as provided for in the Lease and in the event that the Works or any part or parts thereof are destroyed or damaged the Landlord shall comply with its obligations under the Lease as if the Lease had been granted
- 3.3 The Tenant shall have the right to make representations in respect of the appointment of any sub-contractors appointed by the Contractor. No sub-contractor undertaking a design obligation relating to floor slab, frame, mechanical and electrical engineering services shall be appointed except on terms that the sub-contractor shall enter into a deed of warranty in respect of such design in substantially the terms of the Sub-Contractor Warranty. The Sub-Contractor Warranty shall provide for appropriate professional indemnity insurance cover in the case of the floor slab and frame elements and appropriate product liability insurance cover in respect of the other design elements. The Landlord will use all reasonable endeavours to obtain product guarantees for cladding/roofs and lifts
- 3.4 The Landlord shall prior to the Certificate Date provide to the Tenant for approval full details of the professional indemnity cover in respect of the Contractor, Professional Team and Environmental Consultant
- 3.5 The Building Contract shall not be subject to assignment by the Landlord save in the event of any insolvency of the Landlord
- 3.6 If during the carrying out of the Works any pollution or contamination of the Premises is found which is additional to that referred to in the Report the Landlord at its own expense shall procure the removal/neutralisation of the same in accordance with Environmental Agency Recommendations and as approved by the Representative such approval not to be unreasonably withheld or delayed and to the reasonable satisfaction of the Environmental Consultant and the Environmental Deed of Warranty shall be varied to cover the further pollution/contamination.
- 3.7 Within the period of thirty days after the Certificate Date the Landlord shall provide the Tenant with a complete and detailed "as built" specification and related drawings in respect of the Works both in paper form and on computer disc and all instruction and operation manuals for all plant and machinery in the Premises
- 3.8 The Landlord shall procure the issue by the Architect of the Access Certificate as soon as reasonably possible and shall permit early access to the Premises in accordance with and where the provisions of Schedule B shall apply
- 3.9 The Landlord will provide a copy of the Access Certificate to the Tenant on the day it is issued in Email format the Tenant having supplied to the Landlord the relevant Email address with a hard copy thereof to be forwarded by first class post within 48 hours of issue of the Access Certificate

4. GRANT OF THE LEASE

- 4.1 Upon the Completion Date the Landlord shall:-
 - 4.1.1 grant the Lease and the Licence to Alter and the Tenant shall accept the said Lease and the Licence to Alter and
 - 4.1.2 the parties shall enter into the Deposit Deed
 - 4.1.3 on completion the definition in the Lease of “Term” “Commencement Date” “Rent” “Rent Commencement Date” and “Review Dates” shall be completed so as to correspond to the provisions contained in clause 1
- 4.2 The Lease Deposit Deed and the Licence to Alter and Counterparts thereof shall be prepared by the Landlord’s Solicitors and shall be executed respectively by the Landlord and the Tenant
- 4.3 Completion shall take place at the offices of the Landlord’s Solicitors or at such other place in London or Slough as they shall reasonably require
- 4.4 If the Tenant has not provided full details of its works for the purpose of the Licence to Alter 14 days prior to the Completion Date completion of such Licence shall take place within 14 days of the Landlord’s Solicitors submitting the engrossment of a Counterpart Licence to Alter.
- 4.5 On the Completion Date the Tenant shall pay to the Landlord such sum which when added together with the sum paid pursuant to clause 2 represents the Deposit (as defined in the Deposit Deed)

5. RESTRICTIONS

- 5.1 “Restrictions” means all matters affecting the Premises or its use registered or capable of registration as local land charges and all notices charges orders resolutions demands proposals requirements regulations restrictions agreements directions or other matters affecting the Premises or its use or affecting the Works served or made by any local or other competent authority or otherwise arising under any statute or any regulation or order made under any statute
- 5.2 The Premises shall be demised subject to all (if any) Restrictions affecting the Premises (whether in existence at the date of this Agreement or arising at any later date)
- 5.3 No representation is made or warranty given by the Landlord as to whether any restrictions exist or as to the permitted use of the Premises for planning purposes

6. REPRESENTATIONS

- 6.1 Save as provided in paragraph 6.2 hereof no agent adviser or other person acting for the Landlord has at any time prior to the making of this Agreement been authorised by the Landlord to make to the Tenant or to any agent adviser or other person acting for the Tenant any representation whatever (whether written oral or implied) in relation to the Premises or to any matter contained or referred to in this Agreement
- 6.2 Any statement made in writing by the Landlord's Solicitors to the Tenant's Solicitors prior to the making of this Agreement in reply to an inquiry made in writing by the Tenant's Solicitors was made with the authority of the Landlord

7. NON-ASSIGNMENT

- 7.1 The Tenant may not assign charge or otherwise deal in any way with the benefit of this Agreement in whole or in part except to a group company of the Tenant and the Landlord shall not be obliged to grant the Lease to any person other than the Tenant or a group company of the Tenant (with the Tenant acting as a Guarantor to the assignee in the same manner as provided for in the Third Schedule to the Lease) which in either case in the reasonable opinion of the Landlord is able to comply with covenants of the Tenant in this Agreement and the Lease subject to obtaining the prior written approval of the Landlord such approval not to be unreasonably withheld or delayed

Provided always that:

- 7.2 if the Lease shall not have been granted by reason of any act neglect or default of the Landlord within 3 months after the Certificate Date then the Tenant shall be entitled subject to obtaining the prior approval of the Landlord (such approval not to be reasonably withheld or delayed) to assign its interest under this Agreement and its right to the grant of the Lease to an Assignee which if the Lease had been granted would have qualified to be an Assignee of the Lease and
- 7.3 The Tenant shall be entitled to charge its interest under this Agreement and its right to the grant of the Lease by way of a charge for the purposes of raising finance to enable the Tenant to meet its obligations under this Agreement.

8. NOTICES

- 8.1 In this clause
- 8.1.1 "the Landlord's Address" means the address of the Landlord shown on the first page of this agreement or such other address as the Landlord may from time to time notify to the Tenant as being its address for service for the purposes of this Agreement
- 8.1.2 "the Tenant's Address" means the address of the Tenant shown on the first page of this Agreement or such other address as the Tenant may from time to time notify to the Landlord as being its address for service for the purpose of this Agreement

- 8.2 Any notice or other communication given or made in accordance with this Agreement shall be in writing and given in accordance with Section 196 of the Law of Property Act 1925 (as amended) or by first class post (in respect of which receipt thereof will be deemed to be the day following the posting of the same) and shall be forwarded as applicable to the Landlord's Address or the Tenant's Address

9. EXECUTORY AGREEMENT

- 9.1 This Agreement is an executory agreement only and shall not operate or be deemed to operate as a demise of the Premises
- 9.2 Save as provided for in Schedule B the Tenant shall not be entitled to occupation or possession of the Premises prior to the Certificate Date but shall have possession of the Premises from the Certificate Date and from such date shall observe and perform all the covenants and conditions contained in the Lease as if the same had already been granted
- 9.3 Upon the earlier of the possession by the Tenant of the Premises or the Certificate Date in the event the Lease not having been completed the Tenant will pay to the Landlord on demand a licence fee equal to the rents and other payments which would have been payable by the Landlord to the Tenant had the Lease been granted (subject always to the Rent Commencement Date) provided that for the purposes of this clause 9.3 access to the warehouse part of the Premises shall not constitute possession of the Premises
- 9.4 The Landlord shall be entitled to all remedies by distress action or otherwise for recovering any monies due or for breach of obligation by the Tenant as if the Lease had been completed

10. NON-MERGER ETC

All the provisions of this Agreement shall (to the extent that they remain to be observed and performed) continue in full force and effect notwithstanding completion of the Lease

11. DEFECTS AND WARRANTIES

- 11.1.1 The Landlord agrees with the Tenant to procure the making good of at its own expense any defects shrinkages or other faults that arise in the Premises within 12 months of the Certificate Date (and are notified in writing by the Tenant to the Landlord during such period) which are due to faulty design, supervision of the Works, materials or workmanship not in accordance with the Building Contract or this Agreement or to frost occurring before the first anniversary of the Certificate Date or other failure of the Building Contractor to comply with its obligations under the Building Contract. Any such works shall be undertaken at the expiry of the said 12 month period, unless the defect is such that it impacts upon the use of the Premises by the Tenant whereupon the Landlord will procure that any such works are carried out as soon as reasonably possible. The Landlord shall make good or procure the remedying by the Building Contractor of all defects and/or incomplete items referred to in any supplementary or snagging list referred to in the Certificate and/or required to be carried out by the Landlord whether as part of its certification arrangements in relation to the Premises or otherwise.

- 11.1.2 If the Landlord shall fail to comply with its obligations under this clause then the Tenant may remedy the breach and all proper costs and expenses in connection therewith shall be paid by the Landlord to the Tenant within 10 days of demand.
- 11.1.3 The provisions of this clause shall be without prejudice to any other provisions of this agreement and to any other claims rights of action or remedies which the Tenant might have at common law or otherwise.
- 11.2 The Landlord shall provide to the Tenant prior to the Completion Date of the Lease with Deeds of Warranty from the Professional Team and the Contractor Deed of Warranty and any Sub-Contractor Warranties Provided Always that if the Tenant elects to complete without all such warranties being available the Landlord shall procure completion of those outstanding and shall provide the environmental deed of Warranty as soon as possible following the carrying out by the Environmental Consultant of its post construction audit report and until such warranties are completed the Landlord shall assume the liability in respect of any warrantor until the relevant warranty has been completed
- 11.3 The Environmental Consultant shall prior to the Certificate Date provide a warranty or letter upon which the Tenant is entitled to rely upon confirming all pollution and contamination identified by the Report has been dealt with in accordance with Environmental Agency recommendations

12. AREA AND RENT

- 12.1 Not less than ten days prior to the Certificate Date (as estimated at the relevant time by the Project Manager) the building part of the Premises shall be measured on site by the Landlord and the Representative in accordance with the Code of Measuring Practice
- 12.2 The Landlord and the Representative shall measure the gross external area of the building part of the Premises by way of square feet and square metres and shall agree the resultant figures which
 - 12.2.1 shall be inserted in the relevant part of the First Schedule to the Lease
 - 12.2.2 in the case of the square foot measurement (which shall have deducted therefrom the gross external area of the second floor plant room and the gross external area of the staircase from the first floor to the said plant room) multiplied by the sum of £10.90 shall represent the initial yearly rent (until varied) but where such sum shall not exceed £847,333
- 12.3 If the gross external area of the building part of the Premises exceeds the Target Area the Lease shall be amended to provide at rent review that the revised rent is to be assessed on the building part of the Premises as though it were the Target Area.
- 12.4 If the gross external area (excluding the gross external area of the second floor plant room and the gross external area of the staircase from the first floor to the said plant room) is less than 96% of the Target Area or more than 105% of the Target Area then within ten working

days of the date of agreement or determination of the gross external area the Tenant shall be entitled but not obliged to determine this Agreement by serving notice on the Landlord and on actual receipt of such notice this Agreement shall determine but without prejudice to any pre-existing breach of the terms of this Agreement

- 12.5 The Landlord and the Representative at the time of measuring the building part of the Premises pursuant to clause 12.2 shall agree the final form of the First Schedule to the Lease

13. ENTIRE UNDERSTANDING

- 13.1 This Agreement embodies the entire understanding of the parties and there are no other arrangements between the parties relating to the subject matter of this Agreement
- 13.2 No amendment or modification shall be valid or binding on any party unless
- 13.2.1 it is made in writing
- 13.2.2 refers expressly to this Agreement
- 13.2.3 it is signed by the party concerned or its duly authorised representative

14. STANDARD CONDITIONS

- 14.1 The Standard Conditions shall apply hereto in so far as the same are not inconsistent with the provisions hereof and are applicable to the grant of a lease save that Standard Conditions 3.1.1, 3.1.2, 3.4, 4.1.2, 4.2, 4.5.2, 4.5.3 and 5.1 do not apply

15. EXPERT DETERMINATION

- 15.1 Save as otherwise provided for in this Agreement any dispute or difference which shall arise between the parties as to the construction of this Agreement or as to the respective rights duties and obligations of the parties under or as to any other matter arising out of or connected with the subject matter of this Agreement shall if either the Landlord or the Tenant so requires at any time by notice served on the other ("the Notice") be referred to the decision of an expert ("the Expert")
- 15.2 The Expert shall be appointed by agreement between the Landlord and the Tenant or if within 5 working days after service of the Notice the Landlord and the Tenant have been unable to agree then on the application of either the Landlord or the Tenant by such one of the following as the Landlord and the Tenant shall agree to be appropriate having regard to the nature of the dispute or difference in question:
- 15.2.1 the President for the time being of the Law Society
- 15.2.2 the President for the time being of The Royal Institute of British Architects
- 15.2.3 the President for the time being of The Royal Institution of Chartered Surveyors or (in each such case) the duly appointed deputy of such President or any other person authorised by him to make appointments on this behalf

-
- 15.3 If within 10 working days after service of the Notice the Landlord and the Tenant have been unable to agree which of the persons referred to in paragraph 15.2 is appropriate to appoint the Expert then the Expert shall be appointed on the application of either the Landlord or the Tenant by the President for the time being of the Law Society or his duly appointed deputy or any other person authorised by him to make appointments on his behalf
 - 15.4 The costs of the Expert shall be determined by the Expert but in the event of any failure to determine the same the costs shall be borne in equal shares by the parties
 - 15.5 One party may pay the costs required to be borne by another party if they remain unpaid for 21 days after they become due and then recover these and any incidental expenses incurred from the other party on demand

16. CRITICAL DATE LONG STOP DATE

If the Works have not commenced on site by the Critical Date or if the Certificate Date has not been achieved by the Long Stop Date then provided that the Tenant has not entered the Premises and taken occupation or possession thereof the Tenant shall be entitled to determine this Agreement by serving written notice to that effect on the Landlord whereupon this Agreement shall absolutely determine but without prejudice to any rights that either party may have against the other for any antecedent breach of the terms and conditions of this Agreement

17. EXCLUSION OF THIRD PARTY RIGHTS

Each party confirms that no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement

18. CONSTRUCTION DOCUMENTS

Save where the same are part of the Health and Safety File (which is to be provided to the Tenant pursuant to paragraph 6 of Schedule A) the Landlord shall on the Completion Date or before where practicable supply certified copies to the Tenant of the Building Contract the Appointments and all other relevant documentation relating to the Works

19. THE REPRESENTATIVE

- 19.1 The Landlord shall make available a portakabin or similar accommodation (the "Portakabin") on the site of the development for use by the Representative and the reasonable cost of which shall be borne by the Tenant and any invoice in this respect shall be paid within 14 days of written demand
- 19.2 The Tenant shall procure that all damage caused to the Portakabin by the Representative is made good at its own expense

-
- 19.3 The Representative shall only use the Portakabin in relation to the Works and the Tenant's Fit Out Works and for no other purpose
 - 19.4 The Landlord shall not be obliged to provide any facilities of whatsoever nature in respect of the Portakabin except a power supply and make available on the site of the development the use of a portaloos
 - 19.5 The use of the Portakabin shall be subject to such reasonable regulations as the Contractor may reasonably require

AS WITNESS the hands of the parties hereto the day and year first before written

SCHEDULE A
Provisions relating to the Works

1. CARRYING OUT OF WORKS

- 1.1 Subject to obtaining all necessary Approvals the Landlord will procure the carrying out of the Works at its expense and procure that the same are carried out in a good and workmanlike manner and with good quality materials of their type and kind in accordance with the Approvals and the Building Documents.
- 1.2 The Landlord shall indemnify the Tenant against all fees charges and other payments whatever which may at any time be payable to any local or other competent authority in respect of the carrying out of the Works
- 1.3 The Landlord shall procure that the Tenant and the Tenant's Representative shall
 - 1.3.1 be kept fully informed of the progress of the Works
 - 1.3.2 be supplied with copies of all architect's written instructions in respect of any material variation or addition to or omission from the Works
 - 1.3.3 be given reasonable prior notice of all progress and fortnightly liaison meetings
 - 1.3.4 have the right to attend such meeting
 - 1.3.5 be supplied with copies of site meeting minutes and
 - 1.3.6 be informed forthwith of any delay which is likely to delay the Access Date or the Certificate Date
- 1.4 The Landlord shall procure any landscaping works required as part of the Works shall be completed and carried out within one planting season following the Certificate Date in the course of carrying out of the Works and that any contract in relation to landscaping shall provide for a maintenance period of 12 months from the date of completion thereof
- 1.5 The Landlord shall procure

-
- 1.5.1 The Building Contractor will maintain insurance of the Works up to the Certificate Date in accordance with the provisions of the Building Contract.
 - 1.5.2 That in the event the Works or any part thereof at any time are destroyed or damaged the Works and the Premises are rebuilt and reinstated and as soon as practicable
 - 1.6 The Landlord warrants to and undertakes with the Tenant
 - 1.6.1 Reasonable skill and care will be and has been exercised in the design and supervision of the selection of materials and goods for and the standards of workmanship in connection with the Works and
 - 1.6.2 Reasonable skill and care will be exercised so as to ensure that the mechanical and electrical works forming part of the Works will perform so as to meet their design criteria as described in the Specification

2. REVIEW OF WORKS

- 2.1 The Representative:
 - 2.1.1 may at reasonable times on giving reasonable prior notice to the Project Manager view the state and progress including the monitoring of the Works and make representations to the Landlord in respect thereof
 - 2.1.2 shall have the right to call for a site meeting once per calendar month to discuss the progress of the Works and attend all other site meetings as an observer only without being entitled to make any representations
 - 2.1.3 shall not in the exercise of his rights under this paragraph interfere with the carrying out of the Works nor shall the Representative be entitled to view the Works unless accompanied by a representative of the Landlord or the Project Manager or a representative of the Contractor
 - 2.1.4 may at any time (other than as provided for in paragraph 2.1 2) make representations relating to the following:
 - (a) the detailed critical bar chart programme showing the sequence of operation in the design procurements and construction of the building part of the Premises
 - (b) the procurement schedule showing the last day by which materials accord with the main construction programme are to be ordered, reserved or notice given to supplier or manufacturers.
 - (c) Landlord's instructions (in its capacity as employer), variations and orders and with minutes of progress and team meetings.
 - (d) copies of the Contractor's insurance as required under the Building Contract.
 - (e) copies of soil and site investigations reports, including environmental assessments.
 - (f) copies of all construction drawings and drawings issued to accompany variation orders to include architectural, engineering, M and E specialist sub contract drawings and the like

(g) documentation (where available) relating to compliance with all statutory matters relating to the Works and in any case the Project Manager shall have regard to and shall take account of the same but in the event that no comment is received from the Tenant or the Representative within five working days of receipt of any of the above the Tenant shall be deemed to have accepted the position and therefore approved the same

3. VARIATIONS TO WORKS

- 3.1 "Variation" means any amendment to or departure from the Building Documents and the details of the Works contained therein whether it be by way of alteration addition or omission
- 3.2 The Landlord shall be entitled at any time to make a Variation to the Works where necessary to comply with any lawful requirement of any local or statutory authority or comply with building regulations or the like and the Landlord shall notify the Tenant of such Variation within 10 working days and such variation shall be implemented only with the prior consent of the Tenant which shall not be unreasonably withheld or delayed
- 3.3 The Tenant may make a written request for variations to the Works at any time subject to 3.5 below prior to the Certificate Date and Subject to paragraph 3.3.1 within ten working days of receipt of such request from the Tenant the Landlord shall advise the Tenant in writing as to whether or not the Variation is agreed and if it is agreed shall at the same time supply details of any costs to be incurred or saved including fees profit and overheads ("Costed Variation") for the Variation together with details of any period by which the Landlord considers that the issue of the Certificate will be delayed as a result of the Variation.
- 3.3.1 If the Landlord considers that any Variation requested by the Tenant is of a nature that it is unable to supply the Costed Variation within the ten day period referred to in paragraph 3.3 the Landlord shall supply within 7 days of the Tenant's request for a Variation its estimate of the amount of time it will take to provide the Tenant with the Costed Variation and shall use all reasonable endeavours to provide the same to the Tenant within the said estimated period
- 3.4 Within five working days of receipt of the Costed Variation the Tenant shall advise the Landlord in writing as to whether or not the Costed Variation is agreed and following confirmation of agreement between the parties that the Costed Variation is agreed the Landlord shall implement the Variation at the relevant time
- 3.4.1 The Tenant shall pay to the Landlord the agreed sum if it is a cost to the Landlord or the Landlord shall pay to the Tenant the agreed sum if it is a saving to the Landlord in each case pursuant to the Costed Variation within fourteen days of receipt of a written demand applicable thereto
- 3.4.2 If the Costed Variation is not agreed the Landlord shall not carry out the Variation

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- 3.5 Notwithstanding the provisions of this Paragraph 3 the Tenant shall not be entitled to request any Variation two months prior to the Target Date that would create in aggregate with any other Variation of the Tenant a delay in the Certificate being issued by a period greater than 14 days from the date it would have been achieved but for any Variations
 - 3.6 In respect of this paragraph 3 where the Landlord agrees to a Variation the parties shall at all times comply with the provisions of the Tenant's Variation Form which shall be completed prior to the carrying out of any Variation save and except in the event of paragraph 3.2 hereof when the provisions of this paragraph 3.6 shall not apply
 - 3.7 If a Variation is requested by the Tenant and put into effect by the Landlord and such Variation causes or is likely to cause a delay in completion of the Works then prior to the issue of the completed and signed Tenant's Variation Form the parties shall agree upon the Certificate Date upon which apart from the Variation the Works would otherwise have been completed and such date shall be deemed to be the Certificate Date for the purposes of the definition of Rent Commencement Date unless varied by any further Variation and such date shall be inserted in the Tenant's Variation Form and further the parties shall agree and record a revised Target Date to take account of the delay caused by the Variation

4. TIME FOR COMPLETION OF WORKS

- 4.1 The Landlord shall use all reasonable endeavours to procure that:
 - 4.1.1 completion of the Works occurs by the Target Date
 - 4.1.2 the Access Date occurs within 6 weeks of the date hereof; and
 - 4.1.3 the Access Certificate is issued not earlier than 8 weeks nor later than 4 weeks before the issue of the Certificate
- In the event that the Architect awards an extension of time to the Contractor pursuant to the Building Contract then the Target Completion Date shall be extended by the same period as the extension of time awarded under the Building Contract PROVIDED FURTHER no extension of time shall be granted where there has been a default on the part of the Tenant or the Representative has delayed in responding within a reasonable time in dealing with any matter where his approval is required pursuant to any provision contained in this Agreement.
- 4.2 In respect of any delay arising at any time pursuant to this clause or otherwise the Landlord shall notify the Tenant of the same and if any dispute arises in this respect the matter shall be referred to an Expert pursuant to clause 15 of this Agreement
 - 4.3 If at the Target Date the Certificate Date has not been achieved (subject to any extension of the Target Date having regard to the provisions of paragraphs 3.7, 4.1 and 4.2 of this Schedule A) the rent free period to be granted to the Tenant in respect of the Rent shall be extended by one month for each whole week of delay in the issue of the Certificate

5. PRACTICAL COMPLETION

- 5.1 "Certificate" means a certificate to be issued by the Architect certifying that the Works have been Practically Completed in accordance with the provisions of the Building Contract and the provisions of clause 5.3 shall apply
- 5.2 "Certificate Date" means the date on which the Certificate is issued in respect of the Premises
- 5.3 When the Works shall have been substantially and practically completed ("completed" being construed without reference to any minor works of an unfinished nature which would normally be the subject of a building contractor's snagging list ("Snagging Items")) in accordance with this Agreement ("Practically Completed") the Landlord shall procure that the Architect shall issue the Certificate and a copy together with a list of Snagging Items shall forthwith be sent to the Tenant
- 5.4 The Landlord shall procure that at least ten working days before the Architect proposes to issue the Certificate he shall notify the Representative of his proposal to issue the same and permit the Representative to accompany the Architect on inspection of the Works and together they shall prepare a snagging list and the Representative shall be entitled to make representations and the Architect shall have regard thereto
- 5.5 The Landlord shall procure that the Architect provides to the Tenant a copy of the Certificate as soon as it has been issued.
- 5.6 Any dispute relating to the issue or otherwise of the Certificate shall be referred to an Expert pursuant to clause 15 of this Agreement

6. CDM REGULATIONS

- 6.1 The Landlord has agreed with the Tenant that it will act as the client for the purposes of the Construction (Design and Management) Regulations 1994 ("the CDM Regulations") in respect of the whole of the design and construction of the Works and that the Landlord will accordingly issue a declaration to that effect under Regulation 4 of the CDM Regulations as soon as reasonably practicable after the date of commencement of the Works
- 6.2 On or within thirty days of the Completion Date the Landlord will without charge provide the Tenant with a copy of the health and safety file in respect of the Works which the Landlord shall procure has been prepared in accordance with the requirements of the CDM Regulations 1994 ("the CDM Regulations").
- 6.3 Following the Certificate Date or if sooner the date the Tenant enters the warehouse part of the Premises for the purposes of undertaking the Tenant's Fit Out Works the Tenant shall appoint its own contractor and planning supervisor pursuant to the CDM Regulations in respect of the Tenant's Works

SCHEDULE B

Tenant's Warehouse Works

1. As from the Access Date the Tenant shall be entitled to enter the Premises and to carry out and complete as soon as conveniently practicable the Tenant's Warehouse Works
2. The Tenant's occupation of the Premises shall be as licensee subject to and with the benefit of the same exceptions reservations rights (including the same right to relief as a lessee has to relief from forfeiture as granted by Section 146 of the Law of Property Act 1925) agreements and covenants as would have applied if the Lease had been granted except in so far as the same are inconsistent with the terms of this Agreement.
3. Prior to the Access Date the Tenant shall provide to the Landlord full and sufficient details of the Fit Out Works and Tenant's Warehouse Works for approval by the Landlord such approval not to be unreasonably withheld or delayed
4. The Tenant may at its own expense carry out and complete the Tenant's Warehouse Works:
 - 4.1 in a good and workmanlike manner and with sound materials of their respective kinds
 - 4.2 in accordance with the said plans and specification
 - 4.3 using reasonable endeavours not to obstruct or interfere with the carrying out of the Works
 - 4.4 to the reasonable satisfaction of the Project Manager in all respects
5. If at any time any breach by the Tenant of its obligations herein relating to the manner of the carrying out of the Tenant's Warehouse Works causes or in the reasonable opinion of the Landlord will cause delay in completion of the Works then in such event the Landlord shall give notice to the Tenant of his opinion with reasons and shall request the Tenant agree a new Target Date which would otherwise have been such date but for such delay and in the event of the parties within 7 days of receipt of such notice by the Tenant failing to agree upon such Target Date the matter shall be referred to the President for the time being of the Royal Institute of British Architects for the appointment of the Expert having regard to the provisions of clause 15 and the decision of the Expert shall be final and binding on the parties. The Landlord shall have the right to serve any number of notices pursuant to this clause
6. For the purposes of the rent review provisions of the Lease the Tenant's Fit Out Works and any agreed Costed Variations carried out at the Tenant's expense under part A hereof shall be disregarded for the purposes of any review of the rent

EXECUTED as a DEED by SLOUGH)
TRADING ESTATE LIMITED)

in the presence of:

)

Director

Director/Secretary

EXECUTED as a DEED by INTERCONNECT
EXCHANGE LIMITED acting by:

)

)

Director

Director/Secretary

29 June 2007

IXEUROPE PLC

and

CIT BANK LIMITED
as Arranger

and

CIT CAPITAL FINANCE (UK) LIMITED
acting as Administrative Agent and Security Trustee

and

THE LENDERS

£82,000,000 SENIOR FACILITIES AGREEMENT

Herbert Smith LLP

TABLE OF CONTENTS

<u>Clause</u>	<u>Headings</u>	<u>Page</u>
<u>1.</u>	<u>DEFINITIONS AND INTERPRETATION</u>	4
<u>2.</u>	<u>THE FACILITIES</u>	26
<u>3.</u>	<u>PURPOSE</u>	28
<u>4.</u>	<u>CONDITIONS OF UTILISATION</u>	28
<u>5.</u>	<u>UTILISATION OF LOANS</u>	29
<u>6.</u>	<u>OPTIONAL CURRENCY</u>	30
<u>7.</u>	<u>REPAYMENT</u>	30
<u>8.</u>	<u>PREPAYMENT AND CANCELLATION</u>	31
<u>9.</u>	<u>INTEREST</u>	37
<u>10.</u>	<u>INTEREST PERIODS</u>	38
<u>11.</u>	<u>CHANGES TO THE CALCULATION OF INTEREST</u>	39
<u>12.</u>	<u>FEES</u>	40
<u>13.</u>	<u>TAX GROSS UP AND INDEMNITIES</u>	41
<u>14.</u>	<u>INCREASED COSTS</u>	47
<u>15.</u>	<u>OTHER INDEMNITIES</u>	48
<u>16.</u>	<u>MITIGATION BY THE LENDERS</u>	50
<u>17.</u>	<u>COSTS AND EXPENSES</u>	50
<u>18.</u>	<u>GUARANTEE AND INDEMNITY</u>	51
<u>19.</u>	<u>REPRESENTATIONS</u>	57
<u>20.</u>	<u>INFORMATION UNDERTAKINGS</u>	63
<u>21.</u>	<u>FINANCIAL COVENANTS</u>	68
<u>22.</u>	<u>GENERAL UNDERTAKINGS</u>	69
<u>23.</u>	<u>EVENTS OF DEFAULT</u>	80
<u>24.</u>	<u>CHANGES TO THE LENDERS</u>	83
<u>25.</u>	<u>CHANGES TO THE OBLIGORS</u>	87
<u>26.</u>	<u>ROLE OF THE ADMINISTRATIVE AGENT, THE ARRANGER AND OTHERS</u>	90

<u>27.</u>	<u>CONDUCT OF BUSINESS BY THE FINANCE PARTIES</u>	97
<u>28.</u>	<u>SHARING AMONG THE FINANCE PARTIES</u>	97
<u>29.</u>	<u>HEDGE COUNTERPARTIES</u>	98
<u>30.</u>	<u>THE SECURITY TRUST</u>	100
<u>31.</u>	<u>PARALLEL DEBT</u>	104
<u>32.</u>	<u>PAYMENT MECHANICS</u>	105
<u>33.</u>	<u>SET-OFF</u>	107
<u>34.</u>	<u>NOTICES</u>	107
<u>35.</u>	<u>CALCULATIONS AND CERTIFICATES</u>	111
<u>36.</u>	<u>PARTIAL INVALIDITY</u>	111
<u>37.</u>	<u>REMEDIES AND WAIVERS</u>	111
<u>38.</u>	<u>AMENDMENTS AND WAIVERS</u>	111
<u>39.</u>	<u>COUNTERPARTS</u>	112
<u>40.</u>	<u>GOVERNING LAW</u>	112
<u>41.</u>	<u>ENFORCEMENT</u>	113
	<u>SCHEDULE 1 The Original Parties</u>	114
	<u>SCHEDULE 2 Conditions Precedent/Subsequent</u>	116
	<u>SCHEDULE 3 Utilisation Requests</u>	129
	<u>SCHEDULE 4 Mandatory Cost Formulae</u>	131
	<u>SCHEDULE 5 Forms of Transfer Certificate and Assignment Agreement</u>	134
	<u>SCHEDULE 6 Form of Accession Letter</u>	139
	<u>SCHEDULE 7 Form of Resignation Letter</u>	140
	<u>SCHEDULE 8 Form of Compliance Certificate</u>	141
	<u>SCHEDULE 10 Part I IX Europe Organisation Chart</u>	144
	<u>SCHEDULE 10 Part II Current CEO, COO and CFO</u>	145
	<u>SCHEDULE 11 Permitted Leases</u>	146
	<u>SCHEDULE 12 Template for Acquisition Summary</u>	147
	<u>SCHEDULE 13 Form of Confirmation</u>	153

BETWEEN:

- (1) **IXEUROPE PLC** a company incorporated in England and Wales (the “**Company**”);
- (2) **THE SUBSIDIARIES** of the Company listed in Part I of Schedule 1 (*The Original Obligors*) as original borrowers (together with the Company the “**Original Borrowers**”);
- (3) **THE SUBSIDIARIES** of the Company listed in Part II of Schedule 1 (*The Original Guarantors*) as original guarantors (together with the Company the “**Original Guarantors**”);
- (4) **THE FINANCIAL INSTITUTIONS** listed in Part III of Schedule 1 (*The Original Lenders*) as lenders (the “**Original Lenders**”);
- (5) **CIT BANK LIMITED** as arranger (the “**Arranger**”);
- (6) **CIT CAPITAL FINANCE (UK) LIMITED** as agent of the Lenders (the “**Administrative Agent**”);
- (7) **THE GOVERNOR AND COMPANY OF THE BANK OF IRELAND** as original hedge counterparty (the “**Original Hedge Counterparty**”); and
- (8) **CIT CAPITAL FINANCE (UK) LIMITED** as security trustee for and on behalf of the Finance Parties (as defined below) and others (the “**Security Trustee**”).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**Accession Letter**” means a document substantially in the form set out in Schedule 6 (*Form of Accession Letter*).

“**Accountants Report**” means the report of BDO Stoy Hayward on the financial affairs of the Group provided pursuant to Clause 4.1 (*Initial conditions precedent*).

“**Accounting Principles**” means generally accepted accounting principles and practices in the jurisdiction of incorporation of the relevant member of the Group.

“**Acquisition Information Template**” means a document substantially in the form set out in Schedule 12 (*Template for acquisition summary*) setting out the relevant information relating to a Permitted Acquisition.

“**Additional Borrower**” means a company which becomes an Additional Borrower in accordance with Clause 25 (*Changes to the Obligors*).

“**Additional Cost Rate**” has the meaning given to it in Schedule 4 (*Mandatory Cost Formulae*).

“**Additional Guarantor**” means a company which becomes an Additional Guarantor in accordance with Clause 25 (*Changes to the Obligors*).

“**Additional Obligor**” means an Additional Borrower or an Additional Guarantor.

“Affiliate” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

“Agent’s Spot Rate of Exchange” means the spot rate of exchange of Lloyds TSB Plc (or of such other bank of similar standing as the Administrative Agent may appoint in consultation with the Company) for the purchase of the relevant currency with the Base Currency in the London foreign exchange market as of 11:00 a.m. on a particular day.

“Assignment Agreement” means an agreement substantially in the form set out in Part II of Schedule 5 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

“Authorisation” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

“Availability Period” means:

- (A) in relation to Facility A, the period from and including the Closing Date to and including the date falling 9 Months thereafter;
- (B) in relation to Facility B, the period from and including the Closing Date to and including the date falling 36 Months thereafter;
- (C) in relation to Facility C, the period from and including the Closing Date until the date falling one Month prior to the Termination Date; and
- (D) in relation to Facility D, such period as may be agreed between the Obligors’ Agent, the Administrative Agent and the Lenders in respect of Facility D.

“Available Commitment” means, in relation to a Facility, a Lender’s Commitment under that Facility minus (subject as set out below):

- (A) the Base Currency Amount of its participation in any outstanding Loans under that Facility; and
- (B) in relation to any proposed Utilisation, the Base Currency Amount of its participation in any other Loans that are due to be made under that Facility on or before the proposed Utilisation Date,

other than, in relation to any proposed Utilisation under Facility C only, that Lender’s participation in any Facility C Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date.

“Available Facility” means, in relation to a Facility, the aggregate for the time being of each Lender’s Available Commitment in respect of that Facility.

“B&S Finance Lease” means a Finance Lease between a member of the Group and B&S Card Services GmbH and which has the commercial effect of a “back to back” arrangement in form and substance satisfactory to the Administrative Agent, acting reasonably.

“Base Case” means the document comprising the financial forecasts for the Group in the agreed form and signed, for the purposes of identification, by the Company and the Administrative Agent.

“Base Currency” means sterling.

“Base Currency Amount” means in relation to a Loan, the amount specified in the Utilisation Request delivered by a Borrower for that Loan (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Agent’s Spot Rate of Exchange on the date which is two Business Days before the Utilisation Date or, if later, on the date the Administrative Agent receives the Utilisation Request) adjusted to reflect any repayment (other than a repayment arising from a change of currency), prepayment, consolidation or division of that Loan.

“Blocked Bank Accounts” means two bank accounts of IX Europe GmbH held at Deutsche Bank, Große Gallusstr. 10-14, 60323 Frankfurt am Main with account number 095 07 09 30 and Dresdner Bank, Filiale Fürstenhof, 60613 Frankfurt am Main with account number 938 117 70, two bank accounts of Interconnect Exchange Europe GmbH held at HypoVereinsbank, Mainzer Landstr. 23, 60329 Frankfurt am Main with account number 605823467 and Commerzbank, Breite Str. 25, 40213 Dusseldorf with account number 135155010 and one bank account of IX Europe (Switzerland) AG held at Credit Suisse with account number 604731-41-4-G4 in each case where such accounts hold monies the subject of rent deposits only, and such other accounts as the Administrative Agent shall agree in writing.

