SECURITIES AND EXCHANGE COMMISSION

FORM SC 13D/A

Schedule filed to report acquisition of beneficial ownership of 5% or more of a class of equity securities [amend]

Filing Date: **2005-12-30**
SEC Accession No. 0000950123-05-015383

(HTML Version on secdatabase.com)

FILED BY

DAILY GREGORY S CIK:**1072783** Type: **SC 13D/A**	Mailing Address *C/O IPAYMENT, INC.* *40 BURTON HILLS* *BOULEVARD, SUITE 415* *NASHVILLE TN 37215*	Business Address *615-665-1858*

SUBJECT COMPANY

IPAYMENT INC CIK:**1140184**| IRS No.: **621847042** | State of Incorp.:**DE** | Fiscal Year End: **1231** Type: **SC 13D/A** | Act: **34** | File No.: **005-79530** | Film No.: **051294927** SIC: **7389** Business services, nec	Mailing Address *30 BURTON HILLS BLVD* *SUITE 520* *NASHVILLE TN 37215*	Business Address *40 BURTON HILLS BLVD* *SUITE 415* *NASHVILLE TN 37215* *6156651856*

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OMB APPROVAL
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934
(Amendment No. 1)*

iPayment, Inc.

(Name of Issuer)

Common Stock, par value $0.01

(Title of Class of Securities)

46262E 10-5

(CUSIP Number)

Gregory V. Gooding, Debevoise & Plimpton LLP, 919 Third Ave., New York, NY 10022 (212-909-6000)

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

December 27, 2005

(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. ☐

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person' s initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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1	NAMES OF REPORTING PERSONS: Gregory S. Daily I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY): Not applicable	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐	
3	SEC USE ONLY:	
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): PF - See Item 3 of Statement	
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐	
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A.	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER: 1,925,294
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 1,925,294
	10	SHARED DISPOSITIVE POWER: 0
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 1,925,294	
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 10.9%	

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14	TYPE OF REPORTING PERSON (SEE INSTRUCTIONS): IN

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1	NAMES OF REPORTING PERSONS: Carl A. Grimstad I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY): Not applicable	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐	
3	SEC USE ONLY:	
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): PF - See Item 3 of Statement	
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐	
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER: 1,268,704
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 1,268,704
	10	SHARED DISPOSITIVE POWER: 0
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 1,268,704	
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 7.2%	

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1	NAMES OF REPORTING PERSONS: GSD Trust Partners, LLC I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY): ☐
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐
3	SEC USE ONLY:
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): PF - See Item 3 of Statement
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A.

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH		
	7	SOLE VOTING POWER: 436,215
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 436,215
	10	SHARED DISPOSITIVE POWER: 0

11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 436,215
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 2.4%

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1	NAMES OF REPORTING PERSONS: Stream Family Limited Partnership I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY): 72-1311449
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐
3	SEC USE ONLY:
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): PF - See Item 3 of Statement
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A.

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH		
	7	SOLE VOTING POWER: 200,056
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 200,056
	10	SHARED DISPOSITIVE POWER: 0

11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 200,056
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 1.1%

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1	NAMES OF REPORTING PERSONS: Harold H. Stream, III I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY): Not applicable
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐
3	SEC USE ONLY:
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): PF - See Item 3 of Statement
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A.

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH		
	7	SOLE VOTING POWER: 153,334
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 153,334
	10	SHARED DISPOSITIVE POWER: 0

11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 153,334
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 0.9%

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1	NAMES OF REPORTING PERSONS: Sandra S. Miller I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY): Not applicable
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐
3	SEC USE ONLY:
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): PF - See Item 3 of Statement
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH		
	7	SOLE VOTING POWER: 94,889
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 94,889
	10	SHARED DISPOSITIVE POWER: 0

11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 94,889
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 0.5%

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1	NAMES OF REPORTING PERSONS: Opal Gray Trust I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY): 72-6070426
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐
3	SEC USE ONLY:
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): OO - See Item 3 of Statement
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A.

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH		
	7	SOLE VOTING POWER: 72,384
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 72,384
	10	SHARED DISPOSITIVE POWER: 0

11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 72,384
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 0.4%

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2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐
3	SEC USE ONLY:
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): OO - See Item 3 of Statement
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH		
	7	SOLE VOTING POWER: 47,455
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 47,455
	10	SHARED DISPOSITIVE POWER: 0

11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 47,455
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 0.3%

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1	NAMES OF REPORTING PERSONS: Trust for the benefit of A.S. Daily I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY): 62-6289615	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐	
3	SEC USE ONLY:	
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): OO - See Item 3 of Statement	
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐	
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A.	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER: 23,722
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 23,722
	10	SHARED DISPOSITIVE POWER: 0
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 23,722	
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 0.1%	

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2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐
3	SEC USE ONLY:
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): OO - See Item 3 of Statement
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A.

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH		
	7	SOLE VOTING POWER: 23,722
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 23,722
	10	SHARED DISPOSITIVE POWER: 0

11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 23,722
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 0.1%

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1	NAMES OF REPORTING PERSONS: Trust for the benefit of C.M. Daily I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY): 62-6289614	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐	
3	SEC USE ONLY:	
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): OO - See Item 3 of Statement	
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐	
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A.	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER: 23,722
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 23,722
	10	SHARED DISPOSITIVE POWER: 0
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 23,722	
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 0.1%	

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2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐
3	SEC USE ONLY:
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): OO - See Item 3 of Statement
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH		
	7	SOLE VOTING POWER: 23,722
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 23,722
	10	SHARED DISPOSITIVE POWER: 0

11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 23,722
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 0.1%

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1	NAMES OF REPORTING PERSONS: M. G. Stream Trust FBO H. H. Stream, III I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY): 72-6049777
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐
3	SEC USE ONLY:
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): OO - See Item 3 of Statement
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH		
	7	SOLE VOTING POWER: 23,722
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 23,722
	10	SHARED DISPOSITIVE POWER: 0

11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 23,722
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 0.1%

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1	NAMES OF REPORTING PERSONS: M.G. Stream Trust FBO S.G. Stream I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY): 72-6049778	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐	
3	SEC USE ONLY:	
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): OO - See Item 3 of Statement	
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐	
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A.	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER: 23,722
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 23,722
	10	SHARED DISPOSITIVE POWER: 0
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 23,722	
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 0.1%	

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2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (SEE INSTRUCTIONS): (a) ☑ (b) ☐
3	SEC USE ONLY:
4	SOURCE OF FUNDS (SEE INSTRUCTIONS): OO - See Item 3 of Statement
5	CHECK IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e): ☐
6	CITIZENSHIP OR PLACE OF ORGANIZATION: U.S.A.

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH		
	7	SOLE VOTING POWER: 23,723
	8	SHARED VOTING POWER: 0
	9	SOLE DISPOSITIVE POWER: 23,723
	10	SHARED DISPOSITIVE POWER: 0

11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON: 23,723
12	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (SEE INSTRUCTIONS): ☑*
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11): 0.1%

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14	TYPE OF REPORTING PERSON (SEE INSTRUCTIONS): OO

*Excludes 4,355,653 shares of Common Stock held by other Reporting Persons hereto as to which Stream Trust FBO W.G. Stream disclaims beneficial ownership. This report shall not be construed as an admission that Stream Trust FBO W.G. Stream is the beneficial owner of such securities.

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Amendment No. 1 to Schedule 13D

This Amendment to Schedule 13D is being filed jointly by Gregory S. Daily, Carl A. Grimstad, GSD Trust Partners, LLC, the Daily Family Foundation, the Trust for the benefit of A.S. Daily, the Trust for the benefit of C.C. Daily, the Trust for the benefit of C.M. Daily, the Trust for the benefit of G.R. Daily, Stream Family Ltd. Partners, the Opal Gray Trust, the M.G. Stream Trust FBO H. H. Stream, III, the M.G. Stream Trust FBO S.G. Stream and the M.G. Stream Trust FBO W.G. Stream (collectively, the "Group Members").

Item 2 Identity and Background

The disclosure in Item 1 is hereby amended and restated in its entirety to read as follows:

"**(a)** The names of the Group Members are Gregory S. Daily ("Mr. Daily"), Carl A. Grimstad ("Mr. Grimstad"), Harold H. Stream, III ("Mr. Stream"), Sandra S. Miller ("Ms. Miller"), Daily Family Foundation the Trust for the benefit of A.S. Daily, the Trust for the benefit of C.C. Daily, the Trust for the benefit of C.M. Daily, the Trust for the benefit of G.R. Daily (collectively, the "Daily Entities"), Stream Family Ltd. Partners, the Opal Gray Trust, the M.G. Stream Trust FBO H. H. Stream, III, the M.G. Stream Trust FBO S.G. Stream and the M.G. Stream Trust FBO W.G. Stream (collectively, the "Stream Entities").

(b) and **(c)** The business address of each of Mr. Daily, Mr. Grimstad and the Daily Family Foundation is c/o 40 Burton Hills Boulevard, Suite 415, Nashville, Tennessee 37215. The business address of GSD Trust Partners, LLC is 5353 Hillsboro Road, Nashville, TN 37215. The business address of each of the other Daily Entities is c/o Jeff Gould, 1163 Gateway Lane, Nashville, TN 37220. The business address of Mr. Stream, Ms. Miller and each of the Stream Entities is P.O. Box 40, Lake Charles, LA 70602.

Mr. Daily is the Chief Executive Officer and Chairman of the board of directors of the Issuer.

Mr. Grimstad is the President of the Issuer.

Each of the Daily Entities is organized in Tennessee. The primary business of GSD Trust Partners, LLC is holding its shares of Common Stock. The Daily Family Foundation is a charitable foundation. Each of the other Daily Entities is a family trust.

Mr. Stream is the Managing Partner of Stream Family Limited Partnership. Ms. Miller is an investor in Stream Family Limited Partnership and other businesses held by the Stream family.

Each of the Stream Entities is organized in Louisiana, except for the Stream Family Limited Partnership, which is organized in Texas. The primary business of the Stream Family Limited Partnership is holding real estate and other investments. Each of the other Stream Entities is a family trust.

(d) None of the Reporting Persons has, during the last five years, been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).

(e) None of the Reporting Persons has, during the last five years, been a party to a civil proceeding of a judicial body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

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(f) Each of the Reporting Persons is a citizen of the United States."

Item 3 The disclosure in Item 3 is hereby amended and supplemented by inserting the following after the first paragraph thereof and deleting the final paragraph thereof:

"It is anticipated that the funding for the transactions contemplated by the Merger Agreement (as defined in Item 4 below) will be approximately $760 million (including refinancing the Issuer' s existing credit facility). iPayment Holdings, Inc. ("Parent"), a Delaware corporation newly formed by Mr. Daily and Mr. Grimstad, and Bank of America, N.A. and certain of its affiliates have executed a commitment letter, dated December 27, 2005, to finance the transactions contemplated by the Merger Agreement through a combination of revolving credit facilities, term loans, high yield notes and/or an interim loan credit facility. This summary of the commitment letter does not purport to be complete and is qualified in its entirety by the commitment letter, which is attached hereto as Exhibit 4 and incorporated by reference herein."

Item 4 **Purpose of Transaction**

The disclosure in Item 4 is hereby amended and supplemented by inserting the following after the seventh paragraph thereof:

"On December 27, 2005, the Issuer announced that it had signed an Agreement and Plan of Merger (the "Merger Agreement"), dated as of December 27, 2005, with Parent and iPayment MergerCo, Inc. ("MergerCo"), pursuant to which the Issuer' s stockholders (other than Parent) would receive $43.50 per share in cash in exchange for their shares of Common Stock. MergerCo is a wholly-owned subsidiary of Parent formed for the purpose of effecting the merger. In order to finance the transaction, Parent has received debt commitments of $760.0 million from Bank of America N.A. and certain of its related entities (see Item 3), and equity commitments of up to $206.6 million from Mr. Daily and Mr. Grimstad on their own behalf and on behalf of certain related parties (see the discussion of the Exchange Agreement and the Side Letters below). The merger, which is anticipated to be completed in the first half of 2006, is subject to the receipt of financing necessary to complete the transaction on the terms set forth in the commitments obtained by Parent (or on other terms not less favorable to the Issuer and Parent, as determined by Parent in its reasonable discretion), regulatory approvals, the approval of the Issuer' s stockholders (including the approval of a majority of the stockholders of the Issuer who are unaffiliated with Parent), and other customary conditions. Upon completion of the merger, each issued and outstanding share of Common Stock will be converted into the right to receive $43.50 in cash without interest (other than shares of Common Stock held by Parent or any of its subsidiaries immediately prior to the effective time of the merger and shares of Common Stock held by the Issuer or any of its subsidiaries, or shares held by the Issuer' s stockholders who perfect their appraisal rights under Delaware law). This summary of the Merger Agreement does not purport to be complete and is qualified in its entirety by the Merger Agreement, which is attached hereto as Exhibit 5 and incorporated by reference herein.

In connection with the execution of the Merger Agreement, Mr. Daily and Mr. Grimstad entered into an Exchange Agreement, dated as of the date of the Merger Agreement, with Parent (the "Exchange Agreement"), in which each of them agreed, subject to the terms and conditions set forth therein, to contribute, and to cause certain of the other Reporting Persons to contribute, their shares of Common Stock to Parent in exchange for an equity interest in Parent, immediately prior to the effective time of the Merger. The foregoing summary of the Exchange Agreement does not purport to be complete and is qualified in its entirety by the Exchange Agreement, which is attached hereto as Exhibit 6 and incorporated by reference herein.

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Also in connection with the execution of the Merger Agreement, each Reporting Person other than Mr. Daily and Mr. Grimstad executed a side letter, dated as of the date of the Merger Agreement, to Parent (collectively, the "Side Letters") accepting and agreeing to comply with the Exchange Agreement to the extent it applies to shares of Common Stock owned by such Reporting Person. The foregoing summary of the Side Letters does not purport to be complete and is qualified in its entirety by the Form of Side Letter attached hereto as Exhibit 7 and incorporated herein by reference, which is identical to each Side Letter other than with respect to share amounts and signatories.

In addition, each of Mr. Daily and Mr. Grimstad entered into a Guarantee with the Issuer, dated as of the date of the Merger Agreement (respectively, the "Daily Guarantee" and the "Grimstad Guarantee", and collectively, the "Guarantees"). Under the Guarantees, each of Mr. Daily and Mr. Grimstad, as Guarantors, guarantee to the Issuer, as the Guaranteed Party, the due and punctual payment of one-half of any damages payable by Parent and/or MergerCo under the Merger Agreement as a result of the breach by Parent and/or MergerCo of its obligations thereunder. Mr. Daily' s liability under the Daily Guarantee is capped at $20 million and Mr. Grimstad' s liability under the Grimstad Guarantee is capped at $10 million. This summary of the Guarantees does not purport to be complete and is qualified in its entirety by the Daily Guarantee and the Grimstad Guarantee, which are attached hereto as Exhibits 8 and 9, respectively, and incorporated by reference herein."

Item 5 Interest in Securities of the Issuer

The disclosure in Item 5 is hereby amended and restated in its entirety to read as follows:

"**(a)** and **(b)** The Reporting Persons may be deemed to beneficially own an aggregate of 4,379,376 shares of Common Stock (including options held by Mr. Grimstad to purchase 25,000 shares of Common Stock that are exercisable within 60 days of this filing). Each of the Reporting Persons disclaims beneficial ownership of the securities held by the other Reporting Persons, and this report shall not be deemed to be an admission that such person is the beneficial owner of such securities.

For further information relating to each Reporting Person' s interest in securities of the Issuer, see the cover pages hereto.

(c) None of the Reporting Persons has effected any transactions in Common Stock during the past sixty days.

(d) Not applicable.

(e) Not applicable."

Item 6 Contracts, Arrangements, Understandings or Relationships with respect to Securities of the Issuer

The disclosure in Item 4 is hereby amended and supplemented by inserting the following after the final paragraph thereof:

"See the discussion in Item 4 regarding the Merger Agreement, the Exchange Agreement and the Side Letters."

Item 7 Material to be Filed as Exhibits

Exhibit A: Joint Filing Agreement.

Exhibit B: Power of Attorney

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Exhibit 4: Commitment Letter, dated as of December 27, 2005.

Exhibit 5: Agreement and Plan of Merger, dated as of December 27, 2005.

Exhibit 6: Exchange Agreement, dated as of December 27, 2005.

Exhibit 7: Form of Side Letter.

Exhibit 8: Guarantee (Daily), dated as of December 27, 2005.

Exhibit 9: Guarantee (Grimstad), dated as of December 27, 2005.

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Signature.

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Statement is true, complete and correct.

Date: December 30, 2005

GREGORY S. DAILY

/s/ Gregory S. Daily

CARL A. GRIMSTAD

/s/ Carl A. Grimstad

GSD TRUST PARTNERS, LLC

By: /s/ Collie Daily
Name: Collie Daily
Title: President

DAILY FAMILY FOUNDATION

By: /s/ Gregory S. Daily
Name: Gregory S. Daily
Title:

TRUST FOR THE BENEFIT OF A.S. DAILY

By: /s/ Jeffrey R. Gould
Name: Jeffrey R. Gould
Title: Trustee

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TRUST FOR THE BENEFIT OF C.C. DAILY

By: /s/ Jeffrey R. Gould
Name: Jeffrey R. Gould
Title: Trustee

TRUST FOR THE BENEFIT OF C.M. DAILY

By: /s/ Jeffrey R. Gould
Name: Jeffrey R. Gould
Title: Trustee

TRUST FOR THE BENEFIT OF G.R. DAILY

By: /s/ Jeffrey R. Gould
Name: Jeffrey R. Gould
Title: Trustee

HAROLD H. STREAM, III

/s/ Harold H. Stream, III

SANDRA S. MILLER

By: /s/ Harold H. Stream, III
Name: Harold H. Stream, III
As Attorney-in-Fact

STREAM FAMILY LIMITED PARTNERSHIP

By: /s/ Harold H. Stream, III
Name: Harold H. Stream, III
Title: Managing Partner

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OPAL GRAY TRUST

By: /s/ Bruce N. Kirkpatrick
Name: Bruce N. Kirkpatrick
Title: Trustee

M. G. STREAM TRUST FBO H. H. STREAM, III

By: /s/ Bruce N. Kirkpatrick
Name: Bruce N. Kirkpatrick
Title: Trustee

M.G. STREAM TRUST FBO S.G. STREAM

By: /s/ Bruce N. Kirkpatrick
Name: Bruce N. Kirkpatrick
Title: Trustee

M.G. STREAM TRUST FBO W.G. STREAM

By: /s/ Bruce N. Kirkpatrick
Name: Bruce N. Kirkpatrick
Title: Trustee

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Exhibit A

JOINT FILING AGREEMENT

Pursuant to Rule 13d-1(k)(1) promulgated under the Securities Exchange Act of 1934, as amended, the undersigned agree that the statement on Schedule 13D to which this exhibit is attached is filed on behalf of each of them.

Date: December 30, 2005

GREGORY S. DAILY

/s/ Gregory S. Daily

CARL A. GRIMSTAD

/s/ Carl A. Grimstad

GSD TRUST PARTNERS, LLC

By: /s/ Collie Daily
Name: Collie Daily
Title: President

DAILY FAMILY FOUNDATION

By: /s/ Gregory S. Daily
Name: Gregory S. Daily
Title:

TRUST FOR THE BENEFIT OF A.S. DAILY

By: /s/ Jeffrey R. Gould
Name: Jeffrey R. Gould
Title: Trustee

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TRUST FOR THE BENEFIT OF C.C. DAILY

By: /s/ Jeffrey R. Gould
Name: Jeffrey R. Gould
Title: Trustee

TRUST FOR THE BENEFIT OF C.M. DAILY

By: /s/ Jeffrey R. Gould
Name: Jeffrey R. Gould
Title: Trustee

TRUST FOR THE BENEFIT OF G.R. DAILY

By: /s/ Jeffrey R. Gould
Name: Jeffrey R. Gould
Title: Trustee

HAROLD H. STREAM, III

/s/ Harold H. Stream, III

SANDRA S. MILLER

By: /s/ Harold H. Stream, III
Name: Harold H. Stream, III
As Attorney-in-Fact

STREAM FAMILY LIMITED PARTNERSHIP

By: /s/ Harold H. Stream, III
Name: Harold H. Stream, III
Title: Managing Partner

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OPAL GRAY TRUST

By: /s/ Bruce N. Kirkpatrick
Name: Bruce N. Kirkpatrick
Title: Trustee

M. G. STREAM TRUST FBO H. H. STREAM, III

By: /s/ Bruce N. Kirkpatrick
Name: Bruce N. Kirkpatrick
Title: Trustee

M.G. STREAM TRUST FBO S.G. STREAM

By: /s/ Bruce N. Kirkpatrick
Name: Bruce N. Kirkpatrick
Title: Trustee

M.G. STREAM TRUST FBO W.G. STREAM

By: /s/ Bruce N. Kirkpatrick
Name: Bruce N. Kirkpatrick
Title: Trustee

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Exhibit B

POWER OF ATTORNEY

STATE OF LOUISIANA :

PARISH OF Calcasieu :

BE IT KNOWN, that on this 30 day of March, 1981, before me, the undersigned Notary Public, duly commissioned and qualified in and for the state and county aforesaid, and in the presence of the undersigned competent witnesses, personally came and appeared:

SANDRA GRAY STREAM MILLER, born Stream, married to Nolan B. Miller with whom she is residing in the City of Los Angeles, State of California, and between whom there is an Ante-Nuptial Agreement dated August 21, 1980 ("Appearer")

who declared:

Appearer does hereby appoint Harold H. Stream, III, resident of Calcasieu Parish, Louisiana ("Agent"), Appearer' s true and lawful agent and attorney in fact, for and in Appearer' s name, place and stead, with full power of substitution and with all general, express and special authority provided or required by the laws of Louisiana, or of any other state, or of the United States, to do, perform, conduct, manage and transact, all of Appearer' s affairs, business and concerns, of whatever nature and kind.

Without in any manner limiting the foregoing powers, the Agent is authorized, in Appearer' s name or in the name of the Agent on behalf of Appearer, to:

1. Deposit in a bank or banks, all monies collected and received for Appearer' s accounts, to make checks and draw money in Appearer' s name from any bank or banks, to make, accept, draw and endorse all promissory notes and bills of exchange in Appearer' s name, and to endorse drafts, bills of exchange, checks and other such instruments for collection, and to withdraw the same by check or otherwise and to invest all monies as the Agent may deem proper;

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2. Buy and purchase for cash and/or credit, all property of any kind, movable, immovable or mixed, in Appearer' s name, for such price and upon such terms and conditions as the Agent deems appropriate, pay the price for such purchase and sign and execute all acts and deeds necessary in the premises;

3. Contract loans or borrow money in Appearer' s name at such rate of interest and upon such terms and conditions as the Agent deems appropriate, receive and receipt for all funds from any loans, disburse or expend such funds as the Agent deems necessary, and to pay all costs incident to obtaining and completing such loans, sign and deliver promissory notes or other obligations in connection therewith, stipulating such rates of interest, terms and conditions as the agent deems desirable, and renew, extend or waive prescription on such notes, grant special mortgages, hypothecations and other privileges necessary, required or desirable, in Appearer' s name, in favor of the holder of the promissory notes, covering any and all movable, immovable or mixed property located in the Parish of Calcasieu or elsewhere in the State of Louisiana, or in any other state, standing in Appearer' s name or purchased on Appearer' s behalf, whether belonging to Appearer' s separate or community estate, use the proceeds of such loans in the purchase of real or personal property or for any other purpose the Agent may deem desirable, sign and execute acts of mortgage and/or vendor' s lien in Appearer' s name, containing confession of judgment, waiver of appraisal, waiver of notice of demand, and such other terms and conditions as the Agent deems desirable or necessary to effect any purchase and/or mortgage;

4. Sell, convey, exchange, partition, deliver, mortgage or otherwise encumber, lease or let, pledge or pawn, to any person, partnership or corporation, with all legal warranties, all or any parts of the real, personal or mixed property belonging to Appearer located in the State of Louisiana, or elsewhere, for such price and upon such terms and conditions as Agent deems advisable;

5. Make and execute oil, gas and mineral leases on any property of Appearer, or in which Appearer may have an interest, on such terms and conditions as the Agent shall deem proper in the Agent' s sole and uncontrolled discretion, and receive and receipt for bonuses, rents and proceeds thereof, as the same shall fall due; to make and execute mineral and royalty rights, and for the full execution of the purposes aforesaid, to make, sign and execute in the name of the Appearer all acts, whether of sale, mortgage, lease, release, contract, compromise, covenant, deed, assignment, unitization or pooling agreement, division order or otherwise, that shall or may be requisite or necessary and containing such terms, conditions and provisions as the Agent shall deem proper, and bind Appearer thereby as firmly as if the same were or had been Appearer' s own proper acts and deeds;

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6. Sign all bonds, returns, petitions, waivers, or other documents required by the Collector of Internal Revenue, the Department of Revenue or other taxing authority for account of Appearer;

7. Obtain and procure any and all contracts of indemnity and insurance, including without limitation: (a) flood, fire, windstorm, tornado, and extended coverage insurance upon any of Appearer' s property (b) liability insurance, and (c) life insurance upon the life of Appearer and/or members of Appearer' s immediate family, and for all theses purposes, full power and authority is granted to the Agent to sign any and all applications, claims forms and other documents, necessary or incidental thereto;

8. Represent Appearer judicially or otherwise, whether as heir, legatee, creditor, administrator or otherwise, in all successions or .... tion in which Appearer may own stock or be interested, vote or execute proxies in favor of others to vote in the name of Appearer on all questions or matters that shall or may be submitted at such meetings;

9. Attend all or any meetings of creditors wherein the said Appearer may be interested, and vote in Appearer' s name on all questions or matters that may be submitted to such meetings;

10. Attend all or any meetings of the stockholders of any corporation in which Appearer may own stock or be interested, vote or execute proxies in favor of others to vote in the name of Appearer on all questions or matters that shall or may be submitted at such meetings;

11. Appear before all courts of law and equity and prosecute and defend any and all suits, claims and demands for or against Appearer in such manner as the Agent shall deem advisable, and employ attorneys to represent Appearer in such legal matters; apply for and obtain any conservatory writs, bonds and other incidental processes; and settle, compromise and liquidate Appearer' s interest in any and all claims made by or against Appearer;

12. Do and perform, and to make, sign and deliver, for and on Appearer' s behalf, any and all acts and instruments of writing, with all usual and customary clauses, that may be deemed necessary or proper by the Agent to bind Appearer in connection with any of the matters and affairs referred to hereinabove, to the same extent as if Appearer were present personally and acting personally, and Appearer does hereby ratify and confirm all the Agent may do or cause to be done by virtue of this mandate;

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All authority granted herein to the Agent shall survive and continue in full force and effect notwithstanding any physical or mental incapacity of Appearer or act Personally or to revoke this power of attorney.