“Borrower” means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 25 (*Changes to the Obligors*).

“Borrowing Group” means the Group excluding any Dormant Subsidiary.

“Borrowing Group EBITDA” means EBITDA in relation to the Borrowing Group only.

“Break Costs” means the amount (if any) by which:

(A) the interest (which for the avoidance of doubt excludes the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

(B) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“Budget” means the annual budget for the Group as referred to in Clause 20.4 (Budget).

“Business Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in London and:

(A) (in relation to any date for payment or purchase of swiss francs) Zurich; or

(B) (in relation to any date for payment or purchase of euro) is a TARGET Day.

“Capital Expenditure” means any expenditure or obligation in respect of expenditure which in accordance with the Accounting Principles is treated as capital expenditure and including the capital element of any expenditure or obligation incurred in connection with a capital or Finance Lease, other than a B&S Finance Lease.

“Cash” means, at any time, cash at bank and credited to an account in the name of an Obligor and to which an Obligor is alone beneficially entitled and for so long as:

- (A) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any Borrowing Group member or of any other person whatsoever or on the satisfaction of any other condition;
- (B) there is no Security over that cash except Transaction Security; and
- (C) such cash is freely and immediately available to be applied in repayment or prepayment of Financial Indebtedness of the Group.

“Cashflow Available For Debt Service” or **“CAFDS”** means, in respect of any Relevant Period, Borrowing Group EBITDA for that Relevant Period then adjusted for any adjustments agreed by the Administrative Agent and after:

adding back:

- (A) any decrease in the amount of Working Capital at the end of that Relevant Period compared against Working Capital at the start of that Relevant Period;
- (B) any cash receipt in respect of any exceptional or extraordinary item (excluding any such receipt that is applied in mandatory prepayment of the Facilities);
- (C) any cash receipt in respect of any Tax rebate;
- (D) any increase in provisions, other non-cash debits and other non-cash charges taken into account in establishing Borrowing Group EBITDA; and
- (E) any drawdowns under Facility B and Facility C,

and deducting:

- (A) any amount of Capital Expenditure (other than any incurred by way of finance or capital lease) actually made by any member of the Borrowing Group (save to the extent the same is funded under the Finance Documents);
- (B) any increase in the amount of Working Capital at the end of that Relevant Period compared against Working Capital at the start of that Relevant Period;
- (C) any cash payment in respect of any exceptional or extraordinary item;
- (D) any amount actually paid or due and payable in respect of Tax on the profits of any member of the Borrowing Group;
- (E) any decrease in provisions and other non-cash credits taken into account in establishing Borrowing Group EBITDA; and
- (F) any dividend or other distribution permitted pursuant to Clause 22.16 (*Dividends and other payments on subordinated debt*).

and so that no amount shall be included more than once and no amounts related to a B&S Finance Lease shall be added or deducted.

“Charged Property” means all of the assets of the Obligors which from time to time are, or are expressed to be, the subject of the Transaction Security.

“Closing Date” means the date on which the Administrative Agent confirms in writing to the Company and the Lenders that the documents and other evidence referred to in Clause 4.1(*Initial Conditions Precedent*) has been received.

“Commitment” means a Facility A Commitment, a Facility B Commitment or a Facility C Commitment.

“Compliance Certificate” means a certificate substantially in the form set out in Schedule 8 (*Form of Compliance Certificate*).

“Consolidated Total Finance Charges” means, in respect of any period:

- (A) the aggregate amount of the interest (including the interest element of payments made under Finance Leases other than a B&S Finance Lease), commission, fees (excluding all front end, arrangement and participation fees paid on or about the Closing Date under the Finance Documents and up-front premium or front end fees under any hedging arrangement), discounts, prepayment penalties or premiums and other finance payments payable in cash by any member of the Borrowing Group in respect of Financial Indebtedness, including in respect of any interest rate hedging arrangement; less
- (B) the aggregate of any commission, fees, discounts and other finance payments received in cash by any member of the Borrowing Group under any interest rate hedging arrangement,

provided that any amounts payable by one member of the Borrowing Group to another member of the Borrowing Group shall not be included in the calculation of Consolidated Total Finance Charges.

“Current Assets” means the aggregate of inventory, trade and other receivables of each member of the Borrowing Group including sundry debtors (but excluding cash at bank) maturing within twelve months from the date of computation and excluding:

- (A) receivables in relation to Tax;
- (B) extraordinary items, exceptional items and other non-operating items;
- (C) insurance claims; and
- (D) any accrued interest owing to any member of the Borrowing Group.

“Current Liabilities” means the aggregate of all liabilities (including trade creditors, accruals, provisions and prepayments) of each member of the Borrowing Group falling due within twelve months from the date of computation but excluding:

- (A) liabilities in respect of the Facilities;
- (B) liabilities for Tax;
- (C) extraordinary items, exceptional items and other non-operating items;
- (D) insurance claims; and
- (E) liabilities in relation to dividends declared but not paid by the Company.

“Default” means an Event of Default or any event or circumstance which would with the expiry of a grace period and/or the giving of notice, in each case, under Clause 23 (*Events of Default*), be an Event of Default.

“Default Rate” has the meaning ascribed to it in the definition of Margin.

“Delegate” means any delegate, agent, attorney or co-trustee appointed by the Security Trustee.

“Disposal” means a sale, lease, transfer, loan or other disposal by a person of any asset, undertaking or business (whether voluntary or involuntary and whether as a single transaction or a series of transactions).

“Dormant Subsidiary” means a member of the Group which does not trade (for itself or as agent for any person) and does not own, legally or beneficially, assets which in aggregate have a value of £50,000 or more or its equivalent in other currencies (excluding historic VAT reclaims).

“Dutch Financial Supervision Act” means the Dutch Financial Supervision Act (*Wet op het financieel toezicht*).

“Dutch Obligor” means an Obligor incorporated under Dutch law.

“EBITDA” means the consolidated profits of the Group for a Relevant Period:

- (A) before deducting any Total Interest Costs;
- (B) before deducting any amount attributable to the amortisation of intangible assets, the depreciation of tangible assets or the amortisation of any fees, costs and expenses incurred in connection with the Finance Documents;
- (C) before taking into account any accrued interest owing to any member of the Group;
- (D) before taking into account any items treated as exceptional or extraordinary items;
- (E) after deducting the amount of any profit of any member of the Group which is attributable to minority interests;
- (F) after deducting the amount of any profit of any investment or entity (which is not itself a member of the Group) in which any member of the Group has an ownership interest to the extent that the amount of such profit included in the financial statements of the Group exceeds the amount (net of applicable withholding tax) received in cash by members of the Group through distributions by such investment or entity;
- (G) before taking into account any realised and unrealised exchange gains and losses including those arising on translation of currency debt;
- (H) before taking into account any gain or loss arising from an upward or downward revaluation of any asset; and
- (I) after taking into account the adjustment for options included in the schedule of charges (as agreed with BDO Stoy Hayward and reviewed from time to time under IFRS rules) in respect of the same Relevant Period and any other adjustments agreed by the Administrative Agent, in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining profits of the Group from ordinary activities before taxation.

“Eligible Deposit Bank” means any bank or financial institution with a short term rating of at least A1 granted by Standard and Poors Corporation or P1 granted by Moody’s Investor’s Services Inc.

“Enforcement Action” means any action to:

- (A) demand payment, declare prematurely due and payable or otherwise seek to accelerate payment of all or part of any liability owing or due to any Finance Party under any Finance Document;
- (B) enforce (or require any other person to enforce) any Security (whether by sale, possession, appointment of an administrator or otherwise) or any guarantee;
- (C) discharge, sue for or commence proceedings to recover all or part of any liability or obtain or enforce any judgment against any member of the Group in relation to all or part of any liability owing or due to any Finance Party under any Finance Document;
- (D) declare an early termination date under any Hedging Agreement or demand payment of all or part of any amount which would become payable following an early termination date;
- (E) petition for, apply for or vote in favour of any resolution for the winding up, dissolution, administration or implementation of a voluntary arrangement in relation to any member of the Group; or
- (F) recover or receive all or part of any liability owing or due to any Finance Party under any Finance Document (including by exercising any rights of set-off or combination of accounts) other than in accordance with this Agreement.

“Environmental Claim” means any claim, proceeding or investigation by any person in respect of any Environmental Law.

“Environmental Law” means any applicable law or regulation which relates to:

- (A) the pollution or protection of the environment;
- (B) harm to or the protection of human health; or
- (C) the health of animals or plants.

“Environmental Permits” means any permit, licence, consent, approval and other authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group.

“EURIBOR” means, in relation to any Loan in euro:

- (A) the applicable Screen Rate; or
- (B) (if no Screen Rate is available for the Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Administrative Agent at its request quoted by the Reference Banks to leading banks in the European interbank market, as of the Specified Time on the Quotation Day for the offering of deposits in euro for a period comparable to the Interest Period of the relevant Loan.

“Event of Default” means any event or circumstance specified as such in Clause 23 (*Events of Default*).

“Existing Financial Indebtedness” means all Financial Indebtedness of the Group incurred under or pursuant a senior facilities agreement dated 26 July 2006 made between, amongst others, (1) the Company (as the company), (2) the Arranger (as the arranger) and (3) the Administrative Agent (as administrative agent), as amended and restated on 28 February 2007.

“Facility” means Facility A, Facility B, Facility C or Facility D;

“Facility A” means the term loan facility made available under this Agreement as described in Clause 2.1.1 (*The Facilities*).

“Facility A Commitment” means:

- (A) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading “Facility A Commitment” in Part III of Schedule 1 (*The Original Lenders*) and the amount of any other Facility A Commitment transferred to it under this Agreement; and
- (B) in relation to any other Lender, the amount in the Base Currency of any Facility A Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

“Facility A Loan” means a loan made or to be made under Facility A or the principal amount outstanding for the time being of that loan.

“Facility A Repayment Date” means each of the dates specified in Clause 7.1.1 (*Repayment of Facility A and B Loans*) as Facility A Repayment Dates, but if any such date is not a Business Day, then that Facility A Repayment Date shall be deemed to be the next Business Day.

“Facility A Repayment Instalment” means each instalment for repayment of the Facility A Loans referred to in Clause 7.1.1 (*Repayment of Facility A and B Loans*).

“Facility B” means the term loan facility made available under this Agreement as described in Clause 2.1.2 (*The Facilities*).

“Facility B Commitment” means:

- (A) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading “Facility B Commitment” in Part III of Schedule 1 (*The Original Lenders*) and the amount of any other Facility B Commitment transferred to it under this Agreement; and
- (B) in relation to any other Lender, the amount in the Base Currency of any Facility B Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

“Facility B Loan” means a loan made or to be made under Facility B or the principal amount outstanding for the time being of that loan.

“Facility B Repayment Date” means each of the dates specified in Clause 7.1.2 (*Repayment of Facility A and B Loans*) as Facility B Repayment Dates, but if any such date is not a Business Day, then that Facility B Repayment Date shall be deemed to be the next Business Day.

“Facility B Repayment Instalment” means each instalment for repayment of the Facility B Loans referred to in Clause 7.1.2 (*Repayment of Facility A and B Loans*).

“Facility C” means the revolving loan facility made available under this Agreement as described in Clause 2.1.3 (*The Facilities*).

“Facility C Commitment” means:

(A) in relation to an Original Lender, the amount in the Base Currency set opposite its name under the heading “Facility C Commitment” in Part III of Schedule 1 (*The Original Lenders*) and the amount of any other Facility C Commitment transferred to it under this Agreement; and

(B) in relation to any other Lender, the amount of any Facility C Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement,

“Facility C Loan” means a loan made or to be made under Facility C or the principal amount outstanding for the time being of that loan.

“Facility D” means the uncommitted term loan facility to be made available under, and in accordance with the terms and conditions of, this Agreement as described in Clause 2.2 (*Facility D*).

“Facility D Loan” means a loan made or to be made under Facility D or the principal amount outstanding for the time being of that loan.

“Facility Office” means the office or offices notified by a Lender to the Administrative Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days’ written notice) as the office or offices through which it will perform its obligations under this Agreement.

“Fee Letter” means any letter or letters dated on or about the date of this Agreement between the Arranger and the Company (or the Administrative Agent and the Company or the Security Trustee and the Company) setting out any of the fees referred to in Clause 12 (*Fees*).

“Finance Document” means this Agreement, the Hedging Letter, the Hedging Documents, any Fee Letter, any Accession Letter, any Resignation Letter, any Transaction Security Document and any other document designated as a **“Finance Document”** by the Administrative Agent and the Company.

“Finance Lease” means a contract treated as a finance or capital lease in accordance with generally accepted accounting principles in the relevant jurisdiction.

“Finance Party” means the Administrative Agent, the Arranger, the Security Trustee, a Hedge Counterparty and each Lender.

“Financial Indebtedness” means any indebtedness for or in respect of:

(A) monies borrowed or raised;

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- (B) any amount raised by acceptance under any acceptance credit facility or by a bill discounting or factoring credit facility or any dematerialised equivalent;
 - (C) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
 - (D) any liability in respect of any lease or hire purchase contract or other agreement which would, in accordance with the Accounting Principles, be treated as a finance or capital lease;
 - (E) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
 - (F) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
 - (G) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
 - (H) any amount raised by the issue of redeemable shares;
 - (I) any liability under an advance or deferred purchase agreement if such agreement was entered into primarily as a method of raising finance;
 - (J) any liability for the supply of goods or services which is more than 90 days past the expiry of the period customarily allowed by the relevant supplier after the due date (other than as a result of a bona fide dispute);
 - (K) any arrangement entered into primarily as a method of raising finance pursuant to which an asset sold or otherwise disposed of by that person may be re-acquired by a member of the Group (whether following the exercise of an option or otherwise);
 - (L) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing; and
 - (M) (without double counting) any liability in respect of any guarantee or indemnity or similar assurance against financial loss for any of the items referred to in the preceding paragraphs of this definition and any agreement to maintain the solvency of any person whether by investing in, lending to or purchasing the assets of such person.

“Financial Quarter” means the period commencing on the day after one Quarter Date and ending on the next Quarter Date.

“French Borrower” means any Borrower that is incorporated in France.

“French Guarantor” means any Guarantor that is incorporated in France.

“German Obligor” means any Obligor that is incorporated or established (as the case may be) in the Federal Republic of Germany.

“German Subsidiary” means companies which are dependent enterprises of the relevant Holding Company, or any company in respect of which such term is used, within the meaning of section 17 German Stock Corporation Act (AktG) and subsidiaries within the meaning of section 290 German Commercial Code (*HGB*).

“Group” means the Company and each of its Subsidiaries for the time being.

“Group Structure Chart” means the group structure chart as at the date hereof set out in Schedule 10 *Group Structure Chart*.

“Guarantor” means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 25 (*Changes to the Obligors*).

“Guidelines” means, together, the guideline “Syndicated Loans” of January 2000 (S-02.128) (Merkblatt S-02.128 vom January 2000 betreffend Steuerliche Behandlung von Konsortialdarlehen, Schuldscheindarlehen, Wechseln und Unterbeteiligungen) and the guideline “Bonds” of April 1999 (S-02-122.1) (Merkblatt S-02.122.1 vom April 1999 betreffend Obligationen) as issued by the Swiss Federal Tax Administration.

“Hedge Counterparty” means the Original Hedge Counterparty and any other person who enters into Hedging Agreement with a Borrower.

“Hedging Agreement” means any master agreement, confirmation, schedule or other agreement entered into by a Borrower and a person permitted under Clause 29.1 (*Identity of Hedge Counterparties*) for the purpose of hedging interest rate liabilities in relation to the Term Facilities in accordance with the Hedging Letter.

“Hedging Document” means a Hedging Agreement or any document entered into under or in connection with it.

“Hedging Letter” means the letter addressed from the Administrative Agent to the Company dated on or about the date of this Agreement relating to the hedging strategy of the Group in the form agreed between the Company and the Administrative Agent.

“Hedging Liability” means any liability of any member of the Group to a Hedge Counterparty under any Hedging Agreement.

“Holding Company” means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

“Indebtedness for Borrowed Money” means Financial Indebtedness save for indebtedness in respect of paragraphs (E), (F), (H) and (J) or, to the extent it relates to indebtedness under paragraphs (E), (F), (H) or (J), paragraph (M) of the definition of Financial Indebtedness.

“Information Memorandum” means any document approved by the Company in writing (acting reasonably) concerning the Group which is to be prepared hereafter in relation to this transaction and to be distributed by the Arranger to selected financial institutions prior to the Syndication Date in connection with the syndication of the Facilities.

“Information Package” means the bundle of documents relating to the Group supplied by the Group to the Arranger on or about 12 June 2007 to enable the Arranger, the Administrative Agent, the Security Trustee and the Lenders to assess the credit worthiness of the Group together with such further information and documents relating to the businesses, assets, liabilities and affairs of the Group supplied by any member of the Group to the Administrative Agent or the Arranger in writing since 12 June 2007.

“Intellectual Property” means:

- (A) any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered; and

(B) the benefit of all applications and rights to use such assets of each member of the Group.

“Interest Period” means, in relation to a Loan, each period determined in accordance with Clause 10 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 9.3 (*Default interest*).

“ITA” means the Income Tax Act 2007.

“Legal Opinions” means the legal opinions delivered to the Administrative Agent pursuant to Clause 4.1 (*Initial Conditions Precedent*) or Clause 25 (*Changes to the Obligors*).

“Legal Reservations” means:

- (A) the principal that equitable remedies may be granted or refused at the discretion of a court, the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (B) the time barring of claims under the Limitation Acts or equivalent legislation in any Relevant Jurisdiction, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of the UK stamp duty may be void and defences of set-off or counterclaim; and
- (C) any general principles which are set out in the qualifications as to matters of law in the Legal Opinions.

“Lender” means:

- (A) any Original Lender; and
- (B) any bank, financial institution (including a trust), fund, vehicle or other entity in each case which is engaged in or established for the making of or purchasing or investing in Loans and/or securities which has become a Party in accordance with Clause 24 (*Changes to the Lenders*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement.

“Lender’s Commitment” means, in relation to a Lender, that Lender’s commitment in respect of a Facility as set out at Part III of Schedule 1 (*The Original Lenders*).

“LIBOR” means, in relation to any Loan:

- (A) the applicable Screen Rate; or
- (B) (if no Screen Rate is available for the currency or Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Administrative Agent at its request quoted by the Reference Banks to leading banks in the London interbank market,

as of the Specified Time on the Quotation Day for the offering of deposits in the currency of that Loan and for a period comparable to the Interest Period for that Loan.

“Loan” means a Term Loan or a Revolving Loan.

“**London 4**” means a datacentre to be owned and operated by Interconnect Exchange Europe Limited within the building to be constructed by Slough Trading Estate Limited at 2 Buckingham Avenue, Slough in accordance with the agreement to lease signed by Interconnect Exchange Europe Limited on 12 June 2006.

“**Majority Lenders**” means:

- (A) if there are no Loans then outstanding, a Lender or Lenders whose Commitments aggregate more than 66²/₃ per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66²/₃ per cent. of the Total Commitments immediately prior to that reduction); or
- (B) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate more than 66²/₃ of all the Loans then outstanding.

“**Mandatory Cost**” means the percentage rate per annum calculated by the Administrative Agent in accordance with Schedule 4 (*Mandatory Cost Formulae*).

“**Mandatory Prepayment/Holding Account**” means an interest-bearing account:

- (A) identified in a letter to be agreed hereafter between the Company and the Administrative Agent (in each case acting reasonably) as a Mandatory Prepayment Account (as the same may be redesignated, substituted or replaced from time to time);
- (B) subject to Security in favour of the Security Trustee which Security is in form and substance satisfactory to the Administrative Agent and the Security Trustee; and
- (C) from which no withdrawals may be made by any members of the Group save other than as permitted under this Agreement.

“**Margin**” means:

- (A) in relation to a Facility A Loan or a Facility C Loan, 2.00 per cent. per annum;
- (B) in relation to a Facility B Loan, 2.25 per cent. per annum,

but if:

- (1) no Event of Default has occurred and is continuing; and
- (2) at any Quarter Date after the Closing Date, the ratio of Total Debt at the end of the most recently completed Relevant Period to Pro Forma Borrowing Group EBITDA for such Relevant Period is within a range set out in the table below,

then the Margin for each Loan will thereafter be the percentage per annum set out below opposite that range:

<u>Total Debt to Pro Forma Borrowing Group EBITDA</u>	<u>Facility A/Facility C Margin (% p.a.)</u>	<u>Facility B Margin (% p.a.)</u>
Greater than 3.75:1	2.00	2.25
Less than or equal to 3.75:1 but greater than 3.50:1	2.00	2.00
Less than or equal to 3.50:1 but greater than 3.00:1	1.75	1.75
Less than or equal to 3.00:1 but greater than 2.50:1	1.50	1.50

Less than or equal to 2.50:1 but greater than 2.00:1	1.25	1.25
Less than or equal to 2.00:1 but greater than 1.50:1	1.00	1.00
Less than or equal to 1.50:1	0.75	0.75

and;

- (C) in relation to a Facility D Loan, the rate(s) agreed between the Obligors' Agent, the Administrative Agent and each Lender in respect of Facility D from time to time.

Any change in that Margin shall take effect from and on the fifth Business Day after receipt by the Administrative Agent of the Quarterly Financial Statements and Compliance Certificate for that Relevant Period.

If an Event of Default is outstanding, the Margin will be increased by 2.00 per cent. per annum above the then applicable rate (the "Default Rate") provided that upon the remedy or waiver, as the case may be, of the said Event of Default, the said Margin will be recalculated on the basis set out above, and any change shall take effect as of the date the relevant Event of Default is remedied or waived.

"Material Adverse Effect" means a material adverse effect on:

- (A) the business, assets or financial condition of the Group taken as a whole; or
- (B) the ability of an Obligor to perform its payment obligations under the Finance Documents or result in the invalidity or unenforceability of any Finance Document or have a material adverse effect on the effectiveness or ranking of any material Security granted or purporting to be granted pursuant to any of the Finance Documents; or
- (C) the ability of the Group to comply with its obligations under Clause 21.1 (*Financial condition*) of this Agreement.

"Material Company" means, at any time:

- (A) an Obligor;
- (B) a Subsidiary of the Company which:
- (1) has earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) representing 5 per cent. or more of Borrowing Group EBITDA; or
 - (2) has gross assets (excluding intra-group items) representing 5 per cent. or more of the gross assets of the Borrowing Group,

in each case calculated on a consolidated basis; and

- (C) each Holding Company (which is also a member of the Group) of a member of the Group which is a "Material Group Company" pursuant to paragraph (A) or (B).

Compliance with the conditions set out in paragraphs (B)(1) and (2) above shall be determined by reference to the most recent Compliance Certificate supplied by the Company and/or shall be assessed on a quarterly basis by reference to the latest monthly management accounts of that Subsidiary and on an annual basis by reference to the latest audited consolidated financial statements of the Group.

“Month” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (A) (subject to paragraph (C) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (B) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (C) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period **“Monthly”** shall be construed accordingly.

“Non-Bank Rules” means the Ten Non-Bank Rule and the Twenty Non-Bank Rule.

“Obligor” means a Borrower or a Guarantor.

“Obligors’ Agent” means the Company, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.5 *Obligors’ Agent*.

“Optional Currency” means euros or Swiss francs.

“Original Financial Statements” means:

- (A) in relation to each Original Obligor, its audited financial statements (consolidated where applicable) for its financial year ended 31 December 2006;
- (B) in relation to each Original Obligor, its monthly financial statements (consolidated where applicable) for the month ending 30 April 2007; and
- (C) in relation to any Obligor (other than an Original Obligor), its audited financial statements delivered to the Administrative Agent as required by Clause 25 *(Changes to the Obligors)*.

“Original Obligor” means an Original Borrower or an Original Guarantor.

“Participating Member State” means any member state of the European Communities that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union.

“Party” means a party to this Agreement.

“Permitted Acquisition” means a purchase permitted in accordance with Clause 22.7 *(Acquisitions)*

“Permitted Carry Forward Amount” has the meaning given to such term in Clause 21 *(Financial Covenants)*.

“Permitted Leases” means those Finance Leases in respect of equipment used by members of the Borrowing Group as listed in Schedule 11 *Permitted Leases* (as such list may from time to time be amended by written agreement between the Company and the Administrative Agent, such agreement not to be unreasonably withheld) and any other Finance Lease entered into from time to time with any Lender, provided that the aggregate of any Financial Indebtedness incurred by the Group under such Finance Leases shall not exceed £5,000,000.

“Pro Forma Borrowing Group EBITDA” means the notional EBITDA to be applied in respect of the Relevant Period or (in the case of Clause 21 *Financial Covenants*), Financial Quarter or other three month period (in the case of Clause 5.3.2 *Currency and amount*) (as appropriate), provided that, in the case of EBITDA received by any member of the Borrowing Group from a Significant Customer Contract, the amount of such EBITDA in the current financial year will be deducted from the calculation of EBITDA and an annualised proforma amount of 80 per cent. of the contracted monthly revenues per Financial Quarter in respect of each such Significant Customer Contract will be added back to EBITDA, in each case from the date of signature of such Significant Customer Contract until the first anniversary of such date.

“Qualifying Bank” means any legal entity which is recognised as a bank by the banking laws in force in its country of incorporation and which exercises as its main purpose a true banking activity, having bank personnel, premises, communication devices of its own and the authority of decision-making.

“Quarter Date” means each of 31 March, 30 June, 30 September and 31 December.

“Quotation Day” means, in relation to any period for which an interest rate is to be determined:

- (A) (if the currency is sterling or Swiss francs) the first day of that period; or
- (B) (if the currency is euro) two TARGET Days before the first day of that period,

unless market practice differs in the Relevant Interbank Market for a currency, in which case the Quotation Day for that currency will be determined by the Administrative Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

“Receiver” means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

“Reference Banks” means the principal London offices of Lloyds TSB Plc and such other banks or such of the Lenders as may be appointed by the Administrative Agent in consultation with the Company.

“Related Fund” means, in relation to a trust or fund or other entity, another trust, fund or other entity which is regularly engaged in, or established for the purpose of making, purchasing or investing in loans, securities or other financial assets and either has the same fund manager or has common ownership as such first mentioned trust or fund or other entity.

“Relevant Interbank Market” means in relation to euro, the European interbank market and, in relation to any other currency, the London interbank market.

“Relevant Jurisdiction” means, in relation to an Obligor:

- (A) its jurisdiction of incorporation;

- (B) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (C) any jurisdiction where it conducts its business; and
- (D) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

“Relevant Period” means each period of twelve months, or such shorter period commencing on the Closing Date, ending on each Quarter Date falling on or after the Closing Date.

“Repeating Representations” means each of the representations set out in Clauses 19.1 (*Status*) to 19.6 (*Governing law and enforcement*), 19.10 (*No default*), 19.11.5 (*No misleading information*), 19.12.3 and 19.12.4 (*Financial condition*), 19.13 (*No proceedings pending or threatened*) to 19.17 (*Security and Financial Indebtedness*) and 19.25 (*Dutch Financial Supervision Act*).

“Resignation Letter” means a letter substantially in the form set out in Schedule 7 (*Form of Resignation Letter*).

“Revolving Loan” means a Facility C Loan.

“Rollover Loan” means one or more Facility C Loans:

- (A) made or to be made on the same day that a maturing Facility C Loan is due to be repaid;
- (B) the aggregate amount of which is equal to or less than the maturing Facility C Loan;
- (C) in the same currency as the maturing Facility C Loan; and
- (D) made or to be made to the same Borrower for the purpose of refinancing a maturing Facility C Loan.

“Screen Rate” means:

- (A) in relation to LIBOR, the British Bankers’ Association Interest Settlement Rate for the relevant currency and period; and
 - (B) in relation to EURIBOR, the percentage rate per annum determined by the Banking Federation of the European Union for the relevant period,
- displayed on the appropriate page of the Reuters screen. If the agreed page is replaced or service ceases to be available, the Administrative Agent may specify another page or service displaying the appropriate rate after consultation with the Company and the Lenders.

“Secured Parties” means each Finance Party from time to time party to this Agreement and any Receiver or Delegate.

“Security” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

“Security Company” means any member of the Group that has entered into a Transaction Security Document.

“**Selection Notice**” means a notice substantially in the form set out in Part II of Schedule 3 (*Selection Notice*) given in accordance with Clause 10 (*Interest Periods*) in relation to Facility A and/or Facility B.

“**Significant Customer Contract**” means a material contract entered into or to be entered into by a member of the Borrowing Group with a customer in the ordinary course of business and on arm’s length terms in such form as the Administrative Agent shall approve (acting reasonably).

“**Slough Upgrade**” means second phase of the upgrade in respect of London 4, as referred to in the Base Case.

“**Slough Upgrade Deferred Consideration**” means the amount of the consideration in respect of the Slough Upgrade that is deferred for more than 90 days after the date for initial payment of monies due under the agreement relating to the Slough Upgrade.

“**Specified Time**” means a time determined in accordance with Schedule 9 (*Timetables*).

“**Subsidiary**” means in relation to a company or corporation, any company or corporation:

- (A) which is controlled, directly or indirectly, by the first-mentioned company or corporation;
- (B) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first-mentioned company or corporation; or
- (C) which is a subsidiary of another subsidiary of the first-mentioned company or corporation

and, for these purposes, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body.

“**Swiss Borrower**” means a Borrower incorporated under the laws of Switzerland or which is treated as resident in Switzerland for tax purposes.

“**Swiss Obligor**” means an Obligor incorporated under the laws of Switzerland or which is treated as resident in Switzerland for tax purposes.

“**Swiss Withholding Tax**” means any withholding tax on the payment of interest and dividends (including constructive dividends) in accordance with the Swiss Federal Withholding Tax Act of 13 October 1965 (*Bundesgesetz über die Verrechnungssteuer*), as amended from time to time.

“**Syndication Date**” means the day specified by the Arranger as the day on which primary syndication of the Facilities is completed provided that the Syndication Date shall not be more than six months after the date of the first Utilisation Request under the Facilities as the case may be.

“**Syndication Letter**” means the letter dated on or about the date hereof addressed by the Arranger, to the Company relating to the syndication of the Facilities.

“**TARGET**” means Trans-European Automated Real-time Gross Settlement Express Transfer payment system.

“**TARGET Day**” means any day on which TARGET is open for the settlement of payments in euro.

“Tax” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“Taxes Act” means the Income and Corporation Taxes Act 1988.

“Tax Deduction” means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

“Tax Payment” means either an increased payment made by an Obligor to a Finance Party under Clause 13.2 (*Tax gross-up*) or a payment under Clause 13.3 (*Tax indemnity*).

“Ten Non-Bank Rule” means the rule that the aggregate number of Lenders of a Swiss Borrower under this Agreement which are not Qualifying Banks must not exceed ten (10), in each case in accordance with the meaning of the Guidelines.

“Term Facility” means Facility A, Facility B or, subject to Clause 2.2 (*Facility D*), Facility D.

“Term Loan” means a Facility A Loan, a Facility B Loan or, subject to Clause 2.2 (*Facility D*), a Facility D Loan.

“Termination Date” means 30 June 2014.

“Total Commitments” means the aggregate of the Total Facility A Commitments, the Total Facility B Commitments and the Total Facility C Commitments.

“Total Debt” means, at any time, the aggregate amount of all obligations of the Borrowing Group for or in respect of the principal amount of Indebtedness for Borrowed Money but:

- (A) excluding any such obligations to any other member of the Borrowing Group; and
- (B) including:
 - (1) in the case of Finance Leases (other than B&S Finance Leases), only the capitalised value thereof; and
 - (2) the Slough Upgrade Deferred Consideration,

and so that no amount shall be included or excluded more than once.

“Total Debt Service” means, in respect of any Relevant Period, the aggregate of:

- (A) Total Interest Costs;
- (B) the aggregate of all scheduled repayments of any Indebtedness for Borrowed Money of the Borrowing Group;
- (C) the amount of the capital element of any payments in respect of that Relevant Period payable under any Finance Lease or capital lease entered into by any member of the Borrowing Group;
- (D) the amount of any payments in respect of that Relevant Period payable in respect of the Slough Upgrade Deferred Consideration;
- (E) the aggregate of any dividend or other distribution permitted pursuant to Clause 22.16 (*Dividends and other payments on subordinated debt*);

(F) the aggregate of all interest, lease rentals, coupon or other payments whatsoever in respect of Financial Indebtedness of the Borrowing Group, and so that no amount shall be included more than once and so that, to the extent not already excluded, no amount shall be included in respect of any B&S Finance Lease.

“Total Facility A Commitments” means the aggregate of the Facility A Commitments.

“Total Facility B Commitments” means the aggregate of the Facility B Commitments.

“Total Facility C Commitments” means the aggregate of the Facility C Commitments.

“Total Funding Costs” means, in respect of any period, the aggregate of:

- (A) Consolidated Total Finance Charges for that period;
- (B) scheduled repayments, and any other scheduled payments in the nature of principal, payable by any member of the Borrowing Group in that period in respect of Financial Indebtedness, other than B&S Finance Leases; and
- (C) to the extent not already included in paragraph (b) above, the amount of the capital element of any payments in respect of that period payable under any Finance Lease entered into by any member of the Borrowing Group,

and so that no amount shall be included more than once but excluding any amounts falling due under any overdraft, working capital facility or revolving credit facility provided such amounts are available for simultaneous redrawing under that or any replacement facility and further, to the extent not already excluded, no amount shall be included in respect of any B&S Finance Lease.

“Total Interest Costs” means, for any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment penalties or premiums and other finance payments in respect of Indebtedness for Borrowed Money payable in cash by any member of the Borrowing Group in respect of that Relevant Period:

- (A) excluding any such obligations to any other member of the Borrowing Group;
- (B) including only the interest element of payments payable under any finance capital lease entered into by any member of the Borrowing Group, other than a B&S Finance Lease;
- (C) including any accrued commission, fees, discounts and other finance payments payable by any member of the Borrowing Group under any interest rate hedging arrangement; and
- (D) deducting any accrued commission, fees, discounts and other finance payments owing to any member of the Borrowing Group under any interest rate hedging instrument.

“Total Senior Debt” means, at any time, the aggregate amount of all obligations of the Borrowing Group for or in respect of the principal amount owed under the Facilities.

“Total Senior Interest Costs” means, for any Relevant Period, the Total Interest Costs attributable to Total Senior Debt.

“Transaction Security” means the Security created or expressed to be created in favour of the Security Trustee and/or the Finance Parties (or any of them) pursuant to the Transaction Security Documents.

“Transaction Security Documents” means each of the following documents:

- (A) the charges, pledges and assignments and other security documents in form and substance acceptable to the Security Trustee and the Administrative Agent and identified in and delivered to the Administrative Agent in section 2.5 of Part I of Schedule 2 (*Conditions Precedent to Initial Utilisation*) or under Part II of Schedule 2 (*Conditions Precedent to be delivered by Additional Obligors*); and
- (B) any other document entered into by any member of the Group creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents.

“Transfer Certificate” means a certificate substantially in the form set out in Part I of Schedule 5 (*Form of Transfer Certificate*) or any other form agreed between the Administrative Agent and the Company.

“Transfer Date” means, in relation to a transfer, the later of:

- (A) the proposed Transfer Date specified in the Assignment Agreement or Transfer Certificate; and
- (B) the date on which the Administrative Agent executes the Assignment Agreement or Transfer Certificate.

“Trust Property” means, collectively, (i) the security, powers, rights, titles, benefits and present or future interests constituted by, and conferred on the Security Trustee under, the Transaction Security Documents, any other Finance Document or any other related document (together, the **“Trust Documents”**), (ii) all assets paid, transferred to, or vested in the Security Trustee (or its nominees), or received or recovered by the Security Trustee (or its nominees) in connection with the Trust Documents, and (iii) all rights, benefits, interests and other assets representing or deriving from the foregoing, including all interest, income and other sums at any time received or recoverable in respect of the same.

“Twenty Non-Bank Rule” means the rule that the aggregate number of creditors (including the Lenders), other than Qualifying Banks, of a Swiss Borrower under all outstanding loans, facilities and/or private placements (including under this Agreement) must not at any time exceed twenty (20), in each case in accordance with the meaning of the Guidelines.

“Unpaid Sum” means any sum due and payable but unpaid by an Obligor under the Finance Documents.

“Unused Amount” has the meaning given to such terms in Clause 21.1 (*Financial condition*).

“Utilisation” means the utilisation of a Loan.

“Utilisation Date” means the date on which a Utilisation is made.

“Utilisation Request” means a notice substantially in the form set out in Part I of Schedule 3 (*Utilisation Requests*).

“VAT” means value added tax as provided for in the UK Value Added Tax Act 1994 and any other tax of a similar nature in the UK or any other jurisdiction.

“Working Capital” means, on any date, Current Assets less Current Liabilities.

1.2 **Construction**

1.2.1 Unless a contrary indication appears a reference in this Agreement to:

- (A) the “**Administrative Agent**”, the “**Arranger**”, the “**Security Trustee**”, any “**Finance Party**”, any “**Secured Party**”, any “**Lender**”, any “**Obligor**”, any “**Party**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Trustee, any person for the time being appointed as security trustee or security trustees in accordance with this Agreement;
- (B) a document in “**agreed form**” is a document which is:
 - (1) initialled by or on behalf of the Company and the Administrative Agent or the Arranger; or
 - (2) executed on or before the Closing Date by the Company and the Arranger or the Administrative Agent.
- (C) “**assets**” includes present and future properties, revenues and rights of every description;
- (D) the “**European interbank market**” means the interbank market for euro operating in Participating Member States;
- (E) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended or novated, supplemented, extended or restated (however fundamentally);
- (F) “**guarantee**” means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, including a third party security arrangement, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (G) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (H) “**liabilities**” includes any obligation whether incurred as principal or as surety, whether or not in respect of indebtedness, whether present or future, actual or contingent and whether owed jointly or severally or in any other capacity;
- (I) a “**participation**” of a Lender in a Loan, means the amount of such Loan which such Lender has made or is to make available and thereafter that part of the Loan which is owed to such Lender;
- (J) a “**person**” includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing;
- (K) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

- (L) a provision of law is a reference to that provision as amended or re-enacted; and
- (M) a time of day is a reference to London time.
- 1.2.2 Section, Clause and Schedule headings are for ease of reference only.
- 1.2.3 Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- 1.2.4 A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been waived.

1.3 **Currency Symbols and Definitions**

“£” and “**sterling**” denotes lawful currency of the United Kingdom, “**CHF**” and “**Swiss francs**” denotes lawful currency of Switzerland and “€” and “**euro**” means the single currency unit of the Participating Member States.

1.4 **Third party rights**

- 1.4.1 Unless expressly provided to the contrary in a Finance Document a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or enjoy the benefit of any term of any Finance Document.
- 1.4.2 Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary any Finance Document at any time.

2. **THE FACILITIES**

2.1 **The Facilities**

Subject to the terms of this Agreement, the Lenders make available:

- 2.1.1 to the Borrowers, a multicurrency term loan facility in an aggregate amount equal to the Total Facility A Commitments being £40,000,000 at the date of this Agreement;
- 2.1.2 to the Borrowers, a multicurrency term loan facility in an aggregate amount equal to the Total Facility B Commitments being £40,000,000 at the date of this Agreement; and
- 2.1.3 to the Borrowers, a multicurrency revolving credit facility in an aggregate amount equal to the Total Facility C Commitments being £2,000,000 at the date of this Agreement.

2.2 **Facility D**

- 2.2.1 Following a written request from the Company at any time after 31 December 2007, the Lenders (acting in their sole discretion) may make available to the Borrowers a multicurrency term loan facility in an aggregate amount of up to £15,000,000 (“**Facility D**”).
- 2.2.2 If the Lenders agree to make Facility D available to the Borrowers, the provisions of this Agreement shall apply to Facility D and any Facility D Loan as they apply to each other Term Facility and each other Term Loan, with such modifications as may be agreed between the Obligors’ Agent, Administrative Agent and the Lenders in respect of Facility D.

2.3 **Finance Parties' rights and obligations**

- 2.3.1 The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- 2.3.2 The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- 2.3.3 A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

2.4 **No Further Finance Obligation**

The Obligors acknowledge that, save as expressly provided in this Agreement, the Lenders have no obligation to provide further finance or agree to any variation or amendment to the Finance Documents and shall act in their sole discretion.

2.5 **Obligors' Agent**

- 2.5.1 Each Obligor (other than the Company) by its execution of this Agreement or an Accession Letter irrevocably appoints the Company to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
- (A) the Company on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Utilisation Requests), to execute on its behalf any Accession Letter, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and
- (B) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Company, and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions (including, without limitation, any Utilisation Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.
- 2.5.2 Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Obligors' Agent or given to the Obligors' Agent under any Finance Document on behalf of another Obligor or in connection with any Finance Document (whether or not known to any other Obligor and whether occurring before or after such other Obligor became an Obligor under any Finance Document) shall be binding for all purposes on that Obligor as if that Obligor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Obligors' Agent and any other Obligor, those of the Obligors' Agent shall prevail.

3. PURPOSE

3.1 Purpose

3.1.1 Each Borrower shall apply all amounts borrowed by it under the Term Facilities:

- (A) refinancing the Existing Financial Indebtedness;
- (B) financing Capital Expenditure in respect of the assets acquired by the Group through London 4;
- (C) payment of any fees, costs and expenses payable in respect of the Finance Documents or London 4;
- (D) payment to the relevant vendor of the purchase price in respect of Permitted Acquisitions;
- (E) payment of any fees, costs and expenses payable in respect of Permitted Acquisitions; or
- (F) the expansion and/or upgrading of its existing datacentres where such expansion and/or upgrading is consistent with the Base Case.

3.1.2 Each Borrower shall apply all amounts borrowed by it under Facility C towards the general corporate and working capital purposes of the Group (but not towards prepayment of any Term Loan).

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 Initial Conditions Precedent

No Borrower may deliver a Utilisation Request unless the Administrative Agent has received all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions Precedent to Initial Utilisation*) in form and substance satisfactory to the Administrative Agent. The Administrative Agent shall notify the Company and the Lenders promptly in writing upon being so satisfied.

4.2 Further Conditions Precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- 4.2.1 in the case of a Rollover Loan, no Event of Default is continuing or would result from the proposed Loan and, in the case of any other Loan, no Default is continuing or would result from the proposed Utilisation; and
- 4.2.2 in relation to any Utilisation on the Closing Date, all the representations and warranties in Clause 19 (*Representations*) or, in relation to any other Utilisation, the Repeating Representations to be made by each Obligor are true in all material respects.

4.3 **Maximum number of Loans**

4.3.1 A Borrower (or the Company) may not deliver a Utilisation Request if as a result of the proposed Utilisation:

- (A) 10 or more Facility A Loans would be outstanding;
- (B) 10 or more Facility B Loans would be outstanding; or
- (C) 10 or more Revolving Loans would be outstanding.

4.3.2 A Borrower may not request that a Term Loan be divided if, as a result of the proposed division, 20 or more Term Loans would be outstanding.

5. **UTILISATION OF LOANS**

5.1 **Delivery of a Utilisation Request**

A Borrower may utilise a Facility by delivery to the Administrative Agent of a duly completed Utilisation Request not later than the Specified Time.

5.2 **Completion of a Utilisation Request**

5.2.1 Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- (A) it identifies the Facility to be utilised;
- (B) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;
- (C) the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*); and
- (D) the proposed Interest Period complies with Clause 10 (*Interest Periods*).

5.2.2 Only one Utilisation may be requested in each Utilisation Request.

5.3 **Currency and amount**

5.3.1 The currency specified in a Utilisation Request must be the Base Currency or an Optional Currency.

5.3.2 The amount of the proposed Loan must be:

- (A) if the currency selected is the Base Currency, a minimum of £300,000 and an integral multiple of £50,000 or, if less, the Available Facility and if the currency selected is other than sterling, the equivalent Base Currency Amount; and
- (B) an amount which once utilised results in the aggregate amount of the Loans outstanding not exceeding an amount which is no greater than 16.00x Pro Forma Borrowing Group EBITDA in respect of the three month period ending on the most recent month end in respect of which the Company has delivered financial statements under Clause 20.1.3 (*Financial statements*) (or Clause 20.1.2 (*Financial statements*) where such month end is a Quarter Date) ending on the most recent Quarter Date prior to the date of the Utilisation Request.

5.4 **Lenders' participation**

- 5.4.1 If the conditions set out in this Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- 5.4.2 The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- 5.4.3 The Administrative Agent shall determine the Base Currency Amount of each Loan which is to be made in an Optional Currency and notify each Lender of the amount, currency and the Base Currency Amount of each Loan and the amount of its participation in that Loan by the Specified Time.

5.5 **Cleardown**

The Company shall ensure that for a period of not less than 10 successive Business Days in each of its financial years there are no outstanding Facility C Loans.

6. **OPTIONAL CURRENCY**

6.1 **Selection of currency**

A Borrower shall select the currency of a Loan in a Utilisation Request. Monies drawn down at the date of this Agreement shall be maintained in the currency actually drawn.

6.2 **Administrative Agent's calculations**

Each Lender's participation in a Loan will be determined in accordance with Clause 5.4.2 (*Lenders' participation*).

7. **REPAYMENT**

7.1 **Repayment of Facility A and B Loans**

- 7.1.1 The Borrowers that have drawn a Facility A Loan shall repay the aggregate Facility A Loans in instalments by repaying on each Facility A Repayment Date an amount (a "**Facility A Repayment Instalment**") equal to the amount set out opposite the relevant Facility A Repayment Date below:

<u>Facility A Repayment Date</u>	<u>Facility A Repayment Instalment</u>
30 June 2008	£ 500,000
31 December 2008	£ 500,000
30 June 2009	£ 2,500,000
31 December 2009	£ 2,500,000
30 June 2010	£ 2,500,000
31 December 2010	£ 2,500,000
30 June 2011	£ 3,000,000
31 December 2011	£ 3,000,000
30 June 2012	£ 3,000,000
31 December 2012	£ 3,000,000
30 June 2013	£ 4,250,000
31 December 2013	£ 4,250,000
On the Termination Date	£ 8,500,000

- 7.1.2 The Borrowers that have drawn a Facility B Loan shall repay the aggregate Facility B Loans in instalments by repaying on each Facility B Repayment Date an amount (a “**Facility B Repayment Instalment**”) equal to the amount set out opposite the relevant Facility B Repayment Date below:

Facility B Repayment Date	Facility B Repayment Instalment
30 June 2010	£ 2,000,000
31 December 2010	£ 2,000,000
30 June 2011	£ 2,000,000
31 December 2011	£ 2,000,000
30 June 2012	£ 3,000,000
31 December 2012	£ 3,000,000
30 June 2013	£ 3,000,000
31 December 2013	£ 3,000,000
On the Termination Date	£ 20,000,000

- 7.1.3 No Borrower may reborrow any part of a Facility A Loan or a Facility B Loan which is repaid.

7.2 **Repayment of Facility C Loans**

Each Borrower which has drawn a Facility C Loan shall repay that Loan on the last day of its Interest Period.

7.3 **Repayment of Facility D Loans**

The Borrowers that have drawn a Facility D Loan shall repay the aggregate Facility D Loans at the times and in the manner agreed between the Parties, provided that no amount in respect of any Facility D Loan shall be outstanding after the Termination Date.

7.4 **Effect of Prepayment and Cancellation on Scheduled Repayments and Reductions**

- 7.4.1 If the Company cancels the whole or any part of the Facility A Commitments or the Facility B Commitments, in accordance with Clause 8.4 *Right of repayment and cancellation in relation to a single Lender*) or if the Facility A Commitments or the Facility B Commitments of any Lender is reduced under Clause 8.1 (*Illegality of a Lender*) then, the amount of the Facility A Repayment Instalment for each Facility A Repayment Date or, as the case may be, the amount of the Facility B Repayment Instalment for each Facility B Repayment Date falling after that cancellation will reduce pro rata by the amount cancelled.
- 7.4.2 If any of the Facility A Loans or Facility B Loans are prepaid in accordance with Clause 8.4 *Right of repayment and cancellation in relation to a single Lender*) or Clause 8.1 (*Illegality of a Lender*) then the amount of the Facility A Repayment Instalment for each Facility A Repayment Date or the amount of the Facility B Repayment Instalment for each Facility B Repayment Date (as applicable) falling after that prepayment will reduce pro rata by the amount of the Facility A Loan or the Facility B Loan prepaid.

8. **PREPAYMENT AND CANCELLATION**

8.1 **Illegality of a Lender**

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to make, fund, issue or maintain its participation in any Loan, that Lender shall promptly notify the Administrative Agent upon becoming aware of that event and upon the Administrative Agent notifying the Company:

- 8.1.1 that Lender shall not thereafter be obliged to participate in any Utilisation and the Commitments of that Lender shall immediately be reduced to zero and cancelled; and

8.1.2 the Company shall procure that each Borrower will, on such date as the Administrative Agent shall have specified, repay that Lender's participation in the Loans made to that Borrower together with accrued interest on and all other amounts owing to that Lender under the Finance Documents (being no earlier than the last day of any applicable grace period permitted by law).

8.2 Voluntary cancellation

The Company may, if it gives the Administrative Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of £1,000,000 and a multiple of £250,000) of an Available Facility. Any cancellation under this Clause 8.2 shall reduce rateably the Commitments of the Lenders under the relevant Facility.

8.3 Voluntary prepayment of Term Loans

A Borrower may, if it or the Company gives the Administrative Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Facility A Loan or of a Facility B Loan (but, if in part, being an amount that reduces the Base Currency Amount of that Facility A Loan or Facility B Loan by a minimum amount of £1,000,000 and a multiple of £250,000).

8.4 Right of repayment and cancellation in relation to a single Lender

8.4.1 If:

- (A) any sum payable to any Lender by an Obligor is required to be increased under 13.2.3 (*Tax gross-up*);
- (B) any Lender claims indemnification from the Company or an Obligor under Clause 13.3 (*Tax indemnity*) or Clause 14.1 (*Increased costs*); or
- (C) any Lender notifies the Administrative Agent of its Additional Cost Rate under paragraph 3 of Schedule 4 (*Mandatory Cost Formulae*),

the Company may, whilst (in the case of paragraphs (A) and (B) above) the circumstance giving rise to the requirement or indemnification continues or whilst (in the case of paragraph (C) above) that Additional Cost Rate is greater than zero, give the Administrative Agent notice of cancellation of the Commitments of that Lender and its intention to procure the repayment of that Lender's participation in the Loans.

8.4.2 On receipt of a notice referred to in Clause 8.4.1, the Commitments of that Lender shall immediately be reduced to zero.

8.4.3 On the last day of each Interest Period which ends after the Company has given notice under Clause 8.4.1 (or, if earlier, the date specified by the Company in that notice), each Borrower to which a Loan is outstanding shall repay that Lender's participation in that Loan.

8.5 **Exit**

8.5.1 For the purpose of this Clause 8.5:

“Change of Control” means a situation where:

- (A) any person or group of persons acting in concert acquires control directly or indirectly 29.9% or more of the shares of IX Europe Plc; or
- (B) IX Europe Plc ceases to own directly or indirectly the entire issued and voting share capital of any member of the Borrowing Group (other than if approved in writing by the Administrative Agent acting on the instructions of the Majority Lender).

“control” of the Company means the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

- (A) cast, or control the casting of, 29.9% or more of the maximum number of votes that might be cast at a general meeting of the Company; or
- (B) appoint or remove all, or the majority, of the directors of the Company; or
- (C) give directions with respect to the operating and financial policies of the Company which the directors or other equivalent officers of the Company are obliged to comply with.

“acting in concert” means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition of shares in the Company by any of them, either directly or indirectly, to obtain or consolidate control of the Company.

“De-Listing” means a de-listing of all or any part of the share capital of the Company or any other member of the Group on any recognised investment exchange (as that term is used in the Financial Services and Markets Act 2000) or in or on any exchange or market replacing the same or any other exchange or market in any jurisdiction or country.

“Management Change” means a change in the persons comprised in the core management team of the Group as at the date of this Agreement save as replaced by persons within six Months approved in writing by the Administrative Agent or as previously agreed by the Administrative Agent in writing and where such change involves the loss to or departure from the Group within any six Month period of two of the current Chief Executive Officer, the Chief Operating Officer and the Chief Financial Officer, the current persons holding such positions being named in Part II of Schedule 10 (*Current CEO, COO and CFO*).

8.5.2 Upon the occurrence of the sale of the whole or substantially the whole of the Group’s business and assets the Facilities shall forthwith be cancelled in full and all outstanding Loans shall be prepaid in full within 3 Business Days together with interest thereon and all other amounts accrued and owing by each of the Obligor under the Finance Documents.

8.5.3 Upon the occurrence of:

- (A) any De-Listing;
- (B) a Change of Control; or

- (C) a Management Change,
if a Lender so requires and notifies the Administrative Agent, the Administrative Agent shall, by not less than 10 Business Days' notice to the Company, cancel the Commitment of that Lender and declare the participation of that Lender in any outstanding Loans together with interest thereon and all other amounts accrued and owing by each of the Obligors under the Finance Documents immediately due and payable, whereupon the Commitment of that Lender shall be cancelled and the participations of that Lender in all such outstanding Loans shall become immediately due and payable.

8.6 Disposal, Insurance and Recovery Proceeds

8.6.1 For the purposes of this Clause 8.6 and Clause 8.9 (*Mandatory Prepayment Accounts and Holding Accounts*):

"Disposal Proceeds" means the consideration receivable in cash by any member of the Borrowing Group (including any amount receivable in repayment of intercompany debt in connection with that Disposal) for or in respect of any Disposal made by any member of the Borrowing Group (other than any Disposal referred to in Clause 22.13.2 (*Disposals*)) after deducting:

- (A) reasonable expenses incurred by any member of the Borrowing Group due to such Disposal to person(s) who are not members of the Borrowing Group; and
- (B) any Tax incurred and required to be paid by the seller in connection with that disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance); and
- (C) any amounts required to be held in escrow pending determination of whether a purchase price adjustment or indemnity or other payment or adjustment will be made, for so long as and to the extent held in escrow.

"Insurance Proceeds" means the proceeds of any insurance claim received by any member of the Borrowing Group in respect of any keyman insurance policies and/or for loss or damage to property of any member of the Borrowing Group (after deducting any reasonable expenses in relation to that claim which are incurred by any member of the Borrowing Group to persons who are not members of the Borrowing Group) but not any such proceeds which:

- (A) are applied to the replacement, reinstatement and/or repair of the assets or to meet a liability in respect of which the relevant insurance claim was made as soon as reasonably practicable and, in any event, within 150 days or committed to be so applied within 150 days of receipt of such proceeds and are so applied within 180 days of receipt of such proceeds by the relevant member of the Borrowing Group; or
- (B) when aggregated with any other such proceeds received by a member of the Borrowing Group within the same financial year of the Company (net of costs and expenses, Taxes incurred or reasonably estimated to be incurred and reserved), are less than £100,000;

"Recovery Proceeds" means the proceeds of any claim (a **"Recovery Claim"**) against the relevant vendors or any of their Affiliates (or any employee, officer or adviser) in relation to any acquisition as described in Clause 22.7 (*Acquisitions*) effected hereafter by any member of the Group which has been financed in part or in whole by the Facilities (after deducting any reasonable expenses in relation to that claim which are incurred by any member of the Borrowing Group) but not any proceeds applied:

- (A) to satisfy (or reimburse a member of the Borrowing Group who has discharged) any liability, charge or claim upon a member of the Borrowing Group by a person who is not a member of the Borrowing Group; or

- (B) in the replacement, reinstatement and/or repair of assets of a member of the Borrowing Group which have been lost, destroyed or damaged, in each case as a result of the events or circumstances giving rise to that Recovery Claim, if those proceeds are so applied as soon as possible, but in any event within 90 days or committed to be so applied within 90 days of receipt of those proceeds and are so applied within 180 days of receipt of those proceeds (or such longer period as the Administrative Agent may agree).
- 8.6.2 The Company shall ensure that the Borrowers prepay the Facilities in an amount equal to all Disposal Proceeds and all Recovery Proceeds and, to the extent they exceed £250,000 in any financial year of the Company, Insurance Proceeds received by members of the Borrowing Group promptly upon such receipt but subject to Clause 8.11 (*Prepayment elections*). The prepayments will be applied under Clause 8.7 (*Application of prepayments*).

8.7 Application of prepayments

A prepayment made under Clause 8.3 (*Voluntary prepayment of Term Loans*) or Clause 8.6 (*Disposal, Insurance and Recovery Proceeds*) shall be applied as follows:

- 8.7.1 firstly, in prepayment of the Facility A Loans pro rata, and against the relevant Facility A Repayment Instalments pro rata in respect of mandatory prepayments and in such proportions as the Company may select in respect of voluntary prepayments;
- 8.7.2 secondly, in prepayment of the Facility B Loans pro rata, and against the relevant Facility B Repayment Instalments pro rata in respect of mandatory prepayments and in such proportions as the Company may select in respect of voluntary prepayments; and
- 8.7.3 thirdly, following prepayment of the Term Loans, in prepayment of the Facility C Loans pro rata.

8.8 Mandatory Prepayment/Holding Account

- 8.8.1 The Company shall ensure that:
- (A) an amount equal to the amount of Disposal Proceeds and Insurance Proceeds to be applied in prepayment of the Facilities is paid promptly into a Mandatory Prepayment/Holding Account upon receipt by a member of the Borrowing Group; and
- (B) proceeds of a disposal within Clause 22.13.2(D) (*Disposals*) and proceeds excluded from Insurance Proceeds because those proceeds are to be applied in the replacement, reinstatement or repair of assets are promptly paid into a Mandatory Prepayment/Holding Account upon receipt by a member of the Borrowing Group.
- 8.8.2 The Company and each Borrower irrevocably authorises the Administrative Agent to apply amounts credited to the Mandatory Prepayment/Holding Account which

have not been applied in replacement or reinstatement or in relation to Disposal Proceeds, in accordance with Clause 22.13.2(D) *Disposals*) or otherwise applied against the relevant liabilities within the relevant time period, in pre-payment of amounts payable under the Finance Documents.

- 8.8.3 A Finance Party or the Administrative Agent with which a Mandatory Prepayment/Holding Account is held acknowledges and agrees that (i) interest shall accrue at normal commercial rates on amounts credited to those accounts and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless a Default is continuing and (ii) such account is subject to the Transaction Security.

8.9 Restrictions

- 8.9.1 Any notice of cancellation or prepayment given by any Party under this Clause 8 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- 8.9.2 Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- 8.9.3 No Borrower may reborrow any part of Facility A or Facility B which is prepaid.
- 8.9.4 Any part of Facility C which is prepaid may be reborrowed in accordance with the terms of this Agreement.
- 8.9.5 The Borrowers shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- 8.9.6 No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- 8.9.7 If the Administrative Agent receives a notice under this Clause 8 it shall promptly forward a copy of that notice to either the Company or the affected Lenders, as appropriate.

8.10 Prepayment elections

- 8.10.1 Any prepayment under Clause 8.6 (*Disposal, Insurance and Recovery Proceeds*) may, if the Company gives the Administrative Agent not less than 5 Business Days (or such shorter period as the Majority Lenders may agree) prior written notice, be applied in prepayment of a Loan on the last day of the Interest Period relating to that Loan.
- 8.10.2 The Company shall ensure that any amounts in relation to which an election is made under this Clause 8.10 are deposited in the Mandatory Prepayment/Holdings Account.
- 8.10.3 No election can be made by the Company under Clause 8.10.1 and no election already made by the Company under that paragraph shall apply (unless the Majority Lenders otherwise agreed in writing) if a Default has occurred and is continuing.

8.11 Waiver of Mandatory Prepayment Provisions

The Majority Lenders may elect to waive the requirement by the Company to make prepayments pursuant to Clause 8.6 *Disposal, Insurance and Recovery Proceeds*). This Clause 8.11 shall not apply to prepayments under Clause 8.5 (*Exit*).

9. INTEREST

9.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

- 9.1.1 Margin;
- 9.1.2 LIBOR or, in relation to any Loan in euro, EURIBOR; and
- 9.1.3 Mandatory Cost, if any.

9.2 Payment of interest

The Borrower to which a Loan has been made shall pay accrued interest on that Loan on the last day of each Interest Period (and, if any Interest Period is six Months, on the dates falling at three Monthly intervals after the first day of that Interest Period).

9.3 Default interest

- 9.3.1 If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at the Default Rate.
- 9.3.2 Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

9.4 Notification of rates of interest

The Administrative Agent shall promptly notify the Lenders and the relevant Borrower (or the Company) of the determination of a rate of interest under this Agreement.

9.5 Effective global rate (*Taux effectif global*)

In relation to a French Borrower, and for the purposes of Articles L313-1 et seq, R 313-1 and R313-2 of the *Code de la Consommation*, the Parties acknowledge that by virtue of certain characteristics of the Facilities (and in particular the variable interest rate applicable to Loans and a Borrowers' right to select the currency and the duration of the Interest Period of each Loan) the *taux effectif global* cannot be calculated at the date of this Agreement. However, each French Borrower acknowledges that it has received from the Administrative Agent a letter containing an indicative calculation of the *taux effectif global*, based on figured examples calculated on assumptions as to the *taux de période* and *durée de période* set out in the letter. The Parties acknowledge that that letter forms part of this Agreement

10. INTEREST PERIODS

10.1 Selection of Interest Periods

- 10.1.1 A Borrower (or the Company on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan is a Term Loan and has already been borrowed) in a Selection Notice.
- 10.1.2 Each Selection Notice is irrevocable and must be delivered to the Administrative Agent by the Borrower (or the Company on behalf of the Borrower) to which that Term Loan was made not later than the Specified Time.
- 10.1.3 If a Borrower (or the Company) fails to deliver a Selection Notice to the Administrative Agent in accordance with Clause 10.1.2, the relevant Interest Period will, subject to Clause 10.2 (*Changes to Interest Periods*), be one Month.
- 10.1.4 Subject to this Clause 10, a Borrower (or the Company) may select an Interest Period of one, two, three or six Months for the Facility A Loans, the Facility B Loans and the Facility C Loans or any other period agreed between the Company and the Administrative Agent (acting on the instructions of all the Lenders). In addition, a Borrower (or the Company on its behalf) may in relation to a Term Loan select an Interest Period of a period of less than one Month, if necessary to ensure that, in the case of Facility A Loans, there are Term Loans (with an aggregate Base Currency Amount equal to or greater than the next Facility A Repayment Instalment) which have an Interest Period ending on a Facility A Repayment Date to enable that Borrower to make the Facility A Repayment Instalment due on that date and, in the case of Facility B Loans, there are Facility B Loans (with an aggregate Base Currency Amount equal to or greater than the next Facility B Repayment Instalment) which have an Interest Period ending on a Facility B Repayment Date to enable that Borrower to make the Facility B Repayment Instalment due on that date.
- 10.1.5 An Interest Period for a Loan shall not extend beyond the Termination Date.
- 10.1.6 Each Interest Period for a Term Loan shall start on the Utilisation Date or (if a Loan has already been made) on the last day of its preceding Interest Period.
- 10.1.7 A Facility C Loan has one Interest Period only.
- 10.1.8 Prior to the Syndication Date, Interest Periods shall be one month or such other period as the Administrative Agent and the Company may agree and any Interest Period which would otherwise end during the month preceding or extend beyond the Syndication Date shall end on the Syndication Date.

10.2 Changes to Interest Periods

- 10.2.1 Prior to determining the interest rate for a Term Loan, the Administrative Agent may shorten an Interest Period for any Term Loan to ensure there are sufficient Facility A Loans or Facility B Loans (with an aggregate Base Currency Amount equal to or greater than the next Facility A Repayment Instalment or Facility B Repayment Instalment, as applicable) which have an Interest Period ending on a Facility A Repayment Date or a Facility B Repayment Date to enable the Borrowers to make the Facility A Repayment Instalment or the Facility B Repayment Instalment due on that date.
- 10.2.2 If the Administrative Agent makes any of the changes to an Interest Period referred to in this Clause 10.2, it shall promptly notify the Company and the Lenders.

10.3 **Non-Business Days**

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

10.4 **Consolidation and division of Term Loans**

10.4.1 Subject to Clause 10.4.2, if two or more Interest Periods:

- (A) relate to Term Loans under the same Facility in the same currency;
- (B) end on the same date; and
- (C) are made to the same Borrower,

those Term Loans will, unless that Borrower (or the Company on its behalf) specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Term Loan on the last day of the Interest Period.

10.4.2 Subject to Clause 4.3 (*Maximum number of Loans*), and Clause 5.3 (*Currency and amount*) if a Borrower (or the Company on its behalf) requests in a Selection Notice that a Term Loan be divided into two or more Term Loans, that Term Loan will, on the last day of its Interest Period, be so divided with Base Currency Amounts specified in that Selection Notice, being an aggregate Base Currency Amount equal to the amount of the Term Loan immediately before its division.

11. **CHANGES TO THE CALCULATION OF INTEREST**

11.1 **Absence of quotations**

Subject to Clause 11.2 (*Market disruption*), if LIBOR or, if applicable, EURIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable LIBOR or EURIBOR shall be determined on the basis of the quotations of the remaining Reference Banks.

11.2 **Market disruption**

11.2.1 If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the rate per annum which is the sum of:

- (A) the Margin;
- (B) the rate notified to the Administrative Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select; and
- (C) the Mandatory Cost, if any, applicable to that Lender's participation in the Loan.

11.2.2 In this Agreement "**Market Disruption Event**" means:

- (A) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate not being available and none or only one of the Reference Banks supplying a rate to the Administrative Agent to determine LIBOR or, if applicable, EURIBOR for the relevant currency and Interest Period; or

- (B) before close of business in London on the Quotation Day for the relevant Interest Period, the Administrative Agent receiving notifications from a Lender or Lenders (whose participations in a Loan exceed 25 per cent. of that Loan) that the cost to it of obtaining matching deposits in the Relevant Interbank Market would be in excess of LIBOR or, if applicable, EURIBOR.

11.3 Alternative basis of interest or funding

- 11.3.1 If a Market Disruption Event occurs and the Administrative Agent or the Company so requires, the Administrative Agent and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- 11.3.2 Any alternative basis agreed pursuant to Clause 11.3.1 shall, with the prior consent of all the Lenders and the Company, be binding on all Parties.

11.4 Break Costs

- 11.4.1 Each Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- 11.4.2 Each Lender shall, as soon as reasonably practicable after a demand by the Administrative Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

12. FEES

12.1 Commitment fee

- 12.1.1 The Company shall pay to the Administrative Agent (for the account of each Lender) a fee in the Base Currency computed as being the aggregate of amounts calculated at the rate of:
- (A) 0.50 per cent. per annum on that Lender's Available Commitment under Facility A for the Availability Period applicable to Facility A or the period ending on the date upon which Facility A is fully utilised or cancelled, whichever period is shorter;
- (B) 0.50 per cent. per annum on that Lender's Available Commitment under Facility B for the Availability Period applicable to Facility B or the period ending on the date upon which Facility B is fully utilised or cancelled, whichever period is shorter; and
- (C) 0.50 per cent. per annum on that Lender's Available Commitment under the Facility C for the Availability Period applicable to Facility C.
- 12.1.2 The accrued commitment fee is payable in arrear within 5 Business Days of each Quarter Date.

12.2 Arrangement fee

The Company shall pay to the Arranger an arrangement fee in the amount and at the times agreed in a Fee Letter.

12.3 **Agency fee**

The Company shall pay to (or procure payment to) the Administrative Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter.

13. **TAX GROSS UP AND INDEMNITIES**

13.1 **Definitions**

In this Clause 13:

“Borrower State” means a jurisdiction in which a Borrower is treated as resident for tax purposes.

“French Treaty Lender” means a Lender which:

- (A) is beneficially entitled to interest payable to that Lender in respect of the relevant loan under the Agreement;
- (B) is treated as a resident of a French Treaty State for the purposes of the French Treaty; and
- (C) does not carry on a business in France through a permanent establishment or dependent agency with which that Lender’s participation in the Loan is effectively connected.

“French Treaty State” means a jurisdiction having a double taxation agreement with France (a**“French Treaty”**) which makes provision for full exemption from tax imposed by France on interest.

“German Treaty Lender” means a Lender which:

- (A) is beneficially entitled to interest payable to that Lender in respect of the relevant loan under the Agreement;
- (B) is treated as a resident of a German Treaty State for the purposes of the German Treaty; and
- (C) does not carry on a business in Germany through a permanent establishment or dependent agency with which that Lender’s participation in the Loan is effectively connected.

“German Treaty State” means a jurisdiction having a double taxation agreement (a**“German Treaty”**) with Germany which makes provision for full exemption from tax imposed by Germany on interest.

“Permitted Non-Qualifying Lender” means with regard to a Swiss Obligor:

- (A) up to five (5) Lenders that are not Qualifying Banks at the date they become Lenders, provided that each such Lender (prior to its becoming a Lender) is designated as a Permitted Non-Qualifying Lender in writing by the Company with at least five (5) days’ notice before such designation notice is intended to become effective; provided that:
 - (1) if the Company (acting reasonably), on receiving such notification with respect to a proposed Lender, believes such proposed Lender is more than one person for purposes of the Non-Bank Rules, it may during such notice period request a tax ruling of the Swiss Federal Tax Administration that such proposed Lender constitutes one person for purposes of the Non-Bank Rules; and

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- (2) following such a request under paragraph (A)(1) of this definition, such proposed Lender shall only be a Permitted Non-Qualifying Lender under this paragraph (A) if (i) the Company receives from such proposed Lender a copy of such tax ruling and such tax ruling confirms, to the Company's reasonable satisfaction, that such proposed Lender constitutes one person for such rules and (ii) such proposed Lender confirms to the Company that such proposed Lender has disclosed all facts relevant to this determination to the Company.

The Company shall confirm within five (5) days of its receipt of any such tax ruling whether or not such ruling is satisfactory for this purpose and, in the absence of such confirmation, the Company will be deemed to have confirmed that such tax ruling is so satisfactory on the fifth (5th) day after its receipt of such tax ruling; and

- (B) any other entity that is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets, that:
- (1) is not a Qualifying Bank;
 - (2) has become a party hereto, and
 - (3) which (in each case) has not ceased to be a party hereto in accordance with the terms hereof.

"Protected Party" means a Finance Party which is or will be, for or on account of Tax, subject to any liability or required to make any payment in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

"Qualifying Lender" means:

- (A) in respect of an Obligor resident for tax purposes in Germany, a German Treaty Lender;
- (B) in respect of an Obligor resident for tax purposes in France, a French Treaty Lender that has completed the procedural formalities required in both France and the relevant French Treaty State to obtain full exemption from Tax imposed by France on interest paid by a French resident;
- (C) in respect of an Obligor resident for tax purposes in Switzerland, a Qualifying Swiss Lender;
- (D) in respect of an Obligor resident for tax purposes in the United Kingdom, a Qualifying UK Lender that has completed the procedural formalities required in both the United Kingdom and the relevant UK Treaty State to obtain full exemption from tax imposed by the United Kingdom on interest paid by a United Kingdom resident; and
- (E) in respect of an Obligor resident for tax purposes in the Netherlands, a Netherlands resident (as no tax will be withheld on interest paid by the Netherlands resident).

"Qualifying Swiss Lender" means a Lender which is either a Qualifying Bank or a Permitted Non-Qualifying Lender.

“Qualifying UK Lender” means a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:

- (A) a Lender which is:
 - (1) a bank (as defined for the purposes of Section 879 of the ITA) making an advance under a Finance Documents; or
 - (2) in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purposes of Section 879 of the ITA) at the time that that advance was made,and which is within the charge to the United Kingdom corporation tax as regards any payments of interest made in respect of that advance.
- (B) a Lender which is:
 - (1) a company resident in the United Kingdom for United Kingdom tax purposes;
 - (2) a partnership each member of which is
 - (a) a company resident in the United Kingdom for United Kingdom tax purposes; or
 - (b) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (for the purposes of section 11(2) of the Taxes Act) the whole of any share of interest payable in respect of that advance that falls to it by reason of sections 114 and 115 of the Taxes Act,
 - (3) a company not resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing its chargeable profits (within the meaning given by section 11(2) of the Taxes Act); or
- (C) a UK Treaty Lender.

“Tax Authority” means any authority entitled to collect or enforce any Tax.

“Tax Confirmation” means a confirmation by a Lender that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

- (A) a company resident in the United Kingdom, or a partnership each member of which is a company resident in the United Kingdom, for United Kingdom tax purposes;
- (B) a partnership each member of which is
 - (i) a company so resident in the United Kingdom; or
 - (ii) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account in computing its chargeable profits (for the purposes of section 11(2) of the Taxes Act) the whole of any share of interest payable in respect of that advance that falls to it by reason of sections 114 and 115 of the Taxes Act,

(C) a company not resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and that interest payable in respect of that advance falls to be brought into account in computing the chargeable profits of that company for the purposes of section 11(2) of the Taxes Act.

“**Tax Credit**” means a credit against any Tax or any relief or remission for Tax or its repayment.

“**Treaty Lender**” means a French Treaty Lender, a Germany Treaty Lender or a UK Treaty Lender.

“**UK Non-Bank Lender**” means:

- (A) where a Lender becomes a Party on the day on which this Agreement is entered into, a Lender listed in Part III of Schedule 1 (*The Original Lenders*); and
- (B) where a Lender becomes a Party to this Agreement after the day on which this Agreement is entered into, a Lender which gives a Tax Confirmation in the Assignment Agreement or Transfer Certificate which it executes on becoming a Party to this Agreement.