This Power of Attorney is effective immediately and shall remain in effect unless and until revoked in writing. If recorded in the Conveyance Records of Calcasieu Parish, Louisiana, this Power of Attorney shall remain in full force and effect until an instrument revoking the same shall be recorded in the same records.

THUS DONE AND PASSED in multiple originals in Lake Charles, Louisiana, on the date above written, in the presence of the undersigned competent witnesses, who hereunto sign their names with the appearer and me, Notary, after due reading of the whole.

WITNESSES:

/s/ Mariella Urelca

/s/ Sandra Gray Stream Miller
SANDRA GRAY STREAM MILLER

/s/ Gail Lopez

/s/ Karla J. Guzzino
NOTARY PUBLIC

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STATE OF LOUISIANA:

PARISH OF CALCASIEU:

BEFORE ME, the undersigned Notary Public, personally came and appeared Harold H. Stream, III, who declared that he does hereby accept the foregoing mandate on all of its terms and conditions.

THUS DONE AND SIGNED at Lake Charles, Louisiana, on this 30 day of March, 1981.

WITNESSES:

/s/ Mariella Urelca

/s/ Harold H. Stream, III

/s/ Gail Lopez

/s/ Karla J. Guzzino
NOTARY PUBLIC

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Exhibit 4

EXECUTION COPY

BANC OF AMERICA SECURITIES LLC
BANC OF AMERICA BRIDGE LLC
BANK OF AMERICA, N.A.
9 West 57th Street
New York, New York 10019

December 27, 2005

iPayment Holdings, Inc.
40 Burton Hills Boulevard
Suite 415
Nashville, TN 37215

Attention: Mr. Gregory S. Daily

Commitment Letter

Ladies and Gentlemen:

You have advised Bank of America, N.A. ("***Bank of America***"), Banc of America Bridge LLC ("***Banc of America Bridge***") and Banc of America Securities LLC ("***BAS***") that Mr. Gregory S. Daily has contributed and that certain other existing members of management of iPayment, Inc., a Delaware corporation (the "***Company***") and persons under their control (collectively, the "***Rollover Shareholders***") are contemplating to contribute all (or a portion) of their shareholdings in the Company to iPayment Holdings, Inc. ("***you***" or "***Holdings***") and that Holdings intends to enter into an agreement (the "***Merger Agreement***") with the Company to acquire it (the "***Acquisition***") through a long form merger (the "***Merger***") of a newly-created wholly-owned subsidiary of Holdings ("***MergerCo.***") into the Company, with the Company being the surviving corporation and the shareholders of the Company (other than the Rollover Shareholders with respect to the shares of common stock of the Company contributed by them) receiving $43.50 for each share of outstanding common stock of the Company held by them. After giving effect to the Acquisition, Holdings will be a holding company that directly owns, and the sole asset of which is, all of the equity interests in the Company.

You have also advised Bank of America, Banc of America Bridge and BAS that you intend to finance the Acquisition, the repayment of certain existing indebtedness of the Company and its subsidiaries (the "***Refinancing***"), costs and expenses related to the Transaction (as hereinafter defined) and your and your subsidiaries' ongoing working capital and other general corporate purposes after consummation of the Acquisition from the following sources (and that no financing other than the financing described herein will be required in connection with the Transaction): (a) at least $170 million of the total consideration for the Transaction will be comprised of (i) the rollover of shares of common equity of the Company into Holdings' common equity (the "***Rollover Equity***") by the Rollover Shareholders and (ii) to the extent applicable, the issuance by Holdings of common stock (or preferred equity interests upon terms reasonably acceptable to us) for cash to other investors reasonably acceptable to us, and such cash shall be contributed by Holdings to MergerCo. as common equity (the "***Co-Investment***", and together with the Rollover Equity, the "***Equity Contribution***"), *provided* that not more than 49.9% of the Equity Contribution shall consist of the Co-Investment, (b) $475 million in senior secured credit facilities (the "***Senior Credit Facilities***") of the Borrower (as defined in the Summaries of Terms referred to below) and (c) at least $285 million in gross proceeds from the issuance and sale by the

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Borrower of senior subordinated unsecured notes (the "***Senior Subordinated Notes***") or, alternatively, at least $285 million of senior subordinated unsecured bridge loans under a bridge facility (the "***Bridge Facility***" and, together with the Senior Credit Facilities, the "***Facilities***") made available to the Borrower as interim financing to the Permanent Securities referred to below (such senior subordinated loans being the "***Bridge Loans***" and, together with any Rollover Loans and Exchange Notes (as defined in Exhibit B hereto), the "***Bridge Financing***"), in each case as potentially reduced pursuant to an Equity Offset Reduction (as defined in Exhibit C hereto) as contemplated by this Commitment Letter. The Acquisition, the Rollover Equity, the Co-Investment, the Refinancing, the entering into and funding of the Senior Credit Facilities, the issuance and sale of the Senior Subordinated Notes or the entering into and funding of the Bridge Facility and all related transactions are hereinafter collectively referred to as the "***Transaction***."

BAS has also delivered to you a separate engagement letter dated the date hereof (the "***Engagement Letter***") setting forth, among other things, the terms on which BAS is willing to act, on an exclusive basis, as sole underwriter, sole initial purchaser, sole arranger and sole placement agent for (i) the Senior Subordinated Notes or (ii) if the Bridge Facility is funded on the Closing Date (as hereinafter defined), the senior subordinated unsecured notes or any other debt securities of Holdings, the Company or its subsidiaries that may be issued after the Closing Date (the "***Permanent Securities***") for the purpose of refinancing all or a portion of the outstanding amounts under the Bridge Facility (the "***Permanent Financing***").

In connection with the foregoing, (a) Bank of America is pleased to advise you of its commitment to provide the full amount of the Senior Credit Facilities and to act as the sole administrative agent (in such capacity, the "***Administrative Agent***") for the Senior Credit Facilities, all upon and subject to the terms and conditions set forth in this letter and in the summaries of terms attached as Exhibit A and Exhibit C hereto and incorporated herein by this reference (collectively, the "***Senior Financing Summary of Terms***"), (b) BAS is pleased to advise you of its willingness, as the sole lead arranger and sole bookrunning manager (in such capacities, the "***Senior Lead Arranger***") for the Senior Credit Facilities, to form a syndicate of financial institutions and institutional lenders reasonably acceptable to you (collectively, the "***Senior Lenders***") in consultation with you for the Senior Credit Facilities, including Bank of America (the "***Initial Senior Lender***"), (c) Banc of America Bridge is pleased to advise you of its commitment to provide the full principal amount of the Bridge Facility, all upon and subject to the terms and conditions set forth in this letter and in the summaries of terms attached as Exhibit B and Exhibit C hereto (collectively, the "***Bridge Summary of Terms***" and, together with the Senior Financing Summary of Terms, the "***Summaries of Terms***" and, together with this letter agreement, the "***Commitment Letter***"), and (d) BAS is also pleased to advise you of its willingness, as the sole lead arranger and sole bookrunning manager (in such capacity, the "***Bridge Lead Arranger***"; BAS acting in its capacity as Senior Lead Arranger and/or Bridge Lead Arranger is sometimes referred to herein as the "***Lead Arranger***") for the Bridge Facility, to form a syndicate of financial institutions and institutional lenders reasonably acceptable to you (collectively, the "***Bridge Lenders***" and, together with the Senior Lenders, the "***Lenders***") in consultation with you for the Bridge Facility, including Banc of America Bridge (the "***Initial Bridge Lender***" and, together with the Initial Senior Lender, the "***Initial Lenders***"). It is understood and agreed that no other agents, co-agents, arrangers, co-arrangers, bookrunners, managers or co-managers will be appointed, no other titles will be awarded and no compensation (other than compensation expressly contemplated by the Summaries of Terms or the Fee Letter) will be paid in connection with the Facilities unless you and we shall so agree. All capitalized terms used and not otherwise defined herein shall have the same meanings as specified therefor in the Summaries of Terms. If you accept this Commitment Letter as provided below in respect of the Senior Credit Facilities, the date of the initial funding under the Senior Credit Facilities, and/or if you accept this Commitment Letter as provided below in respect of the Bridge Facility, the date of the initial funding of the Bridge Facility or of

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the issuance and sale of the Senior Subordinated Notes in lieu of funding the Bridge Facility, in each case, is referred to herein as the "***Closing Date***."

The commitment of Bank of America in respect of the Senior Credit Facilities, the commitment of Banc of America Bridge in respect of the Bridge Facility and the undertaking of BAS to provide the services described herein are subject to the satisfaction in a manner reasonably acceptable to Bank of America, Banc of America Bridge and BAS of the conditions precedent that (a) prior to and during the syndication of the Facilities there shall be no offering, placement or arrangement of any debt securities or bank financing by or on behalf of the Company, Holdings or any of their respective subsidiaries or affiliates (other than the Facilities and the Senior Subordinated Notes) nor any solicitation of any bank, investment bank, financial institution, person or entity to provide, structure, arrange or syndicate any credit facility, bridge loan, debt securities or other financing in lieu of or as a replacement or refinancing of the Facilities; *provided, however,* that the foregoing shall not prohibit (i) the Company from borrowing under its existing revolving credit facility or incurring other debt in an aggregate amount of up to $5 million, or (ii) Holdings and its affiliates from, in consultation with the Lead Arranger, soliciting individual investors for subordinated securities of Holdings in an aggregate principal amount of up to $10 million to be issued in lieu of a corresponding principal amount of the Facilities and (b) your compliance in all material respects with the terms of this Commitment Letter (including the Exhibits attached hereto). BAS intends to commence syndication of each of the Facilities promptly upon your acceptance of this Commitment Letter and the fee letter of even date herewith (the "***Fee Letter***") among you, Bank of America, Banc of America Bridge and BAS; *provided* that, notwithstanding the Lead Arranger' s right to syndicate the Facilities and receive commitments with respect thereto and except to the extent provided for in the Fee Letter, the Lead Arranger may not assign all or any portion of the commitments of the Initial Lenders hereunder prior to the date of the initial funding under the Senior Credit Facilities. You agree to actively assist, and to cause your subsidiaries to actively assist, BAS in achieving a syndication of each such Facility that is reasonably satisfactory to BAS and you. Such assistance shall include (a) your providing and causing your advisors to provide Bank of America, Banc of America Bridge and BAS and the other Lenders upon request with all information reasonably deemed necessary by Bank of America, Banc of America Bridge and BAS to complete syndication, (b) your assistance in the preparation of a customary Information Memorandum to be used in connection with the syndication of each such Facility, (c) using commercially reasonable efforts to ensure that the syndication efforts of BAS benefit materially from your existing lending relationships and (d) otherwise using commercially reasonable efforts to assist Bank of America, Banc of America Bridge and BAS in their syndication efforts, including by making your officers and advisors available from time to time to attend and make presentations regarding your and your subsidiaries' business and prospects at one or more meetings of prospective Lenders and at rating agency presentations. You hereby agree that the Information Memorandum to be used in connection with the syndication of each Facility shall be completed at least 30 days prior to the Closing Date.

It is understood and agreed that BAS will manage and control all aspects of the syndication of each Facility in consultation with you, including decisions as to the selection of prospective Lenders reasonably acceptable to you and any titles offered to proposed Lenders, when commitments will be accepted and the final allocations of the commitments among the Lenders. It is understood that no Lender participating in either Facility will receive compensation from you or the Company in order to obtain its commitment, except on the terms contained herein and in the Summaries of Terms. It is also understood and agreed that the amount and distribution of the fees among the Lenders will be determined by Bank of America, Banc of America Bridge and BAS in consultation with you.

You hereby represent and warrant that (a) all information, other than Projections (as defined below) and information of a general economic nature, that has been or is hereafter made available to Bank of America, Banc of America Bridge, BAS or the Lenders by you or any of your representatives

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(or on your or their behalf) or by the Company or any of its subsidiaries or representatives (or on their behalf) in connection with any aspect of the Transaction (the "***Information***"), taken as a whole, is and will be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein (taken as a whole) not misleading in light of the circumstances in which they were made and (b) all projections, forecasts, estimates, budgets and other forward looking information concerning you and your subsidiaries that have been or are hereafter made available to Bank of America, Banc of America Bridge, BAS or the Lenders by you or any of your representatives (or on your or their behalf) or by the Company or any of its subsidiaries or representatives (or on their behalf) (the "***Projections***") have been or will be prepared in good faith based upon assumptions believed by you to be reasonable at the time of the preparation thereof. You agree to furnish us with such Information and Projections as we may reasonably request and to supplement the Information and the Projections from time to time until the date of execution and delivery of definitive documentation with respect to the Senior Credit Facilities so that the representations and warranties in the immediately preceding sentence are complete and correct on such date. In issuing the commitments hereunder and in arranging and syndicating the Facilities, Bank of America, Banc of America Bridge and BAS are and will be using and relying on the Information and the Projections without independent verification thereof. The Information and Projections provided to Bank of America, Banc of America Bridge and BAS prior to the date hereof are hereinafter referred to as the "***Pre-Commitment Information***."

You hereby acknowledge that, in connection with the syndication of the Facilities, (a) BAS and/or Bank of America will make available Information and Projections (collectively, "***Borrower Materials***") to the proposed syndicates of Lenders by posting the Borrower Materials on IntraLinks or another similar electronic system (the "***Platform***") and (b) certain of the proposed Lenders may be "public-side" Lenders (*i.e.*, Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "***Public Lender***"). You hereby agree that prior to the Closing Date (w) that portion of the Borrower Materials that may be distributed to Public Lenders shall be clearly and conspicuously marked "PUBLIC," which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," you shall be deemed to have authorized BAS, Bank of America and the proposed Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States federal and state securities laws, it being understood that certain of such Borrower Materials may be subject to the confidentiality requirements of the definitive credit documentation; (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (z) BAS and Bank of America shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor." Notwithstanding the foregoing and except as set forth in the next sentence, you shall be under no obligation to mark any Borrower Materials "PUBLIC". However, you will include as part of such Borrower Materials and mark "PUBLIC" a reasonably detailed term sheet for the Facilities for distribution to the Public Lenders.

By executing this Commitment Letter, you agree to reimburse Bank of America, Banc of America Bridge and BAS from time to time on demand for all reasonable out-of-pocket fees and expenses (including, but not limited to, (a) the reasonable fees, disbursements and other charges of Shearman & Sterling LLP, as counsel to the Lead Arranger and the Administrative Agent, and of any local counsel to the Lenders retained by the Lead Arranger or the Administrative Agent with your prior consent (not to be unreasonably withheld), (b) reasonable due diligence expenses and (c) all CUSIP fees for registration with the Standard & Poor' s CUSIP Service Bureau) incurred in connection with the Facilities, the syndication thereof, the preparation of the definitive documentation therefor and the other transactions contemplated hereby; *provided* that, prior to the date on which the initial funding under the Senior Credit Facilities is made and the Acquisition is consummated, you shall be obligated to reimburse pursuant to

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this paragraph only if you or any of your affiliates shall have received, in connection with the Merger Agreement, any compensation in the nature of expense reimbursement or in the nature of a break-up or similar payment (it being understood that, to the extent that the sum of expenses referred to in this paragraph and of your expenses (including for this purpose the expenses of the Rollover Shareholders) of a similar nature exceeds the aggregate amount of such compensation, such reimbursement shall be on a *pro rata* basis between your expenses, on the one hand, and the expenses referred to in this paragraph, on the other hand).

You agree to indemnify and hold harmless each Indemnified Party (as defined below) from and against (and will reimburse each Indemnified Party as the same are incurred for) any and all claims, damages, losses, liabilities and reasonable expenses (including, without limitation, the reasonable fees, disbursements and other charges of one counsel (except in the case of an asserted conflict of interest)) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (a) any aspect of the Transaction or any similar transaction and any of the other transactions contemplated thereby or (b) the Facilities and any other financings, or any use made or proposed to be made with the proceeds thereof, except to the extent such claim, damage, loss, liability or expense is found in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnified Party or its Related Parties. For purposes hereof, (A) "***Indemnified Party***" shall mean (i) each of Bank of America, Banc of America Bridge and BAS and (ii) as to any person referred to in clause (i), such person' s Related Parties; and (B) "***Related Parties***" shall mean, as to any person, (i) such person' s officers, directors and employees and (ii) such person' s affiliates, agents, advisors and other representatives in each case acting at the direction of such person. In the case of an investigation, litigation or proceeding to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by you, your equityholders or creditors or an Indemnified Party, whether or not an Indemnified Party is otherwise a party thereto and whether or not any aspect of the Transaction is consummated. You also agree that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to you or your subsidiaries or affiliates or to your or their respective equity holders or creditors arising out of, related to or in connection with any aspect of the Transaction, except to the extent of direct, as opposed to special, indirect, consequential or punitive, damages determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party' s bad faith, gross negligence or willful misconduct. Notwithstanding any other provision of this Commitment Letter, no Indemnified Party shall be liable for any damages arising from the use by others of information or other materials obtained through electronic telecommunications or other information transmission systems.

We agree to maintain the confidentiality of any Confidential Information (as defined below) provided to us by the Company or on its behalf relating to itself, any of its subsidiaries or the Transaction, except that such Confidential Information may be disclosed (a) to our affiliates and to our and our affiliates' respective partners, directors, officers, employees, agents, advisors and representatives (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such Confidential Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over us (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or any action or proceeding relating to this Commitment Letter, the Fee Letter or the Engagement Letter or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this paragraph, to any assignee of or participant

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in, or any prospective assignee of or participant in, any of our rights or obligations under the Facilities, (g) with the consent of the Company or (h) to the extent such Confidential Information (x) becomes publicly available other than as a result of a breach of this paragraph or (y) becomes available to us or any of our affiliates on a nonconfidential basis from a source other than the Company. "***Confidential Information***" means all information received from Holdings or the Company relating to Holdings or the Company or either of their respective businesses, other than any such information that is available to the Lead Arranger or any Lender on a nonconfidential basis prior to disclosure by Holdings or the Company.

This Commitment Letter, the Fee Letter and the Engagement Letter and the contents hereof and thereof are confidential and, except for the disclosure hereof or thereof on a confidential basis to your officers, directors, employees, agents, accountants, attorneys and other professional advisors retained by you in connection with the Transaction or as otherwise required by law, may not be disclosed in whole or in part to any person or entity without our prior written consent; *provided*, *however*, it is understood and agreed that (a) you may disclose this Commitment Letter, but not, without our consent, the Fee Letter or the Engagement Letter, on a confidential basis to the board of directors, officers, employees, agents, attorneys and advisors of the Company in connection with their consideration of the Transaction, (b) you may disclose this Commitment Letter (i) after your acceptance of this Commitment Letter, the Fee Letter and, if you accept this Commitment Letter as to the Bridge Facility, the Engagement Letter, in filings with the Securities and Exchange Commission and other applicable regulatory authorities and stock exchanges and (ii) as required by any applicable regulatory authority and (c) you may make public disclosure of the existence and amount of the commitments hereunder and of our identity in such form as we may mutually agree after your acceptance of this Commitment Letter, the Fee Letter and, if you accept this Commitment Letter as to the Bridge Facility, the Engagement Letter. Bank of America, Banc of America Bridge and BAS hereby notify you that, pursuant to the requirements of the USA Patriot Act, Title III of Pub. L. 107-56 (signed into law on October 26, 2001) (the "***Patriot Act***"), each of them is required to obtain, verify and record information that identifies you, the Company and each Guarantor (as defined in the Summaries of Terms), which information includes names and addresses and other information that will allow Bank of America, Banc of America Bridge or BAS, as applicable, to identify you, the Company and each Guarantor in accordance with the Patriot Act.

You acknowledge that Bank of America, Banc of America Bridge and BAS or their affiliates may be providing financing or other services to parties whose interests may conflict with yours. Bank of America, Banc of America Bridge and BAS agree that they will treat confidential information relating to you, the Company and your and its respective affiliates with the same degree of care as they treat their own confidential information. Bank of America, Banc of America Bridge and BAS further advise you that they will not make available to you confidential information that they have obtained or may obtain from any other customer. In connection with the services and transactions contemplated hereby, you agree that Bank of America, Banc of America Bridge and BAS are permitted to access, use and share with, on a confidential basis, any of their bank or non-bank affiliates, agents, advisors (legal or otherwise) or representatives any information concerning you, the Company or any of your or its respective affiliates that is or may come into the possession of Bank of America, Banc of America Bridge, BAS or any of such affiliates.

In connection with all aspects of each transaction contemplated by this letter, you acknowledge and agree that: (i) the Facilities and any related arranging or other services described in this letter are arm' s-length commercial transactions between you and your affiliates, on the one hand, and Bank of America, Banc of America Bridge and BAS, on the other hand, and you are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated by this Commitment Letter; (ii) in connection with the process leading to such transactions, Bank of America, Banc of America Bridge and BAS each is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for you or any of your affiliates, stockholders, creditors or

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employees or any other party; (iii) none of Bank of America, Banc of America Bridge or BAS has assumed or will assume an advisory, agency or fiduciary responsibility in your or your affiliates' favor with respect to any of the transactions contemplated hereby or the process leading thereto (irrespective of whether Bank of America, Banc of America Bridge or BAS has advised or is currently advising you or your affiliates on other matters) and none of Bank of America, Banc of America Bridge or BAS has any obligation to you or your affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth in this Commitment Letter, the Fee Letter and, if you accept this Commitment Letter as to the Bridge Facility, the Engagement Letter; (iv) Bank of America, Banc of America Bridge and BAS and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from yours and your affiliates and Bank of America, Banc of America Bridge and BAS have no obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (v) Bank of America, Banc of America Bridge and BAS have not provided any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby and you have consulted your own legal, accounting, regulatory and tax advisors to the extent you have deemed appropriate. You hereby waive and release, to the fullest extent permitted by law, any claims that you may have against Bank of America, Banc of America Bridge and BAS with respect to any breach or alleged breach of agency or fiduciary duty.

The provisions of the immediately preceding five paragraphs shall remain in full force and effect regardless of whether any definitive documentation for the Facilities shall be executed and delivered, and notwithstanding the termination of this Commitment Letter or any commitment or undertaking of Bank of America, Banc of America Bridge or BAS hereunder; *provided*, *however*, that you shall be deemed released of your reimbursement and indemnification obligations hereunder with respect to (i) the Senior Credit Facilities, if you have accepted the commitments hereunder in respect of the Senior Credit Facilities, upon the execution of all definitive documentation for the Senior Credit Facilities and the initial extension of credit thereunder and (ii) the Bridge Facility if you have accepted the commitments hereunder in respect of the Bridge Facility, upon the execution of all definitive documentation for the Bridge Facility and the advance of the Bridge Loans thereunder or the execution and delivery of all definitive documentation for the Senior Subordinated Notes and the issuance and sale thereof on the Closing Date.