“**UK Treaty Lender**” means a Lender:

- (A) is treated as a resident of a UK Treaty State for the purposes of the relevant UK Treaty;
- (B) does not carry on a business in the United Kingdom through a permanent establishment with which that Lender’s participation in the Loan is effectively connected;
- (C) beneficially entitled to interest payable to that Lender in respect of the relevant loan under this agreement; and
- (D) has obtained authorisation from HM Revenue and Customs to receive interest under this Agreement without deduction of United Kingdom Tax and has completed any necessary procedural formalities in relation thereto.

“**UK Treaty State**” means a jurisdiction having a double taxation agreement (a “**UK Treaty**”) with the United Kingdom which makes provision for full exemption from tax imposed by the United Kingdom on interest.

Unless a contrary indication appears, in this Clause 13 a reference to “**determines**” or “**determined**” means a reasonable determination made in the sole discretion of the person making the determination acting reasonably and in good faith.

13.2 Tax gross-up

13.2.1 Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

13.2.2 The Company shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Administrative Agent accordingly. Similarly, a Lender shall notify the Administrative Agent on becoming so aware of a payment to that Lender. If the Administrative Agent receives such notification from a Lender it shall notify the Company and that Obligor.

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- 13.2.3 If a Tax Deduction is required by law to be made by an Obligor the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- 13.2.4 An Obligor is not required to make an increased payment to a Lender under Clause 13.2.3 for a Tax Deduction in respect of Tax from a payment of interest on a Loan, if on the date on which the payment falls due:
- (A) the payment could have been made to the relevant Lender without a Tax Deduction if it was a Qualifying Lender in respect of the relevant Obligor, but on that date that Lender is not or has ceased to be a Qualifying Lender in respect of the relevant Obligor other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty, or any published practice or concession of any relevant taxing authority; or
- (B) in respect of Tax imposed by the UK:
- (1) the relevant Lender is Qualifying UK Lender solely under sub-paragraph (B) of the definition of Qualifying UK Lender;
 - (2) the Board of HM Revenue and Customs has given (and not revoked) a direction (a“**Direction**”) under section 931 of the ITA (as that provision has effect on the date on which the relevant Lender became a party to this Agreement) which relates to that payment and that Obligor or the Company has notified that Qualifying UK Lender of the terms of that notice or provided a copy thereof to such Qualifying UK Lender; and
 - (3) the payment could have been to the Lender without any Tax Deduction in the absence of that Direction; or
- (C) the relevant Lender is a Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under Clause 13.2.7.
- 13.2.5 If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- 13.2.6 Within thirty days of making a Tax Deduction, or any payment required in connection with that Tax Deduction the Obligor making that Tax Deduction shall deliver to the Administrative Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment has been made to the relevant Tax Authority.
- 13.2.7 A Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.

13.2.8 A UK Non-Bank Lender which becomes a Party on the day on which this Agreement or upon a change to the Lenders pursuant to Clause 24 is entered into gives a Tax Confirmation to the Company by entering into this Agreement.

13.2.9 A UK Non-Bank Lender shall promptly notify the Company and the Administrative Agent if there is a change in the position from that set out in the Tax Confirmation.

13.3 Tax indemnity

13.3.1 The Company shall (within three Business Days of demand by the Administrative Agent) pay (or procure payment) to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

13.3.2 Clause 13.3.1 shall not apply:

(A) with respect to any Tax assessed on a Finance Party:

- (1) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
- (2) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party;

(B) to the extent a loss, liability or cost:

- (1) is compensated for by an increased payment under Clause 13.2 (*Tax gross-up*); or
- (2) would have been compensated for by an increased payment under Clause 13.2 (*Tax gross-up*) but was not so compensated solely because one of the exclusions in of Clause 13.2.4 (*Tax gross-up*) applied; or

(C) if such Tax is triggered because obligations under a Finance Document are directly or indirectly secured by German real estate.

13.3.3 A Protected Party making, or intending to make a claim pursuant to Clause 13.3.1 shall promptly notify the Administrative Agent of the event which will give, or has given, rise to the claim, following which the Administrative Agent shall notify the Company.

13.3.4 A Protected Party shall, on receiving a payment from an Obligor under this Clause 13.3, notify the Administrative Agent.

13.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

13.4.1 a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and

13.4.2 that Finance Party has obtained, utilised and retained that Tax Credit, the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been made by the Obligor.

13.5 **Stamp Taxes**

The Company shall pay and, within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability that such Finance Party incurs in relation to all stamp duty, registration and other similar Taxes or fees payable in respect of any Finance Document.

13.6 **Value Added Tax**

13.6.1 All consideration expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or part) constitutes consideration for a supply for VAT purposes shall be deemed to be exclusive of any VAT chargeable on such supply. If VAT is chargeable on any supply made by any Finance Party to any Party in connection with a Finance Document, that Party shall pay to the Finance Party (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT and such Finance Party shall promptly provide a valid VAT invoice to such Party.

13.6.2 Where a Finance Document requires any Party to reimburse a Finance Party for any costs or expenses, that Party shall also at the same time pay and indemnify that Finance Party against all VAT incurred by the Finance Party in respect of the costs or expenses to the extent that the Finance Party reasonably determines that neither the Finance Party nor any other member of any group of which the Finance Party is a member for VAT purposes is entitled to credit or repayment of the VAT.

14. **INCREASED COSTS**

14.1 **Increased costs**

14.1.1 Subject to Clause 14.3 (*Exceptions*) the Company shall, within three Business Days of a demand by the Administrative Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.

14.1.2 In this Agreement “**Increased Costs**” means:

(A) a reduction in the rate of return from a Facility or on a Finance Party’s (or its Affiliate’s) overall capital;

(B) an additional or increased cost; or

(C) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitments or funding or performing its obligations under any Finance Document.

14.2 **Increased cost claims**

- 14.2.1 A Finance Party intending to make a claim pursuant to Clause 14.1 (*increased costs*) shall notify the Administrative Agent of the event giving rise to the claim, following which the Administrative Agent shall promptly notify the Company.
- 14.2.2 Each Finance Party shall, as soon as practicable after a demand by the Administrative Agent, provide a certificate confirming the amount of its Increased Costs.

14.3 **Exceptions**

- 14.3.1 Clause 14 (*Increased costs*) does not apply to the extent any Increased Cost is:
- (A) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (B) compensated for by Clause 13.3 (*Tax indemnity*) (or would have been compensated for under Clause 13.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 13.3.2 (*Tax indemnity*) applied);
 - (C) compensated for by the payment of the Mandatory Cost;
 - (D) attributable to the wilful breach by, or the gross negligence of, the relevant Finance Party or its Affiliates of any law or regulation; or
 - (E) compensated for by any indemnity provided by an Obligor under any Finance Document.

15. **OTHER INDEMNITIES**

15.1 **Currency indemnity**

- 15.1.1 If any sum due from an Obligor under the Finance Documents (a“**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the“**Second Currency**”) for the purpose of:
- (A) making or filing a claim or proof against that Obligor; or
 - (B) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,
- that Obligor shall as an independent obligation, within three Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (i) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (ii) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- 15.1.2 Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

15.2 **Other indemnities**

The Company shall (or shall procure that an Obligor will), within 3 Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- 15.2.1 the occurrence of any Event of Default;
- 15.2.2 a failure by an Obligor to pay any amount due or to fulfil any other obligation under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 28 (*Sharing among the Finance Parties*);
- 15.2.3 funding, or making arrangements to fund, its participation in a Utilisation requested by the Company or a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- 15.2.4 a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Company.

15.3 **Indemnity to the Administrative Agent**

The Company shall (or shall procure that an Obligor will) promptly indemnify the Administrative Agent against any cost, loss or liability incurred by the Administrative Agent (acting reasonably) as a result of:

- 15.3.1 investigating any event which it reasonably believes is a Default;
- 15.3.2 entering into or performing any foreign exchange contract for the purposes of Clause 32.9.2 (*Change of Currency*); or
- 15.3.3 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

15.4 **Indemnity to the Security Trustee**

15.4.1 Each Obligor shall promptly indemnify the Security Trustee and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:

- (A) the taking, holding, protection or enforcement of the Transaction Security,
- (B) the exercise of any of the rights, powers, discretions and remedies vested in the Security Trustee and each Receiver and Delegate by the Finance Documents or by law; and
- (C) any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents.

15.4.2 The Security Trustee may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 15.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

16. MITIGATION BY THE LENDERS

16.1 Mitigation

16.1.1 Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 8.1 (*Illegality of a Lender*), Clause 13 (*Tax Gross-up and Indemnities*) or Clause 14 (*Increased Costs*) or paragraph 3 of Schedule 4 (*Mandatory Cost Formulae*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

16.1.2 Clause 16.1.1 does not in any way limit the obligations of any Obligor under the Finance Documents.

16.2 Limitation of liability

16.2.1 The Company shall (or shall procure that an Obligor will) indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 16.1 (*Mitigation*).

16.2.2 A Finance Party is not obliged to take any steps under Clause 16.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

17. COSTS AND EXPENSES

17.1 Transaction expenses

The Company shall promptly within 30 days of demand pay (or shall procure that an Obligor will pay) the Administrative Agent, the Arranger and the Security Trustee the amount of all costs and expenses (including legal and other professional fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution and perfection of:

17.1.1 this Agreement and any other documents referred to in this Agreement and the Transaction Security; and

17.1.2 any other Finance Documents executed after the date of this Agreement.

17.2 Amendment costs

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 32.9 (*Change of Currency*), the Company shall, within 20 Business Days of demand, reimburse (or procure reimbursement of) each of the Administrative Agent and the Security Trustee for the amount of all costs and expenses (including legal fees) reasonably incurred by the Administrative Agent and the Security Trustee in responding to, evaluating, negotiating or complying with that request or requirement.

17.3 Enforcement and preservation costs

The Company shall, within 20 Business Days of demand, pay (or procure payment) to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of or the preservation of any rights, powers and remedies under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Trustee as a consequence of taking or holding the Transaction Security or enforcing these rights, powers and remedies.

18. GUARANTEE AND INDEMNITY

18.1 Guarantee and indemnity

Subject to the limitations set forth below, each Guarantor irrevocably and unconditionally jointly and severally:

- 18.1.1 guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;
- 18.1.2 undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal Obligor; and
- 18.1.3 indemnifies each Finance Party immediately on demand against any cost, loss or liability suffered by that Finance Party if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which that Finance Party would otherwise have been entitled to recover;

provided that, if and to the extent the guarantee, undertaking and indemnification pursuant to this Clause 18.1 (*Guarantee and Indemnity*) secures obligations of a German Obligor, such guarantee, undertaking and indemnification does not come along with a collateral security (*dingliche Sicherheit*) including but not limited to a lien based on general business terms of a Lender on, a restraint in favour of the Lenders on disposal (*Verfügungsbeschränkung*) of interest bearing claims and instruments which qualify as long term for tax purposes (as set out in the guidelines of the German Federal Ministry of Finance (*BMF*) dated 15 July 2004, 19, 20 and 37) or a submission to immediate foreclosure according to German law (*Unterwerfung unter die sofortige Zwangsvollstreckung*).

The draft bill (*Gesetzesvorlage*) of the German Tax Reform Act 2008 (*Unternehmen-steuerreformgesetz 2008*) as passed by the German Bundestag on 25 May 2007 proposed the abolition of the current German thin capitalisation rules (Section 8a of the German Corporate Income Tax Act) with effect from 1 January 2008. If these proposals substantially in the form of the aforementioned draft bill become law the above restriction of the collateralization of the guarantee, undertaking or indemnification shall no longer apply with effect of the first fiscal year of the respective German Obligor in which the new law is applicable. The parties agree to enter into negotiations in good faith if and to the extent that it is necessary to avoid negative tax effects after the draft bill has become law.

18.2 Continuing Guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

18.3 Reinstatement

If any payment by an Obligor or any discharge given by a Finance Party (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- 18.3.1 the liability of each Obligor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and

18.3.2 each Finance Party shall be entitled to recover the value or amount of that security or payment from the Obligor, as if the payment, discharge, avoidance or reduction had not occurred.

18.4 Waiver of defences

The obligations of each Guarantor under this Clause 18 will not be affected by any act, omission, matter or thing which, but for this Clause 18, would reduce, release or prejudice any of its obligations under this Clause 18 (without limitation and whether or not known to it or any Finance Party) including:

18.4.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;

18.4.2 the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

18.4.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

18.4.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;

18.4.5 any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature) or replacement of a Finance Document or any other document or security;

18.4.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

18.4.7 any insolvency or similar proceedings.

18.5 Guarantor Intent

Without prejudice to the generality of Clause 18.4 (*Waiver of defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

18.6 Immediate recourse

Each Guarantor waives any right it may have of first requiring any Finance Party (or any Security Trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 18. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

18.7 **Appropriations**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party (or any Security Trustee or agent on its behalf) may:

18.7.1 refrain from applying or enforcing any other monies, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and

18.7.2 hold in an interest-bearing suspense account any monies received from any Guarantor or on account of any Guarantor's liability under this Clause 18.

18.8 **Deferral of Guarantor's rights**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Administrative Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

18.8.1 to be indemnified by an Obligor;

18.8.2 to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents; and/or

18.8.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Administration Agent or as the Administration Agent may direct for application in accordance with Clause 32 (*Payment mechanics*) of this Agreement.

18.9 **Release of Guarantors' right of contribution**

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

18.9.1 that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and

18.9.2 each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

18.10 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Finance Party.

18.11 Swiss Limitation

18.11.1 The aggregate liability of a Swiss Obligor under the provision of this Clause 18 and Clause 31 *Parallel Debt* as well as any and all security, guarantee, joint liability, representation, warranty, undertaking, indemnity, parallel debt, abstract acknowledgement of debt or other obligation incurred in connection with any and all Finance Documents for, or with respect to, obligations of any other Obligor or all Obligors or other third party, as well as the use of the proceeds resulting from the enforcement of the security granted under this Agreement and any other security granted by the Swiss Obligor in connection with the Finance Documents shall be limited to the Swiss Obligor's unrestricted equity capital surplus (including the unrestricted portion of general and statutory reserves, other free reserves, retained earnings and current net profits), less any Swiss withholding tax at the rate of 35% (or such other rate in force and applied from time to time) to the extent to be deducted and/or withheld under Swiss law, subject to any applicable double taxation treaty, available for distribution to the shareholder(s) of the Swiss Obligor under the Swiss Code of Obligations at the time of the start of enforcement, which amount shall be determined in the following procedure:

- a) an audited balance sheet of the relevant Swiss Obligor is prepared; and
- b) the auditors of the relevant Swiss Obligor approve the amount of the proposed payment based on applicable Swiss law and the articles of association of the Swiss Obligor.

18.11.2 Each Swiss Obligor herewith undertakes to take and/or cause all measures necessary or useful, as the case may be, to implement the foregoing measures, documents and other acts.

18.11.3 Any enforcement proceeds exceeding the unrestricted equity capital surplus are for the account of, and shall be remitted to, the Swiss Obligor.

18.12 German Limitation

18.12.1 To the extent a German Obligor guarantees liabilities other than its own liabilities or liabilities of its German Subsidiaries (up-stream or cross-stream guarantees), the Security Trustee agrees to release any amounts resulting from the enforcement of this guarantee if and only to the extent that that German Obligor demonstrates, by evidence reasonable satisfactory to the Lenders, that the application of the proceeds resulting from the enforcement of this guarantee would otherwise lead to a reduction of:

- (A) its Net Assets (as defined below) (*Reinvermögen*) to an amount less than its registered share capital (*Stammkapital*); or
- (B) if its net assets have already fallen below the registered share capital, causing such amount to be further reduced.

18.12.2 If the German Obligor notifies the Security Trustee, within 20 Business Days after the Security Trustee has notified the German Obligor of its intention to enforce this guarantee, that payment in full of an amount due from it under this guarantee would

- lead to one of the effects referred to in Clause 18.12.1, then the amount due for payment at that time hereunder by the German Obligor will be reduced to the extent necessary to ensure compliance by the German Obligor with its obligations to preserve its stated share capital.
- 18.12.3 If the Security Trustee is not satisfied with the evidence given by the German Obligor pursuant to Clause 18.12.1 and/or Clause 18.12.2, such German Obligor may within 15 calendar days (or such longer period as has been agreed between the German Obligor and the Security Trustee for such purpose) from the date the Security Trustee has given the German Obligor written notice to this effect (the “**Notice**”), request a determination by auditors of international standing and reputation of the amount of the available Net Assets, as defined below (the “**Auditor’s Determination**”). If the Security Trustee and the German Obligor do not agree on the appointment of a joint auditor within 5 Business Days from the date the Security Trustee has given the Notice the Security Trustee is entitled to appoint auditors of international standing and reputation. The amount determined as the available Net Assets in the Auditor’s Determination shall be (except for manifest error) binding for all parties. The costs of the Auditor’s Determination shall be borne by the German Obligor.
- 18.12.4 No release or reduction of any of the proceeds resulting from the enforcement of this guarantee in accordance with Clause 18.12.1 or Clause 18.12.2 will prejudice the rights of the Security Trustee to claim (again) under this guarantee in respect of any of the released or reduced amount.
- 18.12.5 The calculation of net assets (*Reinvermögen*) shall include the assets pursuant to section 266 (2) (A), (B) and (C) of the German Commercial Code (*HGB*) less liabilities pursuant to section 266 (3) (B), (C) and (D) of the German Commercial Code (*HGB*) (the “**Net Assets**”) provided that for the purposes of the calculation of the Net Assets in this Clause 18 the following balance sheet items shall be adjusted as follows:
- (A) the amount of any increase of registered share capital after the date hereof that has been effected contrary to the provisions of the Finance Documents shall be deducted from the registered share capital;
 - (B) loans made available to the German Obligor (and/or, as the case may be, its general partner) by any members of the Group as far as such loans are subordinated or qualify under Section 32a of the German Limited Liability Companies Act (*GmbHG*) (or, as the case may be, the respective provision of the German Commercial Code (*HGB*)) shall be disregarded;
 - (C) loans and other contractual liabilities incurred by the German Obligor (and/or, as the case may be, its general partner) in violation of the provisions of any of the Finance Documents shall be disregarded; and
 - (D) any asset that is shown in the balance sheet with a book value (Buchwert) that is significantly lower than the market value of such asset and that can be realised, to the extent legally permitted and commercially justifiable with regard to costs and efforts involved, shall be taken into account with its market value.
- 18.12.6 The limitations set out in this Clause 18.12 shall not apply to any proceeds resulting from the enforcement of this guarantee which relate to any amounts owed under this Agreement which have been on-lent, or otherwise passed on, to the German Obligor or any of its Subsidiaries and which are still outstanding.

18.13 **Dutch Limitation**

The obligations of any Guarantor incorporated under the laws of the Netherlands (a “**Dutch Guarantor**”) and any of its Subsidiaries under or pursuant to this Clause 18 shall exclude and shall not be or be construed as any guarantee, indemnity or security, to the extent that this would:

- 18.13.1 constitute unlawful financial assistance within the meaning of Section 2:98c or 2:207c of the Dutch Civil Code, as relevant; or
- 18.13.2 be deemed “ultra vires” within the meaning of Section 2:7 of the Dutch Civil Code.

18.14 **German Confirmation in relation to Back-to-Back Financing**

- 18.14.1 For the purposes of providing evidence to the German tax authorities of the absence of any back-to-back financing in connection with the Decree (as defined below) each of the Original Lenders agrees to deliver to the Company no later than 10 days after the Closing Date and subsequently on an annual basis a completed bank certificate in the form set out in the sample confirmation attached to the letter (*Bescheinigung im Sinne der Rdnr. 5 des BMF-Schreibens vom 22. Juli 2005* (BStBl. I 2005, S. 829)) issued by the German Federal Ministry of Finance *Bundesministerium für Finanzen* on 20 October 2005 (unless prohibited by law, administrative rule or regulation of the jurisdiction the relevant Lender is subject to) stating what collateral security (*Kreditsicherheit*) was granted to the respective lender by the Borrower, an Obligor or a third party to this Agreement or any member of the Group or any of its direct or indirect shareholders in connection with the Finance Documents and that the Lenders do not hold either directly or indirectly any security pursuant to the terms of the Finance Documents for the purposes of securing any obligations in respect of Financial Indebtedness incurred by any of the German Borrowers under the Finance Documents other than stated in the Transaction Security Documents.
- 18.14.2 The Lenders will use all reasonable endeavours to inform the Borrowers and each Borrower undertakes to inform the Lenders, in each case without undue delay, if it becomes aware of any circumstances as a result of which the confirmation to be given from time to time by the Lenders pursuant to Clause 18.14.1 ceases to be correct.
- 18.14.3 If at any time after the date hereof, a German Borrower reasonably considers that the confirmation required to be delivered from time to time pursuant to Clause 18.14.1 is not sufficient for the purpose of providing proof to the German tax authorities in the manner described in the Decree or otherwise required by the German tax administration, and such German Borrower wishes to make a proposal to the Lenders that an amendment is made to that Clause to reflect what it reasonably considers to be the required proof, that German Borrower may deliver to the Lenders a request to consider that proposal. Promptly upon receipt of a proposal the Lenders agree to consider the proposal(s) therein in good faith and, if requested to do so by the relevant German Borrower the Lenders will enter into discussions with that German Borrower with a view to agreeing any amendments described in the proposal.
- 18.14.4 For the purposes of this Clause 18.14
“**Decree**” means the decrees issued by the German Federal Ministry of Finance (*Bundesfinanzministerium*) on 15 July 2004 (IV A2-S2742a-20/04) and 22 July 2005 (IV B7-S2742a-31/05) in relation to Section 8a of the Corporation Tax Act (*KStG*).

“**Form of Confirmation**” means the form of confirmation set out in Schedule 13 (*Form of Confirmation*).

“**German Borrower**” means each Borrower incorporated in the Federal Republic of Germany.

“**LTIBR**” means any interest-bearing claims and instruments with a maturity which qualifies as long term in accordance with Section 8 No. 1 of the Trade Tax Act (*GewStG*).

18.15 French Limitation

The obligations and liabilities of any French Guarantor under this Clause 18:

- 18.15.1 shall not include, as regards its obligation to act jointly and severally with any other Obligor, any obligation or liability which (i) would not be assumed in furtherance of a common economic, social or financial interest related to a strategy defined for the entire group, (ii) would be assumed for no or insufficient consideration for such French Guarantor, or (iii) would exceed the overall financial capabilities of such French Guarantor, notwithstanding anything to the contrary in this Clause 18;
- 18.15.2 shall not include any obligation or liability which would constitute a misuse of corporate assets as defined under article L. 242-6 of the French Commercial Code; or
- 18.15.3 shall exclude and shall not be construed as including any guarantee, indemnity or security, to the extent that this would contravene any laws in France relating to financial assistance or analogous process.

Further, the Company shall hold any French Borrower or French Guarantor harmless from any tax loss it may suffer from and/or reimburse any tax cost it may incur in connection with this Agreement, should the obligations and liabilities of such French Borrower or French Guarantor hereunder have a negative tax impact for such French Borrower or French Guarantor in respect of the thin capitalization rules defined by article 212 of the French Tax Code (*Code Général des Impôts*). The Company further agrees, as the Holding Company of any French Borrower or French Guarantor, to duly refund such French Borrower or French Guarantor according to French law (articles L. 225-248 and L. 227-1 al. 3 of the French Commercial Code), should the obligations and liabilities of such French Borrower or French Guarantor hereunder impact its shareholders' equity (*capitaux propres*), as defined by article 22 of the French Decree n° 83-1020 of November 29, 1983, in an amount such that shareholders' equity of that French Borrower or French Guarantor is less than half of its share capital at the end of the on-going fiscal year.

19. REPRESENTATIONS

Each Obligor makes the following representations and warranties to each Finance Party at the times specified in Clause 19.26 (*Times on which representations are made*).

19.1 Status

- 19.1.1 It and each of its Subsidiaries is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

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- 19.1.2 It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.
- 19.1.3 The documents described in Part I of Schedule 2 have been furnished to the Administrative Agent, are and remain true, complete, accurate and up to date and have not been modified, amended or varied in any manner whatsoever since so furnished.
- 19.2 **Binding obligations**
Subject to the Legal Reservations:
- 19.2.1 the obligations expressed to be assumed by it in each Finance Document are legal, valid, binding and enforceable obligations; and
- 19.2.2(withoutlimiting the generality of Clause 19.2.1), each Transaction Security Document to which an Obligor is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid, effective and enforceable.
- 19.3 **Non-conflict with other obligations**
The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:
- 19.3.1 any law or regulation applicable to it;
- 19.3.2 its constitutional documents; or
- 19.3.3 any agreement or instrument binding upon it or its Subsidiaries to the extent or in a manner that such conflict has or could reasonably be expected to have a Material Adverse Effect.
- 19.4 **Power and authority**
- 19.4.1 Subject to the Legal Reservations, it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is or will be a party and the transactions contemplated by those Finance Documents.
- 19.4.2 No limit on its powers will be exceeded as a result of the borrowing, granting of security or giving of guarantees or indemnities contemplated by the Finance Documents to which it is or will be a party.
- 19.5 **Validity and admissibility in evidence**
- 19.5.1 All Authorisations required or desirable:
- (A) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
- (B) to make the Finance Documents to which it is or will be a party admissible in evidence in its Relevant Jurisdictions, have been obtained or effected and are in full force and effect.
- 19.5.2 All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect except to the extent failure to obtain or effect those Authorisations could reasonably be expected not to have a Material Adverse Effect.

19.6 **Governing law and enforcement**

Subject to the Legal Reservations:

- 19.6.1 the choice of English law (or such other law as specified) as the governing law of the Finance Documents will be recognised and enforced in an Obligor's Relevant Jurisdictions;
- 19.6.2 any judgment obtained in England (or such other jurisdiction as specified) in relation to a Finance Document will be recognised and enforced in its Relevant Jurisdictions.

19.7 **Deduction of Tax**

As at the date of this Agreement, it is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

19.8 **Insolvency**

No:

- 19.8.1 corporate action, legal proceeding or other procedure or step described in Clause 23.1 (*Insolvency proceedings*); or
- 19.8.2 creditors process described in Clause 23.8 (*Creditors' process*),

has been taken or, to the knowledge of the Company, threatened in relation to a Material Company and none of the circumstances described in Clause 23.6 (*Insolvency*) applies to a Material Company.

19.9 **No filing or stamp taxes**

Under the laws of the Relevant Jurisdictions it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents except:

- 19.9.1 registration of particulars of any and all asset charges granted by the Company, Interconnect Exchange Europe Limited or IX Services Limited and share pledges granted by the Company at the Companies Registration Office in England and Wales under Section 395 of The Companies Act 1985;
- 19.9.2 registration of particulars of any and all asset charges granted by a Security Company (other than a Security Company incorporated in the United Kingdom) over one or more assets situated in the United Kingdom at the Companies Registration Office in England and Wales;
- 19.9.3 registration of any and all asset charges granted by Interconnect Exchange Europe Limited at the Land Registry or Land Charges Registry in England and Wales or the mortgage over land created by IX Europe Real Estate GmbH, at the Land Registry (*Grundbuchamt*) in Frankfurt am Main, Federal Republic of Germany;
- 19.9.4 registration of on-going business pledge granted by Interconnect Exchange Europe SAS with the French tax authorities;

19.9.5 filing of the on-going business pledge granted by Interconnect Exchange Europe SAS with the commercial Court and with the *Institut National de la Propriété Industrielle -INPI-*;

which registrations and filings will be made promptly after the date of this Agreement.

19.10 No default

19.10.1 No Event of Default and, on the date of this Agreement and the Closing Date, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Finance Document.

19.10.2 No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or its Subsidiaries') assets are subject in each case which has or could reasonably be expected to have a Material Adverse Effect.

19.11 No misleading information

19.11.1 Any factual information contained in the Information Memorandum, the Base Case, the Accountant's Report, the Environmental Report or the Information Package was true and accurate in all material respects as at the date of the relevant report or document or (as the case may be) as at the date the information is expressed to be given.

19.11.2 Any financial projections or forecasts contained in the Information Memorandum, the Base Case, the Accountant's Report, the Environmental Report or the Information Package have been prepared on the basis of then current historical information and on the basis of reasonable assumptions and were fair (as at the date of the relevant report or document containing the information) and arrived at after careful consideration.

19.11.3 The expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Memorandum, the Accountant's Report, the Environmental Report or the Information Package were arrived at after careful consideration and were fair and based on reasonable grounds.

19.11.4 No event or circumstance has occurred or arisen and no information has been omitted from the Information Memorandum, the Base Case, the Accountant's Report, the Environmental Report or the Information Package and no information has been given or withheld that results in the information, forecasts or projections contained in the Information Memorandum or the Information Package being untrue or misleading or other than fair and reasonable in any material respect.

19.11.5 All other written information (including, without limitation in respect of insurances and pensions) provided by any member of the Group (including its advisers) was true, complete and accurate in all material respects as at the date it was expressed to be given and is not misleading in any material respect.

19.12 Financial condition

19.12.1 Its Original Financial Statements were prepared in accordance with the relevant Accounting Principles consistently applied.

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- 19.12.2 Its Original Financial Statements fairly represent its financial condition and operations (consolidated in the case of the Company) during the relevant financial year.
- 19.12.3 There has been no material adverse change in its property, assets, business or financial condition (or the property, assets, business or consolidated financial condition of the Group, in the case of the Company) since 31 December 2006.
- 19.12.4 Each set of financial statements delivered pursuant to Clause 20.1 (*Financial statements*) gives a true and fair view of (in the case of audited financial statements) or fairly represents (in the case of unaudited financial statements) its financial condition and operations as at the date at which those financial statements were drawn up.
- 19.13 **No proceedings pending or threatened**
- Save and to the extent fully and fairly disclosed in writing to the Administrative Agent, no litigation, arbitration or administrative proceedings or investigations of or before any court, arbitral body or agency which, if adversely determined, could reasonably be expected to have a Material Adverse Effect have been started or (to the best of its knowledge and belief) threatened against it or any of its Subsidiaries.
- 19.14 **Environmental and other laws**
- 19.14.1 Each member of the Group is in compliance with Clause 22.3 (*Environmental compliance*) and to the best of its knowledge and belief no circumstances have occurred which would prevent that performance or observation.
- 19.14.2 No Environmental Claim has been commenced or (to the best of its knowledge and belief) is threatened against any member of the Group where that claim has or could reasonably be expected, if determined against that member of the Group, to have a Material Adverse Effect.
- 19.14.3 To the best of its knowledge, having made due and careful enquiry, neither it nor any of its Subsidiaries is in breach of any other law or regulation in a manner or to an extent which has or could reasonably be expected to have a Material Adverse Effect.
- 19.15 **Taxation**
- 19.15.1 No member of the Group is:
- (A) materially overdue in the filing of any Tax returns; or
- (B) overdue in the payment of any amount in respect of Tax of £50,000 (or its equivalent in any other currency) or more.
- 19.15.2 As far as the Obligors are aware (having made all due enquiry), no claims are being or are reasonably likely to be asserted against any member of the Group with respect to Taxes which if adversely determined, could reasonably be expected to have a Material Adverse Effect.
- 19.16 **No immunity**
- Subject to the Legal Reservations, in respect of any proceedings taken in its Relevant Jurisdiction in relation to any of the Finance Documents, no Obligor will be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or legal process.

19.17 **Security and Financial Indebtedness**

- 19.17.1 No Security exists over all or any of the present or future assets of any member of the Group other than any Security permitted under Clause 22.12 (*Negative pledge*).
- 19.17.2 No member of the Borrowing Group has any actual or contingent Financial Indebtedness outstanding other than as permitted by this Agreement.

19.18 **Ranking**

Subject only to the release of the Security in respect of the Existing Financial Indebtedness:

- 19.18.1 the Transaction Security has or will have first ranking priority and it is not subject to any prior ranking or pari passu ranking Security, other than any Security permitted under Clause 22.12 (*Negative pledge*);
- 19.18.2 the payment obligations under the Finance Documents will rank at least pari passu with the claims of all its other present and future unsecured creditors.

19.19 **Shares**

The shares or equity interests of any member of the Group which are subject to the Transaction Security are fully paid, represent all of the shares or equity interests in such member of the Group and are not subject to any option to purchase or similar rights. The constitutional documents of companies whose shares or equity interests are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares or equity interests, or the voting rights attaching thereto, on creation or enforcement of the Transaction Security so as to cause a Material Adverse Effect. There are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any member of the Group (including any option or right of pre-emption or conversion).

19.20 **Good Title to Assets**

- 19.20.1 Each member of the Borrowing Group has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.
- 19.20.2 Each Obligor and each of their Subsidiaries is the sole legal and beneficial owner of the respective material assets over which it purports to grant Security.

19.21 **Intellectual Property**

No Obligor is aware of any circumstances relating to the validity, subsistence or use of any of its or its Subsidiaries' Intellectual Property which have or could reasonably be expected to have a Material Adverse Effect.

19.22 **Group structure**

The Group Structure Chart is true, complete and accurate.

19.23 **Accounting reference date**

The Accounting Reference Date of each member of the Group is 31 December.

19.24 **No Trading**

Save as contemplated by, or otherwise in connection with the transactions contemplated hereby or in the normal conduct of activities as a listed holding company, the Company has not traded or undertaken any commercial activities of any kind and the Company has no liabilities or obligations (actual or contingent) save for (i) professional fees and administration costs in the ordinary course of business and/or incurred for the purposes of the maintenance of their corporate existence, (ii) liabilities in respect of the fees of the providers of the Reports and (iii) liabilities imposed by law (and not by contract), and (iv) loans to or from members of the Borrowing Group, in each case only save and to the extent permitted under the Finance Documents.

19.25 **Dutch Financial Supervision Act**

Each Dutch Obligor is in compliance with the Dutch Financial Supervision Act and any regulations issued pursuant thereto.

19.26 **Times when representations are made**

- 19.26.1 All the representations and warranties in this Clause 19 are made to each Finance Party on the date of this Agreement and on the Closing Date except for the representations and warranties set out in Clause 19.11 (*No misleading information*) to the extent relating to the Information Memorandum which are deemed to be made by each Obligor on the date that the Information Memorandum is approved in writing by the Company and on the Syndication Date.
- 19.26.2 The Repeating Representations are deemed to be made by each Obligor to each Finance Party on the date of each Utilisation Request and on the first day of each Interest Period.
- 19.26.3 All the representations and warranties in this Clause 19 except Clause 19.11 (*No misleading information*) to Clause 19.24 (*No Trading*) are deemed to be made by each Additional Obligor to each Finance Party on the day on which it becomes an Additional Obligor.
- 19.26.4 Each representation or warranty deemed to be made after the date of this Agreement shall be made by reference to the facts and circumstances existing at the date the representation or warranty is made.

20. **INFORMATION UNDERTAKINGS**

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

In this Clause 20:

“**Annual Financial Statement**” means a financial statement for a financial year delivered pursuant Clause 20.1.1 (*Financial statements*).

“**Monthly Financial Statement**” means a financial statement delivered pursuant to Clause 20.1.3 (*Financial statements*).

“**Quarterly Financial Statement**” means a financial statement in respect of a quarter in which a Financial Quarter in the financial year of the Company expires.

20.1 **Financial statements**

The Company shall supply to the Administrative Agent in sufficient copies for all the Lenders:

- 20.1.1 as soon as they are available, but in any event (i) within 150 days after the end of each of its financial years, the audited consolidated financial statements for the Group for that financial year, and (ii) 180 days after the end of each of its financial years, the audited financial statements for each Obligor for that financial year; and
- 20.1.2 as soon as they are available, but in any event within 30 days after the end of each Financial Quarter of each of its financial years the consolidated Quarterly Financial Statements for the Borrowing Group for that Financial Quarter; and
- 20.1.3 as soon as they are available, but in any event within 30 days after the end of each month:
 - (A) the consolidated financial statements for that month; and
 - (B) the financial statements of each Obligor for that month.

20.2 **Compliance Certificate**

- 20.2.1 The Company shall supply a Compliance Certificate to the Administrative Agent with each set of the Group's audited consolidated Annual Financial Statements and each set of the Group's consolidated Quarterly Financial Statements.
- 20.2.2 Each Compliance Certificate shall:
 - (A) set out (in reasonable detail) computations as to compliance with Clause 21 (*Financial Covenants*) and the Margin computations set out in the definition of "Margin" as at the date as at which those financial statements were drawn up;
 - (B) confirm no Event of Default has occurred and is continuing or, if an Event of Default has occurred, what Event of Default has occurred and the steps being taken to remedy that Event of Default; and
 - (C) confirm the identity of all Material Companies.
- 20.2.3 Each Compliance Certificate shall be signed by two directors of the Company and, if required to be delivered with the consolidated Annual Financial Statements of the Company by the Company's auditors.

20.3 **Requirements as to financial statements**

- 20.3.1 Each set of financial statements delivered pursuant to Clause 20.1 (*Financial statements*):
 - (A) shall, on each Quarter Date, be certified by the Chief Financial Officer of the Company as giving a true and fair view (in the case of Annual Financial Statements) or fairly representing (in other cases) its financial condition and operations as at the date as at which those financial statements were drawn up;
 - (B) in the case of consolidated financial statements of the Borrowing Group shall, on each Quarter Date, be accompanied by a narrative from the directors of the Company comparing actual performance for the period to which the financial statements relate to the projected performance for that period set out in the Base Case (or the Budget, if approved by the Administrative Agent) and the actual performance for the corresponding period in the preceding financial year of the Borrowing Group;

- (C) shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Budget and the Original Financial Statements for each Obligor,
- unless, in relation to any set of financial statements, the Company notifies the Administrative Agent that there has been a change in the Accounting Principles, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of the Obligor) deliver to the Administrative Agent:
- (1) a description of any change necessary for those financial statements to reflect the Accounting Principles, accounting practices and reference periods upon which that Obligor's Original Financial Statements were prepared; and
 - (2) sufficient information, in form and substance as may be reasonably required by the Administrative Agent, to enable the Lenders to determine whether Clause 21 (*Financial covenants*) has been complied with, to determine the Margin as set out in the definition of "Margin" and to make an accurate comparison between the financial position indicated in those financial statements and that Obligor's Original Financial Statements.
- 20.3.2 If the Company notifies the Administrative Agent of a change in accordance with Clause 20.3.1(C) then the Company and Administrative Agent shall enter into negotiations in good faith with a view to agreeing:
- (A) whether or not the change might result in any material alteration in the commercial effect of any of the terms of this Agreement; and
 - (B) if so, any amendments to this Agreement which may be necessary to ensure that the change does not result in any material alteration in the commercial effect of those terms
- and if any amendments are agreed they shall take effect and be binding on each of the Parties in accordance with their terms.
- If no such agreement is reached within 30 days of that notification of change, the Administrative Agent shall (if so requested by the Majority Lenders) instruct the auditors of the Company or independent accountants (approved by the Company or, in the absence of such approval within 5 days of request by the Administrative Agent for such approval, a firm with recognised expertise) to determine any amendment to Clause 21 (*Financial covenants*) and the Margin computations set out in the definition of "Margin" and any other terms of this Agreement which those auditors or, as the case may be, accountants (acting as experts and not arbitrators) consider appropriate to ensure the change does not result in any material alteration in the commercial effect of the terms of this Agreement. Those amendments shall take effect when so determined by those auditors, or as the case may be, accountants. The cost and expense of those auditors or accountants shall be for the account of the Company.

Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

20.3.3 The Company shall procure that each set of Annual Financial Statements shall be audited by an internationally recognised firm of independent auditors licensed to practice in the jurisdiction of incorporation of the relevant member of the Group.

20.3.4 The Company shall procure that each set of Quarterly Financial Statements includes:

(A) a profit and loss account by country in respect of each member of the Borrowing Group;

(B) a consolidated balance sheet of the Borrowing Group made up to the end of the relevant quarter;

(C) a Borrowing Group cashflow statement, and

(D) a Borrowing Group cashflow forecast relating to the 12 month period commencing at the end of the relevant Financial Quarter;

each in a form reasonably acceptable to the Administrative Agent and accompanied by a statement by the directors of the Company commenting on all performance of the Borrowing Group for the quarter to which the financial statements relate and any material developments or proposals affecting the Borrowing Group or its business.

20.3.5 The Company shall procure that each set of Monthly Financial Statements:

(A) a profit and loss account by country in respect of each member of the Borrowing Group;

(B) a consolidated balance sheet of the Borrowing Group made up to the end of the relevant Month; and

(C) a Borrowing Group cashflow statement;

each in a form reasonably acceptable to the Administrative Agent and accompanied by a statement by the directors of the Company commenting on all performance of the Borrowing Group for the month to which the financial statements relate and any material developments or proposals affecting the Borrowing Group or its business.

20.4 **Budget**

20.4.1 The Company shall supply to the Administrative Agent in sufficient copies for all the Lenders, as soon as the same become available but in any event not less than 30 days after the start of each of its financial years, an annual budget for that financial year.

20.4.2 The Company shall ensure that the Budget:

(A) is in a form reasonably acceptable to the Administrative Agent and includes a projected consolidated profit and loss, balance sheet and cashflow statement, in each case, for the Borrowing Group, projected disposals and projected capital expenditure for the Borrowing Group, projected financial covenant calculations and descriptions of the proposed activities of the Borrowing Group for the financial year to which the budget relates. The projections shall relate to each of the 3 month periods ending on each Quarter Date within that financial year;

- (B) is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under Clause 20.1 (*Financial statements*); and
 - (C) has been approved by the board of directors of the Company; and
 - (D) is accompanied by a statement by a director of the Company comparing the information and projections in the Budget with the information and projections for the same period in the Base Case.
- 20.4.3 The Company shall, if it materially changes the projections in such budget, promptly supply to the Administrative Agent in sufficient copies for the Lenders revised projections with a description of the material changes.

20.5 **Group Companies**

The Company shall, at the request of the Administrative Agent, supply to the Administrative Agent a report issued by its auditors stating which of its Subsidiaries are Material Companies.

20.6 **Annual Presentation**

If requested, once in every financial year at intervals of approximately 12 Months at least two executive directors of the Company (one of whom shall be the Chief Financial Officer) shall give a single presentation to the Finance Parties, at a time and venue agreed with the Administrative Agent, about the business and financial performance of the Group and such other related matters as any of the Finance Parties may reasonably request.

20.7 **Year-end**

The Company shall procure that each financial year-end of each member of the Group falls on 31 December.

20.8 **Information: Miscellaneous**

The Company shall supply to the Administrative Agent (in sufficient copies for all the Lenders, if the Administrative Agent so requests):

- 20.8.1 all documents dispatched by the Company to its shareholders (or any class of them) or dispatched by the Company or any Obligor to its creditors generally at the same time as they are dispatched;
- 20.8.2 promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which involve a sum of money or value in excess of £50,000 and/or which could otherwise reasonably be expected, if adversely determined, to have a Material Adverse Effect; and
- 20.8.3 promptly, such information or projections regarding the financial condition, business, property, assets, operations, performance or prospects of any member of the Group as the Administrative Agent may reasonably request.

20.9 **Notification of default**

- 20.9.1 Each Obligor shall notify the Administrative Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).
- 20.9.2 Promptly upon a request by the Administrative Agent, the Company shall supply to the Administrative Agent a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

21. **FINANCIAL COVENANTS**

21.1 Financial condition

The Company shall ensure that:

- 21.1.1 **Cash Flow Test.** The ratio of CAFDS to Total Debt Service in respect of each Relevant Period (commencing with the Relevant Period ending on 30 June 2008) shall not be less than 1.00:1.00.
- 21.1.2 **Interest Cover I.** The ratio of Pro Forma Borrowing Group EBITDA to Total Interest Costs in respect of any Relevant Period ending on a Quarter Date falling on the date set out in Column 1 below shall not be then the ratio set out in Column 2 below opposite the relevant date.

Column 1 Relevant Period	Column 2 Ratio
Period expiring 30 September 2007	2.75
Period expiring 31 December 2007	3.00
Period expiring 31 March 2008	3.25
Period expiring 30 June 2008	3.00
Period expiring 30 September 2008	3.25
Period expiring 31 December 2008	3.50
Period expiring 31 March 2009	3.75
Period expiring 30 June 2009	4.00
Period expiring 30 September 2009	4.25
For all remaining periods	4.50

- 21.1.3 **Leverage:** The ratio of Total Debt as at each Quarter Date set out in Column 1 below to Pro Forma Borrowing Group EBITDA in respect of the Relevant Period ending on such Quarter Date shall not be more than the ratio set out in Column 2 below opposite the relevant date.

Column 1 Relevant Period	Column 2 Ratio
Period expiring 30 September 2007	5.75
Period expiring 31 December 2007	6.25
Period expiring 31 March 2008	6.25
Period expiring 30 June 2008	5.75
Period expiring 30 September 2008	5.00
Period expiring 31 December 2008	4.50
Period expiring 31 March 2009	4.00
Period expiring 30 June 2009	3.50
Period expiring 30 September 2009	3.25
Period expiring 31 December 2009	3.00
Period expiring 31 March 2010	2.75
For all remaining periods	2.50

21.1.4 **Capital Expenditure:** The aggregate Capital Expenditure of the Borrowing Group in respect of each financial year of the Company specified in Column 1 below, shall not exceed the amount set out in Column 2 below opposite that financial year.

Column 1 Financial Year Ending	Column 2 Maximum Expenditure
31 December 2007	£ 58,000,000
31 December 2008	£ 32,000,000
31 December 2009	£ 16,500,000
31 December 2010 and thereafter	£ 7,500,000

If in any financial year (the “**Original Financial Year**”) the amount of the Capital Expenditure is less than the maximum amount permitted for that Original Financial Year (the difference being referred to below as the “**Unused Amount**”), then the maximum expenditure amount set out in column 2 above for the immediately following financial year only shall be increased by an amount equal to the lower of (1) the Unused Amount and (2) the maximum amount permitted for the Original Financial Year (the “**Permitted Carry Forward Amount**”) provided that at the end of that financial year Clause 21.1.1 (*Cash Flow Test*) is satisfied.

In any financial year it will be assumed that any Permitted Carry Forward Amount is spent after all of the other capital expenditure permitted to be spent in such financial year has been spent.

21.2 Financial testing

21.2.1 Subject to Clause 21.2.2, the financial covenants set out in Clause 21.1 (*Financial condition*) shall be tested by reference to each of the Annual Financial Statements and Quarterly Financial Statements delivered pursuant to Clause 20.1 (*Financial statements*) and each Compliance Certificate delivered pursuant to Clause 20.2 (*Compliance Certificate*).

21.2.2 In respect of each Relevant Period ending on or before 31 March 2008, the values for Total Debt Service, Total Interest Costs, Pro Forma Borrowing Group EBITDA and CAFDS shall be annualised by taking the value “T” for the Relevant Period and applying the following formula:

$$T \times \frac{365}{N}$$

where “N” is the number of days in the Relevant Period.

22. GENERAL UNDERTAKINGS

The undertakings in this Clause 22 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

22.1 **Authorisations**

Each Obligor (and the Company shall ensure that each member of the Group shall) shall promptly:

- 22.1.1 obtain, comply with and do all that is necessary to maintain in full force and effect; and
- 22.1.2 supply certified copies to the Administrative Agent of any Authorisation required under any law or regulation of a Relevant Jurisdiction to:
 - (A) enable it to perform its obligations under the Finance Documents;
 - (B) ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; and
 - (C) enable it to own its property and assets and to carry on its business, trade and ordinary activities as currently conducted, except to the extent failure to obtain or comply with those Authorisations could reasonably be expected not to have a Material Adverse Effect.

22.2 **Compliance with laws**

Each Obligor (and the Company shall ensure that each member of the Group shall) shall comply in all respects with all laws to which it may be subject, if failure to comply would, or could reasonably be expected to have, a Material Adverse Effect.

22.3 **Environmental compliance**

Each Obligor shall (and the Company shall ensure that each member of the Group shall):

- 22.3.1 comply with all Environmental Law;
- 22.3.2 obtain and maintain and ensure compliance with any Environmental Permits, where failure to do so could reasonably be expected to have a Material Adverse Effect.

22.4 **Taxation**

Each Obligor shall (and the Company shall procure that each member of the Group shall) duly and punctually pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- 22.4.1 such payment is being contested in good faith;
- 22.4.2 adequate reserves are being maintained for those Taxes which have been disclosed in its latest financial statements delivered to the Administrative Agent under Clause 20.1 (*Financial statements*); and
- 22.4.3 such payment can be lawfully withheld.

22.5 **Merger**

No Obligor shall (and the Company shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction except pursuant to any acquisition or disposal permitted by Clause 22.7.2 (*Acquisitions*) or Clause 22.13.2 (*Disposals*) or with the consent of the Majority Lenders. Each Finance Party consents to the

merger of Interconnect Exchange Europe GmbH with IX Europe GmbH provided such merger does not, in the reasonable opinion of the Administrative Agent, adversely affect the interests of any Lender under any Finance Document.

22.6 Change of business

The Company shall procure that no substantial change is made to the general nature of the business of the Group from that carried on at the date of this Agreement.

22.7 Acquisitions

22.7.1 No Obligor shall (and the Company shall ensure that no other member of the Group will) incorporate or acquire a company or acquire (or acquire an interest in) shares or securities or a business or undertaking (including for this purpose but without limitation the acquisition of assets, including without limitation the entering into of a lease of or other right to occupy of business premises, in connection with any datacentre not previously operated by a member of the Borrowing Group).

22.7.2 Clause 22.7.1 shall not apply to:

- (A) an acquisition permitted under Clause 22.7.3 below or funded under sub-Clause 22.7.4; or
- (B) an acquisition by a member of the Group permitted pursuant to Clause 22.13.2(B) *Disposals*).

22.7.3 Clause 22.7.1 shall not apply to acquisitions which are of businesses whose principal activity can reasonably be regarded as consistent with the activities of the Group and which have no liabilities (off-balance sheet or otherwise) including in respect of environmental, litigation, tax or pensions matters which may be expected to have a material adverse effect on the business acquired or a Material Adverse Effect provided always that the acquisition is funded as to 100% by the Group's own cash reserves or, without prejudice to Clause 8.5.2 (*Exit*), by a new issue of shares issued by the Company provided that the cost to the Group of such acquisition (including by way of purchase price, assumption of liabilities and/or fees and expenses) does not exceed £500,000 and provided further that no more than four such acquisitions shall be permitted within any 12 month period.

22.7.4 Save as provided in this Agreement, Facility B Loans shall be available to fund up to 75% of the aggregate of consideration, known assumed liabilities (actual and contingent), costs and expenses in relation to acquisitions (but no more than three such acquisitions within any one financial year) subject to:

- (A) in the case of such aggregate in respect of any single acquisition being less than £5,000,000:
 - (1) the Company having confirmed to the Administrative Agent in writing that no Event of Default is continuing on the closing date for the acquisition or would occur as a result of the acquisition;
 - (2) the Company having demonstrated to the Administrative Agent's reasonable satisfaction that no breach of Clause 21 would result or can reasonably be foreseen following such acquisition and its integration into the Group on the basis of the provisions of Clause 21 as against the Base Case or as against the Company's most recent management accounts and taking into account the impact of the proposed acquisition on a historic and forecast basis, which impact shall be set at a level of EBITDA headroom of 25%;

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- (3) the Company having provided the Administrative Agent with a Acquisition Information Template, duly completed to the reasonable satisfaction of the Administrative Agent to include the Company's management's overview of the acquisition opportunity and a review of historic and expected performance;
 - (4) satisfactory completion of legal due diligence in a form enabling legal reliance thereon for the Administrative Agent on behalf of the Lenders to cover key constitutional documents, material contracts and the key agreements relating to the acquisition;
 - (5) repayment of any existing Financial Indebtedness of target, subject to the Majority Lenders' consent to retain certain indebtedness (upon which the Administrative Agent shall, on behalf of the Lenders, consult with the Company in good faith);
 - (6) all pre-existing Security granted by the acquisition target being released at closing of the acquisition; and
 - (7) full copies of all documentation signed by any member of the Group in connection with such acquisition; and
- (B) in the case of such aggregate in respect of any single acquisition being more than £5,000,000:
- (1) satisfactory completion of due diligence (the scope being agreed by the Administrative Agent but in its entire discretion) including, without limitation, detailed third-party due diligence (to include, without limitation, legal, financial or commercial due diligence) to cover key contracts, constitutional documents, environmental matters and financial analysis;
 - (2) the Company having provided the Administrative Agent with a Acquisition Information Template, duly completed to the reasonable satisfaction of the Administrative Agent to include the Company's management's overview of acquisition opportunity and a review of historic and expected performance;
 - (3) repayment of any existing Financial Indebtedness of target, subject to the Majority Lenders' consent to retain certain indebtedness (upon which the Administrative Agent shall, on behalf of the Lenders, consult with the Company in good faith);
 - (4) all pre-existing Security granted by the acquisition target being at closing of the acquisition; and
 - (5) the prior written consent of the Majority Lenders.

22.8 Holding Companies

Neither the Company nor Intelisite BV shall trade, undertake any commercial activity, carry on any business own any assets or incur any liabilities except for:

22.8.1 business as a holding company (either listed or not);

22.8.2 the ownership of shares in its Subsidiaries, intra-Group debit balances, credit balances in bank accounts and, Cash but only if those shares, debit balances, credit balances and Cash are subject to the Transaction Security; or

22.8.3 any liabilities under the Finance Documents to which it is a party and professional fees and administration costs in the ordinary course of business as a holding company.

22.9 Dormant subsidiaries

No Obligor shall (and the Company shall ensure no member of the Group shall) cause or permit any member of the Group which is a Dormant Subsidiary to commence trading or cease to satisfy the criteria for a Dormant Subsidiary unless such Dormant Subsidiary becomes an Additional Guarantor in accordance with Clause 25 (*Changes to the Obligors*).

22.10 Preservation of assets

Each Obligor shall (and the Company shall ensure that each member of the Group shall) maintain and preserve, in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business, as conducted at the date of this Agreement, including without being limited to its computers and computer systems.

22.11 Pari passu ranking

Each Obligor shall ensure that at all times any unsecured and unsubordinated claims of a Finance Party held against it under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

22.12 Negative pledge

In this Clause 22.12, “**Quasi-Security**” means a transaction described in Clause 22.12.2.

Except as permitted under Clause 22.12.3:

22.12.1 No Obligor shall (and the Company shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.

22.12.2 No Obligor shall (and the Company shall ensure that no other member of the Group will):

(A) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

(B) enter into any other preferential arrangement (including any title transfer and/or retention arrangement) having the effect of creating security.

22.12.3 Clauses 22.12.2 and 22.12.3 do not apply to:

(A) any netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group;

(B) any lien arising by operation of law in the ordinary course of trading;

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- (C) any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the Closing Date if:
- (1) the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
 - (2) the principal amount secured has not been increased in contemplation of, or since the acquisition of that asset by a member of the Group; and
 - (3) the Security or Quasi-Security is removed or discharged within three months of the date of acquisition of such asset;
- (D) any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the Closing Date, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group, if:
- (1) the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
 - (2) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
 - (3) the Security or Quasi-Security is removed or discharged within three months of that company becoming a member of the Group;
- (E) any netting or set-off arrangement entered into by any member of the Group under a hedging agreement for the purposes of determining the obligations of the parties to that agreement by reference to their net exposure under that agreement;
- (F) any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the suppliers standard or usual terms;
- (G) any sale, transfer or other disposal of an asset by an Obligor on terms that it may be leased to or re-acquired by another Obligor;
- (H) the Transaction Security;
- (I) any Security or Quasi-Security which exists in respect of any asset of any member of the Group the value of which (when aggregated with the value of any other assets of the Group over which Security or Quasi Security exists other than any permitted under Clauses 22.12.3(A) to 22.12.3(H)) does not exceed £250,000. For the purposes of this Clause 22.12.3(I) the value of an asset shall be the higher of its book value and market value;
- (J) the Permitted Leases;
- (K) the granting by Interconnect Exchange Europe Limited, of Security over the rent deposit required in respect of London 4;
- (L) the granting by Interconnect Exchange Europe Limited of Security in favour of The Vital International Group Limited (as vendor) over assets acquired pursuant to the acquisition and assumption of the business, contracts and operations of a datacentre in London, provided that such Security secures a maximum principal amount of £450,000 is released (and a Form 403a is filed with the Registrar of Companies) no later than 31 August 2007; or

- (M) the credit balances of the Blocked Bank Accounts as at the Closing Date together with interest accruing thereon and in the event that further Blocked Bank Accounts are approved, such credit balance as approved by the Administrative Agent in respect of those accounts, together with interest accruing thereon.

22.13 Disposals

- 22.13.1 Except as permitted under Clause 22.13.2 below, no Obligor shall (and the Company shall ensure that no other member of the Group will) make any Disposals.
- 22.13.2 Clause 22.13.1 above does not apply to any Disposal:
- (A) of assets made in the ordinary course of trading of the disposing entity and on arms length terms;
- (B) of any asset by a member of the Group (the “**Disposing Company**”) to another member of the Group (the “**Acquiring Company**”), provided that:
- (1) if the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;
 - (2) if the Disposing Company had given (or intended to give) Security over the asset, the Acquiring Company must give equivalent Security over the asset; and
 - (3) if the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing an amount no less than the amount guaranteed by the Disposing Company;
- (C) of obsolete vehicles, plant, machinery or equipment;
- (D) of cash where that disposal is not otherwise prohibited by the Finance Documents;
- (E) arising as a result of granting of any Security permitted under Clause 22.12 (*Negative pledge*); or
- (F) of fixed assets where the proceeds of Disposal are used within 90 days of that Disposal to purchase replacement fixed assets comparable or superior as to type, value and quality or are contractually committed to be applied to purchase replacement fixed assets comparable or superior as to type, value and quality within 90 days and are so applied with 6 months of receipt of the relevant proceeds of the Disposal.

22.14 Arm’s length basis

- 22.14.1 Except as permitted by Clause 22.14.2, no Obligor shall (and the Company shall ensure no member of the Group will) enter into any transaction with any person except on arm’s length terms.
- 22.14.2 The following transactions shall not be a breach of this Clause 22.14:
- (A) arrangements, contracts and transactions between Obligors permitted under this Agreement; and

- (B) fees, costs and expenses payable under the Finance Documents in the amounts set out in the Finance Documents delivered to the Administrative Agent under Clause 4.1 (*Initial Conditions Precedent*) or agreed by the Administrative Agent.

22.15 Loans or credit

- 22.15.1 Except as permitted under Clause 22.15.2, no Obligor shall (and the Company shall ensure that no member of the Group will) make any loans or grant any credit or make any other financial arrangement having a similar effect.
- 22.15.2 Clause 22.15.1 above does not apply to:
 - (A) trade credit extended by any member of the Group to its customers in the ordinary course of its trading activities;
 - (B) a loan by an Obligor to another Obligor;
 - (C) a loan by a member of the Group to an employee or director of any member of the Group if the amount of that loan when aggregated with the amount of all loans to employees and directors by members of the Group and the maximum actual and contingent liabilities under all guarantees or indemnities by members of the Group in respect of liabilities or obligations of employees or directors of members of the Group does not exceed £100,000;
 - (D) a loan by an Obligor to an Obligor;
 - (E) a loan by a member of the Group which is not an Obligor to another member of the Group;
 - (F) loans not included within Clauses 22.15.2(A) to 22.15.2(E) above where the outstanding aggregate principle amount of all such loans does not exceed £250,000 (or its equivalent) at any time.

22.16 Dividends and other payments on subordinated debt

- 22.16.1 The Company shall not:
 - (A) declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, fee or distribution) on or in respect of its share capital (or any class of its share capital);
 - (B) redeem, purchase, retrieve or otherwise reduce (nor allow any other member of the Group to purchase) the Company's share capital (or any class of its share capital); or
 - (C) repay or distribute any dividend or share premium reserve.
- 22.16.2 No Obligor shall and shall procure that no other member of the Group shall redeem, repurchase, defease, repay any loan to any shareholder of the Company or pay any interest on any such loan. For the avoidance of doubt, the Borrowing Group shall procure that any interest on such loans accrues but shall not be paid until such time as the obligations under the Finance Documents has been unconditionally and irrevocably paid and discharged.
- 22.16.3 No Obligor (other than the Company) shall (and shall procure that no other member of the Group shall) pay any dividend or other distribution in relation to its share capital to a member of the Group which is not an Obligor.

22.17 **Financial Indebtedness**

- 22.17.1 Except as permitted under Clause 22.17.2, no Obligor shall (and the Company shall ensure that no member of the Borrowing Group will) incur or allow to remain outstanding any Financial Indebtedness.
- 22.17.2 Clause 22.17.1 does not apply to Financial Indebtedness which:
- (A) arises under the Finance Documents;
 - (B) arises in favour of a third party that has entered into subordination arrangements in a manner satisfactory to the Lenders;
 - (C) is a liability under any Permitted Lease;
 - (D) arises under or in respect of a loan from another member of the Group which is permitted under Clause 22.15 (*Loans or credit*);
 - (E) is indebtedness in respect of any derivative transaction which is a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates if that foreign exchange exposure arises in the ordinary course of trade but not a foreign exchange transaction for investment or speculative purposes;
 - (F) arises under a guarantee or indemnity given by a member of the Group for the liabilities or obligations of an employee or director of any member of the Group if the maximum actual and contingent liability under that guarantee or indemnity, when aggregated with the amount of all loans and other guarantee or indemnity obligations referred to in Clause 22.15.2(C) (*Loans or credit*), does not exceed the monetary limit specified in that Clause 22.15.2(C) (*Loans or credit*);
 - (G) arises under a guarantee or indemnity entered into by a member of the Group in favour of a bank in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group;
 - (H) is indebtedness raised under a disposal and lease or acquisition arrangement permitted under Clause 22.12.3(H) (*Negative pledge*);
 - (I) is money owing in respect of the Slough Upgrade Deferred Consideration; or
 - (J) is indebtedness not referred to in Clauses 22.17.2(A) to 22.17.2(H) and which does not exceed £1,000,000 in an aggregate principal amount for the Group taken as a whole. (For the purposes of determining whether the monetary limit in this Clause 22.17.2(J) has been exceeded any guarantee, indemnity or counter-indemnity obligation in respect of other forms of Financial Indebtedness falling within this Clause 22.17.2(J) shall not be double counted).

22.18 **Insurance**

- 22.18.1 Each Obligor shall (and the Company shall ensure that each member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for prudent companies carrying on the same or substantially similar business.
- 22.18.2 All insurances must be with reputable independent insurance companies or underwriters.

22.19 **Pensions**

The Company shall ensure that all pension schemes operated by or maintained for the benefit of members of the Group and/or any of its employees are fully funded based on reasonable actuarial assumptions and recommendations and are operated or maintained as required by law.

22.20 **Access**

While a Default (or where the Administrative Agent reasonably suspects a Default) is continuing each Obligor shall (and the Company shall ensure that each member of the Group shall) permit the Administrative Agent and/or the Security Trustee and/or accountants or other professional advisers and contractors of the Administrative Agent or Security Trustee free access at all reasonable times and on reasonable notice at the cost of the Company to (a) inspect and take copies and extracts from the books, accounts and records of each member of the Group and (b) view the assets which are the subject of the Transaction Security and the premises of each member of the Group and (c) meet and discuss matters with senior management within the Group.

22.21 **Intellectual property**

Each Obligor shall (and the Company shall procure that each member of the Group shall):

22.21.1 preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group member; and

22.21.2 not use or permit that Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of that Intellectual Property or imperil the right of any member of the Group to use such property.

22.22 **Further assurance**

22.22.1 Each Obligor shall (and the Company shall procure that each member of the Group shall) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require in favour of the Security Trustee or its nominee(s)):

(A) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights powers and remedies of the Security Trustee or the Finance Parties provided by or pursuant to the Finance Documents or by law;

(B) to confer on the Security Trustee or confer on the Finance Parties Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or

(C) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.

22.22.2 Each Obligor shall (and the Company shall procure that each member of the Group shall) take all such action as is available to it (including making all filings and

registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Trustee or the Finance Parties by or pursuant to the Finance Documents and, for the avoidance of doubt, such other Security as the Administrative Agent reasonably requires from the members of the Borrowing Group and in accordance with the following principles:

Security shall not be created or perfected and/or guarantees will not be given to the extent that they would:

- (A) result in any breach of corporate benefit, financial assistance, fraudulent preference, thin capitalisation rules, the laws or regulations (or analogous restrictions) of any applicable jurisdiction;
- (B) result in any risk to the officers of the Obligor of contravention of their fiduciary duties and/or of civil or criminal liability;
- (C) result in costs disproportionate to the benefit obtained by the beneficiaries of that Security and/or guarantee; or
- (D) impose an undue administration burden on, or material inconvenience to the ordinary course of operations of, the provider of the guarantee or Security, taking into account the benefit obtained by the beneficiary of the Security.

For the avoidance of doubt, "cost" includes, but is not limited to income tax cost, registration taxes payable on the creation or enforcement or for the continuance of any Security or guarantee, stamp duties, out-of-pocket expenses, and other fees and expenses directly incurred by the Company, and Obligor or any of their direct or indirect owners, Subsidiaries or Affiliates.

22.23 Cash and bank accounts

- 22.23.1 No Obligor shall (and the Company shall ensure that no other member of the Group will) open or maintain any account with any bank or other financial institution other than an Eligible Deposit Bank.
- 22.23.2 Each Obligor shall (and the Company shall ensure that each other member of the Borrowing Group will) pay all sums received by it into a bank account permitted by Clause 22.23.1.
- 22.23.3 The Company shall ensure to the extent the aggregate cash balances of the Borrowing Group exceed £25,000, such cash shall be held in bank accounts which are subject to the Transaction Security, other than cash or deposits held (i) in the Blocked Bank Accounts; and (ii) at Fortis Bank or another Eligible Deposit Bank on overnight rates where the relevant Obligor has a contractual right to require transfer of such deposit to such other account which is the subject of Transaction Security.

22.24 Amendments

No Obligor shall (and the Company shall ensure that no member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Finance Document or any other document delivered to the Administrative Agent pursuant to Clauses 4.1 (*Initial Conditions Precedent*) or Clause 25 (*Changes to the Obligors*) except with the prior written consent of the Lenders or:

- 22.24.1 prior to or on the Closing Date, with the prior written consent of the Administrative Agent; or

- 22.24.2 after the Closing Date, in a way which could not be reasonably expected to materially and adversely affect the interests of the Lenders.
- 22.25 **Dutch Tax undertaking**
No notice under Section 36 of the Dutch Tax Collection Act (*Invoeringswet 1990*) has been given by any member of the Group.
- 22.26 **Conditions subsequent**
The Company shall procure the satisfaction to the Administrative Agents satisfaction of each of the matters referred to at Part III of Schedule 2 (*Conditions Subsequent*) within the periods set out therein.
23. **EVENTS OF DEFAULT**
Each of the events or circumstances set out in Clause 23 is an Event of Default.
- 23.1 **Non-payment**
An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:
- 23.1.1 its failure to pay is caused by administrative or technical error; and
- 23.1.2 payment is made within seven Business Days of its due date.
- 23.2 **Breach of certain obligations**
Any requirement of Clause 21.1 (*Financial covenants*) is not satisfied within 10 Business Days of the date upon which the Company becomes aware or ought to have become aware thereof.
- 23.3 **Other obligations**
- 23.3.1 An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 23.1 (*Non-payment*) and Clause 23.2 (*Breach of certain obligations*)).
- 23.3.2 No Event of Default under Clause 23.3.1 will occur if the failure to comply is capable of remedy and is remedied within 20 Business Days of the Administrative Agent giving notice to the Company or relevant Obligor or the Company or an Obligor becoming aware of the failure to comply.
- 23.4 **Misrepresentation**
Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or in any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made unless the underlying circumstances (if capable of remedy) are remedied within 20 Business Days of the earlier to occur of the date of the Administrative Agent giving notice to the Company or the Company becoming aware of such underlying circumstances.

23.5 **Cross default**

- 23.5.1 Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.
- 23.5.2 Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- 23.5.3 Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- 23.5.4 No Event of Default will occur under this Clause 23.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within Clauses 23.5.1 to 23.5.3 above is less than £1,000,000 (or its equivalent in any other currencies).

23.6 **Insolvency**

- 23.6.1 A Material Company is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- 23.6.2 The value of the assets of any Material Company is less than its liabilities (taking into account contingent and prospective liabilities).
- 23.6.3 A moratorium is declared in respect of any indebtedness of any Material Company.

23.7 **Insolvency proceedings**

- 23.7.1 Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- (A) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Material Company;
 - (B) a composition, compromise, assignment or arrangement with any creditor of any Material Company; or
 - (C) the appointment of a provisional liquidator, a liquidator receiver, receiver or manager, administrative receiver, administrator, compulsory or interim manager or other similar officer in respect of any Material Company or any of its assets; or
 - (D) enforcement of any Security over any assets of any member of the Group having an aggregate value of at least £250,000, or any analogous procedure or step is taken in any jurisdiction.
- 23.7.2 Clause 23.7.1 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement.

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- 23.8 **Creditors' process**
Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of members of the Group having an aggregate value of £500,000 and is not discharged within 21 days.
- 23.9 **Dutch Tax Status**
A notice under Section 36 of the Dutch Tax Collection Act (*Invorderingswet*) 1990 has been given by any member of the Group.
- 23.10 **Unlawfulness and invalidity**
- 23.10.1 It is or becomes unlawful for any member of the Group to perform any of its material obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective.
- 23.10.2 Any obligation or obligations of any member of the Group under any Finance Documents are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.
- 23.11 **Repudiation**
An Obligor repudiates a Finance Document.
- 23.12 **Cessation of business**
Any Material Company ceases (or threatens to cease) to carry on all or a substantial part of its business.
- 23.13 **Audit qualification**
The auditors of the Group qualify the audited annual consolidated financial statements of the Company in circumstances where the matters in respect of which such qualification was made have, or could reasonably be expected to have a Material Adverse Effect.
- 23.14 **Expropriation**
The authority or ability of any Material Company to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any member of the Group or any of its assets.
- 23.15 **Material Adverse Change**
Any event or circumstance occurs which have or could reasonably be expected to have a Material Adverse Effect.
- 23.16 **Litigation**
Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against any member of the Group or its assets which could reasonably be expected to have a Material Adverse Effect.

23.17 **Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing the Administrative Agent may, and shall if so directed by the Majority Lenders, by notice to the Company:

- 23.17.1 cancel the Total Commitments whereupon they shall immediately be cancelled and any fees payable under the Finance Documents in connection with those Commitments shall be immediately due and payable;
- 23.17.2 declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
- 23.17.3 declare that all or part of the Utilisations be payable on demand, whereupon they shall immediately become payable on demand by the Administrative Agent on the instructions of the Majority Lenders; and/ or
- 23.17.4 exercise or direct the Security Trustee to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

24. CHANGES TO THE LENDERS

24.1 **Assignments and transfers by the Lenders**

Subject to this Clause 24 a Lender (the “**Existing Lender**”) may:

- 24.1.1 assign any of its rights and benefits; or
- 24.1.2 transfer by novation any of its rights, benefits and obligations,

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the “**New Lender**”).

24.2 **Conditions of assignment or transfer**

- 24.2.1 The consent of the Company is not required for an assignment or transfer by an Existing Lender, although no such assignment or transfer may be made without prior consultation with the Company.
- 24.2.2 An assignment will only be effective on:
 - (A) receipt by the Administrative Agent (whether in the Assignment Agreement or otherwise) of a Lender accession undertaking and written confirmation from the New Lender (in form and substance satisfactory to the Administrative Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
 - (B) performance by the Administrative Agent of all “know your customer” or other checks relating to any person that it is required to carry out in relation to such assignment to a New Lender, the completion of which the Administrative Agent shall promptly notify to the Existing Lender and the New Lender.
- 24.2.3 A transfer will only be effective if the procedure set out in Clause 24.5 *Procedure for transfer* is complied with.

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- 24.2.4 If:
- (A) a Lender assigns or transfers any of its rights, benefits or obligations under the Finance Documents or changes its Facility Office; and
 - (B) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased costs*),
- then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.
- 24.2.5 Unless the Company and the Administrative Agent otherwise agree, a transfer or assignment of part of an Existing Lender's Commitment to a New Lender must be in a minimum amount of, or if less, such Lender's Commitment) £1 million other than in relation to any transfer from an Existing Lender to:
- (A) an Affiliate; or
 - (B) a Related Fund.

24.3 Assignment or transfer fee

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Administrative Agent (for its own account) a fee of £2,500 except no such fee shall be payable in connection with an assignment or transfer to a New Lender upon primary syndication of the Facilities.

24.4 Limitation of responsibility of Existing Lenders

24.4.1 Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

- (A) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents, the Transaction Security or any other documents;
 - (B) the financial condition of any Obligor;
 - (C) the performance and observance by any Obligor or any other member of the Group of its obligations under the Finance Documents or any other documents; or
 - (D) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,
- and any representations or warranties implied by law are excluded.