This Commitment Letter and the Fee Letter may be executed in multiple counterparts and by different parties hereto in separate counterparts, all of which, taken together, shall constitute an original. Delivery of an executed counterpart of a signature page to this Commitment Letter or the Fee Letter by telecopier or facsimile shall be effective as delivery of a manually executed counterpart thereof.

This Commitment Letter and the Fee Letter shall be governed by, and construed in accordance with, the laws of the State of New York. Each of you, Bank of America, Banc of America Bridge and BAS hereby irrevocably waives any and all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Commitment Letter, the Fee Letter, the Transaction and the other transactions contemplated hereby and thereby or the actions of Bank of America, Banc of America Bridge and BAS in the negotiation, performance or enforcement hereof.

This Commitment Letter and the Fee Letter (and, if this Commitment Letter is accepted with respect to the Bridge Facility, the Engagement Letter) embody the entire agreement and understanding among Bank of America, Banc of America Bridge, BAS, you and your affiliates with respect to the Facilities and supersede all prior agreements and understandings relating to the subject matter hereof. This Commitment Letter sets forth all of the material terms of the Facilities and all of the conditions precedent to the extension of the Facilities. Those terms of the Facilities that are not covered or made clear herein or in the Summaries of Terms or the Fee Letter are subject to mutual agreement of

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the parties. No party has been authorized by Bank of America, Banc of America Bridge or BAS to make any oral or written statements that are inconsistent with this Commitment Letter.

This Commitment Letter is not assignable by any party without the prior written consent of the other parties and is intended to be solely for the benefit of the parties hereto and the Indemnified Parties.

All commitments and undertakings of Bank of America and BAS hereunder with respect to the Senior Credit Facilities will expire at 5:00 p.m. (New York City time) on December 28, 2005 unless you execute this Commitment Letter and the Fee Letter and return them to us prior to that time. All commitments and undertakings of Banc of America Bridge and BAS hereunder with respect to the Bridge Facility will also expire at that time unless you execute this Commitment Letter, the Fee Letter and the Engagement Letter, and return them to us prior to that time. Thereafter, all commitments and undertakings to arrange and syndicate the Facilities of Bank of America, Banc of America Bridge and BAS hereunder will expire on the earliest of (a) August 15, 2006, unless the Closing Date occurs on or prior thereto, (b) the closing of the Acquisition, in the case of the Senior Credit Facilities, without the use of the Senior Credit Facilities or, in the case of the Bridge Facility, without the use of the Bridge Facility and (c) the date of the termination of the Merger Agreement and the abandonment of the Transaction by you.

BY SIGNING THIS COMMITMENT LETTER, EACH OF THE PARTIES HERETO HEREBY ACKNOWLEDGES AND AGREES THAT (A) BANK OF AMERICA IS OFFERING TO PROVIDE THE SENIOR CREDIT FACILITIES SEPARATE AND APART FROM BANC OF AMERICA BRIDGE' S OFFER TO PROVIDE THE BRIDGE FACILITY AND (B) BANC OF AMERICA BRIDGE IS OFFERING TO PROVIDE THE BRIDGE FACILITY SEPARATE AND APART FROM THE OFFER BY BANK OF AMERICA TO PROVIDE THE SENIOR CREDIT FACILITIES. YOU MAY, AT YOUR OPTION, ELECT TO ACCEPT THIS COMMITMENT LETTER (AND THE APPLICABLE PROVISIONS OF THE FEE LETTER) WITH RESPECT TO EITHER THE SENIOR CREDIT FACILITIES OR THE BRIDGE FACILITY OR BOTH.

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We are pleased to have the opportunity to work with you in connection with this important financing.

Very truly yours,

BANK OF AMERICA, N.A.

By: /s/ Peter M. Glaser
Name: Peter M. Glaser
Title: Managing Director

BANC OF AMERICA BRIDGE LLC

By: /s/ Peter M. Glaser
Name: Peter M. Glaser
Title: Managing Director

BANC OF AMERICA SECURITIES LLC

By: /s/ Peter M. Glaser
Name: Peter M. Glaser
Title: Managing Director

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THE PROVISIONS OF THIS COMMITMENT LETTER
WITH RESPECT TO THE SENIOR CREDIT FACILITIES
ARE ACCEPTED AND AGREED TO AS OF THE DATE
FIRST ABOVE WRITTEN:

iPAYMENT HOLDINGS, INC.

By: /s/ Gregory S. Daily
Name: Gregory S. Daily
Title: President

THE PROVISIONS OF THIS COMMITMENT LETTER
WITH RESPECT TO THE BRIDGE FACILITY
ARE ACCEPTED AND AGREED TO AS OF THE DATE
FIRST ABOVE WRITTEN:

iPAYMENT HOLDINGS, INC.

By: /s/ Gregory S. Daily
Name: Gregory S. Daily
Title: President

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EXHIBIT A

iPayment
Senior Credit Facilities
Summary of Terms and Conditions

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Exhibit A is attached

Borrower:	Upon consummation of the merger as contemplated by the Merger Agreement, iPayment Inc., a Delaware corporation (the "***Borrower***"), as the surviving corporation in the merger with a newly created, wholly-owned subsidiary of Holdings ("***MergerCo.***").
Rollover Shareholders:	Each person holding shares of the Company on the Closing Date that are controlled, directly or indirectly, by the management of the Company, that will invest such shares (or a portion of such shares) in Holdings (the "***Rollover Shareholders***").
Holdings:	iPayment Holdings, Inc., a corporation formed by the Rollover Shareholders to acquire (the "***Acquisition***") the Company and, upon consummation of the Acquisition, hold all of the capital stock of the Borrower.
Guarantors:	The obligations of the Borrower and its subsidiaries under the Senior Credit Facilities and under any treasury management, interest protection or other hedging arrangements entered into with a Lender (or any affiliate thereof) will be guaranteed by Holdings and each existing and future direct and indirect material domestic subsidiary of the Borrower. All guarantees will be guarantees of payment and not of collection.
Administrative and Collateral Agent:	Bank of America, N.A. ("***Bank of America***") will act as sole and exclusive administrative and collateral agent (the "***Administrative Agent***").
Sole Lead Arranger and Sole Bookrunning Manager:	Banc of America Securities LLC ("***BAS***") will act as sole and exclusive lead arranger and sole and exclusive bookrunning manager (the "***Senior Lead Arranger***").
Senior Lenders:	Bank of America and other banks, financial institutions and institutional lenders acceptable to the Lead Arranger and reasonably acceptable to the Borrower.
Senior Credit Facilities:	An aggregate principal amount of $475 million (subject to reduction as contemplated by the Equity Offset Reduction (as defined in Exhibit C to

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the Commitment Letter)) will be available through the following facilities:

Term Loan Facility: a $450 million term loan facility, all of which will be drawn on the Closing Date (the "***Term Loan Facility***").

Revolving Credit Facility: a $25 million revolving credit facility, available from time to time until the sixth anniversary of the Closing Date (and at least $25 million shall be available thereunder as of the Closing Date after giving effect to the Transaction), which will include a sublimit of $15 million (which shall be increased to $25 million if the Revolving Credit Facility shall be increased to $50 million) for the issuance of letters of credit (each a "***Letter of Credit***") and a sublimit for swingline loans (each a "***Swingline Loan***"). Letters of Credit will be initially issued by Bank of America (in such capacity, the "***Fronting Bank***") and Swingline Loans will be made available by Bank of America, and each of the Senior Lenders under the Revolving Credit Facility will purchase an irrevocable and unconditional participation in each Letter of Credit and each Swingline Loan.

Swingline Option: Swingline Loans will be made available on a same day basis in an aggregate amount not exceeding $7,500,000 and in minimum amounts of $100,000. The Borrower must repay (or refinance through drawings under the Revolving Credit Facility) each Swingline Loan in full no later than 10 business days after such loan is made.

Purpose: The proceeds of the Senior Credit Facilities shall be used to (i) finance in part the Acquisition; (ii) refinance certain existing indebtedness of the Company and its subsidiaries; (iii) pay fees and expenses incurred in connection with the Transaction; and (iv) provide ongoing working capital and for capital expenditures and other general corporate purposes of the Borrower and its subsidiaries.

Closing Date: The date of the initial extension of credit under the Senior Credit Facilities, which shall occur on or before August 15, 2006 (the "***Closing Date***").

Incremental Facilities: Subject to the satisfaction of certain conditions to be agreed, the Borrower will be entitled to request an increase in the amount of the Term Loan Facility or the Revolving Credit Facility, or the addition of one or more new facilities, in an aggregate amount of up to $75 million (less any amount by which the Revolving Credit Facility may be increased on or prior to the Closing Date above the $25 million specified above).

Interest Rates: The interest rates per annum applicable to the Senior Credit Facilities (other than in respect of Swingline Loans) will be LIBOR *plus* the Applicable Margin (as hereinafter defined) or, at the option of the Borrower, the Alternate Base Rate (to be defined as the higher of (x) the Bank of America prime rate and (y) the Federal Funds rate *plus* 0.50%) *plus* the Applicable Margin. The Applicable Margin means

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(a) with respect to the Revolving Credit Facility, (i) until the Borrower delivers its financial statements for the first full fiscal quarter following the Closing Date, 2.25% per annum, in the case of LIBOR advances, and 1.25% per annum, in the case of Alternate Base Rate advances, and (ii) thereafter, a percentage per annum to be determined in accordance with a pricing grid to be agreed, based on the Leverage Ratio (total debt/EBITDA), and

(b) with respect to the Term Loan Facility, 2.25% per annum, in the case of LIBOR advances, and 1.25% per annum, in the case of Alternate Base Rate advances;

provided that in the event the Senior Credit Facilities do not receive ratings of at least B1 by Moody' s and B+ by S&P (in each case with a stable outlook) the percentages set forth in each of (a) and (b) above shall be 2.50% per annum, in the case of LIBOR advances and 1.50% per annum, in the case of Alternate Base Rate advances

Each Swingline Loan shall bear interest at the Alternate Base Rate plus the Applicable Margin in respect of the Revolving Credit Facility.

The Borrower may select interest periods of one, two, three or six months or, if available to all Lenders, nine or twelve months for LIBOR advances. Interest shall be payable at the end of the selected interest period, but no less frequently than quarterly.

Overdue principal, interest, fees and other amounts shall bear interest at the rate that is 2.0% above the rate then borne by such borrowing.

Commitment Fee:

Commencing on the Closing Date, a commitment fee of (a) until the Borrower delivers its financial statements for the first full fiscal quarter following the Closing Date, 0.50%, and (b) thereafter, a percentage per annum determined in accordance with a pricing grid to be agreed, based on the Leverage Ratio shall be payable on the unused portions of the Senior Credit Facilities (including Swingline Loans), such fee to be payable quarterly in arrears and on the date of termination or expiration of the commitments.

Letter of Credit Fees:

Outstanding Letter of Credit fees equal to the Applicable Margin from time to time on Revolving Credit LIBOR advances on a per annum basis will be payable quarterly in arrears and shared proportionately by the Lenders under the Revolving Credit Facility. In addition, a fronting fee will be payable to the Fronting Bank for its own account in an amount equal to 0.125% per annum of the amount available to be drawn under such Letter of Credit, shall be payable to the Fronting Bank for its own account quarterly in arrears.

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Calculation of Interest and Fees: Other than calculations in respect of interest at the Alternate Base Rate (which shall be made on the basis of actual number of days elapsed in a 365/366 day year), all calculations of interest and fees shall be made on the basis of actual number of days elapsed in a 360-day year.

Maturity: The Term Loan Facility shall be subject to repayment according to the Scheduled Amortization (as defined below), with the final payment of all amounts outstanding, *plus* accrued interest, being due seven years after the Closing Date.

The Revolving Credit Facility shall terminate and all amounts outstanding thereunder shall be due and payable in full six years after the Closing Date.

Scheduled Amortization: *Term Loan Facility*: The Term Loan Facility will be subject to quarterly amortization of principal (in equal installments), with 0.25% of the initial aggregate Term Loan Advances to be payable at the end of each quarter prior to maturity and 93.25% of the initial aggregate Term Loan Advances to be payable at maturity (collectively, the "***Scheduled Amortization***").

Revolving Credit Facility: Advances under the Revolving Credit Facility may be made, and Letters of Credit may be issued, on a revolving basis up to the full amount of the Revolving Credit Facility.

Mandatory Prepayments and Commitment Reductions: In addition to the amortization set forth above, subject to customary and other exceptions to be agreed, the Senior Credit Facilities shall be prepaid with (a) 100% of all net cash proceeds (i) from sales of property and assets of Holdings and its subsidiaries (with exceptions to include (x) sales of assets in the ordinary course of business, (y) sales generating net cash proceeds not to exceed an amount to be agreed upon in any fiscal year and (z) reinvestment provisions to be agreed upon so long as the respective reinvestment is made or contracted to be made with in 365 days after the date of the receipt of the proceeds therefrom (so long as actually made within a time frame to be agreed upon)) and proceeds from insurance and condemnation awards (subject to repair and replacement provisions to be agreed upon and subject to the reinvestment rights referred to above) and (ii) from the issuance or incurrence after the Closing Date of additional debt of Holdings or any of its subsidiaries other than debt permitted to be incurred under the loan documentation (including, if the Bridge Facility is funded, the Rollover Loans or Exchange Notes referred to in Exhibit B or Permanent Securities in an amount sufficient to refinance any outstanding Bridge Financing and to pay all related fees and expenses in full), and (b) 75% of Excess Cash Flow (to be defined in the loan documentation) of Holdings and its subsidiaries, *provided* that the foregoing percentage shall be reduced to 50% and to 0% at Leverage Ratios to be agreed. Each such prepayment

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shall be applied to the Senior Credit Facilities in the following manner: *first*, at the Borrower' s option, to any scheduled principal installments due within the following twelve months in direct order of maturity and, thereafter, ratably to all remaining principal repayment installments of the Term Loan Facility and, *second*, to the outstandings under the Revolving Credit Facility, but without reduction of the commitments thereunder. Escrow arrangements will be implemented to avoid interest period breakage charges that might otherwise result from mandatory prepayments.

Optional Prepayments and Commitment Reductions:

The Senior Credit Facilities may be prepaid at any time in whole or in part without premium or penalty, except that any prepayment of LIBOR advances other than at the end of the applicable interest periods therefor shall be made with reimbursement for any actual funding losses and redeployment costs of the Lenders resulting therefrom. Each such prepayment of the Term Loan Facility shall be applied as directed by the Borrower. The unutilized portion of any commitment under the Senior Credit Facilities may be reduced or terminated by the Borrower at any time without penalty.

Security:

The Borrower and each of the Guarantors shall grant the Administrative Agent for the benefit of the Senior Lenders valid and perfected first priority liens and security interests in all of the following (the "***Collateral***") (subject to customary exceptions and exceptions for those assets as to which the Administrative Agent shall determine in its reasonable discretion that the cost of obtaining a security interest therein is excessive in relation to the value of the security to be afforded thereby):

(a) All present and future shares of capital stock of (or other ownership or profit interests in) each of its present and future subsidiaries (limited, in the case of foreign subsidiaries, to a pledge of 65% of the capital stock of each first-tier foreign subsidiary to the extent the pledge of any greater percentage would result in adverse tax consequences to the Borrower), including, without limitation, all of the equity interests in the Borrower owned or otherwise held by Holdings.

(b) All present and future intercompany debt of the Borrower and each Guarantor.

(c) Substantially all of the present and future property and assets, real and personal, of the Borrower and each Guarantor, including, but not limited to, machinery and equipment, inventory and other goods, accounts receivable, owned real estate, fixtures, bank accounts, general intangibles, financial assets, investment property, license rights, patents, trademarks, tradenames, copyrights, chattel paper, insurance proceeds,

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contract rights, hedge agreements, documents, instruments, indemnification rights and tax refunds.

(d) All proceeds and products of the property and assets described in clauses (a), (b) and (c) above.

The Collateral shall ratably secure the relevant party' s obligations in respect of the Senior Credit Facilities, any treasury management arrangements and any interest rate swap or similar agreements with a Senior Lender under the Senior Credit Facilities.

Initial Conditions Precedent: Only those specified in Exhibit C to the Commitment Letter.

Conditions Precedent to Each Borrowing Under the Senior Credit Facilities: Each borrowing or issuance or renewal of a Letter of Credit under the Senior Credit Facilities will be subject to satisfaction of the following conditions precedent: (i) all of the representations and warranties in the loan documentation shall be true and correct in all material respects (although any representations and warranties which relate to a given date or period shall be required to be true and correct in all material respects as of the respective date or for the respective period, as the case may be); and (ii) no defaults or Events of Default shall have occurred and be continuing.

Representations and Warranties: The following (subject in each case to customary exceptions and qualifications to be agreed but in any case, such representations and warranties shall be no less favorable to the Borrower than the representations and warranties set forth in the Company' s existing credit agreement): (i) existence, qualification and power; (ii) authorization and no violation of law, contracts or organizational documents; (iii) no governmental authorization and third party approvals or consents; (iv) binding effect; (v) financial statements and other information and no material adverse effect; (vi) no material litigation; (vii) no default; (viii) valid ownership of property and assets free and clear of liens; (ix) environmental matters; (x) insurance matters; (xi) tax matters; (xii) ERISA matters; (xiii) subsidiaries and equity interests; (xiv) margin regulations, Investment Company Act status; (xv) accuracy of disclosure; (xvi) compliance with laws; (xvii) intellectual property matters; (xviii) solvency; (xix) casualty, etc.; (xx) perfection of security interests; and (xxi) senior debt and designated senior debt.

Covenants: The following (applicable to Holdings and its subsidiaries following the closing) (subject in each case to customary exceptions and qualifications to be agreed):

(a) Affirmative Covenants − (i) annual and quarterly financial statements and annual budgets; (ii) certificates and other

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information reasonably requested; (iii) notices; (iv) payment of taxes and other obligations; (v) preservation of corporate existence, etc.; (vi) maintenance of properties; (vii) maintenance of insurance (including key-man life insurance on the chief executive officer of the Borrower as of the date of the Commitment Letter in an amount not less than $25 million); (viii) compliance with laws and regulations; (ix) proper books and records; (x) visitation and inspection rights; (xi) use of proceeds; (xii) additional guarantees and collateral; (xiii) compliance with environmental laws; (xiv) environmental reports; (xv) further assurances as to after-acquired Guarantors; (xvi) performance of material agreements; and (xvii) interest rate hedging.

(b) Negative Covenants - Restrictions on (i) liens; (ii) debt (with exceptions to include the Senior Subordinated Notes or the Bridge Financing and the Permanent Securities in an amount sufficient to refinance the outstanding Bridge Financing); (iii) loans, acquisitions, joint ventures and other investments; (iv) mergers, consolidations, etc.; (v) sales, transfers and other dispositions of property or assets (with exceptions to include sales of assets in the ordinary course of business); (vi) dividends, distributions, redemptions and other restricted payments; (vii) sale-leaseback transactions; (viii) changes in the nature of business; (ix) transactions with affiliates; (x) payment and dividend restrictions affecting subsidiaries of the Borrower; (xi) capital expenditures; (xii) amending or modifying organizational documents, subordinated debt documents, transaction documents and other material agreements in a manner adverse to the Lenders; (xiii) prepaying, redeeming or repurchasing certain debt; (xiv) changes in accounting policies other than as permitted or required by GAAP; (xv) becoming a general partner in any partnership other than through a subsidiary the sole asset of which is its interest in such partnership; (xvi) speculative transactions; and (xvi) with respect to Holdings, passive holding company.

(c) Financial Covenants − To consist of the following:

Maintenance of a minimum Interest Coverage Ratio (EBITDA/cash interest expense) to be determined, with step-up provisions to be agreed;

Maintenance of a maximum Total Leverage Ratio (total debt/EBITDA) to be determined, with step-down provisions to be agreed.

All of the financial covenants will be calculated on a consolidated basis and for each consecutive four fiscal quarter period and based on an approximately 20% cushion to the Company' s forecasts.

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The controlling shareholder of Holdings shall be allowed two non-consecutive opportunities to cure defaults under the coverage and leverage ratio covenants by contributing cash (the amount of such cash to be deemed to constitute EBITDA for purposes of such covenants) to Holdings and the Borrower, in each case in exchange for additional common equity, in a manner and subject to customary limitations (including with respect to the amount and timing of such contribution).

Interest Rate Protection: The Borrower shall obtain interest rate protection in a notional amount equal to 50% of its floating rate indebtedness for borrowed money for a period of two years from the Closing Date.

Events of Default: The following (subject in each case to customary exceptions and qualifications to be agreed): (i) nonpayment of principal when due or interest, fees or other amounts after a grace period to be agreed; (ii) failure to perform or observe covenants set forth in the loan documentation within a specified period of time, where customary and appropriate, after such failure; (iii) any representation or warranty proving to have been materially incorrect when made or confirmed; (iv) cross-defaults to other indebtedness in an amount to be agreed; (v) bankruptcy, insolvency proceedings, etc. (with grace period for involuntary proceedings to be agreed); (vi) inability to pay debts, attachment, etc.; (vii) monetary judgment defaults in an amount to be agreed and material nonmonetary judgment defaults; (viii) customary ERISA defaults; (ix) actual or asserted invalidity of loan documentation or impairment of a material amount of the Collateral; and (x) change of control.

Assignments and Participations: *Revolving Credit Facility Assignments*: Each Lender will be permitted to make assignments in respect of the Revolving Credit Facility in a minimum amount equal to $5 million to other financial institutions approved by the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower, which approval shall not be unreasonably withheld or delayed; *provided*, *however*, that the approval of the Borrower shall not be required in connection with assignments to other Lenders, to any affiliate of a Lender, or to any Approved Fund (as such term is defined in the definitive documentation) and the approval of the Administrative Agent shall not be required in connection with assignments to other Lenders under the Revolving Credit Facility. Notwithstanding the foregoing, however, any Lender assigning a Commitment (as such term shall be defined in the definitive loan documentation) shall be required to obtain the approval of the Administrative Agent, the Fronting Bank, and the lender for any Swingline Loan, unless the proposed assignee is already a Lender.

Term Loan Facility Assignments: Each Lender will be permitted to make assignments in respect of the Term Loan Facility in a minimum amount equal to $1 million to other financial institutions approved by the Administrative Agent and, so long as no Event of Default has occurred

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and is continuing, the Borrower which approvals shall not be unreasonably withheld or delayed; *provided*, *however*, that the approvals of the Administrative Agent and the Borrower shall not be required in connection with assignments of the Term Loan Facility to other Lenders, to any affiliate of a Lender, or to any Approved Fund.

Assignments Generally: An assignment fee will be charged with respect to each assignment as set forth in Addendum I. Each Lender will also have the right, without consent of the Borrower or the Administrative Agent, to assign as security all or part of its rights under the loan documentation to any Federal Reserve Bank.

Participations: Lenders will be permitted to sell participations with voting rights limited to changes in amount, rate, maturity date and releases of all or substantially all of the Collateral or the value of the guarantees. Participants will have the same benefits as the Lenders (and will be limited to the amount of such benefits) with respect to yield protection and increased cost provisions, subject to customary limitations.

Waivers and Amendments:

Amendments and waivers of the provisions of the loan documentation will require the approval of Lenders holding advances and commitments representing more than 50% of the aggregate advances and commitments under the Senior Credit Facilities, except that (a) the consent of each affected Lender shall be required with respect to (i) increases in commitment amounts, (ii) reductions of principal, interest, or fees and (iii) extensions of scheduled maturities or times for payment and (b) the consent of all Lenders shall be required with respect to releases of all or substantially all of the Collateral or the value of the guarantees.

Indemnification:

The Borrower will indemnify and hold harmless each Indemnified Party (as defined below) from and against all losses, liabilities, claims, damages or expenses arising out of or relating to the Transaction, the Senior Credit Facilities, the Borrower's use of loan proceeds or the commitments, including, but not limited to, reasonable attorneys' fees and settlement costs, except to the extent such loss, liability, claim, damage or expense is found in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnified Party or its Related Parties. For purposes hereof, (A) "***Indemnified Party***" shall mean (i) the Administrative Agent, the Senior Lead Arranger and each Lender and (ii) as to any person referred to in clause (i), such person's Related Parties; and (B) "***Related Parties***" shall mean, as to any person, (i) such person's officers, directors and employees and (ii) such person's affiliates, agents, advisors and other representatives in each case acting at the direction of such person.

Governing Law:

New York.

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Expenses:	If the Closing Date occurs, the Borrower will pay all reasonable out of pocket costs and expenses associated with the due diligence, syndication and closing of the Senior Credit Facilities and the preparation, negotiation and administration of all loan documentation, including, without limitation, the reasonable legal fees of one counsel retained by, and of any local counsel retained with your prior consent (not to be unreasonably withheld) by, the Administrative Agent and BAS. The Borrower will also pay the out of pocket expenses of the Administrative Agent and each Lender in connection with the enforcement of any of the loan documentation.
Counsel to the Administrative Agent:	Shearman & Sterling LLP
Miscellaneous:	Each of the parties shall (i) waive its right to a trial by jury and (ii) submit to New York jurisdiction. The loan documentation will contain customary increased cost, withholding tax, capital adequacy and yield protection provisions.

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ADDENDUM I
PROCESSING AND RECORDATION FEES

The Administrative Agent will charge a processing and recordation fee (an "***Assignment Fee***") in the amount of $2,500 for each assignment; *provided, however*, that, in the event of two or more concurrent assignments to members of the same Assignee Group (which may be effected by a suballocation of an assigned amount among members of such Assignee Group) or two or more concurrent assignments by members of the same Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group), the Assignment Fee will be $2,500 *plus* the amount set forth below:

Transaction:	Assignment Fee:
First four concurrent assignments or suballocations to members of an Assignee Group (or from members of an Assignee Group, as applicable)	-0-
Each additional concurrent assignment or suballocation to a member of such Assignee Group (or from a member of such Assignee Group, as applicable)	$500

For purposes hereof, "***Assignee Group***" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor. The terms "***Affiliate,***" "***Approved Fund***" and "***Eligible Assignee***" shall be defined in the definitive loan documentation.

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Bridge Facility
Summary of Terms and Conditions

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Exhibit B-1 is attached

Borrower:	Same Borrower as in the Summary of Terms and Conditions for the Senior Credit Facilities.
Guarantors:	Same Guarantors as in the Summary of Terms and Conditions for the Senior Credit Facilities.
Sole Lead Arranger and Sole Bookrunning Manager:	Banc of America Securities LLC ("***BAS***") will act as sole and exclusive lead arranger and sole and exclusive bookrunning manager for the Bridge Facility (the "***Bridge Lead Arranger***").
Bridge Lenders:	Banc of America Bridge LLC or an affiliate thereof ("***Banc of America Bridge***" or the "***Initial Bridge Lender***") and other financial institutions and institutional lenders acceptable to BAS and reasonably acceptable to the Borrower.
Bridge Facility:	$285 million (subject to reduction as contemplated by the Equity Offset Reduction (as defined in Exhibit C to the Commitment Letter)) of unsecured senior subordinated bridge loans (the "***Bridge Loans***"). The Bridge Loans will be available to the Borrower in one drawing upon consummation of the Acquisition.
Ranking:	The Bridge Loans will be unsecured, senior subordinated obligations of the Borrower, subordinated to the Senior Credit Facilities pursuant to subordination provisions customary for high yield securities and ranking *pari passu* with or senior to all other unsecured obligations of the Borrower. The Guarantees will be unsecured, senior subordinated obligations of each Guarantor, subordinated to such Guarantor' s guarantee under the Senior Credit Facilities pursuant to subordination provisions customary for high yield securities and ranking *pari passu* with or senior to all other unsecured obligations of such Guarantor.
Purpose:	Together with borrowings under the Senior Credit Facilities, the proceeds of the Bridge Facility shall be used (i) to finance in part the Acquisition; (ii) to refinance certain existing indebtedness of the Company and its subsidiaries; and (iii) to pay fees and expenses incurred in connection with the Transaction.

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Closing Date:	The date of the extension of credit under the Bridge Facility, which shall occur on or before August 15, 2006 (the "***Closing Date***").
Interest Rates:	Interest shall be payable quarterly in arrears at a rate per annum equal to three-month LIBOR plus a margin initially equal to 6.50% per annum. The margin shall increase by 1.00% per annum at the end of the six-month period after the Closing Date and by an additional 0.50% per annum at the end of each three-month period thereafter for as long as the Bridge Financing is outstanding; *provided* that the interest rate shall not exceed 13% per annum; and *provided further* that the portion, if any, of any interest payable at a rate in excess of 12% per annum may be paid by capitalizing such interest and adding it to principal. Overdue principal, interest and other amounts shall bear interest at a rate per annum equal to the rate that is 2.00% in excess of the rate then borne by the Bridge Loans.
Maturity:	12 months from the Closing Date (the "***Bridge Loan Maturity Date***" or "***Rollover Date***").
Optional Prepayment:	The Bridge Loans may be prepaid prior to the Bridge Loan Maturity Date, without premium or penalty, in whole or in part, upon written notice, at the option of the Borrower, at any time, together with accrued interest to the prepayment date.
Mandatory Prepayments:	The Borrower will prepay the Bridge Loans, without premium or penalty, together with accrued interest to the prepayment date, with any of the following: (i) 100% of the net cash proceeds from the issuance of the Permanent Securities or any other debt of Holdings or subordinated debt of the Borrower; (ii) subject to customary exceptions to be agreed and only to the extent such amounts are not required to be paid to the Senior Lenders under the Senior Credit Facilities, 100% of the net cash proceeds from any other indebtedness incurred by Holdings, the Borrower or any of the Borrower' s subsidiaries, other than debt permitted to be incurred under the Facilities; (iii) subject to customary exceptions to be agreed, 50% of the net cash proceeds from the issuance of any equity securities of Holdings or the Borrower; and (iv) subject to customary exceptions to be agreed and only to the extent such amounts are not required to be paid to the Senior Lenders under the Senior Credit Facilities, 100% of the net cash proceeds from asset sales by the Borrower or any of the Borrower' s subsidiaries (with exceptions to include (x) sales of assets in the ordinary course of business, (y) sales generating net cash proceeds not to exceed an amount to be agreed upon in any fiscal year and (z) reinvestment provisions to be agreed upon so long as the respective reinvestment is made or contracted to be made within 365 days after the date of the receipt of the proceeds therefrom (so long as actually made within a time frame to be agreed upon)) and proceeds from insurance and condemnation awards (subject to repair and replacement provisions to be agreed upon and subject to the reinvestment right referred to above).

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Change of Control:

In the event of a Change of Control, each Bridge Lender will have the right to require the Borrower, and the Borrower must offer, to prepay, without premium or penalty, the outstanding principal amount of the Bridge Loans plus accrued and unpaid interest thereon to the date of prepayment. Prior to making any such offer, the Borrower will, within 60 days of the Change of Control, repay all obligations under the Senior Credit Facilities or obtain any required consent of the Senior Lenders under the Senior Credit Facilities to make such prepayment of the Bridge Loans.

Permitted Refinancing:

If the Bridge Loans have not been previously prepaid in full for cash on or prior to the Rollover Date (with the proceeds of the Permanent Securities or otherwise), the principal amount of the Bridge Loans outstanding on the Rollover Date shall, subject to the conditions precedent set forth in Exhibit B-2, be refinanced by unsecured, senior subordinated rollover loans with a maturity of seven years from the Rollover Date (the "***Rollover Loans***") and otherwise having the terms set forth in Exhibit B-2. On or after the Rollover Date, each Bridge Lender will have the right to exchange the outstanding Rollover Loans held by it for unsecured, senior subordinated exchange notes (the "***Exchange Notes***") of the Borrower having the terms set forth in Exhibit B-3; *provided* that the initial issuance of Exchange Notes shall be in a principal amount of no less than $25 million.

Conditions Precedent:

Only those specified in Exhibit C to the Commitment Letter.

Covenants:

Usual affirmative covenants for facilities and transactions of this type and others as may be reasonably agreed by the Lead Arranger and the Borrower (including covenant for Borrower to use its commercially reasonable best efforts to refinance the Bridge Facility with proceeds of the Permanent Financing as promptly as practicable following the Closing Date) (but in any event no financial maintenance covenants) and incurrence based negative covenants consisting of: restrictions on the incurrence of indebtedness; the incurrence of debt junior to senior debt but senior to the Bridge Loans; the payment of dividends, redemption of capital stock and making certain investments; the incurrence of liens; the sale of assets and the sale of subsidiary stock; entering into agreements that restrict the payment of dividends by subsidiaries or the repayment of intercompany loans and advances; entering into affiliate transactions; entering into mergers, consolidations and sales of substantially all the assets of the Borrower and its subsidiaries and requirements as to future subsidiary guarantors, subject, in each case, to customary and other exceptions and qualifications to be agreed.

Representations and Warranties, Events of Default, Waivers and Consents:

Usual and customary for a transaction of this type and others reasonably agreed by the Bridge Lead Arranger and the Borrower, subject, in each

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case, to customary and other exceptions and qualifications to be agreed, but in any case, such representations and warranties shall be no less favorable to the Borrower than the representations and warranties set forth in the documentation for the Senior Credit Facilities.

Right to Assign Bridge Loans: The Bridge Lenders shall have the right to assign their interest in the Bridge Loans in whole or in part in a minimum assignment amount of $5 million and increments of $1 million in excess thereof in compliance with applicable law to any third parties only with the prior written consent of the Bridge Lead Arranger.

Waivers and Amendments: Amendments and waivers of the provisions of the loan documentation will require the approval of Lenders holding advances and commitments representing more than 50% of the aggregate advances and commitments under the Bridge Facility, except that (a) the consent of each affected Lender shall be required with respect to (i) increases in commitment amounts, (ii) reductions of principal, interest or fees and (iii) extensions of scheduled maturities or times for payment and (b) the consent of all Lenders shall be required with respect to releases of all or substantially all of the value of the guarantees.

Governing Law: New York.

Expenses: If the Closing Date occurs, the Borrower will pay all reasonable out of pocket costs and expenses associated with the due diligence and closing of the Bridge Facility and the preparation, negotiation and administration of all loan documentation, including, without limitation, the reasonable legal fees and expenses of one counsel retained by, and of any local counsel retained with your prior consent (not to be unreasonably withheld) by, the Bridge Lead Arranger. The Borrower will also pay the out of pocket expenses of each Bridge Lender in connection with the enforcement of any of the loan documentation.

Counsel to Bridge Lead Arranger: Shearman & Sterling LLP

Fees: As provided in the Fee Letter.

Miscellaneous: Each of the parties shall (i) waive its right to a trial by jury and (ii) submit to New York jurisdiction. The loan documentation will contain customary increased cost, withholding tax, capital adequacy and yield protection provisions.

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Rollover Facility
Summary of Terms and Conditions

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Exhibit B-2 is attached

Borrower:	Same Borrower as in the Summary of Terms and Conditions for the Senior Credit Facilities and the Summary of Terms and Conditions for the Bridge Facility.
Guarantors:	Same Guarantors as in the Summary of Terms and Conditions for the Senior Credit Facilities and the Summary of Terms and Conditions for the Bridge Facility.
Rollover Facility:	Unsecured, senior subordinated rollover loans (the "***Rollover Loans***") in an initial principal amount equal to 100% of the outstanding principal amount of the Bridge Loans on the Rollover Date. Subject to the condition precedent set forth below, the Rollover Loans will be available to the Borrower to refinance the Bridge Loans on the Rollover Date. The Rollover Loans will be governed by the definitive documents for the Bridge Loans and, except as set forth below, shall have the same terms as the Bridge Loans.
Ranking:	Same as Bridge Loans.
Interest Rate:	Rate and margins to continue to increase as set forth in Exhibit B-1 for the Bridge Loans.
Maturity:	Seven years from the Rollover Date (the "***Rollover Maturity Date***").
Optional Prepayment:	For so long as the Rollover Loans have not been exchanged for unsecured, senior subordinated exchange notes of the Borrower as provided in Exhibit B-3, they may be prepaid at the option of the Borrower, in whole or in part, at any time, together with accrued and unpaid interest to the prepayment date (but without premium or penalty).
Conditions Precedent to Rollover:	The ability of the Borrower to refinance any Bridge Loans with Rollover Loans is subject to the condition that, at the time of any such refinancing, there shall exist no insolvency Event of Default.
Right to Assign Rollover Loans:	The Bridge Lenders shall have the right to assign their interest in any Rollover Loans in whole or in part in compliance with applicable law to any third parties only with the prior written consent of the Bridge Lead Arranger.

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Rollover Covenants:	From and after the Rollover Date, the covenants applicable to the Rollover Loans will conform to those applicable to the Exchange Notes as specified in the Indenture therefor and other customary covenants to be agreed.
Governing Law:	New York.
Expenses:	Same as the Bridge Loans.
Fees:	As provided in the Fee Letter.

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Exchange Notes
Summary of Terms and Conditions

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Exhibit B-3 is attached

Borrower:	Same Borrower as in the Summary of Terms and Conditions for the Senior Credit Facilities and the Summary of Terms and Conditions for the Bridge Facility.
Guarantors:	Same Guarantors as in the Summary of Terms and Conditions for the Senior Credit Facilities and the Summary of Terms and Conditions for the Bridge Facility.
Exchange Notes:	At any time on or after the Rollover Date, Rollover Loans due to or held by any Bridge Lender may, at the option of such Bridge Lender, be exchanged for an equal principal amount of unsecured, senior subordinated exchange notes of the Borrower (the "***Exchange Notes***"); *provided* that the initial issuance of Exchange Notes shall be in a principal amount of at least $25 million. The Borrower will issue the Exchange Notes under an indenture that complies with the Trust Indenture Act of 1939, as amended (the "***Indenture***"). The Borrower will appoint a trustee reasonably acceptable to the holders of the Exchange Notes. The Indenture will include provisions customary for an indenture governing publicly traded high yield debt securities as agreed by the Borrower and the Bridge Lead Arranger. Except as expressly set forth above, the Exchange Notes shall have the same terms as the Rollover Loans.
Ranking:	Same as Bridge Loans.
Maturity:	Same as Rollover Loans.
Interest Rate Redemption Provision:	Each Exchange Note will initially bear interest at the rate in effect on the Rollover Loans for which it is exchanged and, thereafter, the rate and margin will continue to increase as set forth in Exhibit B-1 for the Bridge Loans, subject to the limitations set forth therein. For so long as they bear interest at an increasing rate of interest, the Exchange Notes will be redeemable at the option of the Borrower, in whole or in part at any time, at par plus accrued and unpaid interest to the redemption date (without penalty or premium). If any Exchange Note is sold by a holder to a third party purchaser, such holder shall have the option to fix the interest rate on such Exchange Note to a rate that is equal to the then applicable rate of interest borne by such Exchange Note; *provided* that the interest rate

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shall not exceed 13% per annum; *provided further* that the portion, if any, of any interest payable at a rate in excess of 12% per annum may be paid by capitalizing such interest and adding it to principal. In such event, such Exchange Notes will be non-callable until the fifth anniversary of the Closing Date (subject to customary equity clawback and make-whole provisions) and will be callable thereafter at par plus accrued interest plus a premium equal to one-half of the coupon in effect on the date on which the interest rate was fixed, declining ratably to par on the date that is one year prior to maturity of the Exchange Notes. The fixed rate Exchange Notes will provide for mandatory repurchase offers customary for publicly traded high yield debt securities, but without premium or penalty (except upon a change of control, in which case a 1% prepayment penalty will be payable).

Registration Rights: Within 60 days after Exchange Notes have been issued in an aggregate amount of at least $50 million, the Borrower shall file a shelf registration statement with the Securities and Exchange Commission and the Borrower shall use its commercially reasonable best efforts to cause such shelf registration statement to be declared effective within 180 days after such filing and keep such shelf registration statement effective, with respect to resales of the Exchange Notes, for as long as it is required by the holders to resell the Exchange Notes, but in no event longer than two years and 30 days from the date such aggregate amount of Exchange Notes has been issued. Upon failure to comply with the requirements of the registration rights agreement as set forth above (a "***Registration Default***"), the Borrower shall pay liquidated damages to each holder of Exchange Notes with respect to the first 90-day period immediately following the occurrence of the first Registration Default accruing at a rate equal to one-quarter of one percent (0.25%) per annum on the principal amount of Exchange Notes held by such holder. The rate of accrual of the liquidated damages will increase by an additional one-quarter of one percent (0.25%) per annum on the principal amount of Exchange Notes with respect to each subsequent 90-day period until all Registration Defaults have been cured, up to a rate of accrual of liquidated damages for all Registration Defaults of 1.00% per annum.

Governing Law: New York.

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iPayment
Conditions Precedent

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Exhibit C is attached

Conditions Precedent to Closing:

The closing and the initial extension of credit under the Senior Credit Facilities and the advances of the Bridge Loans under the Bridge Facility will be subject to the satisfaction of the following conditions precedent:

(i) All information related to the Company and its subsidiaries provided for in the Company' s filings with the Securities and Exchange Commission on forms 10-K, 10-Q and 8-K which is publicly available prior to the date of the Commitment Letter, taken as a whole, (i) is complete and correct in all material respects and (ii) does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein (taken as a whole) not misleading in light of the circumstances in which they were made.

(ii) The negotiation, execution and delivery of definitive documentation with respect to each Facility consistent with the terms of the Commitment Letter and otherwise reasonably satisfactory to BAS, the Administrative Agent and the Borrower. The Acquisition shall have been consummated (or shall be consummated substantially simultaneously with the closing of the Facilities) in accordance with the terms of, the Agreement and Plan of Merger dated as of December 27, 2005 (the "***Merger Agreement***") among iPayment Holdings, Inc., iPayment Mergerco, Inc. and iPayment, Inc. and all other related documentation without any amendment, modification or waiver that is adverse to the Lenders without the prior consent of the Lead Arranger (such consent not to be unreasonably withheld). Without limiting the generality of the above, the Arranger shall be satisfied that Holdings shall have received an Equity Contribution of at least $170 million, with at least 50.1% of such Equity Contribution consisting of Rollover Equity.

(iii) There shall not have occurred any event, circumstance, state of facts, change or development having an effect (a "***Material Adverse Effect***") that individually or in the aggregate (a) would, or would reasonably be expected to, prevent or materially delay the performance by the Company of its obligations under the Merger Agreement or the consummation by the Company of the transactions contemplated by the Merger Agreement on a timely

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basis or (b) is, or would reasonably be expected to be, materially adverse to the business, assets, results of operations or financial condition of the Company and its subsidiaries, taken as a whole, other than, in the case of this clause (b), any event circumstance, state of facts, change or development resulting from (i) changes in general economic or political conditions or the securities markets (including any such change caused by any natural disaster or any acts of terrorism, sabotage, military action or war (whether or not declared) or any escalation or worsening thereof, but excluding any such changes to the extent they disproportionately adversely affect the Company and its subsidiaries, taken as a whole), (ii) the announcement of the transactions contemplated by the Merger Agreement or other communication by Holdings or MergerCo. of their plans or intentions with respect to any of the businesses of the Company or any of its subsidiaries, (iii) the consummation of the transactions contemplated by the Merger Agreement or any actions by Holdings, MergerCo. or the Company taken pursuant to the Merger Agreement, (iv) any change in the market price or trading volume of the shares of common stock of the Company (the "***Shares***") or any failure by the Company to meet any revenue or earnings predictions released by the Company or provided to Holdings or MergerCo. or the revenue or earnings predictions of equity analysts (it being agreed that the events, circumstances, state of facts, changes or developments giving rise or contributing to any such change or failure may constitute or give rise to a Material Adverse Effect), (v) the failure of the Shares to be quoted on Nasdaq or (vi) the existence of any stockholder class action, derivative or similar litigation arising from allegations of breach of fiduciary duty relating to the Merger Agreement.

(iv) In the case of the Senior Credit Facilities, the Administrative Agent shall have received reasonably satisfactory evidence of receipt by the Borrower of not less than $285 million cash proceeds from the advance of the Bridge Loans or the issuance by the Borrower of the Senior Subordinated Notes (as such amount shall, at the request of the Company, be reduced dollar for dollar by the amount of additional Equity Contributions exceeding $170 million to the extent such reduction is necessary to permit the Leverage Ratio Condition (as defined below) to be satisfied (the "***Equity Offset Reduction***")); and, in the case of the Bridge Facility, the Lead Arranger shall have received reasonably satisfactory evidence of receipt by the Borrower of not less than $450 million cash proceeds from the advance of the Term Loan Facility (subject to reduction pursuant to the Equity Offset Reduction).

(v) The Lenders under each Facility shall have received customary opinions of counsel to the Borrower and the Guarantors (which shall cover, among other things, authorization and enforceability

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of the documents for such Facility and, in the case of the Senior Credit Facilities, creation and perfection of the liens granted thereunder on the Collateral) and of any appropriate local counsel and such corporate resolutions, certificates, instruments and other documents as are customary for transactions of this type. Receipt of all material governmental, shareholder and third party consents (including Hart-Scott-Rodino clearance) and approvals necessary in connection with the Facilities, each of which shall be in full force and effect. All loans made by the Lenders to the Borrower or any of its affiliates shall be in full compliance with the Federal Reserve' s margin regulations.

(vi) With respect to the Senior Credit Facilities, all documents and instruments necessary to perfect the Administrative Agent' s (on behalf of the Senior Lenders) security in interest in all the Collateral under the Senior Credit Facilities shall have been executed and delivered, and, if applicable, be in proper form for filing, and no material amount of the Collateral shall be subject to any other security interests except for customary liens permitted under the documentation with respect to the Senior Credit Facilities.

(vii) The Lead Arranger and the Lenders shall have received: (a) *pro forma* financial statements as to the Borrower (or, if reasonably required by the Lead Arranger, Holdings) and its subsidiaries giving effect to the Transaction for the most recently completed fiscal year and the period commencing with the end of the most recently completed fiscal year and ending with the most recently completed quarter in each case ended no less than 45 days prior to the Closing Date, and, with respect to any annual or quarterly periods, shall meet the requirements of Regulation S-X under the Securities Act of 1933, as amended, and all other accounting rules and regulations of the SEC promulgated thereunder applicable to a registration statement under such Act on Form S-1; and (b) evidence reasonably satisfactory to the Lead Arranger that the ratio of total debt of Holdings and its subsidiaries at the Closing Date to the consolidated EBITDA of the Company and its subsidiaries for the most recent four quarters ended not less than 45 days prior to the Closing Date (which pro forma ratio shall be calculated reflecting the Transaction on a pro forma basis) was not greater than 6.5:1.0 (the "***Leverage Ratio Condition***"). For purposes of this condition, EBITDA shall be determined in a manner that meets the requirements of Regulation S-X under the Securities Act of 1933, as amended, and all other accounting rules and regulations of the SEC promulgated thereunder and otherwise with adjustments to be mutually agreed. The Lenders shall have received certification as to the solvency of the Borrower and each Guarantor (after giving effect to the Transaction and the incurrence of indebtedness related thereto) from the chief financial officer of the Borrower.

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(viii) All accrued fees and expenses of the Administrative Agent, the Lead Arranger and the Initial Lenders (including the fees and expenses of counsel for the Administrative Agent and the Lead Arranger and local counsel for the Lenders) shall have been paid or shall be simultaneously paid upon the drawings under the Facilities. The Borrower shall have complied, in all material respects, with all of the terms of the Fee Letter and, if the Commitment Letter shall have been accepted as to the Bridge Facility, the Engagement Letter to be complied with on or before such date.

(ix) In the case of the Bridge Facility, (a) not later than 30 days prior to the Closing Date, the Borrower shall have completed and made available to the Lead Arranger and potential investors copies of an offering memorandum for the offer and sale of the Senior Subordinated Notes pursuant to Rule 144A of the rules and regulations under the Securities Act containing such disclosures as may be required by applicable laws, as are customary and appropriate for such a document and as may be reasonably required by the Bridge Lead Arranger (including all audited, pro forma and other financial statements and schedules of the Company of the type that would be required in a registered public offering of the Senior Subordinated Notes on Form S-1), and (b) senior management of the Company shall have made themselves available for due diligence, rating agency presentations and a road show and other meetings with potential investors for the Senior Subordinated Notes as required by the Bridge Lead Arranger in its reasonable judgment to market the Senior Subordinated Notes. Each of the Senior Credit Facilities and the Bridge Facility shall have received debt ratings from each of Moody's Investor Service Inc. ("***Moody's***") and Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("***S&P***") at least 30 days prior to the Closing Date.

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Exhibit 5

EXECUTION COPY

AGREEMENT AND PLAN OF MERGER

AMONG

iPAYMENT HOLDINGS, INC.,

iPAYMENT MERGERCO, INC.

AND

iPAYMENT, INC.