24.4.2 Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

- (A) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Finance Document or the Transaction Security; and

- (B) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.
- 24.4.3 Nothing in any Finance Document obliges an Existing Lender to:
- (A) accept a re-transfer from a New Lender of any of the rights and obligations assigned or transferred under this Clause 24; or
 - (B) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

24.5 **Procedure for transfer**

- 24.5.1 Subject to the conditions set out in Clause 24.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with Clause 24.5.3 below when the Administrative Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Administrative Agent shall, subject to Clause 24.5.2 as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.
- 24.5.2 The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender upon its completion of all “*know your customer*” or other checks relating to any person that it is required to carry out in relation to the transfer to such New Lender.
- 24.5.3 On the Transfer Date:
- (A) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights, benefits and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and other members of the Group party to any Finance Document or the Transaction Security and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the “**Discharged Rights and Obligations**”);
 - (B) each of the Obligors and other members of the Group party to any Finance Document and the New Lender shall assume obligations towards one another and/or acquire rights and benefits against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
 - (C) the Administrative Agent, the Arranger, the Security Trustee, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the

Administrative Agent, the Arranger, the Security Trustee and the Existing Lender shall each be released from further obligations to each other under this Agreement; and

(D) the New Lender shall become a Party as a “Lender”.

24.6 Procedure for assignment

24.6.1 Subject to the conditions set out in Clause 24.2 (*Conditions of assignment or transfer*) an assignment may be effected in accordance with Clause 24.6.3 when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to Clause 24.6.2, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

24.6.2 The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender upon its completion of all “know your customer” or other checks relating to any person that it is required to carry out in relation to the assignment to such New Lender.

24.6.3 On the Transfer Date:

(A) the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;

(B) the Existing Lender will be released from the obligations (the “**Relevant Obligations**”) expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and

(C) the New Lender shall become a Party as a “Lender” and will be bound by obligations equivalent to the Relevant Obligations.

24.6.4 Lenders may utilise procedures other than those set out in this Clause 24.6 to assign their rights under the Finance Documents provided that they comply with the conditions set out in Clause 24.2 (*Conditions of assignment or transfer*).

24.7 Copy of Transfer Certificate or Assignment Agreement to Parent

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Company a copy of that Transfer Certificate or Assignment Agreement.

24.8 Creation of security interest in a Lender’s rights in certain circumstances

Any Lender may at its own cost, without the consent of the Company or any Obligor, at any time charge or create a security interest in all or any portion of its rights under any Finance Document to secure obligations of such Lender, including without limitation (i) any charge or creation of a security interest to secure obligations and (ii) in the case of any Lender that is a fund, any charge or creation of a security interest of all or any portion of such Lender’s rights under any Finance Document to any holders of obligations owed, or securities issued, by such Lender as security for such obligations or securities, or to any trustee for, or any other representative of, such holders, provided that no such charge or creation of a security interest shall:

24.8.1 release a Lender from any of its obligations hereunder or substitute any such charger or holder of the benefit of such security interest for such Lender as a party hereto; or

24.8.2 require any payments to be made by any Obligor other than as required by the relevant Finance Document.

24.9 Disclosure of information

24.9.1 Any Lender may disclose to any of its Affiliates and any other person:

- (A) to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under the Finance Documents;
- (B) with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, the Finance Documents or any Obligor; or
- (C) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation; and

24.9.2 any Finance Party may disclose to a rating agency,

any information about any Obligor, the Group and the Finance Documents as that Lender shall consider appropriate if, in relation to Clauses 34.8.3 and 34.8.4, the person to whom the information is to be given has entered into a confidentiality undertaking.

25. CHANGES TO THE OBLIGORS

25.1 Assignment and Transfers by Obligators

No Obligor or any other member of the Group may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

25.2 Additional Borrowers

25.2.1 Subject to compliance with the provisions of Clauses 34.8.3 and 34.8.4 (“*Know your customer*” checks) the Company may request that any of its wholly owned Subsidiaries which is not a Dormant Subsidiary becomes an Additional Borrower. That Subsidiary shall become an Additional Borrower if:

- (A) the Majority Lenders approve the addition of that Subsidiary;
- (B) the Company delivers to the Administrative Agent a duly completed and executed Accession Letter;
- (C) the Company confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and
- (D) the Administrative Agent has received all of the documents and other evidence listed in Part II (*Conditions Precedent Required to be Delivered by an Additional Obligor*) and, if applicable, such Security Transaction Documents which may be reasonably required in relation to that Additional Borrower, each in form and substance satisfactory to the Administrative Agent.

25.2.2 The Administrative Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II (*Conditions Precedent Required to be Delivered by an Additional Obligor*) and, if applicable, such Security Transaction Documents which may be reasonably required in relation to that Additional Borrower.

25.3 **Resignation of an Obligor**

In this Clause 25.3 and Clause 25.6 (*Resignation and Release of Security on Disposal*), “**Third Party Disposal**” means the disposal of an Obligor to a person which is not a member of the Group where that disposal is permitted under Clause 22.13 (*Disposals*) (and the Company has confirmed this is the case).

25.3.1 The Company may request that an Obligor (other than the Company) ceases to be a Borrower or, as the case may be, a Guarantor by delivering a Resignation Letter to the Administrative Agent if:

- (A) that Obligor is the subject of a Third Party Disposal;
- (B) any guarantee and Transaction Security provided by that Obligor are not effected by the resignation; or
- (C) all the Lenders have consented to the resignation of the Obligor.

25.3.2 The Administrative Agent shall accept a Resignation Letter and notify the Company and the Lenders of its acceptance if:

- (A) the Company has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter; and
- (B) where:

(1) the Obligor is:

- (a) a Borrower, it is under no actual or contingent obligations as a Borrower under any Finance Documents; or
- (b) a Guarantor, no payment is due from a Guarantor under Clause 18.1 (*Guarantee and Indemnity*); or

(2) such Obligor is both a Borrower and a Guarantor the Company has confirmed that either:

- (a) such Obligor is subject to a Third Party Disposal and its obligations in its capacity as Guarantor continue to be legal, valid, binding and enforceable and in full force and effect and the amount guaranteed by it as a Guarantor is not decreased; or
- (b) each of the conditions set out in Clause 25.3.2,

and

- (C) where such Obligor is a Borrower and such Borrower created or intended to create Transaction Security and it is not a Third Party Disposal of the Borrower, the Transaction Security continues to be legal, valid, binding and enforceable in full force and effect and the amount secured by the Transaction Security is not decreased (and the Company has confirmed this is the case).

- 25.3.3 In the case of a Third Party Disposal, the Company has or shall ensure the Disposal Proceeds will be applied in accordance with Clause 8.6 (*Disposal and Insurance Proceeds*).
- 25.3.4 Subject to Clause 25.3.5, upon notification by the Administrative Agent to the Company of its acceptance of the resignation of a Borrower or a Guarantor, that company shall cease to be a Borrower or a Guarantor and shall have no further rights or obligations under the Finance Documents as a Borrower or a Guarantor.
- 25.3.5 The resignation of an Obligor which is the subject of a Third Party Disposal shall not be effective until the date of that disposal whereupon that company shall cease to be an Obligor and shall have no further rights or obligations under the Finance Documents as an Obligor.
- 25.3.6 The Administrative Agent may, at the cost and expense of the Company require a legal opinion from counsel to the Administrative Agent confirming the matters set out in Clauses 25.3.2(B) to 25.3.2(C) and the Administrative Agent shall be under no obligation to accept a Resignation Letter until it has obtained such opinion.
- 25.4 **Additional Guarantors**
- 25.4.1 Subject to compliance with the provisions of Clauses 31.8.3 and 31.8.4 ("*Know your customer*" checks), the Company may request that any of its wholly owned Subsidiaries become an Additional Guarantor.
- 25.4.2 The Company shall ensure that each Additional Borrower shall become an Additional Guarantor and that each Additional Obligor shall grant such Security as the Administrative Agent reasonably requires on or prior to the date which such Additional Obligor accedes to this Agreement.
- 25.4.3 The Company shall ensure that any other member of the Group which is a Material Company shall, as soon as possible after becoming a Material Company, become an Additional Guarantor and, subject to the principles set out in Clause 22.22.2 (*Further Assurance*), grant such Security as the Administrative Agent may require unless, without prejudice to the obligation of the Company to procure the granting of Security by such member of the Group under this Clause 25.4.3, legal counsel to the Administrative Agent has confirmed there is a provision of law prohibiting such member of the Group becoming an Additional Guarantor and there are no applicable exemptions or exceptions to that prohibition which would permit such member to become an Additional Guarantor. The Company shall procure that the Group uses reasonable endeavours to overcome that prohibition.
- 25.4.4 A member of the Group shall become an Additional Guarantor if:
- (A) the Company delivers to the Administrative Agent a duly completed and executed Accession Letter; and
- (B) the Administrative Agent has received all of the documents and other evidence listed in Part II (*Conditions Precedent Required to be Delivered by an Additional Obligor*) and, if applicable, such Security Transaction Documents which may be reasonably required in relation to that Additional Guarantor pursuant to Clause 25.4.2, each in form and substance satisfactory to the Administrative Agent.

25.4.5 The Administrative Agent shall notify the Company and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II (*Conditions Precedent Required to be Delivered by an Additional Obligor*) and, if applicable, such Security Transaction Documents which may be reasonably required in relation to that Additional Guarantor pursuant to Clause 25.4.2.

25.4.6 The Administrative Agent may (but shall not be obliged to) agree a limit on the amount of the liability of the potential Additional Guarantor or other changes to the Finance Documents which in the opinion of the Administrative Agent, based on the advice of its legal counsel, are necessary to overcome a prohibition referred to in Clause 25.4.3 or a risk that a guarantee by the potential Additional Guarantor will not be legal, valid, binding, enforceable and effective. The cost of the advice of legal counsel obtained pursuant to this Clause 25.4.6 shall be for the account of the Company.

25.5 **Repetition of Representations**

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in Clause 19 (*Representations*) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

25.6 **Resignation and Release of Security on Disposal**

If an Obligor is or is proposed to be the subject of a Third Party Disposal under Clause 22.13 (*Disposals*):

25.6.1 where that Obligor created Transaction Security over any of its assets or business in favour of the Security Trustee, or Transaction Security in favour of the Security Trustee was created over the shares (or equivalent) of that Obligor, the Security Trustee may, at the cost and request of the Company, release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation;

25.6.2 the resignation of that Obligor and related, notwithstanding the provisions of any instrument purporting to release such Transaction Security, release of Transaction Security referred to in Clause 25.6.1 shall not become effective until the date of that Third Party Disposal; and

25.6.3 if the Third Party Disposal of that Obligor is not made, the Resignation Letter of that Obligor and the related release of Transaction Security referred to in Clause 25.6.1 shall have no effect and the obligations of the Obligor and the Transaction Security created or intended to be created by or over that Obligor shall continue in full force and effect.

26. **ROLE OF THE ADMINISTRATIVE AGENT, THE ARRANGER AND OTHERS**

26.1 **Appointment of the Administrative Agent and Security Trustee**

26.1.1 Each of the Arranger and, the Lenders appoints the Administrative Agent to act as its agent under and in connection with the Finance Documents (other than any Hedging Agreements).

26.1.2 Each other Finance Party authorises the Administrative Agent to exercise the rights, powers, authorities and discretions specifically given to the Administrative Agent under or in connection with the Finance Documents together with any other

incidental rights, powers, authorities and discretions. The Administrative Agent is released from the restrictions under s.181 of the German Civil Code (*Bürgerliches Gesetzbuch*) (where applicable).

- 26.1.3 To the extent under applicable law it is able to hold the Trust Property as trustee, each other Finance Party appoints the Security Trustee to act as its agent and trustee under and in connection with the Transaction Security Documents.
- 26.1.4 If under German, Swiss, Dutch, French or any other applicable law it is not able to hold any part of the Trust Property as a trustee, the Security Trustee shall accept and hold that part in its own name as agent for itself and the other Finance Parties (for so long as they are Finance Parties) and to deal with that part in accordance with the terms of this Agreement. The Security Trustee is released from the restrictions under s.181 of the German Civil Code (*Bürgerliches Gesetzbuch*) (where applicable).
- 26.1.5 Each other Finance Party authorises the Security Trustee to exercise the rights, powers, authorities and discretions specifically given to the Security Trustee under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions, and to execute each of the Transaction Security Documents and all other documents that may be approved by the Majority Lenders for execution by it, in each case, for and on behalf of the Finance Parties.

26.2 Transaction Security Document governed by German law

The Security Trustee shall administer those Transaction Security Documents governed by German law of an accessory nature (the “**Accessory Security**”) granted in favour of those Finance Parties named thereunder as receiving the benefit of the Security granted thereunder (the “**Relevant Finance Parties**”). The Security Trustee shall hold and administer as trustee (*Treuhänder*) of the Relevant Finance Parties any proceeds from the enforcement of the Accessory Security and any payment received pursuant to the parallel debt provisions contained in Clause 31 (*Parallel Debt*) with the purpose of securing the claims of the Relevant Finance Parties.

26.3 Duties of the Administrative Agent and the Security Trustee

- 26.3.1 The Administrative Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Administrative Agent for that Party by any other Party.
- 26.3.2 Except where a Finance Document specifically provides otherwise, the Administrative Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- 26.3.3 If the Administrative Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- 26.3.4 If the Administrative Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Administrative Agent, the Arranger or the Security Trustee) under this Agreement it shall promptly notify the other Finance Parties.
- 26.3.5 The Administrative Agent’s and the Security Trustee’s respective duties under the Finance Documents are solely mechanical and administrative in nature.
- 26.3.6 The duties of the Security Trustee are set out in Clause 30 (*The Security Trust*).

26.4 **Role of the Arranger**

Except as specifically provided in the Finance Documents, the Arranger has no obligations of any kind to any other Party under or in connection with any Finance Document.

26.5 **No fiduciary duties**

26.5.1 Nothing in this Agreement constitutes the Administrative Agent, the Arranger and/or, save as expressly stated in any Finance Document, the Security Trustee as a trustee or fiduciary of any other person.

26.5.2 Neither the Administrative Agent nor the Security Trustee shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

26.6 **Business with the Group**

The Administrative Agent and the Security Trustee may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

26.7 **Rights and discretions**

26.7.1 The Administrative Agent and, in relation to the Transaction Security Documents, the Security Trustee may rely on:

(A) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and

(B) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.

26.7.2 The Administrative Agent and, in relation to the Transaction Security Documents, the Security Trustee may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:

(A) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 23.1 *(Non-payment)*);

(B) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and

(C) any notice or request made by the Company (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.

26.7.3 The Administrative Agent and, in relation to the Transaction Security Documents, the Security Trustee may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.

26.7.4 The Administrative Agent may act in relation to the Finance Documents, and the Security Trustee may act in relation to the Transaction Security Documents, through its personnel and agents. The Administrative Agent shall not be liable for the negligence or misconduct of such agents.

26.7.5 The Administrative Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.

- 26.7.6 Notwithstanding any other provision of any Finance Document to the contrary, none of the Administrative Agent or Arranger or Security Trustee is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- 26.8 Majority Lenders' instructions**
- 26.8.1 Unless a contrary indication appears in a Finance Document, the Administrative Agent or, as the case may be, the Security Trustee, shall (a) act in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from acting or exercising any right, power, authority or discretion vested in it as Administrative Agent or, as the case may be, the Security Trustee) and (b) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with such an instruction of the Majority Lenders.
- 26.8.2 Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties other than the Security Trustee.
- 26.8.3 The Administrative Agent or, as the case may be, the Security Trustee may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.
- 26.8.4 In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Administrative Agent or, as the case may be, the Security Trustee may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- 26.8.5 Neither the Administrative Agent nor the Security Trustee is authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This Clause 26.7.5 shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.
- 26.9 Responsibility for documentation**
- None of the Administrative Agent or the Arranger or the Security Trustee:
- 26.9.1 is responsible for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Administrative Agent, the Arranger, an Obligor or any other person given in or in connection with any Finance Document or the Information Memorandum or the Reports or the transactions contemplated in the Finance Documents; or
- 26.9.2 is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document.
- 26.10 Exclusion of liability**
- 26.10.1 Without limiting Clause 26.9.2, neither the Administrative Agent nor the Security Trustee will be liable for any action taken by it under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct.

- 26.10.2 No Party (other than the Administrative Agent) may take any proceedings against any officer, employee or agent of the Administrative Agent or the Security Trustee in respect of any claim it might have against the Administrative Agent or the Security Trustee in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Finance Document and any officer, employee or agent of the Administrative Agent or Security Trustee may rely on this Clause subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Act.
- 26.10.3 Neither the Administrative Agent nor the Security Trustee will be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Administrative Agent or, as the case may be, the Security Trustee if the Administrative Agent or, as the case may be, the Security Trustee has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Administrative Agent or, as the case may be, the Security Trustee for that purpose.
- 26.10.4 Nothing in this Agreement shall oblige the Administrative Agent, the Arranger or the Security Trustee to carry out any “know your customer” or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Administrative Agent, the Arranger and the Security Trustee that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Administrative Agent, the Arranger or the Security Trustee.

26.11 Lenders’ indemnity to the Administrative Agent and the Security Trustee

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Administrative Agent and the Security Trustee within three Business Days of demand, against any cost, loss or liability incurred by the Administrative Agent or the Security Trustee (otherwise than by reason of the Administrative Agent’s or, as the case may be, the Security Trustee’s gross negligence or wilful misconduct) in acting as Administrative Agent or Security Trustee, as the case may be, under the Finance Documents (unless the Administrative Agent or the Security Trustee, as the case may be, has been reimbursed by an Obligor pursuant to a Finance Document).

26.12 Resignation of the Administrative Agent and the Security Trustee

- 26.12.1 Each of the Administrative Agent and the Security Trustee may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the Lenders and the Company.
- 26.12.2 Alternatively each of the Administrative Agent and the Security Trustee may resign by giving notice to the Lenders and the Company, in which case the Majority Lenders (after consultation with the Company) may appoint a successor Administrative Agent or Security Trustee, as the case may be.
- 26.12.3 If the Majority Lenders have not appointed a successor Administrative Agent or Security Trustee, as the case may be, in accordance with Clause 26.11.2 above within 30 days after notice of resignation was given, the Administrative Agent or

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- Security Trustee, as the case may be, (after consultation with the Company) may appoint a successor Administrative Agent or Security Trustee (acting through an office in the United Kingdom).
- 26.12.4 The retiring Administrative Agent or Security Trustee, as the case may be, shall, at its own cost, make available to the successor Administrative Agent or Security Trustee such documents and records and provide such assistance as the successor Administrative Agent or Security Trustee may reasonably request for the purposes of performing its functions as Administrative Agent under the Finance Documents or as Security Trustee under the Security Documents, (as applicable).
- 26.12.5 The Administrative Agent's or the Security Trustee's resignation notice shall only take effect upon the appointment of a successor.
- 26.12.6 Upon the appointment of a successor, the retiring Administrative Agent or the Security Trustee shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 26.11. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- 26.12.7 After consultation with the Company, the Majority Lenders may, by notice to the Administrative Agent or the Security Trustee, require it to resign in accordance with Clause 26.11.2. In this event, the Administrative Agent or the Security Trustee (as the case may be) shall resign in accordance with Clause 26.11.2.
- 26.13 **Confidentiality**
- 26.13.1 In acting as agent or trustee for the Finance Parties, both the Administrative Agent and Security Trustee shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- 26.13.2 If information is received by another division or department of the Administrative Agent or Security Trustee, it may be treated as confidential to that division or department and the Administrative Agent or the Security Trustee shall not be deemed to have notice of it.
- 26.13.3 Notwithstanding any other provision of any Finance Document to the contrary, none of the Administrative Agent, the Arranger and the Security Trustee are obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty.
- 26.14 **Relationship with the Lenders**
- 26.14.1 The Administrative Agent or, in respect of the Security Documents, the Security Trustee, may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- 26.14.2 Each Lender shall supply the Administrative Agent with any information required by the Administrative Agent in order to calculate the Mandatory Cost in accordance with Schedule 4 (*Mandatory Cost Formulae*).

26.14.3 Each Finance Party shall supply the Administrative Agent with any information that the Security Trustee may reasonably specify (through the Administrative Agent) as being necessary or desirable to enable the Security Trustee to perform its functions as Security Trustee. Each Lender shall deal with the Security Trustee exclusively through the Administrative Agent and shall not deal directly with the Security Trustee.

26.15 Credit appraisal by the Finance Parties

Without affecting the responsibility of any Obligor for information supplied by it or on its behalf in connection with any Finance Document, each Finance Party confirms to the Administrative Agent, the Arranger and the Security Trustee, that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

26.15.1 the financial condition, status and nature of each member of the Group;

26.15.2 the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

26.15.3 whether that Finance Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

26.15.4 the adequacy, accuracy and/or completeness of the Information Memorandum, the Information Package and any other information provided by the Administrative Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

26.15.5 the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

26.16 Reference Banks

If a Reference Bank (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the Administrative Agent shall (in consultation with the Company) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

26.17 Deduction from amounts payable by the Administrative Agent

If any Party owes an amount to the Administrative Agent under the Finance Documents the Administrative Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Administrative Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

26.18 Reliance and Engagement Letters

Each Finance Party and Secured Party confirms that each of the Arranger and the Agent has authority to accept on its behalf the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents (including any net asset letter in connection with the financial assistance procedures) and to bind it in respect of those reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

26.19 Common Parties

Notwithstanding the fact that the Administrative Agent and the Security Trustee may from time to time be the same person, both the Administrative Agent and the Security Trustee have entered into this Agreement in such separate capacity. However, where the Finance Documents (or any of them) provide for the Administrative Agent or the Security Trustee to communicate with, or provide instructions to, the other, to the extent that the Administrative Agent and the Security Trustee are the same person there shall be no requirement for any such formal instruction or communication to be given or made, notwithstanding the terms of the Finance Document(s) in question.

27. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- 27.1.1 interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- 27.1.2 oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- 27.1.3 oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

28. SHARING AMONG THE FINANCE PARTIES

28.1 Payments to Finance Parties

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from an Obligor other than in accordance with Clause 29 *Payment mechanics*) and applies that amount to a payment due under the Finance Documents then:

- 28.1.1 the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to the Administrative Agent;
- 28.1.2 the Administrative Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Administrative Agent and distributed in accordance with Clause 29 *Payment mechanics*), without taking account of any Tax which would be imposed on the Administrative Agent in relation to the receipt, recovery or distribution; and
- 28.1.3 the Recovering Finance Party shall, within three Business Days of demand by the Administrative Agent, pay to the Administrative Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Administrative Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 29.5 *Partial payments*).

28.2 **Redistribution of payments**

The Administrative Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with Clause 29.5 (*Partial payments*).

28.3 **Recovering Finance Party's rights**

28.3.1 On a distribution by the Administrative Agent under Clause 28.2 (*Redistribution of payments*), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.

28.3.2 If and to the extent that the Recovering Finance Party is not able to rely on its rights under Clause 28.3.1, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

28.4 **Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

28.4.1 each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 28.2 (*Redistribution of payments*) shall, upon request of the Administrative Agent, pay to the Administrative Agent for account of that Recovering Finance Party an amount equal to its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and

28.4.2 that Recovering Finance Party's rights of subrogation in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Finance Party for the amount so reimbursed.

28.5 **Exceptions**

28.5.1 This Clause 28 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.

28.5.2 A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:

(A) it notified the other Finance Party of the legal or arbitration proceedings; and

(B) the other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice or did not take separate legal or arbitration proceedings.

29. **HEDGE COUNTERPARTIES**

29.1 **Identity of Hedge Counterparties**

Each Hedge Counterparty shall be either:

29.1.1 the Original Hedge Counterparty;

- 29.1.2 a Lender; or
- 29.1.3 such person as is approved in advance in writing by the Administrative Agent.

29.2 Prohibited action by Obligors

No Obligor shall, and each Obligor shall procure that none of its Subsidiaries will, until after the date on which the Finance Parties have taken any Enforcement Action:

- 29.2.1 make any payment or distribution in respect of any Hedging Liability except for scheduled payments arising under the original terms of the relevant Hedging Document; or
- 29.2.2 create or permit to subsist any Security over any asset of any member of the Group or give or permit to subsist any guarantee in respect of any Hedging Liability, other than under the Transaction Security Documents,

in each case, without the consent of the Administrative Agent.

29.3 Prohibited action by Hedge Counterparties

29.3.1 Subject to Clause 29.3.1, no Hedge Counterparty shall take any Enforcement Action in respect of any Hedging Document unless:

- (A) an Event of Default is continuing; and
- (B) written notice of that Event of Default and the intention to enforce all or any of the Transaction Security Documents has been given to the Company by the Administrative Agent.

29.3.2 A Hedge Counterparty may exercise any right to terminate or close out any hedging transaction under the Hedging Documents before its originally stated maturity if:

- (A) an Obligor has not paid when due or within any applicable grace period an amount of any Hedging Liability; or
- (B) any liquidation, winding-up, dissolution or bankruptcy proceedings have been formally commenced against the Obligor which is the counterparty under that hedging transaction and have not been discharged within one Month from the date of commencement.

29.3.3 Each Hedge Counterparty may, and shall if so requested by the Administrative Agent, following service of a notice under Clause 23.17 (*Acceleration*), terminate or close out transactions entered into by it under the Hedging Documents and demand amounts due to it under the Hedging Documents.

29.4 No set-off by Hedge Counterparties

No Hedging Liability may be discharged by any set-off, right of combination of accounts or otherwise except to the extent that it is permitted to be paid under Clause 29.2.1.

29.5 No Security

No Obligor shall (and each Obligor shall procure that none of its Subsidiaries will) create or permit to subsist any Security over any of its assets or give any financial support to any person for, in respect of or in connection with, any Hedging Liability except under the original terms of the Hedging Documents or the Transaction Security Documents and in accordance with the priority and ranking specified in the Finance Documents.

29.6 **Hedging Documents**

Each Obligor and each Hedge Counterparty agrees that:

- 29.6.1 the Hedging Documents shall provide for “two way payments” or payments under the “Second Method” in the event of a termination of a hedging transaction whether on a Termination Event or an Event of Default (each as defined in the relevant Hedging Documents) meaning that the defaulting party under the Hedging Documents may receive payment under the relevant termination provisions if the net replacement value of all terminated transactions affected under the relevant Hedging Documents is in its favour;
- 29.6.2 each Hedging Agreement shall be based on the 1992 standard ISDA Master Agreement (or any successor agreement);
- 29.6.3 if an amount falls due from a Hedge Counterparty to any Obligor on or following the date of any Enforcement Action or the termination or closing out of any hedging transaction under a Hedging Document, that Hedge Counterparty shall pay that amount to the Security Trustee, which shall apply it as set out in Clause 30.1 (*Declaration of Trust: Order of application*); and
- 29.6.4 the Hedging Documents shall provide that the relevant Hedge Counterparty shall if so requested by the Administrative Agent following a declaration under Clause 23.17 (*Acceleration*) be entitled to terminate or close out any hedging transaction entered into under the relevant Hedging Documents.

29.7 **Copies of Hedging Documents**

Each Hedge Counterparty shall provide to the Security Trustee copies of all Hedging Documents, which must be in form and substance satisfactory to the Security Trustee, acting reasonably.

29.8 **Amendments to Hedging Documents**

No Hedge Counterparty or Obligor shall make any amendment to any Hedging Agreement without the written consent of the Administrative Agent, unless the amendment is procedural or administrative and does not prejudice the interests of the Finance Parties under the Finance Documents.

30. **THE SECURITY TRUST**

30.1 **Declaration of Trust: Order of application**

30.1.1 The Security Trustee hereby accepts its appointment under Clause 26.1 (*Appointment of the Agent and the Security Trustee*) as trustee of the Trust Property (to the extent that it is able to hold such Trust Property as trustee under any applicable law) with effect from the date of this Agreement and agrees to hold the Trust Property on trust for itself and the other Finance Parties (for so long as they are Finance Parties) and to apply the Trust Property in accordance with the following respective claims:

- (A) first, as to a sum equivalent to the amounts payable to the Security Trustee (excluding any amounts received by the Security Trustee pursuant to Clause 26.11 (*Lenders' Indemnity to the Agent and the Security Trustee*)) for the Security Trustee absolutely;

- (B) second, as to a sum equivalent to the sum of the aggregate amount owing to the Finance Parties (other than the Security Trustee and amounts satisfied pursuant to Clause 30.1.1(A));
 - (C) third, to such other persons (if any) as are legally entitled thereto in priority to the Obligors; and
 - (D) fourth, as to the balance (if any) for the Obligors absolutely pro rata to the respective amounts paid, received or recovered from each of them.
- 30.1.2 If under German, Swiss, Dutch, French or any other applicable law it is not able to hold any part of the Trust Property as a trustee, the Security Trustee undertakes to accept and hold that part in its own name as agent for itself and the other Finance Parties (for so long as they are Finance Parties) and to deal with that part in accordance with the terms of this Agreement.
- 30.1.3 The Security Trustee shall make each application as soon as is practicable after the relevant moneys are received by, or otherwise become available to, it save that (without prejudice to any other provision contained in any of the Security Documents) the Security Trustee (acting on the instructions of the Administrative Agent) or any receiver may credit any moneys received by it to a suspense account for so long and in such manner as the Security Trustee or such receiver may from time to time determine with a view to preserving the rights of the Finance Parties or any of them to prove for the whole of their respective claims against any Borrower or any other person liable.
- 30.1.4 If, for any reason, any indebtedness owed to any Finance Party which a Transaction Security Document purports to secure is not recoverable under any such Transaction Security Document as a result of any applicable law, or is found not to be validly secured by any such Transaction Security Document, then the Security Trustee shall take no account of the affected indebtedness in applying and/or distributing any recoveries under the relevant Security Document in accordance with this Clause 30.1. In such circumstances, the relevant Finance Party shall on demand repay to the Security Trustee the amounts received by it under this Clause 30.1 (if any) had such unrecoverability and/or invalidity been known on and from the Enforcement Date.
- 30.1.5 The Security Trustee shall obtain a good discharge in respect of the amounts expressed to be due to the Arranger, the Administrative Agent and the Lenders under the terms of this Agreement by paying such amounts to the Administrative Agent for distribution in accordance with Clause 32.2 (*Distributions by the Administrative Agent*).

30.2 **Perpetuities**

- 30.2.1 The trusts constituted or evidenced in or by the Transaction Security Documents shall remain in full force and effect until whichever is the earlier of:
- (A) the expiration of a period of 80 years from the date of this Agreement; and
 - (B) receipt by the Security Trustee, at any time when it is satisfied that all of the Obligors are solvent, of confirmation in writing from the Administrative Agent that there is no longer outstanding any indebtedness (actual or contingent (other than any contingent

indebtedness which is fully cash collateralised to the satisfaction of the relevant Finance Party)), and no obligation of any Finance Party to make available any indebtedness, which is secured or guaranteed by or under any of the Transaction Security Documents or such later date on which all of the Transaction Security Documents have been released in accordance with their terms;

and the parties to this Agreement declare that the perpetuity period applicable to the Security Documents shall for the purposes of the Perpetuities and Accumulations Act 1964 be the period of 80 years from the date of this Agreement.

30.3 Powers and duties of the Security Trustee as trustee of the security

In its capacity as trustee in relation to the Security Documents, the Security Trustee:

- 30.3.1 Powers generally: shall, without prejudice to any of the powers, discretions and immunities conferred upon trustees by law (and to the extent not inconsistent with the provisions of this Agreement or any of the Transaction Security Documents), have all the same powers and discretions as a natural person acting as the beneficial owner of such property and/or as are conferred upon the Security Trustee by this Agreement and/or any Transaction Security Document but so that the Security Trustee may only exercise such powers and discretions to the extent that it is authorised to do so by the provisions of this Agreement;
- 30.3.2 Power to invest: shall (subject to Clause 30.1 (*Declaration of Trust: Order of application*)) be entitled (in its own name or in the names of nominees) to invest moneys from time to time forming part of the Trust Property or otherwise held by it as a consequence of any enforcement of the Security constituted by the Transaction Security Documents which, in the reasonable opinion of the Security Trustee, it would not be practicable to distribute immediately by placing the same on deposit in the name or under the control of the Security Trustee as the Security Trustee may think fit without being under any duty to diversify the same and the Security Trustee shall not be responsible for any loss due to interest rate or exchange rate fluctuations except for any loss arising from the Security Trustee's gross negligence or wilful misconduct;
- 30.3.3 Power to engage agents: may in the conduct of its obligations under and in respect of the Transaction Security Documents (otherwise than in relation to its right to make any declaration, determination or decision), instead of acting personally, employ and pay any person to transact or concur in transacting any business and to do or concur in doing any acts required to be done by the Security Trustee (including the receipt and payment of money), and on the basis that (i) any such agent engaged in any profession or business shall be entitled to be paid all usual professional and other charges for business transacted and acts done by him or any partner or employee of his in connection with such employment, and (ii) the Security Trustee shall not be bound to supervise, or be responsible for any loss incurred by reason of any act or omission of, any such agent if the Security Trustee shall have exercised reasonable care in the selection of such agent; and
- 30.3.4 Deposit of documents: may place all deeds, certificates and other documents relating to the Security which are from time to time deposited with it pursuant to the Transaction Security Documents in any safe deposit, safe or other receptacle selected by the Security Trustee exercising reasonable care, or with any firm of solicitors selected by the Security Trustee exercising reasonable care and may make any such arrangements as it thinks fit for allowing the Company access to, or its solicitors or auditors possession of, such documents when necessary or convenient

and the Security Trustee shall not be responsible for any loss incurred in connection with any such deposit, access or possession if it has exercised reasonable care in the selection of a safe deposit, safe, receptacle or firm of solicitors.

30.4 All enforcement action through the Security Trustee

None of the other Finance Parties shall have any independent power to:

- 30.4.1 enforce any of the Transaction Security Documents;
- 30.4.2 exercise any rights, discretions or powers or to grant any consents or releases under or pursuant to any of the Transaction Security Documents;
- 30.4.3 take any step (including petition, application, notice of meeting or proposal to creditors) for the liquidation, winding-up or administration of, or any insolvency proceeding in relation to, an Obligor, or for a voluntary arrangement or scheme of arrangement in relation to an Obligor;
- 30.4.4 apply for any order for an injunction or specific performance in respect of an Obligor in relation to any of the Finance Documents; or
- 30.4.5 otherwise have direct recourse to the security and/or guarantees constituted by any of the Transaction Security Documents

except through the Security Trustee. In the case of proceedings brought before a French court, the Finance Parties will confirm the appointment of the Security Trustee as their agent acting in their name and for their account for the purposes of such proceedings.

30.5 Co-operation to achieve agreed priorities of application

- 30.5.1 The other Finance Parties shall co-operate with each other and with the Security Trustee and any receiver under the Transaction Security Documents in realising the Security and in ensuring that the net proceeds realised under the Transaction Security Documents after deduction of the expenses of realisation are applied in accordance with Clause 30.1 (*Declaration of Trust: Order of application*).

30.6 Indemnity from Trust Property

- 30.6.1 In respect of all liabilities, costs, claims, charges or expenses for which the Borrowers are liable under this Agreement, the Security Trustee and every employee, officer, agent or other person appointed by it in connection with its appointment under the Transaction Security Documents (each an **"Indemnified Party"**) shall be entitled to be indemnified out of the Trust Property in respect of all liabilities, damages, costs, claims, charges or expenses whatsoever properly incurred or suffered by an Indemnified Party:
 - (A) in the execution or exercise or bona fide purported execution or exercise of the trusts, rights, powers, authorities, discretions and duties created or conferred by or pursuant to the Transaction Security Documents;
 - (B) as a result of any breach by any member of the Group of any of its obligations under any Transaction Security Document;
 - (C) in respect of any Environmental Claim made or asserted against an Indemnified Party which would not have arisen if the Transaction Security Documents had not been executed; and

- (D) in respect of any matter or thing done or omitted in any way in accordance with the terms of the Finance Documents relating to the Trust Property or the provisions of any of the Transaction Security Documents;
- 30.6.2 The rights conferred by this Clause 30.6 (*Indemnity from Trust Property*) are without prejudice to any right to indemnity by law given to trustees generally and to any provision of the Transaction Security Documents entitling the Security Trustee or any other person to any indemnity in respect of, and/or reimbursement of, any liabilities, damages, costs, claims, charges or expenses incurred or suffered by it in connection with any of the Transaction Security Documents or the performance of any duties under any of the Transaction Security Documents. Nothing contained in this Clause 30.6 (*Indemnity from Trust Property*) shall entitle the Security Trustee or any other person to be indemnified in respect of any liabilities, damages, costs, claims, charges or expenses to the extent that the same arise from such person's own gross negligence or wilful misconduct.
- 30.6.3 Any third party referred to in this Clause 30.6 (*Indemnity from Trust Property*) as an Indemnified Party may enjoy the benefit and enforce the terms of this Clause 30.6 (*Indemnity from Trust Property*) in accordance with the provisions of the Third Parties Act.

30.7 Finance Parties to provide information

- 30.7.1 The Finance Parties shall provide the Security Trustee with such written information as it may reasonably require for the purposes of carrying out its duties and obligations under the Transaction Security Documents and, in particular, with such necessary directions in writing so as to enable the Security Trustee to make the calculations and applications contemplated by Clause 30.1 (*Declaration of Trust: Order of application*) above and to apply amounts received under, and the proceeds of realisation of, the Transaction Security Documents on and after the occurrence of an Event of Default as contemplated by the Transaction Security Documents, Clause 32.5 (*Partial payments*) and 30.1 (*Declaration of Trust: Order of application*) above.