Dated as of December 27, 2005

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TABLE OF CONTENTS

ARTICLE I DEFINITIONS		1
Section 1.1	Definitions	1
Section 1.2	Construction	6
Section 1.3	Schedules and Exhibits	7
Section 1.4	Knowledge	7
ARTICLE II THE MERGER		7
Section 2.1	The Merger	7
Section 2.2	Certificate of Incorporation of the Surviving Corporation	7
Section 2.3	By-laws of the Surviving Corporation	8
Section 2.4	Directors and Officers of the Surviving Corporation	8
Section 2.5	Conversion of Stock	8
Section 2.6	Paying Agent; Surrender of Certificates; Payment	9
Section 2.7	Payment Fund	10
Section 2.8	No Further Rights of Transfers	10
Section 2.9	Stock Options and Restricted Stock	10
Section 2.10	Section 16 Matters	11
Section 2.11	Closing	11
Section 2.12	Withholding Rights	11
ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANY		12
Section 3.1	Due Organization, Good Standing and Corporate Power	12
Section 3.2	Authorization; Noncontravention	12
Section 3.3	Capitalization	13
Section 3.4	Consents and Approvals	13
Section 3.5	Company Reports and Financial Statements	14
Section 3.6	Absence of Certain Changes	14
Section 3.7	Compliance with Laws	14
Section 3.8	Litigation	15
Section 3.9	Employee Benefit Plans	15
Section 3.10	Labor Matters	16
Section 3.11	Taxes	16
Section 3.12	Intellectual Property	16
Section 3.13	Information	17
Section 3.14	Broker’ s or Finder’ s Fee	17
Section 3.15	Certain Contracts and Arrangements	17
Section 3.16	Environmental Laws and Regulations	17
Section 3.17	Opinion of Financial Advisor	18
Section 3.18	Board Approval	18
Section 3.19	Rights Agreement	18
Section 3.20	State Takeover Statutes	18
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGERCO		19
Section 4.1	Due Organization, Good Standing and Corporate Power	19
Section 4.2	Authorization; Noncontravention	19

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Section 4.3 Consents and Approvals 20
Section 4.4 Information 20
Section 4.5 Funds 20
Section 4.6 Litigation 20
Section 4.7 Investigation by Parent and MergerCo; Company' s Liability 20
Section 4.8 Broker' s or Finder' s Fees 21
Section 4.9 Solvency 21
Section 4.10 Exchange Agreement 22
Section 4.11 Guarantees 22

ARTICLE V ADDITIONAL AGREEMENTS 22
Section 5.1 Access to Information Concerning Properties and Records 22
Section 5.2 Conduct of the Business of the Company Pending the Closing Date 23
Section 5.3 Preparation of Proxy Statement; Stockholders' Meeting 24
Section 5.4 Reasonable Best Efforts 25
Section 5.5 No Solicitation of Other Offers 26
Section 5.6 Antitrust Laws 28
Section 5.7 Regulatory Approvals; Other Consents 29
Section 5.8 Indemnity; Directors' and Officers' Insurance; Fiduciary and Employee Benefit Insurance 29
Section 5.9 Public Announcements 30
Section 5.10 Notification of Certain Matters 31
Section 5.11 Defense of Litigation 31
Section 5.12 Acquisition of Shares 31
Section 5.13 Knowledge of Breach 31
Section 5.14 Confidentiality 31

ARTICLE VI CONDITIONS PRECEDENT 32
Section 6.1 Conditions to the Obligations of Each Party 32
Section 6.2 Conditions to the Obligations of Parent and MergerCo. 32
Section 6.3 Conditions to the Obligations of the Company 33

ARTICLE VII TERMINATION AND ABANDONMENT 33
Section 7.1 Termination 33
Section 7.2 Effect of Termination 35

ARTICLE VIII MISCELLANEOUS 35
Section 8.1 Fees and Expenses 35
Section 8.2 Representations and Warranties 36
Section 8.3 Extension; Waiver 36
Section 8.4 Notices 36
Section 8.5 Entire Agreement 38
Section 8.6 Binding Effect; Benefit; Assignment 38
Section 8.7 Amendment and Modification 38
Section 8.8 Headings 38
Section 8.9 Counterparts 38
Section 8.10 Applicable Law 38
Section 8.11 Severability 39

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Section 8.12	Specific Enforcement	39
Section 8.13	Waiver of Jury Trial	39
Section 8.14	Rules of Construction	39

Exhibit A − Form of Exchange Agreement

Exhibit B − Form of Guarantee

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER is dated as of December 27, 2005 (as amended, modified or supplemented from time to time, this "Agreement"), among iPAYMENT HOLDINGS, INC., a corporation organized under the laws of Delaware ("Parent"), iPAYMENT MERGERCO, INC., a corporation organized under the laws of Delaware and a wholly-owned subsidiary of Parent ("MergerCo"), and iPAYMENT, INC., a corporation organized under the laws of Delaware (the "Company").

W I T N E S S E T H:

WHEREAS, the respective boards of directors of each of Parent, MergerCo and the Company have approved the merger of MergerCo with and into the Company (the "Merger"), in accordance with the General Corporation Law of the State of Delaware (the "DGCL"), and upon the terms and subject to the conditions set forth in this Agreement and have approved and declared advisable this Agreement;

WHEREAS, upon the consummation of the Merger, each issued and outstanding share of common stock, par value $0.01 per share, of the Company (each a "Share" and, collectively, the "Shares") (other than Excluded Shares) will be converted into the right to receive the Merger Consideration (as defined herein), upon the terms and subject to the limitations and conditions of this Agreement;

WHEREAS, the board of directors of the Company (the "Board"), based on the recommendation of a special committee of the Board has recommended that the Company' s stockholders approve and adopt this Agreement and the Merger; and

WHEREAS, Parent, MergerCo and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the consummation of the Merger;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, representations, warranties and agreements herein contained, the parties intending to be legally bound, agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings specified therefor below.

"Acquisition Proposal" shall mean any inquiry, offer or proposal (whether or not in writing and whether or not delivered to the Company' s stockholders generally), from any Person to acquire, in a single transaction or series of transactions, by merger, tender offer, stock acquisition, asset acquisition, consolidation, liquidation, business combination or otherwise (i) at least 20% of any class of equity securities of the Company or one or more of its Subsidiaries which in the aggregate constitutes 20% or more of the net revenues, net income or assets of the

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Company and its Subsidiaries, taken as a whole, or (ii) assets of the Company and/or one or more of its Subsidiaries which in the aggregate constitutes 20% or more of the net revenues, net income or assets of the Company and its Subsidiaries, taken as a whole, other than the transactions contemplated by this Agreement. Whenever the term "Acquisition Proposal" is used in Section 8.1(c), each reference in this definition to 20% shall be deemed to be 50.01%.

"Adjustment Amount" shall mean $0.0085 multiplied by the number of days, if any, from and after the twentieth (20th) calendar day after satisfaction of the conditions precedent set forth in Section 6.1(a)-(c) through and including the Closing Date.

"Affiliate" of any Person shall mean any Person directly or indirectly controlling, controlled by, or under common control with, such Person; provided that, for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" shall have the meaning set forth in the preamble hereto.

"Antitrust Authorities" shall mean the Federal Trade Commission, the Antitrust Division of the United States Department of Justice, the attorneys general of the several states of the United States and any other Governmental Entity having jurisdiction with respect to the transactions contemplated hereby pursuant to applicable Antitrust Laws.

"Antitrust Laws" shall mean the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, and all other federal, state and foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

"Board" shall have the meaning set forth in the third recital hereto.

"Business Day" shall mean any day except a Saturday, a Sunday or any other day on which commercial banks are required or authorized to close in New York, New York.

"Capital Structure Date" shall have the meaning set forth in Section 3.3.

"Cash Payment" shall have the meaning set forth in Section 2.9(a).

"Certificate of Merger" shall have the meaning set forth in Section 2.1(b).

"Certificates" shall have the meaning set forth in Section 2.5(a).

"Closing" shall have the meaning set forth in Section 2.11.

"Closing Date" shall have the meaning set forth in Section 2.11.

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"Code" shall mean the United States Internal Revenue Code of 1986, as amended, and the regulations promulgated and the rulings issued thereunder.

"Commission" shall mean the Securities and Exchange Commission.

"Commission Filings" shall have the meaning set forth in Section 3.5(a).

"Commitment Letter" shall have the meaning set forth in Section 4.5.

"Company" shall have the meaning set forth in the preamble hereto.

"Company Board Recommendation" shall have the meaning set forth in Section 5.3(a).

"Company Disclosure Letter" shall have the meaning set forth in Section 3.

"Company Intellectual Property" shall have the meaning set forth in Section 3.12.

"Company Material Adverse Effect" shall mean any event, circumstance, state of facts, change or development having an effect that individually or in the aggregate (a) would, or would reasonably be expected to, prevent or materially delay the performance by the Company of its obligations under this Agreement or the consummation by the Company of the transactions contemplated hereby on a timely basis or (b) is, or would reasonably be expected to be, materially adverse to the business, assets, results of operations or financial condition of the Company and its Subsidiaries, taken as a whole, other than, in the case of this clause (b), any event circumstance, state of facts, change or development resulting from (i) changes in general economic or political conditions or the securities markets (including any such change caused by any natural disaster or any acts of terrorism, sabotage, military action or war (whether or not declared) or any escalation or worsening thereof, but excluding any such changes to the extent they disproportionately adversely affect the Company and its Subsidiaries, taken as a whole), (ii) the announcement of the transactions contemplated by this Agreement or other communication by Parent or MergerCo of their plans or intentions with respect to any of the businesses of the Company or any of its Subsidiaries, (iii) the consummation of the transactions contemplated by this Agreement or any actions by Parent, MergerCo or the Company taken pursuant to this Agreement, (iv) any change in the market price or trading volume of the Shares or any failure by the Company to meet any revenue or earnings predictions released by the Company or provided to Parent or MergerCo or the revenue or earnings predictions of equity analysts (it being agreed that the events, circumstances, state of facts, changes or developments giving rise or contributing to any such change or failure may constitute or give rise to a Company Material Adverse Effect), (v) the failure of the Shares to be quoted on Nasdaq, or (vi) the existence of any stockholder class action, derivative or similar litigation arising from allegations of breach of fiduciary duty relating to this Agreement.

"Company Property" shall have the meaning set forth in Section 3.16(b).

"Consents" shall have the meaning set forth in Section 5.7(a).

"Contracts" shall have the meaning set forth in Section 3.15.

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"DGCL" shall have the meaning set forth in the first recital hereto.

"Dissenting Shares" shall mean Shares that are owned by Dissenting Stockholders.

"Dissenting Stockholders" shall mean stockholders of the Company who have perfected and not withdrawn a demand for appraisal rights pursuant to Section 262 of the DGCL.

"Effective Time" shall have the meaning set forth in Section 2.1(b).

"Employee Benefit Plans" shall have the meaning set forth in Section 3.9.

"Environmental Law" shall have the meaning set forth in Section 3.16(b).

"ERISA" shall have the meaning set forth in Section 3.9.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Exchange Agreement" shall have the meaning set forth in Section 4.10.

"Excluded Share" shall have the meaning set forth in Section 2.5(a).

"Expenses" shall mean all reasonable out-of-pocket expenses (including, without limitation, all reasonable fees and expenses of counsel, accountants, investment bankers, experts and consultants) incurred by a party or on its behalf in connection with or related to the authorization, preparation, negotiation, execution and performance of this Agreement and the transactions contemplated hereby.

"GAAP" shall mean generally accepted accounting principles of the United States of America consistently applied, as in effect from time to time.

"Governmental Entity" shall mean any domestic or foreign court, arbitral tribunal, administrative agency or commission or other governmental or regulatory agency or authority or any securities exchange.

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

"Indemnified Parties" shall have the meaning set forth in Section 5.8(a).

"Intellectual Property" shall mean any of the following (a) U.S. and non-U.S. patents, and applications for either, (b) registered and unregistered trademarks and service marks, pending trademark and service mark registration applications, and intent-to-use registrations or similar reservations of marks, (c) registered and unregistered copyrights and mask works, and applications for registration of either, (d) internet domain names, trade names and trade dress and (e) trade secrets and proprietary information not otherwise listed in (a) through (d) above.

"Material Contracts" shall have the meaning set forth in Section 3.15.

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"Material Recapitalization" shall mean any incurrence of indebtedness by the Company or any of its Subsidiaries and related (a) purchase or series of related purchases within a six (6) month period by the Company or any of its Subsidiaries of 40% or more in aggregate of any class of equity securities of the Company or (b) payment of a dividend or series of dividends within a six (6) month period in an aggregate amount of 40% or more of the Company' s then-current market capitalization.

"Merger" shall have the meaning set forth in the first recital hereto.

"Merger Consideration" shall mean $43.50, plus, to the extent applicable, the Adjustment Amount, per share, in cash (without interest).

"MergerCo" shall have the meaning set forth in the preamble hereto.

"Nasdaq" shall mean the Nasdaq National Market.

"Options" shall have the meaning set forth in Section 2.9(a).

"Other Filings" shall have the meaning set forth in Section 3.13.

"Parent" shall have the meaning set forth in the preamble hereto.

"Parent or MergerCo Material Adverse Effect" shall mean any event, circumstance, state of facts, change or development having an effect that individually or in the aggregate would, or would reasonably be expected to, prevent or materially delay the performance by Parent and/or MergerCo of their obligations under this Agreement or the consummation by Parent and/or MergerCo of the transactions contemplated hereby on a timely basis.

"Paying Agent" shall have the meaning set forth in Section 2.6(a).

"Payment Fund" shall have the meaning set forth in Section 2.7.

"Permits" shall have the meaning set forth in Section 3.7(b).

"Permitted Investments" shall have the meaning set forth in Section 2.7.

"Person" shall mean and include an individual, a partnership, a limited liability partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization, a group and a Governmental Entity.

"Proprietary Information" means all information about the Company furnished by the Company or its representatives, whether furnished before or after the date of this Agreement, whether oral or written, and regardless of the manner in which it was furnished, but does not include information which (i) is or becomes generally available to the public other than as a result of a disclosure by Parent, MergerCo or any of their representatives, (ii) was available to Parent and MergerCo or any of its Affiliates on a nonconfidential basis prior to its disclosure by the Company or any of the Company' s representatives or (iii) becomes available to Parent and MergerCo on a nonconfidential basis from a Person other than the Company or any Company

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representative who is not known to Parent and MergerCo to be otherwise bound by a confidentiality agreement with the Company or any of the Company' s representatives.

"Proxy Statement" shall have the meaning set forth in Section 5.4(a).

"Returns" shall have the meaning set forth in Section 3.11(a).

"Rights Agreement" shall mean that certain Rights Agreement, dated as of May 12, 2003, between the Company and Wachovia Bank, N.A., as amended as of November 28, 2005 and as of the date hereof.

"Rollover Stockholders" means those Persons specified by Parent to the Company prior to the date of this Agreement (with such subsequent changes as are acceptable to the Company) that have agreed to contribute some or all of the Shares beneficially owned by them to Parent.

"Schedule 13E-3" shall have the meaning set forth in Section 5.4(a).

"Special Meeting" shall have the meaning set forth in Section 5.4(c).

"Stock Plans" shall have the meaning set forth in Section 2.9(a).

"Subsidiary", with respect to any Person, shall mean any other Person which is consolidated with such Person for financial reporting purposes.

"Superior Proposal" shall mean an Acquisition Proposal made by a third-party in respect of a transaction involving the acquisition of (i) a majority of the voting power of the Company' s capital stock or (ii) a majority of the consolidated assets of the Company and its subsidiaries, which such Acquisition Proposal the Board, after consultation with its outside legal counsel and its independent financial advisors, determines in good faith to be more favorable to the stockholders of the Company (in their capacity as such) than the transactions contemplated hereby (taking into account, among other things, all legal, financial, regulatory and other aspects of such Acquisition Proposal and the identity of the Person making such proposal).

"Surviving Corporation" shall have the meaning set forth in Section 2.1.

"Taxes" shall have the meaning set forth in Section 3.11(a).

"Termination Date" shall have the meaning set forth in Section 7.1(b)(ii).

"Termination Fee" shall have the meaning set forth in Section 8.1(b).

Section 1.2 Construction. In this Agreement, unless the context otherwise requires:

(a) any reference in this Agreement to "writing" or comparable expressions includes a reference to facsimile transmission or comparable means of communication;

(b) words expressed in the singular number shall include the plural and vice versa; words expressed in the masculine shall include the feminine and neuter gender and vice versa;

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(c) references to Articles, Sections, Exhibits, Schedules, the preamble and recitals are references to articles, sections, exhibits, schedules, the preamble and recitals of this Agreement;

(d) reference to "day" or "days" are to calendar days;

(e) references to this "Agreement" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended, varied, novated or supplemented; and

(f) "include," "includes," and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of similar import.

Section 1.3 Schedules and Exhibits. The Schedules and Exhibits to this Agreement are incorporated into and form an integral part of this Agreement. If an Exhibit is a form of agreement, such agreement, when executed and delivered by the parties thereto, shall constitute a document independent of this Agreement.

Section 1.4 Knowledge. When any representation, warranty, covenant or agreement contained in this Agreement is expressly qualified by reference to the "Knowledge of the Company", it shall mean the current, actual knowledge of the individuals set forth in Section 1.4 of the Company Disclosure Letter. When any representation, warranty, covenant or agreement contained in this Agreement is expressly qualified by reference to the "Knowledge of Parent", it shall mean the current, actual knowledge of Gregory S. Daily or Carl A. Grimstad.

ARTICLE II

THE MERGER

Section 2.1 The Merger. (a) Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time MergerCo shall be merged with and into the Company and the separate corporate existence of MergerCo shall thereupon cease. The Company shall be the surviving corporation in the Merger (sometimes hereinafter referred to as the "Surviving Corporation"), and the separate corporate existence of the Company, with all its rights, privileges, immunities, powers and franchises, shall continue unaffected by the Merger, except as set forth in Article II. From and after the Effective Time, the Merger shall have the effects specified in the DGCL.

(b) On the Closing Date, the Company and Parent will cause a certificate of merger (the "Certificate of Merger") to be executed, acknowledged and filed with the Secretary of State of Delaware as provided in Section 251 of the DGCL. The Merger shall become effective at the time when the Certificate of Merger has been duly filed with the Secretary of State of Delaware or at such later time as may be agreed by the parties in writing and specified in the Certificate of Merger (the "Effective Time").

Section 2.2 Certificate of Incorporation of the Surviving Corporation. The certificate of incorporation of the Company shall be amended in connection with the consummation of the Merger to read in its entirety the same as the certificate of incorporation of MergerCo in effect

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immediately prior to the Effective Time (except that the name of the Company shall remain "iPayment, Inc."), and as so amended, shall be the certificate of incorporation of the Surviving Corporation.

Section 2.3 By-laws of the Surviving Corporation. The by-laws of the Company shall be amended in connection with the consummation of the Merger to read in their entirety the same as the by-laws of MergerCo in effect immediately prior to the Effective Time (except that all references to the name of the corporation shall be to "iPayment, Inc."), and, as so amended, shall be the by-laws of the Surviving Corporation.

Section 2.4 Directors and Officers of the Surviving Corporation. At the Effective Time, the directors of MergerCo immediately prior to the Effective Time shall be the directors of the Surviving Corporation, each of such directors to hold office, subject to the applicable provisions of the certificate of incorporation and by-laws of the Surviving Corporation, until their respective successors shall be duly elected or appointed and qualified, or until their earlier death, resignation or removal, or as otherwise provided by law. At the Effective Time, the officers of the Company immediately prior to the Effective Time shall, subject to the applicable provisions of the certificate of incorporation and by-laws of the Surviving Corporation, be the officers of the Surviving Corporation until their respective successors shall be duly elected or appointed and qualified or until their earlier death, resignation or removal, or as otherwise provided by law.

Section 2.5 Conversion of Stock. At the Effective Time, as a result of the Merger and without any action on the part of the holder of any Shares:

(a) Merger Consideration. Each Share issued and outstanding immediately prior to the Effective Time (other than (i) Shares owned by Parent or any direct or indirect Subsidiary of Parent, (ii) Shares owned by the Company or any direct or indirect wholly-owned Subsidiary of the Company and (iii) Dissenting Shares (each of the Shares described in (i), (ii) and (iii), an "Excluded Share" and collectively, "Excluded Shares")) shall be converted into the right to receive the Merger Consideration. At the Effective Time, all of the Shares shall cease to be outstanding, shall be cancelled and shall cease to exist, and each certificate (a "Certificate") formerly representing any Share (other than any Excluded Share) shall thereafter represent only the right to receive the Merger Consideration, without interest, and each certificate formerly representing Shares owned by Dissenting Stockholders shall thereafter represent only the right to receive such consideration as may be determined to be due such Dissenting Stockholders pursuant to Section 262 of the DGCL.

(b) Excluded Shares. Each Excluded Share referred to in clause 2.5(a)(i) or 2.5(a)(ii) shall, by virtue of the Merger and without any action on the part of the holder thereof, cease to be outstanding and shall be canceled, and no Merger Consideration or other consideration shall be delivered in exchange therefor.

(c) MergerCo. At the Effective Time, each share of common stock of MergerCo issued and outstanding immediately prior to the Effective Time shall be converted into one share of common stock, par value $0.01 per share, of the Surviving Corporation.

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Section 2.6 Paying Agent; Surrender of Certificates; Payment. (a) Prior to the Effective Time, the Company shall designate a bank or trust company located in the United States to act as paying agent (the "Paying Agent") to receive funds in trust in order to make the payments contemplated by Section 2.5(a). Prior to the Effective Time, the Company shall enter into a paying agent agreement with the Paying Agent in form and substance reasonably acceptable to Parent. As soon as practicable after the Effective Time, the Surviving Corporation shall cause the Paying Agent to mail and/or make available to each holder of a Certificate which, prior to the Effective Time, represented Shares or any portion of a Share (other than Excluded Shares), a notice and letter of transmittal advising such holder of the effectiveness of the Merger and the procedure for surrendering to the Paying Agent such Certificate or Certificates in exchange for the aggregate Merger Consideration deliverable in respect thereof pursuant to this Article II. Upon the surrender for cancellation to the Paying Agent of such Certificates, together with a letter of transmittal, duly executed and completed in accordance with the instructions thereon, and any other items specified by the letter of transmittal, the Paying Agent shall, pursuant to irrevocable instructions from the Company, promptly pay to the Person entitled thereto the product of the Merger Consideration and the number of Shares and any portion of a Share represented by such Certificates. Until so surrendered, each Certificate shall be deemed, for all corporate purposes, to evidence only the right to receive upon such surrender the aggregate Merger Consideration deliverable in respect thereof to which such Person is entitled pursuant to this Article II. No interest shall be paid or accrued in respect of such cash payments.

(b) If the aggregate Merger Consideration (or any portion thereof) is to be delivered to a Person other than the Person in whose name the Certificates surrendered in exchange therefor are registered, it shall be a condition to the payment of such Merger Consideration that the Certificates so surrendered shall be properly endorsed or accompanied by appropriate stock powers and otherwise in proper form for transfer, and that the Person requesting such transfer pay to the Paying Agent any transfer or other taxes payable by reason of the foregoing or establish to the satisfaction of the Paying Agent that such taxes have been paid or are not required to be paid.

(c) If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation, the posting by such Person of a bond, in such reasonable amount as the Surviving Corporation may direct, as indemnity against any claim that may be made against it with respect to the alleged loss, theft or destruction of such Certificate, the Paying Agent shall issue in exchange for such lost, stolen or destroyed Certificate the aggregate Merger Consideration deliverable in respect thereof as determined in accordance with this Article II.

(d) No Person who has perfected a demand for appraisal rights pursuant to Section 262 of the DGCL shall be entitled to receive the Merger Consideration with respect to the Shares owned by such Person unless and until such Person shall have effectively withdrawn or lost such Person' s right to appraisal under the DGCL. Each Dissenting Stockholder shall be entitled to receive only the payment provided by Section 262 of the DGCL with respect to Dissenting Shares owned by such Dissenting Stockholder. The Company shall give Parent prompt notice of any written demands for appraisal, attempted withdrawals of such demands, and any other

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instruments served pursuant to applicable law that are received by the Company relating to stockholders' rights of appraisal.

(e) The Surviving Corporation shall pay all charges and expenses, including those of the Paying Agent, in connection with the exchange of cash for Shares.

Section 2.7 Payment Fund. Immediately after the Effective Time, the Surviving Corporation shall deposit or cause to be deposited in trust with the Paying Agent cash in United States dollars necessary to make the payments contemplated by Section 2.5(a) to the holders of Shares other than Excluded Shares (the "Payment Fund"). The Payment Fund shall be invested by the Paying Agent as directed by the Surviving Corporation (i) in direct obligations of the United States, obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, commercial paper of an issuer organized under the laws of a state of the United States rated of the highest quality by Moody' s Investors Service, Inc. or Standard & Poor' s Ratings Group, or certificates of deposit, bank repurchase agreements or bankers' acceptances of a United States commercial bank having at least $1,000,000,000 in assets (collectively, "Permitted Investments") or (ii) in money market funds which are invested in Permitted Investments, and any net earnings with respect thereto shall be paid to the Surviving Corporation as and when requested by the Surviving Corporation. The Payment Fund shall not be used for any purpose other than making the payments contemplated by Section 2.5(a) and Section 2.6(a). Promptly following the date which is one year after the Effective Time, the Paying Agent shall return to the Surviving Corporation all cash, certificates and other instruments in its possession that constitute any portion of the Payment Fund, and the Paying Agent' s duties shall terminate. Thereafter, each holder of a Certificate may surrender such Certificate to the Surviving Corporation and (subject to applicable abandoned property, escheat and similar laws) receive in exchange therefor the aggregate Merger Consideration deliverable in respect thereof pursuant to this Article II, without interest, but shall have no greater rights against the Surviving Corporation than may be accorded to general creditors of the Surviving Corporation under applicable law. Notwithstanding the foregoing, neither the Paying Agent nor any party hereto shall be liable to a holder of Shares for any Merger Consideration with respect to such Shares delivered to a public official pursuant to applicable abandoned property, escheat and similar laws.

Section 2.8 No Further Rights of Transfers. From and after the Effective Time, each holder of Shares shall cease to have any rights as a stockholder of the Company, except as otherwise required by applicable law and except for, in the case of a holder of a Certificate (other than Certificates representing Shares to be canceled pursuant to Section 2.5(b)), the right to surrender his or her Certificate in exchange for payment of the applicable aggregate Merger Consideration (subject to abandoned property, escheat and similar laws), and no transfer of Shares shall be made on the stock transfer books of the Surviving Corporation. Certificates presented to the Surviving Corporation after the Effective Time shall be canceled and exchanged for the Merger Consideration as provided in this Article II. At the close of business on the day of the Effective Time the stock ledger of the Company with respect to the Shares shall be closed.

Section 2.9 Stock Options and Restricted Stock. (a) At the Effective Time, each outstanding stock option and other right to purchase Shares (each, an "Option" and, collectively, the "Options") heretofore granted under any stock option or stock-based compensation plan of

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the Company or otherwise (the "Stock Plans"), whether or not then vested or exercisable shall no longer be exercisable for the purchase of Shares but shall entitle each holder thereof, in cancellation and settlement therefor, to payments in cash (the "Cash Payment") from the Surviving Corporation, at the Effective Time, equal to the product of (i) the total number of Shares subject to such Option, whether or not then vested or exercisable and (ii) the amount, if any, by which the Merger Consideration exceeds the exercise price per Share subject to such Option; each such Cash Payment to be paid to each holder of an outstanding Option at the Effective Time. The Company shall terminate, as of the Effective Time, the Stock Plans and amend, as of the Effective Time, the provisions of any other Employee Benefit Plans providing for the issuance, transfer or grant of any capital stock of the Company, or any interest in respect of any capital stock of the Company, to provide no continuing rights to acquire, hold, transfer or grant any capital stock of the Company or any interest in the capital stock of the Company.

(b) Immediately prior to the Effective Time, each Share in the form of restricted stock outstanding under the Stock Plans shall become, subject to applicable securities laws, fully and immediately transferable and the restrictions thereon shall lapse.

Section 2.10 Section 16 Matters. Prior to the Effective Time, the Company and Parent shall take such steps, to the extent required and permitted, to cause the transactions contemplated by this Agreement, including any dispositions of equity securities (including derivative securities) of the Company by each individual who is or will be subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company, to be exempt under Rule 16b-3 promulgated under the Exchange Act.

Section 2.11 Closing. Unless this Agreement shall have been terminated and the transactions contemplated hereby shall have been abandoned pursuant to Article VII, and subject to the satisfaction or waiver of all of the conditions set forth in Article VI, the closing of the Merger (the "Closing") shall take place at 10:00 A.M. at the offices of Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022, as soon as practicable, but in any event within three (3) Business Days after the last of the conditions set forth in Article VI is satisfied or waived, other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions, or at such other date, time or place as the parties hereto shall agree in writing. Such date is herein referred to as the "Closing Date".

Section 2.12 Withholding Rights. Each of Parent and the Surviving Corporation shall be entitled to deduct and withhold, or cause to be deducted or withheld, from any payment made pursuant to this Article II, such amounts as are required to be deducted and withheld with respect to the making of such payment under the Code, or any provision of applicable state, local or foreign tax law. To the extent that amounts are so deducted and withheld, such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to such holders in respect of which such deduction and withholding was made.

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ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Section 3. The Company hereby represents and warrants to Parent and MergerCo, except as set forth in (a) the disclosure letter delivered by the Company to Parent upon or prior to entering into this Agreement (the "Company Disclosure Letter"), or (b) the Commission Filings, as follows:

Section 3.1 Due Organization, Good Standing and Corporate Power. Each of the Company and its Subsidiaries is a corporation duly incorporated (or, if not a corporation, duly organized), validly existing and in good standing under the laws of the jurisdiction of its incorporation (or, if not a corporation, organization) and each such Person has all requisite power (corporate or otherwise) and authority to own, lease and operate its properties and to carry on its business as now being conducted. The Company and each of its Subsidiaries is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it, or the nature of the business conducted by it makes such qualification necessary, except in such jurisdictions where the failure to be so qualified or licensed and in good standing would not reasonably be expected to constitute, individually or in the aggregate, a Company Material Adverse Effect. The Company has made available to Parent complete and correct copies of the Company' s certificate of incorporation and the Company' s by-laws and the comparable governing documents of each of its Subsidiaries, in each case, as amended and in full force and effect as of the date of this Agreement.

Section 3.2 Authorization; Noncontravention. The Company has the requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and, subject to the approval of the stockholders of the Company as required by the DGCL, to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by the Company, and the consummation by it of the transactions contemplated hereby, have been duly authorized and approved by the Board, and no other corporate action on the part of the Company is necessary to authorize the execution, delivery and performance of this Agreement by the Company and the consummation of the transactions contemplated hereby (other than, in each case, as required by the DGCL, the adoption of this Agreement by the stockholders of the Company and the filing of the Certificate of Merger). This Agreement has been duly executed and delivered by the Company and, assuming that this Agreement constitutes a valid and binding obligation of Parent and MergerCo, constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except to the extent that its enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles. The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated by this Agreement will not, (a) conflict with any of the provisions of the certificate of incorporation or by-laws or other equivalent charter documents, as applicable, of the Company or any of its Subsidiaries, in each case, as amended to the date of this Agreement, (b) conflict with or result in a breach of, or default under, any Contract to which the Company or any of its Subsidiaries is a party or by which the Company, any of its Subsidiaries or any of their respective assets are bound or subject or (c) subject to the consents, approvals, authorizations, declarations, filings and notices referred

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to in Section 3.4, contravene any domestic or foreign law, rule or regulation or any order, writ, judgment, injunction, decree, determination or award currently in effect, which, in the case of clauses (b) and (c) above, would reasonably be expected to constitute, individually or in the aggregate, a Company Material Adverse Effect, provided, however, that for purposes of the foregoing, the definition of "Company Material Adverse Effect" shall be deemed not to include clause (b)(iii) thereof.

Section 3.3 Capitalization. The authorized capital stock of the Company consists of (a) 180,000,000 Shares and (b) 20,000,000 shares of preferred stock, par value $0.01 per share. At the close of business on December 23, 2005 (the "Capital Structure Date") (i) 17,725,181 Shares were issued and outstanding, (ii) no shares of the preferred stock were issued and outstanding, (iii) no Shares were held by the Company in its treasury, (iv) 1,345,594 Shares were reserved for issuance upon exercise of outstanding Options granted under the Stock Plans and (v) 200,000 shares of Series A participating preferred stock were reserved for issuance pursuant to the Rights Agreement. Section 3.3 of the Company Disclosure Letter sets forth a list of the Company' s outstanding Options, including the exercise prices of all such Options. All issued and outstanding shares of capital stock of the Company and each of its Subsidiaries have been duly authorized and validly issued and are fully paid and nonassessable, and are not subject to any preemptive rights. All of the issued and outstanding shares of capital stock or other equity interests of each of the Subsidiaries of the Company are owned directly or indirectly by the Company. Except as set forth in this Section 3.3, at the close of business on the Capital Structure Date, no shares of capital stock or other equity securities of the Company were issued, reserved for issuance or outstanding. Since the close of business on the Capital Structure Date, no shares of capital stock or other equity securities of the Company have been issued or reserved for issuance or become outstanding, other than Shares described in clause (iv) of the second sentence of this Section 3.3 that have been issued upon the exercise of outstanding Options granted under the Stock Plans. Except as described in this Section, the Company is not party to any outstanding option, warrant, call, subscription or other right (including any preemptive right), agreement or commitment which (w) obligates the Company to issue, deliver, sell or transfer, or repurchase, redeem or otherwise acquire, or cause to be issued delivered, sold or transferred, or repurchased, redeemed or otherwise acquired, any shares of the capital stock of, or other equity interests in, the Company or any security convertible or exercisable for or exchangeable into any capital stock of, or other equity interest in, the Company, (x) obligates the Company or any of its Subsidiaries to issue, grant, extend or enter into any such option, warrant, call, right, security, commitment, contract, arrangement or undertaking, (y) restricts the transfer of any shares of capital stock of the Company or (z) relates to the voting of any shares of capital stock of the Company.

Section 3.4 Consents and Approvals. Assuming all filings required under the Antitrust Laws are made and any waiting periods thereunder have been terminated or expired, no Consent of or to any Governmental Entity or any other third party, which has not been received or made, is necessary or required with respect to the Company in connection with the execution and delivery of this Agreement by the Company or the consummation by the Company of the transactions contemplated by this Agreement, except for (a) compliance with any applicable requirements of the Exchange Act and any applicable state securities, blue sky or takeover laws, (b) the filing of the Certificate of Merger, (c) applicable requirements of Nasdaq, (d) the adoption and approval of this Agreement and the Merger by the stockholders of the Company in

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accordance with the requirements of the DGCL and (d) any other Consents which, if not made or obtained, would not reasonably be expected to constitute, individually or in the aggregate, a Company Material Adverse Effect, provided, however, that for purposes of the foregoing, the definition of "Company Material Adverse Effect" shall be deemed not to include clause (b)(iii) thereof.

Section 3.5 Company Reports and Financial Statements. (a) Since January 1, 2004, the Company has filed all forms, reports, schedules, statements and other documents with the Commission relating to periods commencing on or after such date required to be filed by it pursuant to the federal securities laws and the Commission rules and regulations thereunder (such forms, reports, schedules, statements and other documents, in each case, as amended, being hereinafter referred to as the "Commission Filings"), and, as of their respective dates, the Commission Filings complied as to form in all material respects with all applicable requirements of the federal securities laws and the Commission rules and regulations promulgated thereunder.

(b) Each of the consolidated financial statements of the Company contained in the Commission Filings has been prepared in accordance with GAAP (except (i) as may be indicated therein or in the notes or schedules thereto and (ii) in the case of unaudited quarterly financial statements, as permitted by Form 10-Q of the Commission) and presents fairly, in all material respects, the consolidated financial position of the Company as of the dates thereof and the consolidated results of operations and changes in cash flows for the periods then ended (subject, in the case of unaudited quarterly statements, to normal year-end audit adjustment).

(c) Except as reflected, reserved against or otherwise disclosed in the financial statements of the Company included in the Commission Filings filed and publicly available prior to the date of this Agreement, neither the Company nor any of its Subsidiaries has any liabilities or obligations (absolute, accrued, fixed, contingent or otherwise) required to be set forth in the Company' s consolidated balance sheet under GAAP, other than liabilities incurred in the ordinary course of business since September 30, 2005 or which would not reasonably be expected to constitute, individually or in the aggregate, a Company Material Adverse Effect.

Section 3.6 Absence of Certain Changes. Since September 30, 2005, (a) the businesses of the Company and each of its Subsidiaries have been conducted in all material respects in the ordinary course, other than actions contemplated by this Agreement, (b) neither the Company nor any of its Subsidiaries have materially increased the compensation of any officer or granted any general salary or benefits increase to their respective employees, other than in the ordinary course of business, (c) there has been no repurchase, redemption or other acquisition by the Company of any of its capital stock, (d) there has been no change by the Company in accounting principles, practices or methods except as required by law or GAAP and (e) there has not been a Company Material Adverse Effect.

Section 3.7 Compliance with Laws. (a) The operations of the Company and its Subsidiaries are not being conducted in violation of any law, rule, regulation or order of any Governmental Entity applicable to the Company or its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or effected, except for violations that would not reasonably be expected to constitute, individually or in the aggregate, a Company Material Adverse Effect.

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(b) The Company and its Subsidiaries hold all federal, state, local and foreign permits, approvals, licenses, authorizations, certificates, rights, exemptions and orders from Governmental Entities (the "Permits") that are necessary for the operation of the business of the Company and/or its Subsidiaries as now conducted, except to the extent that any such failure to hold Permits or any such default would not reasonably be expected to constitute, individually or in the aggregate, a Company Material Adverse Effect.

Section 3.8 Litigation. There is no action, suit, proceeding at law or in equity, or any arbitration or any administrative or other proceeding by or before any Governmental Entity, pending, or, to the Knowledge of the Company, threatened, against or affecting the Company or any of its Subsidiaries, or any of their respective properties or rights which would reasonably be expected to constitute, individually or in the aggregate, a Company Material Adverse Effect.

Section 3.9 Employee Benefit Plans. (a) The Company has delivered to Parent complete and correct copies of (i) each material employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, and all material bonus, stock option, stock purchase, restricted stock, incentive, deferred compensation, retiree health or life insurance, supplemental retirement, severance or other benefit plans, programs or arrangements maintained, or contributed to, by the Company and/or any of its Subsidiaries as of the date of this Agreement and (ii) all individual employment, retention, termination, severance or other similar contracts or agreements pursuant to which the Company and/or any of its Subsidiaries currently has any obligation with respect to any current or former employee, officer or consultant of the Company (the plans, programs, arrangements, contracts and agreements described in clauses (i) and (ii) above, "Employee Benefit Plans"). Each Employee Benefit Plan is in compliance with applicable law and has been administered and operated in all respects in accordance with its terms, except as would not reasonably be expected to constitute a Company Material Adverse Effect. Each Employee Benefit Plan which is intended to be "qualified" within the meaning of Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or has submitted, or is within the remedial amendment period for submitting, an application for a determination letter with the Internal Revenue Service and is awaiting a response, or is comprised of a master or prototype plan that has received a favorable opinion letter from the Internal Revenue Service. To the Knowledge of the Company, no event has occurred and no condition exists which would result in the revocation of any such determination. The representations and warranties in this Section 3.9 are the sole and exclusive representations and warranties of the Company concerning employee benefit plans.

(b) Except as set forth on Section 3.9(b)(i) of the Company Disclosure Letter, there is no contract, agreement, plan or arrangement to which the Company is a party covering any executive officer of the Company, which would give rise to the payment of any amount, including, without limitation, by way of accelerated vesting, that would not be deductible pursuant to Section 280G of the Code as a result of or in connection with the entering into, or the consummation of the transactions contemplated by, this Agreement. Except as set forth on Section 3.9(b)(ii) of the Company Disclosure Letter and as provided for under this Agreement, the entering into, or the stockholder approval or consummation of the transactions contemplated by, this Agreement will not result in an increase in the amount of compensation or benefits or the acceleration of the vesting or timing of payment of any compensation or benefits payable to or in

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respect of any current or former employee, officer or director of the Company or of any of its Subsidiaries.

Section 3.10 Labor Matters. As of the date of this Agreement, no employee of the Company or any of its Subsidiaries is represented by any union or any collective bargaining agreement. As of the date of this Agreement, no labor organization or group of employees of the Company or any of its Subsidiaries has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or, to the Knowledge of the Company, threatened to be brought or filed, with the National Labor Relations Board or any other labor relations tribunal or authority.

Section 3.11 Taxes. (a) The Company and each of its Subsidiaries have duly and timely filed or caused to be duly and timely filed, all returns, statements, forms and reports for material Taxes (the "Returns") that are required to be filed by, or with respect to, the Company and its Subsidiaries on or prior to the date hereof (taking into account any applicable extension of time within which to file). To the Knowledge of the Company, all such Returns were correct and complete in all material respects. "Taxes" shall mean all taxes, assessments, charges, duties, fees, levies or other governmental charges including all United States federal, state, local, foreign and other income, franchise, profits, capital gains, capital stock, transfer, sales, use, occupation, property, excise, severance, windfall profits, stamp, license, payroll, withholding and other taxes, assessments, charges, duties, fees, levies or other governmental charges of any kind whatsoever (whether payable directly or by withholding and whether or not requiring the filing of a Return), all estimated taxes, deficiency assessments, additions to tax, penalties and interest.

(b) All material Taxes and material Tax liabilities of the Company and its Subsidiaries in respect of any taxable period (or portion thereof) ending on the Closing Date have been (or will be) duly and timely paid on or prior to the Effective Date or accrued on the books and records of the Company and its Subsidiaries in accordance with GAAP.

(c) Neither the Company nor any of its Subsidiaries is presently the subject of or party to any audit, proceeding, claim or suit in respect of material Taxes.

Section 3.12 Intellectual Property. (a) To the Knowledge of the Company, the Company or its Subsidiaries own or have the right to use all Intellectual Property (the "Company Intellectual Property") used in the businesses of the Company and its Subsidiaries as presently conducted except where the failure to so own or have such right would not reasonably be expected to constitute, individually or in the aggregate, a Company Material Adverse Effect.

(b) To the Knowledge of the Company, the conduct of the Company' s businesses as presently conducted does not infringe upon the rights of any Person in respect of any Intellectual Property, except for such infringements that, individually or in the aggregate, would not reasonably be expected to constitute a Company Material Adverse Effect. To the Knowledge of the Company, none of the Company Intellectual Property owned by the Company is being infringed by any Person except for such infringements as would not reasonably be expected to constitute a Company Material Adverse Effect. None of the Company Intellectual Property owned by the Company is subject to any outstanding order by or with any court, tribunal or other

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Governmental Entity restricting the use or enforceability thereof in a manner which would reasonably be expected to constitute a Company Material Adverse Effect.

Section 3.13 Information. None of the information contained or incorporated by reference in (i) the Proxy Statement or (ii) any other document filed or to be filed with the Commission in connection with the transactions contemplated by this Agreement, including, without limitation, the Schedule 13E-3 (the "Other Filings") will, at the respective times filed with the Commission and, in addition, in the case of the Proxy Statement, at the date it or any amendment or supplement thereto is mailed to stockholders of the Company, and at the time of the Special Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, provided that no representation is made by the Company with respect to information furnished in writing by Parent or MergerCo specifically for inclusion therein. The Proxy Statement and the Other Filings made by the Company will, at the respective times filed with the Commission, comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder, if applicable, except that no representation is made by the Company with respect to information supplied by Parent or MergerCo in writing specifically for inclusion in the Proxy Statement.

Section 3.14 Broker' s or Finder' s Fee. Except for the fees of Lazard Frères & Co. LLC (whose fees and expenses shall be paid by the Company in accordance with the Company' s agreement with such firm), no agent, broker, Person or firm acting on behalf of the Company is, or shall be, entitled to any broker' s fees, finder' s fees or commissions from the Company in connection with this Agreement or any of the transactions contemplated hereby from any of the parties hereto. The Company has heretofore furnished to Parent a complete and correct copy of all agreements between the Company and Lazard Frères & Co. LLC pursuant to which such firm would be entitled to any payment relating to any of the transactions contemplated hereby.

Section 3.15 Certain Contracts and Arrangements. As of the date hereof, other than those Contracts that are filed as exhibits to the Commission Filings filed and publicly available prior to the date of this Agreement, neither the Company nor any of its Subsidiaries is a party to or bound by any written contracts, agreements or instruments ("Contracts") that are required to be filed as an exhibit to a Commission Filing (collectively, the "Material Contracts"). Except as would not reasonably be expected to constitute, either individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any of its Subsidiaries is in default under any Contract.

Section 3.16 Environmental Laws and Regulations. (a) Except as would not reasonably be expected to constitute a Company Material Adverse Effect, (i) the Company and its Subsidiaries are in compliance with all applicable Environmental Laws and have obtained and are in compliance with all Permits required of them under such Environmental Laws and (ii) there are no claims pending, or threatened in writing, against the Company or its Subsidiaries or any Company Property under any Environmental Law.

(b) For purposes of this Agreement, the following terms shall have the following meanings: (i) "Company Property" shall mean any real property and improvements owned,

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leased or operated by the Company or its Subsidiaries as of the date of this Agreement, and (ii) "Environmental Law" shall mean any law, order or other requirement of law, including any principle of common law, relating to the protection of human health or the environment, or the manufacture, use, transport, treatment, storage, disposal, release or threatened release of petroleum products, asbestos, urea formaldehyde insulation, polychlorinated biphenyls or any substance listed, classified or regulated as hazardous or toxic under such law, order or other requirement of law.

(c) The representations and warranties in this Section 3.16 are the sole and exclusive representations and warranties of the Company concerning environmental matters.

Section 3.17 Opinion of Financial Advisor. The Company has received the oral opinion of Lazard Frères & Co. LLC, to be confirmed in a written opinion, a signed copy of which shall be delivered to Parent, to the effect that, as of the date of this Agreement and based upon and subject to the matters stated in such opinion, the consideration to be received in the Merger by the holders of Shares, other than Parent, its Subsidiaries and Affiliates, is fair to such holders from a financial point of view.

Section 3.18 Board Approval. The Board, at a meeting duly called and held, has (a) duly and validly approved and taken all corporate action required to be taken by the Board to authorize this Agreement and the consummation of the transactions contemplated hereby, (b) resolved that the transactions contemplated by this Agreement are advisable and in the best interests of the stockholders of the Company and that the consideration to be paid for each Share in connection with the Merger is fair to the holders of the Shares and (c) subject to the other terms and conditions of this Agreement, resolved to recommend that the stockholders of the Company approve and adopt this Agreement and each of the transactions contemplated hereby, and none of the aforesaid actions by the Board has been amended, rescinded or modified. Assuming none of the Persons set forth on Annex A to the Resolutions of the Special Committee of the Board, dated November 11, 2005, as supplemented from time to time pursuant to such resolutions (the "Approved Person List"), was, individually or acting together with any other Persons, prior to the date such Person or Persons were first included on the Approved Person List, an "interested stockholder" (as defined in Section 203 of the DGCL), the Board has taken all necessary action to render the restrictions in Section 203 of the DGCL inapplicable to this Agreement, the transactions contemplated by this Agreement and Parent, MergerCo, the Persons listed on Annex A or Annex B of the Exchange Agreement and any other stockholders and prospective stockholders thereof who are on the Approved Person List.

Section 3.19 Rights Agreement. The Company has delivered to Parent a true and complete copy of the Rights Agreement as in effect on the date of this Agreement. MergerCo and its direct stockholder and its indirect stockholders referenced in Annex A and Annex B of the Exchange Agreement will not by virtue of the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement become an "Acquiring Person" under the Rights Agreement.

Section 3.20 State Takeover Statutes. Except for Section 203 of the DGCL (which has been rendered inapplicable to the Merger as contemplated by Section 3.18), no "fair price," "moratorium," "control share acquisition" or other similar anti-takeover statute or regulation is

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applicable to the Company, the Shares, the Merger or the other transactions contemplated by this Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGERCO

Section 4. Each of Parent and MergerCo hereby represents and warrants to the Company as follows:

Section 4.1 Due Organization, Good Standing and Corporate Power. Each of Parent and MergerCo is a corporation duly incorporated, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated and has the requisite corporate power and authority to carry on its business as now being conducted. Each of Parent and MergerCo is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed and in good standing would not reasonably be expected to constitute, individually or in the aggregate, a Parent or MergerCo Material Adverse Effect. Each of Parent and MergerCo has made available to the Company complete and correct copies of its certificate of incorporation and by-laws, in each case, as amended and in full force and effect as of the date of this Agreement. Neither Parent nor MergerCo is in violation of any of the provisions of its certificate of incorporation or by-laws.

Section 4.2 Authorization; Noncontravention. Each of Parent and MergerCo has the requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Parent and MergerCo and the consummation by each of them of the transactions contemplated hereby have been duly authorized and approved by the board of directors of each of Parent and MergerCo and by Parent as the sole stockholder of MergerCo. No other corporate action on the part of either Parent or MergerCo is necessary to authorize the execution, delivery and performance of this Agreement by each of Parent and MergerCo and the consummation of the transactions contemplated hereby (other than the filing of the Certificate of Merger). This Agreement has been duly executed and delivered by each of Parent and MergerCo and, assuming that this Agreement constitutes a valid and binding obligation of the Company, constitutes a valid and binding obligation of each of Parent and MergerCo, enforceable against each of Parent and MergerCo in accordance with its terms, except that such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and by general equitable principles. The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated by this Agreement will not, (a) conflict with any of the provisions of the certificate of incorporation or by-laws of Parent or MergerCo, in each case as amended to the date of this Agreement, (b) conflict with, result in a breach of or default under (with or without notice or lapse of time, or both) any material contract, agreement, indenture, mortgage, deed of trust, lease or other instrument to which Parent or MergerCo is a party or by which Parent or MergerCo or any of their assets is bound or subject or (c) subject to the consents, approvals, authorizations, declarations, filings and notices referred to in Section

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4.3, contravene any domestic or foreign law, rule or regulation or any order, writ, judgment, injunction, decree, determination or award currently in effect, which, in the case of clauses (b) and (c) above, would reasonably be expected to constitute, individually or in the aggregate, a Parent or MergerCo Material Adverse Effect.