31. PARALLEL DEBT

- 31.1.1 Each Obligor hereby irrevocably and unconditionally undertakes to pay to the Security Trustee amounts equal to any amounts owing by that Obligor to each other Finance Party under the Finance Documents as and when the same fall due for payment thereunder so that the Security Trustee shall be the obligee of such covenant to pay and shall be entitled to claim performance thereof in its own name and not only as Security Trustee or trustee acting on behalf of the Finance Parties.
- 31.1.2 The Obligors and the Security Trustee acknowledge that for this purpose, such monetary obligations of the Obligors to the Security Trustee are and/or shall be several and are and/or shall be separate and independent from, and without prejudice to, the identical obligations which an Obligor has and/or shall have to the other Finance Parties under the Finance Documents.
- 31.1.3 Without prejudice to the foregoing, it is further agreed that (i) the amounts due and payable by each Obligor under this Clause 31 (the "**Parallel Debt**") shall be decreased to the extent that the Obligors satisfy any amounts owing by the Obligors to the other Finance Parties under the Finance Documents and/or payments to the Security Trustee under this provision shall reduce the amounts owing to the other Finance Parties under the Finance Documents under the Senior Finance Documents by an equal amount and (ii) the Parallel Debt shall not exceed the aggregate of the

corresponding obligations which the Obligors have to the Finance Parties under the Finance Documents from time to time. Nothing in this Clause 31 shall in any way negate, affect or increase the obligations which any Obligor has to any Finance Party under the Finance Documents. For the avoidance of doubt, any amounts due or owing under this Clause 31 shall be ignored for the purposes of calculating the financial covenants in Clause 21 (*Financial covenants*) and for the purpose of any vote taken by the Finance Parties.

31.1.4 For the purpose of this Clause 31 only, the Security Trustee acts in its own name and on behalf of itself and not as Security Trustee, representative or trustee of any other party hereto. Any security granted to the Security Trustee to secure the Parallel Debt is granted to the Security Trustee in its capacity as creditor of the Parallel Debt. The Security Trustee shall apply any amounts received by it in respect of the Parallel Debt in accordance with the terms of this Agreement.

32. PAYMENT MECHANICS

32.1 Payments to the Administrative Agent

32.1.1 On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Administrative Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Administrative Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

32.1.2 Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in a Participating Member State or London) with such bank as the Administrative Agent specifies.

32.2 Distributions by the Administrative Agent

Each payment received by the Administrative Agent under the Finance Documents for another Party shall, subject to Clause 32.3 (*Distributions to an Obligor*) and Clause 32.4 (*Clawback*) be made available by the Administrative Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Administrative Agent by not less than five Business Days' notice with a bank in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London).

32.3 Distributions to an Obligor

The Administrative Agent may (with the consent of the Obligor or in accordance with Clause 33 (*Set-Off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

32.4 Clawback

32.4.1 Where a sum is to be paid to the Administrative Agent under the Finance Documents for another Party, the Administrative Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

- 32.4.2 If the Administrative Agent pays an amount to another Party and it proves to be the case that the Administrative Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Administrative Agent shall on demand refund the same to the Administrative Agent together with interest on that amount from the date of payment to the date of receipt by the Administrative Agent, calculated by the Administrative Agent to reflect its cost of funds.
- 32.5 **Partial payments**
- 32.5.1 If the Administrative Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Administrative Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
- (A) first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Administrative Agent and the Arranger and the Security Trustee under the Finance Documents;
- (B) secondly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
- (C) thirdly, in or towards payment pro rata of any principal outstandings due but unpaid under this Agreement and any amount due but unpaid under Clause 15 (Indemnities); and
- (D) fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- 32.5.2 The Administrative Agent shall, if so directed by the Majority Lenders, vary the order set out in Clauses 32.5.1(B) to 32.5.1(D).
- 32.5.3 Clauses 32.5.1 and 32.5.2 will override any appropriation made by an Obligor.
- 32.6 **No set-off by Obligor**
- All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.
- 32.7 **Business Days**
- 32.7.1 Any payment or reduction which is due to be made, or an Interest Period which would otherwise end, on a day that is not a Business Day shall be made or will end, as the case may be, on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- 32.7.2 During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal at the rate payable on the original due date.
- 32.8 **Currency of account**
- 32.8.1 Subject to Clauses 32.8.2 to 32.8.5, the Base Currency is the currency of account and payment for any sum due from an Obligor under any Finance Document.

- 32.8.2 A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated on its due date.
- 32.8.3 Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.
- 32.8.4 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- 32.8.5 Any amount expressed to be payable in a currency other than the Base Currency shall be paid in that other currency.

32.9 Change of currency

- 32.9.1 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (A) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Administrative Agent (after consultation with the Company); and
 - (B) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Administrative Agent (acting reasonably).
- 32.9.2 If a change in any currency of a country occurs, this Agreement will, to the extent the Administrative Agent (acting reasonably and after consultation with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

33. SET-OFF

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

34. NOTICES

34.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax, letter or telex.

34.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- 34.2.1 in the case of the Company, that identified with its name below;

34.2.2 in the case of each Lender or any other Obligor, that notified in writing to the Administrative Agent on or prior to the date on which it becomes a Party; and

34.2.3 in the case of the Administrative Agent or the Security Trustee, that identified with its name below,

or any substitute address or fax number or department or officer as the Party may notify to the Administrative Agent (or the Administrative Agent may notify to the other Parties, if a change is made by the Administrative Agent) by not less than five Business Days' notice.

34.3 Delivery

34.3.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

(A) if by way of fax, when received in legible form and printed confirmation of transmission has been received; or

(B) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 34.2 (*Addresses*), if addressed to that department or officer.

34.3.2 Any communication or document to be made or delivered to the Administrative Agent or the Security Trustee will be effective only when actually received by the Administrative Agent or Security Trustee and then only if it is expressly marked for the attention of the department or officer identified with the Administrative Agent's or Security Trustee's signature (or any substitute department or officer as the Administrative Agent or Security Trustee shall specify for this purpose).

34.3.3 All notices from or to an Obligor shall be sent through the Administrative Agent. The Company may make and/or deliver as agent of each Obligor notices and/or requests on behalf of each Obligor

34.3.4 Any communication or document made or delivered to the Company in accordance with this Clause 34.3 will be deemed to have been made or delivered to each of the Obligors.

34.4 Notification of address and fax number

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 34.2 (*Addresses*) or changing its own address or fax number the Administrative Agent shall notify the other Parties.

34.5 Electronic communication

34.5.1 Any communication to be made between the Administrative Agent or the Security Trustee and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Administrative Agent, the Security Trustee and the relevant Lender:

(A) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

- (B) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (C) notify each other of any change to their address or any other such information supplied by them.
- 34.5.2 Any electronic communication made between the Administrative Agent and a Lender or the Security Trustee will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to the Administrative Agent or the Security Trustee only if it is addressed in such a manner as the Administrative Agent or Security Trustee shall specify for this purpose.
- 34.6 **English language**
- 34.6.1 Any notice given under or in connection with any Finance Document must be in English.
- 34.6.2 All other documents provided under or in connection with any Finance Document must be:
- (A) in English; or
 - (B) if not in English, and if so required by the Administrative Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.
- 34.7 **Use of Websites**
- 34.7.1 The Company may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the **"Website Lenders"**) who accept this method of communication by posting this information onto an electronic website designated by the Company and the Administrative Agent (the **"Designated Website"**) if:
- (A) the Administrative Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
 - (B) both the Company and the Administrative Agent are aware of the address of and any relevant password specifications for the Designated Website; and
 - (C) the information is in a format previously agreed between the Company and the Administrative Agent.
- If any Lender (a **"Paper Form Lender"**) does not agree to the delivery of information electronically then the Administrative Agent shall notify the Company accordingly and the Company shall supply the information to the Administrative Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Company shall supply the Administrative Agent with at least one copy in paper form of any information required to be provided by it.
- 34.7.2 The Administrative Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Company and the Administrative Agent.

- 34.7.3 The Company shall promptly upon becoming aware of its occurrence notify the Administrative Agent if:
- (A) the Designated Website cannot be accessed due to technical failure;
 - (B) the password specifications for the Designated Website change;
 - (C) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (D) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (E) the Company becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If the Company notifies the Administrative Agent under Clause 34.7.3(A) or Clause 34.7.3(E), all information to be provided by the Company under this Agreement after the date of that notice shall be supplied in paper form unless and until the Administrative Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- 34.7.4 Any Website Lender may request, through the Administrative Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Company shall comply with any such request within ten Business Days.

34.8 **“Know your customer” checks**

- 34.8.1 Each Obligor shall promptly upon the request of the Administrative Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Administrative Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective New Lender) in order for the Facility Agent, such Lender or any prospective New Lender to carry out and be satisfied with the results of all necessary “know your customer” or other checks in relation to any person that it is required to carry out pursuant to the transactions contemplated in the Finance Documents.
- 34.8.2 Each Lender shall promptly upon the request of the Administrative Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Administrative Agent (for itself) in order for the Administrative Agent to carry out and be satisfied with the results of all necessary “know your customer” or other checks in relation to any person that it is required to carry out pursuant to the transactions contemplated in the Finance Documents.
- 34.8.3 The Company shall, by not less than 10 Business Days’ written notice to the Administrative Agent, notify the Administrative Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 25 (*Changes to the Obligors*).
- 34.8.4 Following the giving of any notice pursuant to Clause 34.8.3, the Company shall promptly upon the request of the Administrative Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Administrative Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective New Lender) to carry out and be

satisfied with the results of all necessary “know your customer” or other checks in relation to any person that it is required to carry out pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

35. CALCULATIONS AND CERTIFICATES

35.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.

35.2 Certificates and Determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

35.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

36. PARTIAL INVALIDITY

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

37. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

38. AMENDMENTS AND WAIVERS

38.1 Required consents

38.1.1 Subject to Clause 38.2 (Exceptions) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Company and any such amendment or waiver will be binding on all Parties.

38.1.2 The Administrative Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 38.

38.1.3 The Company may effect, as agent of each Obligor, any amendment or waiver permitted by this Clause 38.

38.2 Exceptions

38.2.1 An amendment or waiver that has the effect of changing or which relates to:

- (A) the definition of "Majority Lenders" in Clause 1.1 (Definitions);
- (B) an extension to the date of payment of any amount under the Finance Documents;
- (C) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (D) an increase in or an extension of any Commitment;
- (E) a change to the Borrowers or Guarantors other than in accordance with Clause 25 (*Changes to the Obligors*);
- (F) any provision which expressly requires the consent of all the Lenders;
- (G) Clause 2.3 (*Finance Parties Rights and Obligations*), Clause 25 (*Changes to the Lenders*) or this Clause 38; or
- (H) the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Transaction Security are distributed, shall not be made without the prior consent of all the Lenders.

38.2.2 An amendment or waiver which relates to the rights or obligations of the Administrative Agent, the Arranger or the Security Trustee may not be effected without the consent of the Administrative Agent, the Arranger or the Security Trustee (as applicable) at such time.

38.3 Amendments by Security Trustee

Unless the provisions of any Finance Document expressly provide otherwise, the Security Trustee may, if authorised by the Majority Lenders, amend the terms of, waive any of the requirements of, or grant consents under, any of the Transaction Security Documents, any such amendment, waiver or consent being binding on all the parties to this Agreement except that:

38.3.1 the prior consent of all of the Lenders is required to authorise any amendment of any Security Document which would affect the nature or the scope of the Charged Property or the manner in which proceeds of enforcement are distributed; and

38.3.2 no waiver or amendment may impose any new or additional obligations on any person without the consent of that person.

39. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

40. GOVERNING LAW

This Agreement is governed by English law.

41. ENFORCEMENT

41.1 Jurisdiction of English Courts

- 41.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a “**Dispute**”).
- 41.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 41.1.3 This Clause 41.1 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

41.2 Service of process

Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):

- 41.2.1 irrevocably appoints the Company as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document (and the Company by its execution of this Agreement, accepts that appointment); and
- 41.2.2 agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1

THE ORIGINAL PARTIES

Part I

The Original Obligors

Name of Original Borrower	Registration number (or equivalent, if any)
IX Europe Plc	3796971
Interconnect Exchange Europe Limited	3672650
Intelisite BV	34134188
Interconnect Exchange Europe GmbH	Registered with the commercial register of the local court of Dusseldorf under registration number HRB 40720.
IX Europe (Switzerland) AG	CH-020.3.021.001-2
IX Europe GmbH	Registered under the commercial register of the local court of Frankfurt am Main under registration number HRB 46885.
Interconnect Exchange Europe SAS	Registered under the trade and commerce registry of Pontoise under No. 429 860 853

Part II

The Original Guarantors

Name of Original Guarantor	Registration number (or equivalent, if any)
IX Europe Plc	3796971
Interconnect Exchange Europe Limited	3672650
Intelisite BV	34134188

Name of Original Guarantor	Registration number (or equivalent, if any)
Interconnect Exchange Europe GmbH	Registered with the commercial register of the local court of Dusseldorf under registration number HRB 40720.
IX Europe (Switzerland) AG	CH-020.3.021.001-2
IX Europe GmbH	Registered under the commercial register of the local court of Frankfurt am Main under registration number HRB 46885.
Interconnect Exchange Europe SAS	429 840 853 RCS Pontoise
IX Europe Real Estate GmbH	Registered under the commercial register of the local court of Frankfurt am Main under registration number HRB 74672.
IX Services Limited	3998776
IX Corporation Limited	4047080
IX Investments Limited	3998812

Part III

The Original Lenders

Name of Original Lender	Facility A	Facility B	Facility C
	Commitment	Commitment	Commitment
	Sterling	Sterling	Sterling
CIT Bank Limited	£ 14,000,000	£ 14,000,000	£ 2,000,000
CIT Capital Finance (UK) Limited	£ 26,000,000	£ 26,000,000	£ 0
TOTAL	£ 40,000,000	£ 40,000,000	£ 2,000,000

SCHEDULE 2

CONDITIONS PRECEDENT/SUBSEQUENT

Part I

Conditions Precedent to Initial Utilisation

1. OBLIGORS

- 1.1 A copy of the constitutional documents of each Original Obligor (including commercial register excerpts and list of members (where applicable)).
- 1.2 A copy of a resolution of the board of directors (or other appropriate corporate body) of each Original Obligor (other than a German Obligor) in form and substance acceptable to the Administrative Agent:
- (A) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
 - (B) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf;
 - (C) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request and Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - (D) in the case of an Original Obligor other than the Company, authorising the Company to act as its agent in connection with the Finance Documents.
- 1.3 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above in relation to the Finance Documents.
- 1.4 A copy of a resolution signed by all the holders of the issued shares in each Original Guarantor (other than the Company), approving the terms of, and the transactions contemplated by, the Finance Documents to which the Original Guarantor is a party in form and substance acceptable to the Administrative Agent.
- 1.5 A certificate of each Original Obligor (signed by a director/authorised signatory) certifying that:
- (A) borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on that Original Obligor to be exceeded.
 - (B) each copy document relating to it specified in this Part I of this Schedule 2 is correct, complete, up-to-date and in full force and effect as at a date no earlier than the date of this Agreement.
 - (C) each copy document that relates to that Original Obligor listed in this Schedule 2 and provided to CIT Capital Finance (UK) Limited in connection with this Agreement have not changed since that date save as set out therein if applicable and remain correct, complete, up-to-date and in full force and effect as at the later of the date of this Agreement and the first Utilisation Date.

2. FINANCE DOCUMENTS AND NOTICES

- 2.1 This Agreement, duly executed by the Obligors.
- 2.2 The Hedging Letter, duly executed by the relevant Obligors.
- 2.3 Each Fee Letter, duly executed by the relevant Obligors.
- 2.4 The Syndication Letter, duly executed by the relevant Obligors.
- 2.5 The following Transaction Security Documents, each duly executed and delivered by the relevant Obligors:
- (A) debenture governed by English law made between (1) the Company, (2) each other Obligor incorporated in England and (3) the Security Trustee;
 - (B) pledge over shares in Intelisite BV governed by Dutch law made between (1) the Company, (2) Intelisite BV and (3) the Security Trustee;
 - (C) pledge over shares in Interconnect Exchange Europe GmbH governed by German law made between (1) the Company, (2) Interconnect Exchange Europe GmbH and (3) the Security Trustee;
 - (D) pledge over shares in IX Europe Real Estate GmbH governed by German law made between (1) Intelisite BV, (2) IX Europe Real Estate GmbH and (3) the Security Trustee;
 - (E) pledge over shares in IX Europe GmbH governed by German law made between (1) Intelisite BV, (2) IX Europe Real Estate GmbH and (3) the Security Trustee;
 - (F) abstract acknowledgement of debt governed by German law made between (1) the Company, (2) Interconnect Exchange Services Limited, (3) Intelisite BV, (4) Interconnect Exchange Europe GmbH, (5) IX Europe (Switzerland) AG, (6) IX Europe GmbH, (7) Interconnect Exchange Europe SAS and (8) the Security Trustee;
 - (G) pledge over operating bank accounts governed by German law made between (1) Interconnect Exchange Europe GmbH and (2) the Security Trustee;
 - (H) pledge over operating bank accounts governed by German law made between (1) IX Europe GmbH and (2) the Security Trustee;
 - (I) pledge over operating bank accounts governed by German law made between (1) IX Europe Real Estate GmbH and (2) the Security Trustee;
 - (J) security purpose declaration governed by German law (re first mortgage over property acquired in the CCF Acquisition) made between (1) IX Europe Real Estate GmbH and (2) the Security Trustee;
 - (K) security transfer agreement governed by German law made between (1) IX Europe GmbH and (2) the Security Trustee;
 - (L) security transfer agreement governed by German law made between (1) Interconnect Exchange Europe GmbH and (2) the Security Trustee;
 - (M) global assignment agreement governed by German law made between (1) IX Europe GmbH and (2) the Security Trustee;

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- (N) global assignment agreement governed by German law made between (1) Interconnect Exchange Europe GmbH and (2) the Security Trustee;
 - (O) pledge over shares in IX Europe (Switzerland) AG governed by Swiss law made between (1) Intelisite BV and (2) the Security Trustee;
 - (P) pledge over bank accounts governed by Swiss law made between (1) IX Europe (Switzerland) AG and (2) the Security Trustee;
 - (Q) general assignment governed by Swiss law made between (1) IX Europe (Switzerland) AG and (2) the Security Trustee;
 - (R) share pledge over the shares in Interconnect Exchange Europe SAS governed by French law made between (1) the Company, (2) Interconnect Exchange Europe SAS and (3) the Security Trustee (acting in the name and for the account of the Finance Parties);
 - (S) full bank account pledge agreement governed by French law made between (1) Interconnect Exchange Europe SAS and (2) the Security Trustee (acting in the name and for the account of the Finance Parties); and
 - (T) on-going business pledge agreement governed by French law made between (1) Interconnect Exchange Europe SAS and (2) the Security Trustee (acting in the name and for the account of the Finance Parties).
- 2.6 A copy of all notices required to be sent under the Transaction Security Documents duly acknowledged by the addressee.
- 2.7 A copy of all share certificates, transfers and stock transfer forms or equivalent duly executed by the relevant Obligor in blank in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title to be provided under the Transaction Security Documents.
- 3. LEGAL OPINIONS**
- 3.1 A legal opinion of Herbert Smith LLP as to matters of English law.
- 3.2 A legal opinion of Herbert Smith LLP as to matters of French law.
- 3.3 A legal opinion of Stibbe as to matters of Dutch law.
- 3.4 A legal opinion of White & Case LLP as to matters of German law relating to the capacity, authority and due execution (including choice of law and recognition of foreign judgments) of the Finance Documents by the Obligors.
- 3.5 A legal opinion of Gleiss Lutz as to matters of German law relating to the validity of the Finance Documents governed by German law.
- 3.6 A legal opinion of Homburger as to matters of Swiss law.
- 4. OTHER DOCUMENTS AND EVIDENCE**
- 4.1 A schedule of bank accounts of each Original Obligor (including details of the account name, account number and the name and address of the bank or financial institution where the account is held).

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- 4.2 Evidence that the fees, costs and expenses then due from the Company pursuant to Clause 12 (*Fees*), Clause 13.5 (*Stamp Taxes*) and Clause 17 (*Costs and Expenses*) have been paid or will be paid by the first Utilisation Date.
- 4.3 Base Case (updated and agreed five year operating projections and business plan).
- 4.4 Copies of the terms of intention to lease London 4 (Interconnect Exchange Europe Limited).
- 4.5 Copies of or summary of any terms of any material agreements or other contracts as requested by the Administrative Agent.
- 4.6 Operating and financial statements of each member of the Group.
- 4.7 The latest set of management accounts, in the form previously delivered to the Administrative Agent.
- 4.8 Notice of prepayment in relation to the senior facilities agreement dated 26 July 2006 made between, amongst others, (1) the Company (as the company), (2) the Arranger (as the arranger) and (3) the Administrative Agent (as administrative agent), as amended and restated on 28 January 2007.
- 4.9 Utilisation request in the agreed form.
- 4.10 Evidence that all required regulatory approvals and consents (if any) have been obtained.
- 4.11 A copy of the register of members of each member of the Group, whose shares are subject to or expressed to be subject to the Transaction Security (Excerpts from the German commercial Registers and Shareholder lists).
- 4.12 To the extent not delivered above, a copy of the constitutional documents of each member of the Group whose shares are expressed to be subject to the Transaction Security and any shareholders' agreement or resolution amending or varying the rights attaching to those shares.
- 4.13 Accountant's Report.
- 4.14 The following releases or terminations (by deed or similar instruments under any relevant jurisdiction), duly executed and delivered by the parties thereto:
- (A) governed by English law relating to a share pledge governed by English law dated 28 July 2006 made between (1) the Company and (2) CIT Capital Finance (UK) Limited;
 - (B) governed by English law relating to an all assets charge governed by English law dated 28 July 2006 made between (1) the Company and (2) CIT Capital Finance (UK) Limited;
 - (C) governed by English law relating to an all assets charge governed by English law dated 28 July 2006 made between (1) IX Services Limited and (2) CIT Capital Finance (UK) Limited;
 - (D) governed by English law relating to an all assets charge governed by English law dated 28 July 2006 made between (1) Interconnect Exchange Europe Limited and (2) CIT Capital Finance (UK) Limited;
 - (E) governed by English law relating to an all assets charge governed by English law dated 28 July 2006 made between (1) IX Corporation Limited and (2) CIT Capital Finance (UK) Limited;

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- (F) governed by English law relating to an all assets charge governed by English law dated 28 July 2006 made between (1) IX Investments Limited and (2) CIT Capital Finance (UK) Limited;
 - (G) governed by German law relating to a pledge over shares in IX Europe Real Estate GmbH governed by German law made between (1) Intelisite BV, (2) IX Europe Real Estate GmbH and (3) the Security Trustee;
 - (H) governed by German law relating to a pledge over shares in IX Europe GmbH governed by German law made between (1) Intelisite BV, (2) IX Europe GmbH and (3) the Security Trustee;
 - (I) governed by German law relating to an abstract acknowledgement of debt governed by German law made between (1) the Company, (2) Interconnect Exchange Europe Limited, (3) Intelisite BV, (4) Interconnect Exchange Europe GmbH, (5) IX Europe (Switzerland) AG, (6) IX Europe GmbH, (7) Interconnect Exchange Europe SAS and (8) the Security Trustee;
 - (J) governed by German law relating to a pledge over shares in Interconnect Exchange Europe GmbH governed by German law made between (1) the Company, (2) Interconnect Exchange Europe GmbH and (3) the Security Trustee;
 - (K) governed by German law relating to a pledge over operating bank accounts governed by German law made between (1) Interconnect Exchange Europe GmbH and (2) the Security Trustee;
 - (L) governed by German law relating to a pledge over operating bank accounts governed by German law made between (1) IX Europe GmbH and (2) the Security Trustee;
 - (M) governed by German law relating to a pledge over operating bank accounts governed by German law made between (1) IX Europe Real Estate GmbH and (2) the Security Trustee;
 - (N) governed by German law relating to a security purpose declaration governed by German law (as amended) made by IX Europe Real Estate GmbH;
 - (O) governed by German law relating to a security transfer agreement governed by German law made between (1) IX Europe GmbH and (2) the Security Trustee;
 - (P) governed by German law relating to a security transfer agreement governed by German law made between (1) Interconnect Exchange Europe GmbH and (2) the Security Trustee;
 - (Q) governed by German law relating to a global assignment agreement governed by German law made between (1) IX Europe GmbH and (2) the Security Trustee;
 - (R) governed by German law relating to a global assignment agreement governed by German law made between (1) Interconnect Exchange Europe GmbH and (2) the Security Trustee;
 - (S) governed by Swiss law relating to a pledge over shares in IX Europe (Switzerland) AG governed by Swiss law made between (1) Intelisite BV and (2) the Security Trustee;
 - (T) governed by Swiss law relating to a pledge over bank accounts governed by Swiss law made between (1) IX Europe (Switzerland) AG and (2) the Security Trustee;

- (U) governed by Swiss law relating to a general assignment governed by Swiss law made between (1) IX Europe (Switzerland) AG and (2) the Security Trustee;
- (V) governed by French law relating to a full bank account pledge agreement governed by French law dated 28 July 2006 made between (1) Interconnect Exchange Europe SAS and (2) the Security Trustee;
- (W) governed by French law relating to an on-going business pledge agreement governed by French law dated 28 July 2006 made between (1) Interconnect Exchange Europe SAS and (2) the Security Trustee; and
- (X) governed by Dutch Law relating to a pledge over shares in Intelsite B.V. governed by Dutch law dated 28 February 2007 made between (1) IXEurope PLC and (2) the Security Trustee; and
- (Y) governed by French law relating to a share pledge over the shares in Interconnect Exchange Europe SAS dated 28 July 2006 made between (1) the Company, (2) Interconnect Exchange Europe SAS and (3) the Security Trustee

5. JURISDICTION SPECIFIC DOCUMENTS

5.1 United Kingdom

- (A) Deeds for 1 Airport Gate, Bath Road, Harmondsworth, Middlesex.
- (B) Deeds for Ground Floor, Finsbury Court, 101 Finsbury Pavement, London, EC2.
- (C) Deeds for car parking space number 10, Finsbury Court, 101 Finsbury Pavement, London, EC2.

5.2 Germany

- (A) Copy of the Land Charge Register for IX Europe Real Estate GmbH.
- (B) A copy of a resolution signed by all the holders of the issued shares in Interconnect Exchange Europe GmbH, IX Europe Real Estate GmbH, and IX Europe GmbH, consenting to the pledge of the respective company's shares.
- (C) Copies certified by an authorised signatory of each of IX Europe GmbH and Interconnect Exchange Europe GmbH as true, complete and up to date and in full force and effect of each executed notice of the pledge over bank accounts (in agreed form) from each of IX Europe GmbH and Interconnect Exchange Europe GmbH addressed to the respective bank.

5.3 Switzerland

- (A) Account statements for all bank accounts to be pledged by IX Europe (Switzerland) AG.
- (B) List of Receivables according to annexes A and B of the global assignment by IX Europe (Switzerland) AG.

5.4 France

- (A) Formal decision by the sole shareholder of Interconnect Exchange Europe SAS approving the Secured Parties as a new shareholders in the event that the security is enforced (articles 12 of the by-laws).

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- (B) The original share register, shareholders' account (*compte d'actionnaires*) (required for purposes of noting security).
 - (C) Upon execution of the pledge over the shares in Interconnect Exchange Europe SAS:
 - (1) evidence that the pledge was duly recorded in the company's books (i.e creation of a sub-account in IX Europe Plc's shareholder account as open in the books of Interconnect Exchange Europe SAS and recording of the pledge in the share transfer register);
 - (2) evidence that the statement of pledge (*déclaration de gage*) has been duly signed by IX Europe plc (in French);
 - (3) evidence that the certificate of pledge (*attestation de gage*) has been duly signed by the Interconnect Exchange Europe SAS.
 - (D) Upon execution of the pledge over the bank account(s) of Interconnect Exchange Europe SAS:
 - (1) evidence that the statement of bank account pledge has been duly signed by Interconnect Exchange Europe SAS;
 - (2) To the extent not provided pursuant to 4.1 above, a bank accounts schedule (including details of the accounts names, accounts numbers and the name and address of the bank or financial institution where the pledged bank accounts and are held).
 - (E) Power for legal formalities (IX Europe PLC in relation to Interconnect Exchange Europe SAS).
 - (F) A certified copy of a resolution signed by the IX Europe Plc, acting as sole shareholder of Interconnect Exchange SAS, deciding to carry on the operating of the company's business activities notwithstanding the amount of the shareholders' equity, which has become less than half of the share capital as of the end of fiscal year ending on 31 December 2005 (articles L. 225-248 and L. 227-1 al. 3 of the French Commercial Code).

5.5 The Netherlands

- (A) Original share register (required for purpose of noting security).
- (B) A copy of a resolution signed by all the members of the supervisory board of Intelisite BV, approving the terms of, and the transactions contemplated by, the Finance Documents to which Intelisite BV is a party.
- (C) Power of Attorney (Intelisite BV for Germany).
- (D) Power of attorney from Intelisite BV appointing Stibbe its attorney in connection with the pledge of Intelisite shares.
- (E) Power of attorney from IX Europe Plc appointing Stibbe its attorney in connection with the pledge of Intelisite shares.

Part II

Conditions Precedent Required to be Delivered by an Additional Obligor

1. An Accession Letter executed by the Additional Obligor and the Company.
2. A copy of the constitutional documents of the Additional Obligor.
3. A copy of a resolution of the board of directors of the Additional Obligor:
 - 3.1 approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it executes the Accession Letter and any other Finance Document to which it is a party;
 - 3.2 authorising a specified person or persons to execute the Accession Letter and other Finance Documents on its behalf; and
 - 3.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request or Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and
 - 3.4 authorising the Company to act as its agent in connection with the Finance Documents.
4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 4 above.
5. A copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
6. A certificate of the Additional Obligor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.
7. A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in:
 - 7.1 this Part II of Schedule 2; and
 - 7.2 any Transaction Security Documents relating to it,is correct, complete, up-to-date and in full force and effect as at a date no earlier than the date of the Accession Letter.
8. If available, the latest audited financial statements of the Additional Obligor.
9. The following legal opinions, each addressed to the Administrative Agent, the Security Trustee and the Lenders:
 - 9.1 A legal opinion of the legal advisers acceptable to the Administrative Agent in England, as to English law in the form distributed to the Administrative Agent prior to signing the Accession Letter.
 - 9.2 If the Additional Obligor is incorporated in a jurisdiction other than England and Wales or executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers acceptable to the Administrative Agent in the jurisdiction of

- incorporation of that Additional Obligor or, as the case may be, the jurisdiction of the governing law of that Finance Document (the “Relevant Jurisdiction”) as to the law of the Relevant Jurisdiction and in the form distributed to the Administrative Agent prior to signing the Accession Letter.
10. If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 41.2 (Service of process), if not an Original Obligor, has accepted its appointment in relation to the proposed Additional Obligor.
 11. The Transaction Security Documents executed by the Additional Obligor which are required by the Administrative Agent acting reasonably and the execution and delivery of any other security documents required by the Administrative Agent acting reasonably.
 12. Any notices or documents required to be given or executed or made under the terms of those Transaction Security Documents.
 - 13.
 - 13.1 If the Additional Obligor is incorporated in England and Wales or Scotland:
 - 13.1.1 either a letter from the Company to the Administrative Agent (attaching supporting evidence from the Company’s English Solicitors) confirming that the Additional Obligor is not prohibited by Section 151 of the Companies Act 1985 from entering into the Finance Documents; and/or
 - 13.1.2 evidence that the Additional Obligor has done all that is necessary (including, without limitation, by re-registering as a private company) to follow the procedures set out in Sections 151 to 158 of the Companies Act 1985 in order to enable that Additional Obligor to enter into the Finance Documents and perform its obligations under the Finance Documents. The following documentary evidence shall be supplied: a copy of the statutory declarations and annexed auditors reports, board resolutions, shareholders resolutions (if applicable), a certificate of that Additional Obligor listing all directors at the time the statutory declarations are made and a non-statutory comfort letter from its auditors regarding its net asset position. The copy documents shall be certified by an authorised signatory of the Additional Obligor as correct, complete and in full force and effect at a date no earlier than the date of the Accession Letter.
 - 13.2 If the Additional Obligor is not incorporated in England and Wales or Scotland, such documentary evidence as legal counsel to the Administrative Agent may require, that such Additional Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process.
 14. A copy of any other Authorisation or other document, opinion or assurance which the Administrative Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Letter and each Finance Document to which the Additional Obligor is a party or for the validity and enforceability of any Finance Document or of any Transaction Security created or intended to be created by the Additional Obligor.

Part III

Conditions Subsequent to Initial Utilisation

1. HEDGING

Within any requisite time period set out in the Hedging Letter, Hedging Documents effecting the arrangements set out in the Hedging Letter.

2. AUDITORS CONFIRMATION

Within 7 days after the Closing Date, a letter from such Auditors as the Company intends to supply Compliance Certificates in accordance with this Agreement confirming that those Auditors will provide Compliance Certificates in the form set out in Schedule 8 (*Form of Compliance Certificate*) in form and substance satisfactory to the Administrative Agent.

3. EQUINIX LETTER

Within 10 Business Days of the Closing Date, a letter (the "**Equinix Letter**") from Equinix, Inc and Equinix UK Limited (together the "**Equinix Companies**") to the Administrative Agent and the Arranger pursuant to which the Equinix Companies shall give certain clear market undertakings to the Administrative Agent and Arranger, such letter to be based on the principles (the "**Principles**") of the letter drafted and discussed between the Equinix Companies, the Administrative Agent and the Arranger on 29 June 2007, provided that all parties to Equinix Letter may negotiate in good faith any terms of the Equinix Letter that do not affect the Principles.

4. INSURANCE LETTER

Within 30 days after the closing Date, insurance letters addressed to the Administrative Agent (on behalf of the Finance Parties) and tabular summary of insurances (in English).

5. FRENCH SECURITY

Within 5 Business Days of the Closing Date:

- (A) an amendment to the bank account pledge so as to correct the bank account details;
- (B) evidence that the certificate of pledge (*attestation de gage*) referred to in paragraph 5.4(c) of Part I of Schedule 2 has been duly signed by the by the bank account holder; and
- (C) evidence that the certificate of bank account pledge referred to in paragraph 5.4(d) of Part I of Schedule 2 has been duly signed by the bank account holder(s).

6. ENVIRONMENTAL

Within 90 days of the Closing Date, a copy of an environmental report in a form reasonably satisfactory to the Administrative Agent pertaining to London 4 capable of being relied upon by CIT together with written confirmation to be supplied by a third party to the satisfaction of the Administrative Agent (which shall include the same being addressed to the Lenders and capable of being relied upon by the Lenders) as to satisfactory completion of environmental remediation works recommended by such report.

7. ACCOUNTANTS REPORT

Within 15 Business Days of the Closing Date, a final copy of the Accountants Report, capable of being relied upon by the Finance Parties.

8. INSURANCE

Within 30 days of the Closing Date, a letter from the relevant insurance broker(s) addressed to the Administrative Agent (on behalf of the Finance Parties) listing the material insurance policies of the Group and confirming that the insurance for the Group (including key man policies for the Group's CEO and COO) at the date of this Agreement is adequate for the business carried out by the Group and confirming that the insurance policies relating to the Charged Property contain (in form and substance reasonably satisfactory to the Security Trustee) an endorsement naming the Security Trustee as sole loss payee in respect of all claims in excess of EUR 50,000.

9. AMENDMENT TO ARTICLES

Within 10 Business Days of the Closing Date, in respect of each Obligor whose shares are subject to Security created by the Transaction Security Documents and whose articles of association restrict or prohibit any transfer of those shares on creation or enforcement of such Security, a resolution of the shareholders of each such Obligor to amend its articles of association to remove any such restriction or prohibition.

10. SHARE CERTIFICATES

Within 30 days of the Closing Date, the share certificates representing the shares that are subject to the Security created by the Transaction Security Documents, together with duly executed blank stock transfer forms (where applicable, to the extent not previously delivered).

11. GERMAN ASSETS LIST

Within 90 days of the Closing Date, updated schedules in respect of each German Obligor listing each of the assets with a market value of more than €100,000 belonging to such Obligor, in form and substance satisfactory to Agent (acting on the advice of its German legal advisors).