Section 4.3 Consents and Approvals. Assuming all filings required under the Antitrust Laws are made and any waiting periods thereunder have been terminated or expired, no Consent of any Governmental Entity which has not been received or made, is required by or with respect to Parent or MergerCo in connection with the execution and delivery of this Agreement by Parent or MergerCo or the consummation by Parent or MergerCo, as the case may be, of any of the transactions contemplated by this Agreement, except for (a) compliance with any applicable requirements of the Exchange Act and any applicable state securities, blue sky or takeover laws, (b) the filing of the Certificate of Merger and (c) any other consents, approvals, authorizations, filings or notices which, if not made or obtained, would not reasonably be expected to constitute, individually or in the aggregate, a Parent or MergerCo Material Adverse Effect.

Section 4.4 Information. None of the information supplied or to be supplied by Parent or MergerCo in writing specifically for inclusion or incorporation by reference in the Proxy Statement or Other Filings will, at the respective times filed with the Commission and, in addition, in the case of the Proxy Statement, at the date it or any amendment or supplement thereto is mailed to stockholders, and at the time of the Special Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they we made, not misleading. The Other Filings made by Parent or MergerCo will, at the respective times filed with the Commission, comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder, if applicable, except that no representation is made by Parent or MergerCo with respect to statements made therein based on information supplied by the Company in writing specifically for inclusion in the Other Filings.

Section 4.5 Funds. Parent has delivered to the Company a true and correct copy of a commitment letter from Bank of America, N.A., and certain related entities (the "Commitment Letter") in respect of the financing necessary for the consummation of the transactions contemplated by this Agreement. The Commitment Letter represents a binding obligation of Bank of America, N.A., and such related entities to provide such financing, subject to the terms and conditions set forth therein.

Section 4.6 Litigation. There is no action, suit, proceeding at law or in equity, or any arbitration or any administrative or other proceeding by or before any Governmental Entity pending or, to the Knowledge of Parent, threatened, against or affecting Parent or MergerCo, or any of their respective properties or rights which would reasonably be expected to constitute, individually or in the aggregate, a Parent or MergerCo Material Adverse Effect.

Section 4.7 Investigation by Parent and MergerCo; Company' s Liability. Parent and MergerCo have conducted their own independent investigation, review and analysis of the business, operations, assets, liabilities, results of operations, financial condition, technology and prospects of the Company and its Subsidiaries, which investigation, review and analysis was

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done by Parent, MergerCo and their Affiliates (other than the Company) and, to the extent Parent and MergerCo deemed appropriate, by Parent' s and MergerCo' s representatives. Each of Parent and MergerCo acknowledges that it and its representatives have been provided adequate access to the personnel, properties, premises and records of the Company and its Subsidiaries for such purpose. In entering into this Agreement, each of Parent and MergerCo acknowledges that it has relied solely upon the aforementioned investigation, review and analysis and not on any factual representations or opinions of the Company or any of the Company' s representatives (except the specific representations and warranties of the Company set forth in Article III of this Agreement and schedules thereto), and each of Parent and MergerCo:

(a) acknowledges that none of the Company, its Subsidiaries or any of their respective directors, officers, stockholders, employees, Affiliates, controlling persons, agents, advisors or representatives makes or has made any oral or written representation or warranty, either express or implied, as to the accuracy or completeness of any of the information (including in management summaries relating to the Company provided to Parent and MergerCo, in materials furnished in the Company' s data room, in presentations by the Company' s management or otherwise) provided or made available to Parent, MergerCo or their respective directors, officers, employees, Affiliates, controlling persons, agents or representatives; and

(b) acknowledges and agrees that, to the fullest extent permitted by law, none of the Company, its Subsidiaries or any of their respective directors, officers, employees, stockholders, Affiliates, controlling persons, agents, advisors or representatives shall have any liability or responsibility whatsoever to Parent, MergerCo or their respective directors, officers, employees, Affiliates, controlling persons, agents or representatives on any basis (including in contract or tort, under federal or state securities laws or otherwise) based upon any information provided or made available, or statements made (including in management summaries relating to the Company provided to Parent, in materials furnished in the Company' s data room, in presentations by the Company' s management or otherwise), to Parent, MergerCo or their respective directors, officers, employees, Affiliates, controlling persons, advisors, agents or representatives (or any omissions therefrom), including in respect of the specific representations and warranties of the Company set forth in this Agreement, except that the foregoing limitations shall not apply to the Company insofar as the Company makes the specific representations and warranties set forth in Article III of this Agreement.

Section 4.8 Broker' s or Finder' s Fees. No agent, broker, Person or firm acting on behalf of Parent or MergerCo is or shall be entitled to any fee, commission or broker' s or finder' s fees in connection with this Agreement or any of the transactions contemplated hereby from any of the parties hereto or from any Affiliate of the parties hereto and Parent has (for itself and on behalf of MergerCo) provided the Company with its current estimate of expenses to be incurred by Parent and MergerCo in connection with the Merger and the consummation of the transactions contemplated by this Agreement.

Section 4.9 Solvency. Each of Parent and MergerCo is able to pay its debts generally as they become due and is solvent and will not be, nor will the Surviving Corporation be, as of the Effective Time, rendered insolvent as a result of the transactions contemplated hereby. Neither Parent nor MergerCo has, either voluntarily or involuntarily, (i) admitted in writing that it is or may become unable to pay its debts generally as they become due, (ii) filed or consented

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to the filing against it of a petition in bankruptcy or a petition to take advantage of an insolvency act, (iii) made an assignment for the benefit of its creditors, (iv) consented to the appointment of a receiver for itself or for the whole or any substantial part of its property, (v) had a petition in bankruptcy filed against it, (vi) been adjudged as bankrupt or filed a petition or answer seeking reorganization or arrangement under the Federal bankruptcy Laws or any Law or statute of the United States of America or any other jurisdiction, or (vii) incurred, or reasonably should have believed it would incur, debts that are or will be beyond its ability to pay as such debts mature.

Section 4.10 Exchange Agreement. Parent has entered into and delivered to the Company an exchange agreement (the "Exchange Agreement") with certain stockholders of the Company in the form set forth on Exhibit A attached hereto. Other than as contemplated by this Agreement, or as otherwise may be approved by the Board (or any committee thereof), none of Parent, MergerCo or any of their respective Affiliates or Associates (as such terms are defined under Section 203 of the DGCL) beneficially owns, directly or indirectly, or is a party to any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of, any shares of capital stock of the Company.

Section 4.11 Guarantees. Concurrently with the execution of this Agreement, Parent has delivered to the Company guarantees in the form attached hereto as Exhibit B, dated the date hereof, executed by each of Gregory S. Daily and Carl A. Grimstad, with respect to certain obligations of Parent and MergerCo on the terms specified therein.

ARTICLE V

ADDITIONAL AGREEMENTS

Section 5.1 Access to Information Concerning Properties and Records. (a) During the period commencing on the date hereof and ending on the earlier of (i) the date on which the Effective Time occurs and (ii) the date on which this Agreement is terminated pursuant to Section 7.1, the Company shall, and shall cause each of its Subsidiaries to, upon reasonable notice, afford Parent and MergerCo and their respective employees, counsel, accountants, consultants and other authorized representatives, reasonable access during normal business hours to the officers, directors, employees, accountants, properties, books and records of the Company and its Subsidiaries and, during such period, the Company shall furnish promptly to Parent and MergerCo all information concerning its or its Subsidiaries' business, properties and personnel as Parent or MergerCo may reasonably request; provided, however, that the Company may restrict the foregoing access to the extent that in the reasonable judgment of the Company, any law, treaty, rule or regulation of any Governmental Entity applicable to the Company requires it or its Subsidiaries to restrict access to any of its business, properties, information or personnel; and provided, further, that such access shall not unreasonably disrupt the operations of the Company or its Subsidiaries. Notwithstanding anything to the contrary contained in this Agreement, the Company shall not be required to provide any information or access that it reasonably believes could violate applicable law, including Antitrust Laws, rules or regulations or the terms of any confidentiality agreement or cause forfeiture of attorney/client privilege.

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(b) Nothing contained in this Agreement shall give to Parent or MergerCo, directly or indirectly, rights to control or direct the Company' s or its Subsidiaries' operations prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision of its and its Subsidiaries' operations.

Section 5.2 Conduct of the Business of the Company Pending the Closing Date. The Company agrees that, except as expressly permitted or required by this Agreement, during the period commencing on the date hereof and ending at the earlier of (x) the Effective Time and (y) termination of this Agreement pursuant to Section 7.1:

(a) the Company and each of its Subsidiaries shall conduct their respective operations in all material respects only in the ordinary course of business consistent with past practice and, to the extent consistent therewith, use their commercially reasonable efforts to preserve intact their respective business organization, keep available the services of their current key officers and employees as a group and maintain satisfactory relationships with any Person having significant business relationships with the Company or any of such Subsidiaries; and

(b) neither the Company nor any of its Subsidiaries shall do any of the following without the prior written consent of Parent:

(i) make any change in or amendment to its certificate of incorporation or its by-laws (or comparable governing documents);

(ii) issue or sell, or authorize to issue or sell, any shares of its capital stock or any other ownership interests, or issue or sell, or authorize to issue or sell, any securities convertible into or exchangeable for, or options, warrants or rights to purchase or subscribe for, or enter into any arrangement or contract with respect to the issuance or sale of, any shares of its capital stock or any other ownership interests, except for the issuance by the Company of Shares pursuant to the terms of any Options or the acquisition of Shares from holders of Options in full or partial payment of the exercise price payable by such holder upon exercise of Options;

(iii) declare, pay or set aside any dividend or other distribution or payment with respect to, or split, combine, redeem or reclassify, or purchase or otherwise acquire, any shares of its capital stock or its other securities except for (i) the acquisition of Shares from holders of Options in full or partial payment of the exercise price payable by such holder upon exercise of Options and (ii) dividends or distributions to the Company or a Subsidiary thereof;

(iv) make or incur capital expenditures in either of the Company' s fiscal years 2005 or 2006 that, individually or in the aggregate, are more than $1,500,000;

(v) acquire, make any investment in, or make any capital contributions to, any Person or entity other than in the ordinary course of business;

(vi) sell, lease or otherwise dispose of any of its properties or assets that are material to its business;

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(vii) terminate any Material Contract, other than in the ordinary course of business;

(viii) incur any indebtedness for borrowed money or guarantee any such indebtedness of another Person, other than borrowings under existing credit facilities described in the Commission Filings; provided, however, that the Company and its Subsidiaries may take any commercially reasonable measures necessary to complete the refinancing of indebtedness existing on the date hereof if such indebtedness becomes due and payable prior to Closing;

(ix) grant or agree to grant to any officer of the Company any increase in wages or bonus, severance, profit sharing, retirement, deferred compensation, insurance or other compensation or benefits, or establish any new compensation or benefit plans or arrangements, or amend or agree to amend any existing Employee Benefit Plans, except (w) as may be required under applicable law, (x) pursuant to the Employee Benefit Plans or collective bargaining agreements of the Company in effect on the date hereof, (y) in the ordinary course of business, and (z) pursuant to employment, retention, change-of-control or similar type agreements existing as of the date hereof;

(x) except as may be required by the Commission or any Governmental Entity or under GAAP, make any material change in its methods, principles and practices of accounting, including tax accounting policies and procedures;

(xi) except in the ordinary course of business, make or rescind any material election relating to Taxes or settle or compromise any audit, claim, suit or proceeding relating to Taxes;

(xii) amend, modify or waive any provision of the Rights Agreement in any way that is materially adverse to Parent or MergerCo, other than to permit another transaction that the Board has determined is a Superior Proposal in accordance with Section 5.5; or

(xiii) authorize any of, or commit or agree to take any of, the foregoing actions in respect of which it is restricted by the provisions of this Section.

Section 5.3 Preparation of Proxy Statement; Stockholders' Meeting. (a) As soon as reasonably practicable following the date of this Agreement, the Company shall prepare a proxy statement relating to the meeting of the Company' s stockholders to be held in connection with the Merger meeting, which, at the time of mailing, shall comply in all material respects with the requirements of Schedule 14A and Rule 13e-3 under the Exchange Act (together with any amendments thereof or supplements thereto, in each case in the form or forms mailed to the Company' s stockholders, the "Proxy Statement") and file the Proxy Statement and Rule 13e-3 Transaction Statement on Schedule 13E-3 (the "Schedule 13E-3") with the Commission. The Proxy Statement shall include a recommendation of the Board (the "Company Board Recommendation") that its stockholders vote in favor of the Merger and this Agreement (subject to Section 5.5). The Company shall use its commercially reasonable efforts to have the Proxy Statement and Schedule 13E-3 cleared by the Commission as promptly as practicable after such

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filing. The Company shall cause the Proxy Statement to be mailed to the Company' s stockholders as promptly as practicable and, in any event, within ten (10) Business Days after the Proxy Statement is cleared by the Commission.

(b) If at any time prior to the Effective Time any event shall occur that should be set forth in an amendment of or a supplement to the Proxy Statement and Schedule 13E-3, the Company shall prepare and file with the Commission such amendment or supplement as soon thereafter as is reasonably practicable. Parent, MergerCo and the Company shall cooperate with each other in the preparation of the Proxy Statement and Schedule 13E-3, and the Company shall promptly notify Parent of the receipt of any oral or written comments of the Commission with respect to the Proxy Statement or Schedule 13E-3 and of any requests by the Commission for any amendment or supplement thereto or of additional requests by the Commission for any amendment or supplement thereto or for additional information, and shall provide to Parent promptly copies of all correspondence between the Company or any representative of the Company and the Commission with respect to the Proxy Statement or Schedule 13E-3. The Company shall give Parent and its counsel reasonable opportunity to review and comment on the Proxy Statement and Schedule 13E-3 (including each amendment or supplement thereto) and all responses to requests for additional information by, and replies to comments of, the Commission before their being filed with, or sent to, the Commission. Each of the Company, Parent and MergerCo shall use its commercially reasonable efforts after consultation with the other as provided herein, to respond promptly to all such comments of and requests by the Commission.

(c) Subject to applicable law, the Company shall, through the Board, take all action necessary, in accordance with and subject to the DGCL and its certificate of incorporation and by-laws, to duly call, give notice of and convene and hold a special meeting of its stockholders to consider and vote upon the adoption and approval of this Agreement and the Merger (such special stockholder meeting, the "Special Meeting") as promptly as practicable. The Company shall include in the Proxy Statement the Company Board Recommendation and the Board shall use its commercially reasonable efforts to obtain the requisite stockholder approval of the Merger and this Agreement, subject to the duties of the Board to make any further disclosure to the stockholders (which disclosure shall not be deemed to constitute a withdrawal or adverse modification of such recommendation unless expressly stated or unless such disclosure, taken as a whole, is contrary to or inconsistent with such recommendation) and subject to the right to withdraw, modify or change such recommendation in accordance with Section 5.5.

Section 5.4 Reasonable Best Efforts. (a) Except as otherwise set forth in Section 5.6 and Section 7.1(b)(i), subject to the terms and conditions provided herein, each of the Company, Parent and MergerCo shall cooperate and use their reasonable best efforts to take, or cause to be taken, all appropriate action, and do, or cause to be done, in the case of the Company, consistent with the fiduciary duties of the Board, and assist and cooperate with the other in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the Merger and the other transactions contemplated hereby, including (i) the satisfaction of the respective conditions set forth in Article VI (including seeking promptly to obtain the consents referred to on Section 6.1(d) of the Company Disclosure Letter) and (ii) with respect to Parent, the completion of the transactions contemplated by the Commitment Letter; provided, that Parent will be responsible for negotiation of definitive financing documentation not materially inconsistent with the Commitment Letter and that nothing contained herein shall

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require Parent to approve or permit the closing of any Bridge Loans (as such term is defined in the Commitment Letter) at any time prior to the earlier of (x) 45 days following the satisfaction of the condition precedent set forth in Section 6.1(a) and (y) the third business day prior to the Termination Date (provided, in either case, the conditions in Article VI (other than Section 6.1(e)) are satisfied or waived at such time).

(b) If at any time prior to the Effective Time any event or circumstance relating to either the Company or its Subsidiaries, or Parent or any of its Subsidiaries, is discovered by the Company or Parent, as the case may be, and which should be set forth in an amendment to the Proxy Statement, the discovering party will promptly inform the other party of such event or circumstance. If at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement, including the execution of additional instruments, the proper officers and directors of each party to this Agreement shall take all such necessary or desirable action.

(c) Provided that the conditions set forth in Article VI (other than Section 6.1(e)) and all conditions in the definitive financing agreements contemplated by the Commitment Letter (other than any condition relating to the equity contribution to Parent, including that contemplated by the "Equity Offset Reduction" referred to in the Commitment Letter) shall have been satisfied or waived, Parent shall cause the Shares or additional equity contemplated to be contributed to Parent pursuant to the Exchange Agreement (and regardless of any conditions contained therein relating thereto, or amendment, waiver or termination thereof) to be contributed at or prior to the Effective Time so as to satisfy the conditions in the Commitment Letter related thereto.

Section 5.5 No Solicitation of Other Offers. (a) The Company shall, and shall cause its Subsidiaries and shall direct and use its commercially reasonable efforts to cause its officers, directors, representatives and agents to, immediately cease and cause to be terminated any existing activities, discussions or negotiations with any parties conducted prior to the date of this Agreement with respect to any Acquisition Proposal.

(b) The Company shall not take, and shall cause its Subsidiaries and shall direct and use its commercially reasonable efforts to cause its officers, directors, representatives and agents not to take, any action to (i) initiate, encourage, facilitate or solicit the making or submission of any Acquisition Proposal or (ii) initiate, continue, or otherwise participate in any discussions or negotiations with, or furnish or disclose any non-public information to, any Person (other than Parent or MergerCo or any of their Affiliates or representatives) in connection with any Acquisition Proposal; provided, however, that the Company, in response to any unsolicited proposal that is made in good faith and constitutes an Acquisition Proposal, may participate in discussions or negotiations with, or furnish or disclose any non-public information to, any Person (other than Parent or MergerCo) which makes such Acquisition Proposal if (A) the Board reasonably determines in good faith, after consultation with its independent financial advisors, that such Acquisition Proposal is, or may reasonably be expected to lead to, a Superior Proposal, and (B) the Company shall have provided prompt written notice to Parent of its intent to take such action, the identity of the Person making the Acquisition Proposal and the terms and conditions of such proposal. The Company shall keep Parent fully informed on a current basis of the status of any such Acquisition Proposal, including any changes to the terms and conditions

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thereof, and promptly provide Parent with copies of all Acquisition Proposals (and modifications thereof) and related agreements, draft agreements and modifications thereof.

(c) Notwithstanding the foregoing, nothing in this Section 5.5 or any other provision of this Agreement shall prohibit the Company or the Board from (x) taking and disclosing to the Company' s stockholders a position with respect to an Acquisition Proposal by a third party to the extent required under Rule 14d-9 and Rule 14e-2 of the Exchange Act or (y) making any disclosure to the stockholders of the Company as the Board determines, in its good faith judgment (after consultation with its outside counsel), is required under applicable law or that the failure to make such disclosure is reasonably likely to cause the Board to violate its fiduciary duties, provided, however that neither the Board nor any committee thereof shall, except as expressly permitted by Section 5.5(d), amend, modify or withdraw the Company Board Recommendation or approve or recommend, or propose to approve or recommend, an Acquisition Proposal.

(d) The Board (or any committee thereof) shall not (i) amend, modify or withdraw the Company Board Recommendation, (ii) approve or recommend, or propose to approve or recommend, any Acquisition Proposal or (iii) cause the Company or any of its Subsidiaries to enter into and approve any letter of intent, agreement in principle, memorandum of understanding, term sheet or similar document or a definitive agreement relating to any Acquisition Proposal (it being understood that the foregoing shall exclude any typical confidentiality agreement entered into by the Company in connection with discussions otherwise permitted hereby relating to a possible Acquisition Proposal); provided, that:

(A) the Board (or any committee thereof) may recommend to its stockholders an Acquisition Proposal and in connection therewith amend, modify or withdraw the Company Board Recommendation and terminate this Agreement pursuant to Section 7.1(c)(i) if (x) the Board has received an Acquisition Proposal that it has determined in good faith, after having consulted with its outside legal counsel and its independent financial advisors, is a Superior Proposal and (y) before taking such action the Company has given Parent at least three (3) Business Days' (or, in the event of any Acquisition Proposal that has been materially revised or modified, at least two (2) Business Days') prior written notice of the terms of such Superior Proposal and of its intent to take such action, and, during such three (3) Business Day period (or, in the event of an Acquisition Proposal that has been materially revised or modified, such two (2) Business Day period), the Company has, if requested by Parent, engaged in good faith negotiations regarding any revised proposal made by Parent and again has determined in good faith, after consultation with its outside legal counsel and its independent financial advisors, that such Acquisition Proposal remains a Superior Proposal; and

(B) the Board (or any committee thereof) may amend, modify or withdraw the Company Board Recommendation other than in respect of an Acquisition Proposal if (x) the Board (or any committee thereof) becomes aware of events, facts or circumstances after the date hereof as a result of which it determines in good faith, after consultation with its outside legal counsel, that such action is advisable in order for the directors to comply with their fiduciary duties to the Company' s stockholders and (y) before taking such action the Company has given Parent at least three (3) Business Days' prior written

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notice of the events, facts or circumstances causing the Board to seek to amend, modify or withdraw the Company Board Recommendations and, during such three-Business-Day period, the Company has, if requested by Parent, engaged in good faith negotiations regarding any revised proposal made by Parent and again has determined in good faith, after consultation with its outside legal counsel that such action is advisable in order for the directors to comply with their fiduciary duties to the Company' s stockholders.

(e) Notwithstanding any amendment, modification or withdrawal of the Company Board Recommendation pursuant to Section 5.5(d)(B), Parent shall have the option, exercisable within five Business Days after such amendment, modification or withdrawal of the Company Board Recommendation, to cause the Board to submit this Agreement to the stockholders of the Company for the purpose of adopting this Agreement and approving the Merger. If Parent exercises such option, Parent shall not be entitled to terminate this Agreement pursuant to Section 7.1(d)(ii).

Section 5.6 Antitrust Laws. (a) Each party hereto shall (i) take promptly all actions necessary to make the filings required of it or any of its Affiliates under any applicable Antitrust Laws in connection with this Agreement and the transactions contemplated hereby, including, filing with the Antitrust Division of the Department of Justice and the Federal Trade Commission no later than the tenth (10th) Business Day following the date hereof the Notification and Report Form required under the HSR Act with respect to the Merger, (ii) comply at the earliest practicable date with any formal or informal request for additional information or documentary material received by it or any of its Affiliates from any Antitrust Authority and (iii) cooperate with one another in connection with any filing under applicable Antitrust Laws and in connection with resolving any investigation or other inquiry concerning the transactions contemplated by this Agreement initiated by any Antitrust Authority.

(b) Parent and the Company shall each be responsible for the payment of one-half of the filing fees under the HSR Act.

(c) Each party hereto shall use its commercially reasonable efforts to resolve such objections, if any, as may be asserted with respect to the transactions contemplated by this Agreement under any Antitrust Law. Without limiting the generality of the foregoing, in the context of this Section 5.6, "commercially reasonable efforts" shall include:

(i) in the case of each of Parent and the Company, if Parent or the Company receives a formal request for additional information or documentary material from an Antitrust Authority, substantially complying with such formal request within sixty (60) days following the date of its receipt thereof; and

(ii) in the case of the Company only, subject to Parent' s compliance with clause (i) above, not frustrating or impeding Parent' s strategy or negotiating positions with any Antitrust Authority.

(d) Each party hereto shall promptly inform the other parties of any material communication made to, or received by such party from, any Antitrust Authority or any other Governmental Entity regarding any of the transactions contemplated hereby.