12. COMPANIES HOUSE FILINGS

12.1 Within 21 days of the Closing Date, file with the Registrar of Companies:

- (A) Forms 403a in relation to each security document which is the subject of a release or termination document set out in paragraph 4.14 of Part I of Schedule 2 (*Conditions precedent to initial Utilisation*) against each company incorporated in England and Wales to which a release or termination document relates; and
- (B) Forms 395 in relation to each Transaction Security Document (which is registrable pursuant to section 395 of the Companies Act 1985) against each Security Company incorporated in England and Wales.

12.2 Within such period as is allowed by the laws of the relevant jurisdiction (or if no such period is specified, within 21 days):

- (A) any filing that is analogous or similar to those referred to in paragraph 12.1(A) or 12.1(B) above; and

(B) any other filing required by law in a Relevant Jurisdiction.

13. REAL ESTATE

13.1 Within 90 days of the Closing Date:

- (A) Official Copy of Register Entries (showing registration of Legal Charge) 1 Airport Gate, Bath Road, Harmondsworth, Middlesex;
- (B) Official Copy of Register Entries (showing registration of Legal Charge) Ground Floor, Finsbury Court, 101 Finsbury Pavement, London, EC2;
- (C) Official Copy of Register Entries (showing registration of Legal Charge) car parking space number 10, Finsbury Court, 101 Finsbury Pavement, London, EC2;
- (D) Form 395/Certificate of Registration of Mortgage or Charge 1 Airport Gate, Bath Road, Harmondsworth, Middlesex;
- (E) Form 395/Certificate of Registration of Mortgage or Charge Ground Floor, Finsbury Court, 101 Finsbury Pavement, London, EC2;
- (F) Form 395/Certificate of Registration of Mortgage or Charge car parking space number 10, Finsbury Court, 101 Finsbury Pavement, London, EC2;
- (G) Certified copy of the Notice of Charge sent to the Landlord 1 Airport Gate, Bath Road, Harmondsworth, Middlesex;
- (H) Certified copy of the Notice of Charge sent to the Landlord Ground Floor, Finsbury Court 101 Finsbury Pavement, London, EC2;
- (I) Certified copy of the Notice of Charge sent to the Landlord car parking space number 10, Finsbury Court, 101 Finsbury Pavement, London, EC2;
- (J) Certified Copy of the Notice of Charge received by the Landlord 1 Airport Gate, Bath Road, Harmondsworth, Middlesex;
- (K) Certified Copy of the Notice of Charge received by the Landlord, Ground Floor, Finsbury Court, Finsbury 101 Finsbury Pavement, London, EC2; and
- (L) Certified Copy of the Notice of Charge received by the Landlord car parking space number 10, Finsbury Court, 101 Finsbury Pavement, London, EC2.

13.2 Within 45 days of the Closing Date:

- (A) Landlord's consent to the legal charge—1 Airport Gate, Bath Road, Harmondsworth, Middlesex;
- (B) Landlord's consent to the legal charge – Ground Floor Finsbury Court, 101 Finsbury Pavement, London, EC2; and
- (C) Landlord's consent to the legal charge—car parking space number 10, Finsbury Court, 101 Finsbury Pavement, London, EC2.

14. LONDON 4

14.1 Within 90 days of Interconnect Exchange Europe Limited entering into the Lease in respect of Building 2, Buckingham Trading Estate, Slough (London 4):

- (A) Official Copy of Register Entries (showing registration of Legal Charge) Building 2, Buckingham Trading Estate, Slough;

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- (B) Form 395/Certificate of Registration of Mortgage or Charge Building 2, Buckingham Trading Estate, Slough;
 - (C) Certified copy of the Notice of Charge sent to the Landlord Building 2, Buckingham Trading Estate, Slough; and
 - (D) Certified Copy of the Notice of Charge received by the Landlord, Building 2, Buckingham Trading Estate, Slough.
- 14.2 Within 45 days of Interconnect Exchange Europe Limited entering into the Lease in respect of Building 2, Buckingham Trading Estate, Slough Landlord's consent to the legal charge - Building 2, Buckingham Trading Estate, Slough.

15. GERMANY

Within 60 days of the Closing Date, copies certified by an authorised signatory of each of IX Europe GmbH and Interconnect Exchange Europe GmbH as true, complete and up to date and in full force and effect of each response by the banks regarding the executed notice of the pledge over bank accounts (in agreed form) by each of IX Europe GmbH and Interconnect Exchange Europe GmbH.

16. FRANCE

Within 21 days of the execution of the pledge over the on-going business of Interconnect Exchange Europe SAS:

- (A) evidence that the pledge has been duly registered with the tax authorities within 15 days from its execution,
- (B) evidence that the pledge has been duly filed with the relevant Commercial Court within 15 days from its execution,
- (C) if relevant, evidence that the pledge has been duly filed with the INPI (*Institut National de la Propriété Industrielle*).

SCHEDULE 3
UTILISATION REQUESTS

Part I

Utilisation Request Loans

From: [Borrower] [the Company]*
To: CIT Capital Finance (UK) Limited
Dated:

Dear Sirs

IX Europe Plc – £82,000,000 Senior Facilities Agreement dated
[] June 2007 (the “Facilities Agreement”)

1. We wish a Loan to be made on the following terms:
 - (a) Borrower: [•]
 - (b) Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)
 - (c) Facility to be utilised: [[Facility A]/[Facility B]/[Facility C]]**
 - (d) Currency of Loan: [•]
 - (e) Amount: [•] or, if less, the Available Facility
 - (f) Interest Period: [•]
2. We confirm that each condition specified in Clause 4.2 (*Further Conditions Precedent*) is satisfied on the date of this Utilisation Request.
3. [The proceeds of this Loan should be credited to [account]].
4. This Utilisation Request is irrevocable.
5. Terms used in this Request which are not defined in this Request but are defined in the Facilities Agreement shall have the meaning given to those terms in the Facilities Agreement.

Yours faithfully

authorised signatory for

[the Company on behalf of] [insert name of relevant Borrower]/[insert name of Borrower]*

NOTES:

- * Amend as appropriate. The Request can be given by the Borrower or by the Company.
- ** Select the Facility to be utilised and delete references to the other Facilities.

Part II

Selection Notice

Applicable to a Term Loan

From: [Borrower] [the Company]*
To: CIT Capital Finance (UK) Limited
Dated:

Dear Sirs

**IX Europe Plc – £82,000,000 Senior Facilities Agreement
dated [] June 2007 (the “Facilities Agreement”)**

1. We refer to the following [Facility A Loan[s]/Facility B Loan[s]] with an Interest Period ending on [•]**.
2. [We request that the above Term Loan[s] be divided into [•] [[Facility A]. [Facility B]] Loans with the following Base Currency Amounts and Interest Periods:] ***
or
3. [We request that the next Interest Period for the above Term Loan[s] is [•]].****
4. This Selection Notice is irrevocable.
5. Terms used in this Request which are not defined in this Request but are defined in the Facilities Agreement shall have the meaning given to those terms in the Facilities Agreement.

Yours faithfully

authorised signatory for

[the Company on behalf of] [*insert name of relevant Borrower*]/[*insert name of Borrower*]*

NOTES:

- * Amend as appropriate. The Request can be given by the Borrower or the Company.
- ** Insert details of all Facility A Loans or Facility B Loans (delete as applicable) which have an Interest Period ending on the same date.
- *** Use this option if division of Term Loans is requested.
- **** Use this option if sub-division is not required.

SCHEDULE 4

MANDATORY COST FORMULAE

1. The Mandatory Cost is an addition to the interest rate to compensate Lenders for the cost of compliance with (a) the requirements of the Bank of England and/or the Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions) or (b) the requirements of the European Central Bank.
2. On the first day of each Interest Period (or as soon as possible thereafter) the Administrative Agent shall calculate, as a percentage rate, a rate (the "**Additional Cost Rate**") for each Lender, in accordance with the paragraphs set out below. The Mandatory Cost will be calculated by the Administrative Agent as a weighted average of the Lenders' Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the relevant Loan) and will be expressed as a percentage rate per annum.
3. The Additional Cost Rate for any Lender lending from a Facility Office in a Participating Member State will be the percentage notified by that Lender to the Administrative Agent. This percentage will be certified by that Lender in its notice to the Administrative Agent to be its reasonable determination of the cost (expressed as a percentage of that Lender's participation in all Loans made from that Facility Office) of complying with the minimum reserve requirements of the European Central Bank in respect of loans made from that Facility Office.
4. The Additional Cost Rate for any Lender lending from a Facility Office in the United Kingdom will be calculated by the Administrative Agent as follows:

- 4.1 in relation to a sterling Loan:

$$\frac{AB + C(B - D) + E \times 0.01}{100 - (A + C)} \quad \text{per cent. per annum}$$

- 4.2 in relation to a Loan in any currency other than sterling:

$$\frac{E \times 0.01}{300} \quad \text{per cent. per annum}$$

Where:

- A is the percentage of Eligible Liabilities (assuming these to be in excess of any stated minimum) which that Lender is from time to time required to maintain as an interest free cash ratio deposit with the Bank of England to comply with cash ratio requirements.
- B is the percentage rate of interest (excluding the Margin and the Mandatory Cost and, if the Loan is an Unpaid Sum, the additional rate of interest specified in Clause 9.3 (*Default interest*)) payable for the relevant Interest Period on the Loan.
- C is the percentage (if any) of Eligible Liabilities which that Lender is required from time to time to maintain as interest bearing Special Deposits with the Bank of England.
- D is the percentage rate per annum payable by the Bank of England to the Administrative Agent on interest bearing Special Deposits.

- E is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the Administrative Agent as being the average of the most recent rates of charge supplied by the Reference Banks to the Administrative Agent pursuant to paragraph 7 below and expressed in pounds per £1,000,000.
5. For the purposes of this Schedule:
- “**Eligible Liabilities**” and “**Special Deposits**” have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;
- “**Fees Rules**” means the rules on periodic fees contained in the FSA Supervision Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;
- “**Fee Tariffs**” means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and
- “**Tariff Base**” has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.
6. In application of the above formulae, A, B, C and D will be included in the formulae as percentages (i.e. 5 per cent. will be included in the formula as 5 and not as 0.05). A negative result obtained by subtracting D from B shall be taken as zero. The resulting figures shall be rounded to four decimal places.
7. If requested by the Administrative Agent, each Reference Bank shall, as soon as practicable after publication by the Financial Services Authority, supply to the Administrative Agent, the rate of charge payable by that Reference Bank to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by that Reference Bank as being the average of the Fee Tariffs applicable to that Reference Bank for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of that Reference Bank.
8. Each Lender shall supply any information required by the Administrative Agent for the purpose of calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply the following information on or prior to the date on which it becomes a Lender:
- 8.1 the jurisdiction of its Facility Office; and
- 8.2 any other information that the Administrative Agent may reasonably require for such purpose.
- Each Lender shall promptly notify the Administrative Agent of any change to the information provided by it pursuant to this paragraph.
9. The percentages of each Lender for the purpose of A and C above and the rates of charge of each Reference Bank for the purpose of E above shall be determined by the Administrative Agent based upon the information supplied to it pursuant to paragraphs 7 and 8 above and on the assumption that, unless a Lender notifies the Administrative Agent to the contrary, each Lender’s obligations in relation to cash ratio deposits and Special Deposits are the same as those of a typical bank from its jurisdiction of incorporation with a Facility Office in the same jurisdiction as its Facility Office.

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10. The Administrative Agent shall have no liability to any person if such determination results in an Additional Cost Rate which over or under compensates any Lender and shall be entitled to assume that the information provided by any Lender or Reference Bank pursuant to paragraphs 3, 7 and 8 above is true and correct in all respects.
 11. The Administrative Agent shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender and each Reference Bank pursuant to paragraphs 3, 7 and 8 above.
 12. Any determination by the Administrative Agent pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all Parties.
 13. The Administrative Agent may from time to time, after consultation with the Company and the Lenders, determine and notify to all Parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all Parties.

SCHEDULE 5

FORMS OF TRANSFER CERTIFICATE AND ASSIGNMENT AGREEMENT

PART I - FORM OF TRANSFER CERTIFICATE

To: CIT Capital Finance (UK) Limited as Administrative Agent
From: [The Existing Lender] (the “Existing Lender”) and [The New Lender] (the “New Lender”)
Dated:

**IX Europe Plc – £82,000,000 Senior Facilities Agreement
dated [] June 2007 (the “Facilities Agreement”)**

1. We refer to Clause 24.5 (*Procedure for transfer*):
 - (1) The Existing Lender and the New Lender agree to the Existing Lender and the New Lender transferring by novation all or part of the Existing Lender’s Commitment, rights and obligations referred to in the Schedule in accordance with Clause 24.5 (*Procedure for transfer*).
 - (2) The proposed Transfer Date is [•].
 - (3) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 34.2(*Addresses*) are set out in the Schedule.
2. The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in Clause 24.4.3 (*Limitation of responsibility of Existing Lenders*).
3. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
 - (1) a company resident in the United Kingdom, or a partnership each member of which is a company resident in the United Kingdom, for United Kingdom tax purposes; or
 - (2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a branch or agency and interest payable in respect of an advance under a Finance Document falls to be brought into account in computing the chargeable profits of that company for the purposes of section 11(2) of the Taxes Act.]
4. This Transfer Certificate shall be notified by the New Lender, if it wishes to do so, to the French Borrowers in accordance with Article 1690 of the French Civil Code.
5. The New Lender confirms and ratifies all actions of the Security Trustee which the Security Trustee has taken on its behalf as an attorney acting without power of attorney (*als Vertreter ohne Vertretungsmacht*) in connection with the Security created by the Transaction Security Documents governed by German law.
6. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
7. This Transfer Certificate is governed by English law.
8. Terms which are used in this Transfer Certificate which are not defined in this Transfer Certificate but are defined in the Facilities Agreement shall have the meaning given to those terms in the Facilities Agreement.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments.]

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Administrative Agent and the Transfer Date is confirmed as [*].

[Administrative Agent]

By:

PART II—FORM OF ASSIGNMENT AGREEMENT

To: CIT Capital Finance (UK) Limited as Administrative Agent
From: [The Existing Lender] (the “Existing Lender”) and [The New Lender] (the “New Lender”)
Dated:

**IX Europe Plc – £82,000,000 Senior Facilities Agreement
dated [] June 2007 (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This is an Assignment Agreement.
2.
 - (1) We refer to Clause 24.6 (*Procedure for assignment*).
 - (2) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement, the other Finance Documents and in respect of the Security created under the Transaction Security Documents which correspond to that portion of the Existing Lender’s Commitments and participations in Utilisations under the Facilities Agreement as specified in the Schedule.
 - (3) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender’s Commitments and participations in Utilisations under the Facilities Agreement specified in the Schedule.
 - (4) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (3) above.¹
3. The proposed Transfer Date is [].
4. On the Transfer Date the New Lender becomes Party to the Finance Documents as a Lender.
5. The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in Clause 24.4.3 (*Limitation of responsibility of Existing Lenders*).
6. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 34.2 (*Addresses*) are set out in the Schedule.
7. [The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:
 - (1) a company resident in the United Kingdom, or a partnership each member of which is a company resident in the United Kingdom, for United Kingdom tax purposes; or
 - (2) a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a branch or agency and interest payable in respect of an advance under a Finance Document falls to be brought into account in computing the chargeable profits of that company for the purposes of section 11(2) of the Taxes Act.]

¹ If the Assignment Agreement is used in place of a Transfer Certificate in order to avoid a novation of rights/obligations for reasons relevant to a civil jurisdiction, local law advice should be sought to check the suitability of the Assignment Agreement due to the assumption of obligations contained in paragraph 2(d).

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8. This Assignment Agreement shall be notified by the New Lender, if it wishes to do so, to the French Borrowers in accordance with Article 1690 of the French Civil Code.
 9. The New Lender confirms and ratifies all actions of the Security Trustee which the Security Trustee has taken on its behalf as an attorney acting without power of attorney (*als Vertreter ohne Vertretungsmacht*) in connection with the Security created by the Transaction Security Documents governed by German law.
 10. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
 11. This Assignment Agreement is governed by English law.
 12. This Assignment Agreement has been [executed and delivered as a deed] [entered into] on the date stated at the beginning of this Assignment Agreement.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred by assignment, release and accession
[insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments.]

[Existing Lender]

[New Lender]

By:

By:

This Assignment Agreement is accepted by the Administrative Agent and the Transfer Date is confirmed as [•].

[Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.]

[Administrative Agent]

By:

SCHEDULE 6

FORM OF ACCESSION LETTER

To: CIT Capital Finance (UK) Limited as Administrative Agent
From: [Subsidiary] and [the Company] (the "New Lender")
Dated:

Dear Sirs

**IX Europe Plc – £82,000,000 Senior Facilities Agreement
dated [] June 2007 (the "Facilities Agreement")**

1. [Subsidiary] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Facilities Agreement and the other Finance Documents as an Additional [Borrower]/[Guarantor] pursuant to Clause [25.2 (Additional Borrowers)]/[Clause 25.4 (Additional Guarantors)] of the Facility Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company and registered number [•].
2. [Subsidiary's] administrative details are as follows:
Address:
Fax No.:
Attention:
3. [The Company confirms that no Default is continuing or would occur as a result of a [Subsidiary] becoming an additional Borrower.]*
4. This letter is governed by English law.
5. Terms which are used in this Accession Letter which are not defined in this Accession Letter but are defined in the Facilities Agreement shall have the meaning given to those terms in the Facilities Agreement.

[This Guarantor Accession Letter is entered into by deed.]**

[Parent] [Subsidiary]

NOTES:

* Insert if Accession Letter is for an Additional Borrower.

** If the Facilities are fully drawn there may be an issue in relation to past consideration for a proposed Additional Guarantor. This can be overcome by acceding by way of deed.

SCHEDULE 7

FORM OF RESIGNATION LETTER

To: CIT Capital Finance (UK) Limited as Administrative Agent
From: [resigning Obligor] and [the Company]
Dated:

Dear Sirs

**IX Europe Plc – £82,000,000 Senior Facilities Agreement
dated [] June 2007 (the “Facilities Agreement”)**

1. Pursuant to [Clause 25.3 (*Resignation of an Obligor*)], we request that [resigning Obligor] be released from its obligations as a [Borrower]/[Guarantor] under the Facilities Agreement and the Finance Documents.
2. We confirm that:
 - (1) no Default is continuing or would result from the acceptance of this request; and
 - (2) [this request is given in relation to a disposal of [resigning Obligor] which is permitted under Clause 22.13 (*Disposals*) of the Agreement;]
 - (3) [the Disposal Proceeds have been or will be applied in accordance with Clause 8.6(*Disposal, Insurance and Recovery Proceeds*);]*
 - (4) [•]**
3. This letter is governed by English law.
4. Terms which are used in this resignation letter which are not defined in this letter but are defined in the Facilities Agreement shall have the meaning given to those terms in the Facilities Agreement.
5. The Company agrees to indemnify the Finance Parties for any costs, expenses, or liabilities which would have been payable by [resigning Obligor] in connection with the Finance Documents but for the release set out in paragraph 1 above.

[the Company] [resigning Obligor]

By: By:

NOTES:

* Amend as appropriate, e.g. to reflect agreed procedure for payment of proceeds into a specified account.

** Insert any other conditions required by the Facilities Agreement.

SCHEDULE 8

FORM OF COMPLIANCE CERTIFICATE

To: CIT Capital Finance (UK) Limited as Administrative Agent
From: [the Company]
Dated:

Dear Sirs

**IX Europe Plc – £82,000,000 Senior Facilities Agreement
dated [] June 2007 (the “Facilities Agreement”)**

1. We refer to the Facilities Agreement. This is a Compliance Certificate.
2. We confirm that each of the computations as to compliance with Clause 21 (*Financial Covenants*) and the Margin computations set out in the definition of “Margin” as at the date as at which those financial statements were drawn up are true and accurate.
3. We confirm that no Event of Default has occurred and is continuing or, if an Event of Default has occurred, what Event of Default has occurred and the steps being taken to remedy that Event of Default; and
4. We confirm that the following companies currently constitute Material Companies for the purposes of the Facility Agreement: [•].

Signed

Director
of
[the Company]

Director
of
[the Company]

**SCHEDULE 9
TIMETABLES**

**Part I
Term Loans**

	Loans in euro/CHF	Loans in sterling
Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>) or a Selection Notice (Clause 10.1 (<i>Selection of Interest Periods and Terms</i>))	U-5 9.30am	U-5 9.30am
Administrative Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under Clause 5.4 (<i>Lenders' participation</i>)	U-3 Noon	U-1 noon
Administrative Agent notifies the Lenders of the Loan in accordance with Clause 5.4 (<i>Lenders' participation</i>)	U-3 3.00pm	U-1 3.00pm
Administrative Agent determines amount of the Loan in Optional Currency in accordance with Clause 32.9 (Change of Currency)	U-3 11.00am	U 11.00am
LIBOR or EURIBOR is fixed	Quotation Day as of 11:00 a.m. London time in respect of LIBOR and as of 11.00 a.m. Brussels time in respect of EURIBOR	Quotation Day as of 11:00 a.m.

“U” = date of utilisation
“U - X” = X Business Days prior to date of utilisation

Part II

Revolving Loans

	Loans in euro/CHF	Loans in sterling
Delivery of a duly completed Utilisation Request (Clause 5.1 (<i>Delivery of a Utilisation Request</i>) or a Selection Notice (Clause 10.1 (<i>Selection of Interest Periods and Terms</i>)))	U-3 9.30am	U-1 9.30am
Administrative Agent determines (in relation to a Utilisation) the Base Currency Amount of the Loan, if required under Clause 5.4 (<i>Lenders' participation</i>)	U-3 Noon	U-1 noon
Administrative Agent notifies the Lenders of the Loan in accordance with Clause 5.4 (<i>Lenders' participation</i>)	U-3 3.00pm	U-1 3.00pm
Administrative Agent determines amount of the Loan in Optional Currency in accordance with Clause 32.9 (Change of Currency)	U-3 11.00am	U 11.00am
LIBOR or EURIBOR is fixed	Quotation Day as of 11:00 a.m. London time in respect of LIBOR and as of 11.00 a.m. Brussels time in respect of EURIBOR	Quotation Day as of 11:00 a.m.

“U” = date of utilisation
“U - X” = X Business Days prior to date of utilisation

Part II

Current CEO, COO and CFO

CEO: Guy Willner

COO: Christophe De Buchet

CFO: Karen Bach

SCHEDULE 11
PERMITTED LEASES

Permitted Leases

	Lessor	Lease Agreement Number	Start date	Period (mths)	Monthly payment (excl VAT)	Quarterly Payment (excl VAT)
Interconnect Exchange Europe Ltd						
	CHG-Meridian	179685	15-Feb-05	36	9 x £1,823.28 27 x £1,196.58	
	CHG-Meridian	179638	01-Jan-05	36	£ 664.85	
	CHG-Meridian	180079	16-Mar-05	36	9 x £2,928.60 27 x £2,097.20	
	CIT	201-0060915-001	Feb 07	60	£ 25,595.60 (quarterly)	
	CIT	201-0057184-002	Mar 07	60	£ 12,993.43 (quarterly)	
IX Europe (Switzerland) AG						
	CAT Financial	505-7705	01-Jul-05	48	CHF 2,514.47	
	Credit Suisse	675*470/226*109	01-Jul-04	48	CHF 2,683.00	
	CAT Financial	505-8191	01-Mar-06	48	CHF 3,140.47	
	Credit Suisse	690-262	01-Jun-06	48	1x CHF 5,271.00 47 x CHF 705.45	
IX Europe GmbH						
	Disko Leasing GmbH	2376118/2063829/RM (LS 8 etc)	02-Dec-04	37	1x €13,574.32 18x €20,442.43 18x €7,642.37	
	HP Financial Services	24631/DEU/S/4/A/1 (LS 6)	Mar-04	36	€ 20,227.47	
	HP Financial Services	24631/DEU/IM/S/1 (LS 1)	Jul-04	36	€ 14,372.84	
	CHG-Meridian AG	2191701	01-Jan-05	38	€ 10,013.00	
	CHG-Meridian AG	2195890	01-Apr-05	36	€ 1,204.33	
	CHG-Meridian AG	2198572	01-Aug-05	36	€ 455.16	
	CHG-Meridian AG	2199022	01-Aug-05	36	€ 193.56	
	CHG-Meridian AG	2201014	01-Oct-05	36	€ 788.12	
	CHG-Meridian AG	2203158	01-Dec-05	36	€ 88.14	
	CHG-Meridian AG	2203402	01-Dec-05	36	€ 5,960.60	
Interconnect Exchange Europe GmbH						
	RWE		01-Jun-2002	120		€131,253.46 (€87,501 capital and €43,752 interest) €50,487.50 (maintenance)

Any B&S Finance Lease

SCHEDULE 12
TEMPLATE FOR ACQUISITION SUMMARY
[insert project name eg "London 4"]/SUMMARY
For [insert address of property/name of business being acquired]

1. EXECUTIVE SUMMARY

[describe acquisition, managements overview of opportunity and review of historic and expected performance and other main areas which should be brought to the Administrative Agent's attention for example:

- if the acquisition is an Lease, details of any conditions that need to be met before the Lease is entered into, details of any rent deposit, any other material agreements (such as an electricity supply agreement, environmental concerns);*
- if the acquisition is of another business, description of the business, consideration, any unusual conditions, warranties or indemnities etc.]*
- confirm the payback period (EBITDA and cashflow) and see a copy of the board submission for approval.*

2. SUMMARY OF LEASE

Date of Lease

Property

Landlord

Tenant

Term

Security of Tenure

Rent

Rent Free Period

Rent Review

Break Options

Option to Renew

Service Charge

Outgoings

Repair

Use

Insurance

Environmental

Damage or Destruction

Decoration

Assignment

Underletting

Forfeiture

Other provisions to note

Consider specific area for potential dilapidations at the end of the lease.

Details if there is to be a parental guarantee for the lease where a subsidiary/proposed subsidiary is the tenant.

OR

2. SUMMARY OF ASSET/BUSINESS PURCHASE AGREEMENTS

Parties

Target business/shares

Completion

Consideration

Guarantees

Warranties/indemnities

Limitations on claims

Restrictive covenants

Environmental concerns

Other provisions to note

3. SUMMARY OF OTHER MATERIAL AGREEMENTS

Parties

Purpose

Duration

Fee/consideration/payment

Termination

Assignment

Confidentiality

Guarantees

Other provisions to note

4. SUMMARY OF DUE DILIGENCE UNDERTAKEN

- *What type of due diligence has been undertaken (ie legal, commercial, environmental)?*
- *Who has been commissioned to undertake the particular due diligence?*

5. FINANCIAL ANALYSIS

- *Detailed model to be provided including P&L, balance sheet and cashflow projections for at least 5 years.*
- *Cashflows to be provided on a monthly basis for at least 5 years so we can evaluate timing of EBITDA breakeven and when company turns free cashflow positive.*
- *Capex assumptions to be clearly laid out in terms of amounts, phasing, what is to be acquired, "fit out costs", estimated maintenance cost p.a, remedial work required.*

6. CLIENTS

- *Information on existing and prospective clients to be provided to include length and value of contract in terms of monthly EBITDA generation.*
- *Information on how long expected before data centre is full.*

7. OWNERS

- *Information on vendors to be provided and reasons for selling.*

SCHEDULE 13
FORM OF CONFIRMATION

Bescheinigung
zur Vorlage beim Finanzamt für
Zwecke des § 8a
Körperschaftsteuergesetz (KStG)

Soweit in dieser Bescheinigung Begriffe verwendet werden, die nicht definiert sind, sollen diese Begriffe die Bedeutung haben, wie sie ihnen im [•/Vertrag] vom [•] zugeschrieben wurde.

Sie hatten [•] („Darlehensgeber“) gebeten, zur Vorlage beim Finanzamt für Zwecke des § 8a KStG eine Bescheinigung auszustellen. Hierzu erklären wir, dass uns bezüglich des Darlehens [•/doc no., account no.] vom [•] in Höhe von EUR [•] („Finanzierung“) an [•] („Kreditnehmer“)

- keine Sicherheiten an Kapitalforderungen von anderen Personen als dem Kreditnehmer gewährt wurden.
- die nachfolgend aufgeführten Sicherheiten von anderen Personen als dem Kreditnehmer gewährt wurden:

1. Dingliche Sicherheiten

- Pfandrecht (z.B. an Einlagen)
-

- Sicherungsabtretungen (z. B. Einzelabtretung von Forderungen)
-

2. Personalsicherheiten (z. B. Bürgschaft, Garantie, Schuldmitübernahme)

verbunden mit folgenden/r:

- dinglicher Sicherheit (z. B. an Einlagen)
-

- Sicherungsabtretungen (z.B. Einzelabtretung von Forderungen; Global-/Mantelabtretung von Forderungen)
-

Certification
for presentation to the Tax Office
for the purposes of Section 8a of
Germany's Corporation Income
Tax Law
(Körperschaftsteuergesetz, KStG)

All capitalized terms on defined in this Tax Confirmation shall have the meaning ascribed to them in the [•/Agreement] dated [•].

You have asked ... (“Bank/Savings Bank”) to issue a Certification for presentation to the Tax Office for the purposes of the Corporation Tax Law. We hereby declare that regarding the mixed limit/loan/short-term operating credit line ... (contract number; loan number; account number) of ... (date of the conclusion of the contract) in the amount of EUR ... (“Loan”) to the [XY] (“Borrower“):

- No securities on capital claims of persons other than the Borrower have been granted.
- The following securities have been granted by persons other than the Borrower:

1. Security in rem

- Pledges / Liens (e.g. of deposits)
-

- Assignments (e.g. assignments of receivables)
-

2. Personal Security (e.g. surety, guarantee, assumption of debt)

linked with the following:

- Security in rem (e.g. on deposits)
-

- Assignments (e.g. assignment of receivables; global assignments)
-

- Unterwerfung unter die sofortige Zwangsvollstreckung mit dem gesamten Vermögen oder hinsichtlich einzelner Vermögensgegenstände
- vereinbarten Verfügungsbeschränkungen
- sonstigen Vereinbarungen (z. B. Pfandrechte nach den Allgemeinen Geschäftsbedingungen)

3. Sicherheiten der o.g. Art, auf die während des bestehenden Darlehensverhältnisses verzichtet wurde

Sonstige Anmerkungen

Diese Bescheinigung enthält nur solche Angaben, die dem beim Darlehensgeber mit der vorgenannten Finanzierung vertrautem Personenkreis bekannt sind.

Der Darlehensgeber übernimmt mit dieser Erklärung – bereits aus rechtlichen Gründen – keine Beratung in steuerlichen Angelegenheiten. Insbesondere steht der Darlehensgeber nicht für den steuerlichen Erfolg ein, der mit dieser Bescheinigung angestrebt.

Die deutsche Version dieser Bestätigung ist bindend.

For and on behalf of the Lender

[Name]
[Function]
[Date]
[Signature]

- Submission to immediate foreclosure in respect of all or certain assets
- Agreed restraints on disposal
- Other agreements (e.g. pledges/liens under the General Standard Terms and Conditions)

3. Securities as mentioned above that have been waived during the term of the Loan

Other comments

This Certification is based solely on information that is known to the employees of the Bank/Savings Bank who have worked on the Loan.

By providing this Certification, the Bank/Savings Bank - in the first place for legal reasons - is not offering any consultancy services on tax matters. In particular, the Bank/Savings Bank will not be responsible or liable for the Borrower's success in obtaining any tax benefits which are the objective of this Certification.

The German version of this Tax Confirmation shall prevail.

[Name]
[Function]
[Date]
[Signature]

SIGNATURES

ORIGINAL BORROWERS

IX Europe Plc

By: /s/

41-44 Great Queen Street
London
WC2B 5AD

Attn: Karen Bach

Fax: 0207 533 6606

Interconnect Exchange Europe Limited

By: /s/

41-44 Great Queen Street
London
WC2B 5AD

Attn: Karen Bach

Fax: 0207 533 6606

Intelisite B.V.

By: /s/

Strawinskylaan 3105
1077 ZX Amsterdam
The Netherlands

Attention: Christophe de Buchet

Fax: +44 20 7533 6606

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41-44 Great Queen Street
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WC2B 5AD

Attn: Karen Bach

Fax: 0207 533 6606

Intelisite B.V.

By: /s/

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Attn: Karen Bach

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Interconnect Exchange Europe GmbH

By: /s/

Alberstrasse 27
40233 Düsseldorf
Germany

Attn: Harro Beusker

Fax: + 49 (0) 69-92042599

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Attn: Karen Bach

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signature page 2

IX Europe (Switzerland) AG

By: /s/

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BLUM Attorneys at Law
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Interconnect Exchange Europe SAS

By: /s/

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Parc Activité Paris Nord II
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ORIGINAL GUARANTOR

IX Europe Plc

By: /s/

41-44 Great Queen Street
London
WC2B 5AD

Attn: Karen Bach

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Interconnect Exchange Europe Limited

By: /s/

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BLUM Attorneys at Law
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By: /s/

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Attn: Karen Bach

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IX Services Limited

By: /s/

41-44 Great Queen Street
London
WC2B 5AD

Attn: Karen Bach

Fax: 0207 533 6606

IX Corporation Limited

By: /s/

41-44 Great Queen Street
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WC2B 5AD

Attn: Karen Bach

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signature page 7

IX Investments Limited

By: /s/

41-44 Great Queen Street
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WC2B 5AD

Attn: Karen Bach

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IX Europe Real Estate GmbH

By: /s/

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Attn: Karen Bach

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THE ARRANGER

CIT Bank Limited

36 Monument Street /s/
London
EC3R 8LJ

Attn: Wayne Frank

Fax: 020 7411 4748

Copied to:

36 Monument Street
London
EC3R 8LJ

Attn: Maureen Greene

Fax: 020 7411 4748

THE ADMINISTRATIVE AGENT

CIT Capital Finance (UK) Limited

36 Monument Street /s/
London
EC3R 8LJ

Attn: Wayne Frank

Fax: 020 7411 4748

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36 Monument Street
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EC3R 8LJ

Attn: Maureen Greene

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THE SECURITY TRUSTEE

CIT Capital Finance (UK) Limited

36 Monument Street /s/
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EC3R 8LJ

Attn: Wayne Frank

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36 Monument Street
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THE LENDERS

CIT Bank Limited

36 Monument Street
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EC3R 8LJ

Attn: Wayne Frank /s/

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CIT Capital Finance (UK) Limited

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Attn: Wayne Frank /s/

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Attn: Maureen Greene

Fax: 020 7411 4748

THE ORIGINAL HEDGE COUNTERPARTY

The Governor and Company of the Bank of Ireland

36 Queen Street
London
EC4R 1HJ

Attn: Toby Frampton

Fax: 020 7634 3103

/s/

/s/

signature page 11

List of Equinix's Subsidiaries

Name	Jurisdiction
Equinix Operating Co., Inc.	Delaware
Equinix-DC, Inc.	Delaware
Equinix Europe, Inc.	Delaware
Equinix Cayman Islands Holdings	Cayman Islands
Equinix Dutch Holdings N.V.	Dutch Antilles
Equinix Asia Pacific Pte Ltd	Singapore
Equinix Singapore Holdings Pte Ltd	Singapore
Equinix Singapore Pte Ltd	Singapore
Equinix Pacific Pte Ltd	Singapore
Pihana Pacific SDN, BHD	Malaysia
Equinix Pacific, Inc.	Delaware
Equinix Japan KK (in Kanji)	Japan
Equinix Australia Pty Ltd	Australia
Equinix Hong Kong Ltd	Hong Kong
Equinix RP, Inc.	Delaware
Equinix RP II LLC	Delaware
CHI 3, LLC	Delaware
CHI 3 Procurement, LLC	Illinois
NY3, LLC	Delaware
SV1, LLC	Delaware
LA4, LLC	Delaware
Equinix Europe Ltd	United Kingdom
Equinix Group Ltd	United Kingdom
Equinix (UK) Ltd	United Kingdom
Equinix (Services) Ltd	United Kingdom
Equinix Corporation Ltd	United Kingdom
Equinix Investments Ltd	United Kingdom
Equinix (Dusseldorf) GmbH	Germany
Equinix (Real Estate) GmbH	Germany
Equinix (Germany) GmbH	Germany
Equinix (France) SAS	France
Interconnect Exchange Europe Srl	Italy
Interconnect Exchange Europe SL	Spain
Equinix (Switzerland) AG	Switzerland
Intelisite BV	Netherlands

CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Stephen M. Smith, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Equinix, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 2, 2007

/s/ Stephen M. Smith

Stephen M. Smith

President and Chief Executive Officer

CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Keith D. Taylor, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Equinix, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 2, 2007

/s/ Keith D. Taylor

Keith D. Taylor
Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Equinix, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2007, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Stephen M. Smith, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Stephen M. Smith

Stephen M. Smith
President and Chief Executive Officer

November 2, 2007

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Equinix, Inc. (the "Company") on Form 10-Q for the period ending September 30, 2007, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Keith D. Taylor, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Keith D. Taylor

Keith D. Taylor
Chief Financial Officer

November 2, 2007