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Section 5.7 Regulatory Approvals; Other Consents. (a) Except as set forth in Section 5.6, each of Parent and the Company shall, and shall cause their respective Subsidiaries to, cooperate and use their respective reasonable best efforts to obtain as promptly as practicable all consents, waivers, approvals, authorizations, orders, decrees, licenses, or permit of, or registration or filing with or notification to (each of the foregoing, a "Consent") of any Governmental Entity or any other third party required in connection with, and any waivers of any breaches or violations of any Contracts, permits, licenses or other agreements that may be caused by the consummation of, the transactions contemplated by this Agreement, including by (i) promptly making all required filings or submissions to Governmental Entities, (ii) cooperating with one another in (A) determining whether any other filings are required to be made with, or Consents are required to be obtained from any Governmental Entity or any other third party in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and (B) timely making all such filings and timely seeking all such Consents and (iii) seeking to avoid the entry of, or seeking to have vacated or terminated, any decree, order or judgment that would restrain, prevent or delay the Closing, including, by defending through litigation on the merits any claim asserted in court by any Person.

(b) Each of the Company and Parent shall keep each other informed of any material communication, and provide to the other copies of all correspondence between it (or its advisors) and any Governmental Entity relating to this Agreement and shall permit the other to review any material communication to be given by it to, and shall consult with each other in advance of any telephone calls, meetings or conferences with, any Governmental Entity and, to the extent permitted, give the other party the opportunity to attend and participate in such telephone calls, meetings and conferences.

Section 5.8 Indemnity; Directors' and Officers' Insurance; Fiduciary and Employee Benefit Insurance. (a) Parent agrees that all rights to indemnification now existing in favor of any individual who at or prior to the Effective Time was a director, officer, employee or agent of the Company of any of its Subsidiaries or who, at the request of the Company or any of its Subsidiaries, served as a director, officer, member, trustee or fiduciary of another corporation, partnership, joint venture, trust, pension or other employee benefit plan or enterprise (the "Indemnified Parties") as provided in their respective charters, by-laws and indemnification agreements, shall survive the Merger and shall continue in full force and effect for a period of not less than six (6) years from the Effective Time and indemnification agreements shall not be amended, repealed or otherwise modified; provided, that in the event any claim or claims are asserted or made within such six (6) year period, all rights to indemnification in respect of any such claim or claims shall continue until final disposition of any and all such claims. From and after the Effective Time, the Surviving Corporation shall honor, in accordance with their respective terms, each of the covenants contained in this Section 5.8(a) without limit as to time.

(b) At the Effective Time, the Surviving Corporation shall purchase and maintain in effect for a period of six (6) years thereafter, "run-off" coverage as provided (i) by the Company's directors' and officers' liability insurance policies and (ii) by the Company's fiduciary and employee liability policies, in each case, covering those Persons who are covered on the date of this Agreement by such policies provided, however, that (i) in no event shall the Surviving Corporation be obligated to expend in order to obtain or maintain insurance coverage pursuant to this Section 5.8(b) any amount per annum in excess of 300% of the aggregate

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premiums currently paid or payable by the Company in 2005 (on an annualized basis) for such purpose (the “Cap”), which the Company represents to be no more than $500,000, and (ii) if equivalent coverage cannot be obtained, or can be obtained only by paying an annual premium in excess of the Cap, the Surviving Corporation shall only be required to obtain as much coverage as can be obtained by paying an annual premium equal to the Cap.

(c) From and after the Effective Time, to the fullest extent permitted by Delaware law, the Surviving Corporation shall indemnify and advance expenses to all Indemnified Parties with respect to all acts and omissions arising out of such individuals’ services as officers, directors, employees or agents of the Company or any of its Subsidiaries or as trustees or fiduciaries of any plan for the benefit of employees of the Company or any of its Subsidiaries, occurring prior to the Effective Time, including the execution of, and the transactions contemplated by, this Agreement. Without limitation of the foregoing, in the event any such Indemnified Party is or becomes involved, in any capacity, in any action, proceeding or investigation in connection with any matter, including the transactions contemplated by this Agreement, occurring prior to and including the Effective Time, the Surviving Corporation, from and after the Effective Time, to the fullest extent permitted by Delaware law, shall pay, as incurred, such Indemnified Party’ s reasonable legal and other expenses (including the cost of any investigation and preparation and amounts payable in settlement of any such matter) incurred in connection therewith. The Surviving Corporation shall pay all reasonable expenses, including attorneys’ fees, that may be incurred by any Indemnified Party in enforcing this Section 5.8 or any action involving an Indemnified Party resulting from the transactions contemplated by this Agreement. Notwithstanding the foregoing, any Indemnified Party whose expenses are paid by the Surviving Corporation pursuant to this Section 5.8 shall repay such expenses to the extent a court of competent jurisdiction pursuant to a final and non-appealable decision finds that such Indemnified Party is not entitled to indemnification therefor and applicable Delaware law does not permit such indemnification (and, if required by the Surviving Corporation, shall execute and undertaking to that effect as a condition to such Indemnified Party’ s rights under this Section 5.8(c)).

(d) Notwithstanding any other provisions hereof, the obligations of the Surviving Corporation contained in this Section 5.8 shall be binding upon its successors and assigns. In the event the Surviving Corporation, or any of its successors or assigns, (i) consolidates with or merges into any other Person or (ii) transfers all or substantially all of its properties or assets to any Person, then, and in each case, proper provision shall be made so that the successors and assigns of the Surviving Corporation honor the indemnification obligations set forth in this Section 5.8.

(e) The obligations of the Surviving Corporation under this Section 5.8 shall survive the Closing and shall not be terminated or modified in such a manner as to affect adversely any Indemnified Party to whom this Section 5.8 applies without the consent of such affected Indemnified Party (it being expressly agreed that the Indemnified Parties to whom this Section 5.8 applies shall be third-party beneficiaries of this Section 5.8, each of whom may enforce the provisions of this Section).

Section 5.9 Public Announcements. The initial press release announcing the terms of this Agreement shall be a joint press release. Thereafter, to the extent reasonably practicable,

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Parent, MergerCo and the Company each agree to consult with each other before issuing any press release or otherwise making any public statement with respect to the transactions contemplated by this Agreement.

Section 5.10 Notification of Certain Matters. Parent and the Company shall use their respective commercially reasonable efforts to promptly notify each other of (a) any material actions, suits, claims or proceedings in connection with the transactions contemplated by this Agreement commenced or, to the Knowledge of Parent or, as the case may be, the Company, threatened against the Company or any of its Subsidiaries or (b) the occurrence or non-occurrence of any fact or event which would be reasonably likely to cause any condition set forth in Article VI not to be satisfied; provided, however, that no such notification, nor the obligation to make such notification, shall affect the representations, warranties or covenants of any party or the conditions to the obligations of any party to this Agreement.

Section 5.11 Defense of Litigation. Each party hereto agrees to vigorously defend against, and to cooperate with the other party in the defense of, all actions, suits or proceedings in which such party is named as a defendant which seek to enjoin, restrain or prohibit the transactions contemplated hereby or seek damages with respect to such transactions. No party hereto shall settle any such action, suit or proceeding or fail to perfect on a timely basis any right to appeal any judgment rendered or order entered against such party therein without the written consent of the other party (which consent shall not be unreasonably withheld or delayed).

Section 5.12 Acquisition of Shares. Except with the prior written approval of the Board (or any committee thereof), neither Parent nor any of its current or prospective Affiliates or associates (as such term is defined under the Exchange Act) shall acquire beneficial ownership of any Shares not beneficially owned by any of such Persons as of the date of this Agreement prior to the Effective Time.

Section 5.13 Knowledge of Breach. Neither Parent nor its Affiliates shall have any claim or recourse under this Agreement against the Company or its directors, officers, employees, subsidiaries, stockholders, agents, advisors or representatives for the failure of the Closing to occur by reason of a breach by the Company of any of its representations or warranties under this Agreement if Parent had Knowledge prior to the execution of this Agreement of the facts or circumstances constituting such breach.

Section 5.14 Confidentiality. Unless otherwise agreed to in writing by the Company, each of Parent and MergerCo agrees, and will cause its Affiliates and representatives, (i) to keep all Proprietary Information confidential and not to disclose or reveal any Proprietary Information to any Person other than Parent and MergerCo' s representatives who are actively and directly participating in the transactions contemplated hereby or who otherwise need to know the Proprietary Information for the purpose of consummating the Merger and the other transactions contemplated hereby and to cause those Persons to observe the terms of this Section 5.14, and (ii) not to use Proprietary Information for any purpose other than in connection with the consummation of the Merger and the other transactions contemplated hereby or in a manner that the Company has approved, or as otherwise required by law.

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ARTICLE VI

CONDITIONS PRECEDENT

Section 6.1 Conditions to the Obligations of Each Party. The respective obligations of Parent, MergerCo and the Company to consummate the Merger are subject to the satisfaction, at or before the Closing Date, of each of the following conditions:

(a) Stockholder Approval. The stockholders of the Company shall have duly adopted this Agreement, pursuant to the requirements of the Company' s certificate of incorporation and by-laws and applicable law and, in addition, by a vote of a majority of the Shares outstanding as of the record date for the Special Meeting other than Shares beneficially owned by Rollover Stockholders.

(b) Injunctions; Illegality. The consummation of the Merger shall not be restrained, enjoined or prohibited by any order, judgment, decree, injunction or ruling of a court of competent jurisdiction or any Governmental Entity and there shall not have been any statute, rule or regulation enacted, promulgated or deemed applicable to the Merger by any Governmental Entity which prevents the consummation of the Merger or has the effect of making the Merger illegal.

(c) Antitrust Laws. Any applicable waiting period (or any extension thereof) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 required to consummate the Merger shall have expired or been terminated.

(d) Third-Party Consents. The notices, consents, approvals, permits and authorizations required to be made prior to the Effective Time by the Company, Parent, MergerCo or any of their respective Subsidiaries with, or obtained prior to the Effective Time by the Company, Parent, MergerCo or any of their respective Subsidiaries from, any third party and listed in Section 6.1(d) of the Company Disclosure Letter shall have been made or obtained.

(e) Financing. The funding contemplated by the Commitment Letter shall have been received, in the amounts and on the terms and conditions set forth in the Commitment Letter or upon other terms and conditions which are not materially less favorable in the aggregate to the Company, as determined by Parent in its reasonable discretion.

Section 6.2 Conditions to the Obligations of Parent and MergerCo. The obligations of Parent and MergerCo to consummate the Merger are subject to the satisfaction or waiver by Parent on or prior to the Closing Date of the following further conditions:

(a) Performance. The Company shall have performed in all material respects its covenants and obligations under this Agreement required to be performed by it at or prior to the Closing Date.

(b) Representations and Warranties. The representations and warranties of the Company contained in this Agreement, disregarding all qualifications contained in such representations and warranties relating to materiality or Company Material Adverse Effect, shall be true and correct at and as of the Effective Time and the Closing Date as if made at and as of

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such times (except to the extent those representations and warranties expressly relate to an earlier date, in which case as if made at and as of such date); provided, that the condition set forth in this Section 6.2(b) shall only be deemed to not have been satisfied if the failure of any such representation(s) or warranty(ies) to be so true and correct would reasonably be expected to constitute, individually or in the aggregate, a Company Material Adverse Effect. Parent shall have received a certificate of the Company, executed by the Secretary or other proper officer of the Company, as to the satisfaction of the conditions set forth in Section 6.2(a) and this Section 6.2(b).

Section 6.3 Conditions to the Obligations of the Company. The obligation of the Company to consummate the Merger is subject to the satisfaction or waiver by the Company on or prior to the Closing Date of the following further conditions:

(a) Performance. Each of Parent and MergerCo shall have performed in all material respects its covenants and obligations under this Agreement required to be performed by it at or prior to the Closing Date.

(b) Representations and Warranties. The representations and warranties of Parent and MergerCo contained in this Agreement, disregarding all qualifications contained in such representations and warranties relating to materiality or Parent or MergerCo Material Adverse Effect, shall be true and correct at and as of the Effective Time and the Closing Date as if made at and as of such times (except to the extent those representations and warranties expressly relate to an earlier date, in which case as if made at and as of such date); provided, that the condition set forth in this Section 6.3(b) shall only be deemed to not have been satisfied if the failure of any such representation(s) or warranty(ies) to be so true and correct would reasonably be expected to constitute, individually or in the aggregate, a Parent or MergerCo Material Adverse Effect. The Company shall have received a certificate of Parent, executed by its Chief Executive Officer, as to the satisfaction of the conditions set forth in Section 6.3(a) and this Section 6.3(b).

ARTICLE VII

TERMINATION AND ABANDONMENT

Section 7.1 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned, at any time prior to the Effective Time, whether before or after approval of the Merger by the Company' s stockholders:

(a) by mutual written consent of the Company, Parent and MergerCo;

(b) by either Parent, on the one hand, or the Company, on the other hand, if:

(i) any court or other Governmental Entity shall have issued, enacted, entered, promulgated or enforced any law, order, judgment, decree, injunction or ruling or taken any other action (that has not been vacated, withdrawn or overturned) restraining, enjoining or otherwise prohibiting the Merger and such law, order, judgment, decree, injunction, ruling or other action shall have become final and nonappealable; provided

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that the party seeking to terminate pursuant to this Section 7.1(b)(i) shall have used its commercially reasonable efforts to challenge such law, order, judgment, decree, injunction or ruling in accordance with Section 5.7; or

(ii) the Merger shall not have occurred on or prior to (a) May 31, 2006 if the Proxy Statement is first mailed to stockholders on or prior to March 15, 2006, or (b) 75 calendar days after the date the Proxy Statement is first mailed to stockholders if so mailed after March 15, 2006 and prior to May 31, 2006 and otherwise (c) August 15, 2006 (the "Termination Date"); provided, however, that the right to terminate this Agreement pursuant to this Section 7.1(b)(ii) shall not be available to any party whose action or failure to fulfill any covenant, agreement or obligation under this Agreement has been the primary cause of, or resulted in, the failure of the Merger to be consummated by the Termination Date; or

(iii) the requisite stockholder approval referred to in Section 6.1(a) shall not have been obtained by reason of the failure to obtain the requisite vote at a duly held Special Meeting or at any adjournment or postponement thereof;

(c) by the Company, if:

(i) a third party, including any group, shall have made a Superior Proposal and the Company has taken any of the actions referred to in clauses (ii) or (iii) of Section 5.5(d) after having complied with the requirements of Section 5.5(d)(A)(x) and (y) thereof; provided, that prior to or contemporaneously with such termination the Company pays the Termination Fee (as defined in Section 8.1(c)) to Parent; or

(ii) (x) any of the representations and warranties of Parent and/or MergerCo contained in this Agreement shall fail to be true and correct, or (y) there shall be a breach by Parent or MergerCo of any of its covenants or agreements in this Agreement that in either case (i) would result in the failure of a condition set forth in Section 6.3 and (ii) which is not curable or, if curable, is not cured within thirty (30) days after written notice thereof is given by the Company to Parent and MergerCo; provided, that the Company may not terminate this Agreement pursuant to this Section 7.1(c)(ii) if the Company is in material breach of this Agreement; or

(iii) Parent fails to exercise the option referred to in Section 5.5(e) within the time period referred to therein, provided that prior to or contemporaneously with such termination the Company pays the Termination Fee to Parent.

(d) by Parent, if:

(i) (x) any of the representations and warranties of the Company contained in this Agreement shall fail to be true and correct, or (y) there shall be a breach by the Company of any covenant or agreement of the Company in this Agreement that in either case (i) would result in the failure of a condition set forth in Section 6.2 and (ii) which is not curable or, if curable, is not cured within thirty (30) days after written notice thereof is given by Parent to the Company; provided, that Parent may not terminate this

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Agreement pursuant to this Section 7.1(d)(i) if Parent or MergerCo is in material breach of this Agreement; or

(ii) (x) subject to the last sentence of Section 5.5(e), the Board shall have withdrawn, amended or modified, in a way that is adverse to Parent, its approval, adoption or recommendation, as the case may be, of the Merger or this Agreement (it being understood and agreed that any public statement that the Company has received an Acquisition Proposal or has entered into discussions or negotiations with, or furnished or disclosed any information to, any Person regarding an Acquisition Proposal or that otherwise only describes the operation of Section 5.5 or this Section 7.1, shall be deemed not to be a withdrawal, amendment or modification of the approval, adoption or recommendation, as the case may be, of the Merger or this Agreement) or (y) the Board shall have recommended to its stockholders an Acquisition Proposal.

Section 7.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 7.1 by Parent, on the one hand, or the Company, on the other hand, written notice thereof shall forthwith be given to the other party specifying the provision hereof pursuant to which such termination is made, and this Agreement shall become void and have no effect, and there shall be no liability hereunder on the part of Parent, MergerCo or the Company, except that Section 5.14, Article VIII and this Section 7.2 shall survive any termination of this Agreement. Nothing in this Section 7.2 shall relieve any party to this Agreement of liability for fraud or breach of this Agreement.

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Fees and Expenses. (a) Except as provided in paragraphs (b) and (c) below, all costs and expenses incurred in connection with this Agreement and the consummation of the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

(b) The Company shall reimburse Parent for the Expenses of Parent and its Affiliates (other than the Company and its Subsidiaries) up to a maximum of $3,000,000 within three (3) Business Days of the delivery by Parent of evidence thereof if (i) this Agreement is terminated pursuant to Section 7.1(c)(i), Section 7.1(c)(iii), Section 7.1(d)(i), or Section 7.1(d)(ii), or (ii) the Board withdraws, or amends or modifies in a way that is adverse to Parent, its approval, adoption or recommendation, as the case may be, of the Merger or this Agreement, and this Agreement is terminated pursuant to Section 7.1(b)(iii).

(c) If this Agreement is terminated pursuant to (x) Section 7.1(c)(i), Section 7.1(c)(iii), or Section 7.1(d)(ii) or (y) (A) Section 7.1(b)(iii) (but only following the Board' s withdrawal, amendment or modification in a way that is adverse to Parent of its approval, adoption or recommendation of the Merger or this Agreement or a public announcement, made after the date of this Agreement, of an Acquisition Proposal made in good faith by a third party at a price per share in excess of $43.50) or (B) Section 7.1(d)(i) following the failure of the Company to perform its obligations under any of Sections 5.3, 5.4 or 5.5 and, in the case of this

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clause (y), on or prior to the twelve month anniversary of such termination of this Agreement, the Company (I) enters into a written agreement, arrangement or understanding with respect to a transaction or series of related transactions pursuant to an Acquisition Proposal with a Person that made such public announcement or any other Person, or (II) effects a Material Recapitalization, the Company shall promptly (or, in the case of clause (y)(I) of this Section 8.1(c), upon the consummation of such transaction) pay to Parent by wire transfer of immediately available funds an amount equal to $15,000,000 (the "Termination Fee").

(d) In the event this Agreement is terminated in accordance with its terms by either the Company or Parent and Parent receives the Termination Fee, neither Parent nor MergerCo shall assert or pursue in any manner, directly or indirectly, any claim or cause of action against the Company, its affiliates or any of their respective officers, directors, employees, stockholders, agents or representatives based in whole or in part upon (i) a breach of any representation, warranty or covenant in this Agreement or (ii) its or their receipt, consideration, recommendation or approval of an Acquisition Proposal or the Company' s exercise of its right of termination, except, in the case of each of clause (i) and clause (ii), for any such claim or cause of action based upon a willful breach of this Agreement.

Section 8.2 Representations and Warranties. The respective representations and warranties of the Company, on the one hand, and Parent and MergerCo, on the other hand, contained herein or in any certificates or other documents delivered prior to or at the Closing shall expire with, and be terminated and extinguished by, the Closing, and thereafter none of the Company, Parent, MergerCo or any of their respective directors and officers shall be under any liability whatsoever with respect to any such representation or warranty. This Section 8.2 shall have no effect upon any other obligation of the parties hereto, whether to be performed before or after the Effective Time.

Section 8.3 Extension; Waiver. Subject to the express limitations herein, at any time prior to the Effective Time, the parties hereto, by action taken by or on behalf of the respective Boards of Directors of the Company, Parent or MergerCo, as the case may be, may (i) extend the time for the performance of any of the obligations or other acts of the other party hereto, (ii) waive any inaccuracies in the representations and warranties contained herein by any other applicable party or in any document, certificate or writing delivered pursuant hereto by any other applicable party or (iii) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of any party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 8.4 Notices. All notices, consents, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or mailed, certified or registered mail with postage prepaid, or sent by facsimile (upon confirmation of receipt), as follows:

(a) if to the Company, to it at:

iPayment, Inc.
40 Burton Hills Boulevard
Suite 415

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Nashville, Tennessee 37215
Attention: Afshin Yazdian, Esq.
Fax: (615) 665-8434

and

Special Committee of the Board of Directors of iPayment, Inc.
40 Burton Hills Boulevard
Suite 415
Nashville, Tennessee 37215
Attention: David M. Wilds
Fax: (615) 665-8434

with copies (which shall not constitute notice) to:

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036
Attention: Mark L. Mandel, Esq.
Fax: (212) 354-8113

and

Akin Gump Strauss Hauer & Feld LLP
590 Madison Avenue
New York, NY 10022
Attention: Patrick J. Dooley, Esq. and
Fax: (212) 872-1002

and

McDermott Will & Emery LLP
50 Rockefeller Plaza
New York, NY 10020-1605
Attention: Stephen E. Older, Esq.
Fax: (212) 547-5444

(b) if to Parent or MergerCo, to it at:

iPayment Holdings, Inc.
40 Burton Hills Boulevard
Suite 415
Nashville, Tennessee 37215
Attention: Gregory S. Daily
Fax: (615) 665-8434

with a copy (which shall not constitute notice) to:

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Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Attention: Jeffrey J. Rosen, Esq. and
Gregory V. Gooding, Esq.
Fax: (212) 909-6836

or to such other Person or address as any party shall specify by notice in writing to each of the other parties. All such notices, requests, demands, waivers and communications shall be deemed to have been received on the date of delivery unless if mailed, in which case on the third Business Day after the mailing thereof, except for a notice of a change of address, which shall be effective only upon receipt thereof.

Section 8.5 Entire Agreement. This Agreement contains the entire understanding of the parties hereto with respect to the subject matter contained herein and supersedes all prior agreements and understandings, oral and written, with respect thereto.

Section 8.6 Binding Effect; Benefit; Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto and, with respect to the provisions of Section 2.9 and Section 5.8, shall inure to the benefit of the Persons benefiting from the provisions thereof all of whom are intended to be third-party beneficiaries thereof. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of each of the other parties.

Section 8.7 Amendment and Modification. This Agreement may be amended by the Company, Parent and MergerCo at any time before or after any approval of this Agreement by the stockholders of the Company, but, after any such approval, no amendment shall be made which decreases the Merger Consideration or which adversely affects the rights of the Company' s stockholders hereunder without the approval of such stockholders. This Agreement may not be amended except by a written instrument executed by all parties to this Agreement.

Section 8.8 Headings. The descriptive headings of the several Articles and Sections of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

Section 8.10 Applicable Law. This agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws rules thereof, except that the DGCL shall apply to the extent required in connection with the Special Meeting, if any, and the Merger. The state or federal courts located within the City of New York shall have exclusive jurisdiction over any and all disputes between the parties hereto, whether in law or equity, arising out of or relating to this agreement and the agreements, instruments and documents contemplated hereby and the

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parties consent to and agree to submit to the exclusive jurisdiction of such courts. Each of the parties hereby waives and agrees not to assert in any such dispute, to the fullest extent permitted by applicable law, any claim that (i) such party is not personally subject to the jurisdiction of such courts, (ii) such party and such party' s property is immune from any legal process issued by such courts or (iii) any litigation or other proceeding commenced in such courts is brought in an inconvenient forum. The parties hereby agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 8.4, or in such other manner as may be permitted by law, shall be valid and sufficient service thereof and hereby waive any objections to service accomplished in the manner herein provided.

Section 8.11 Severability. If any term, provision, covenant or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable term, provision, covenant or restriction or any portion thereof had never been contained herein.

Section 8.12 Specific Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity, except as otherwise provided in Section 8.1(d).

Section 8.13 Waiver of Jury Trial. Each of the parties to this Agreement hereby irrevocably waives all right to a trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or the transactions contemplated hereby.

Section 8.14 Rules of Construction. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

*   *   *   *   *

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IN WITNESS WHEREOF, each of Parent, MergerCo and the Company has caused this Agreement to be executed by their respective officers thereunto duly authorized, all as of the date first above written.

iPAYMENT HOLDINGS, INC.

By /s/ Gregory S. Daily
Name: Gregory S. Daily
Title: President

iPAYMENT MERGERCO, INC.

By /s/ Gregory S. Daily
Name: Gregory S. Daily
Title: President

iPAYMENT, INC.

By /s/ Afshin M. Yazdian
Name: Afshin M. Yazdian
Title: Executive Vice President, General Counsel and Secretary

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Exhibit 6

EXECUTION COPY

EXCHANGE AGREEMENT

This Exchange Agreement (this “Agreement”) is made and entered into as of December 27, 2005, among iPayment Holdings, Inc., a Delaware corporation (“Parent”), Gregory S. Daily (“GSD”), and Carl A. Grimstad (“CAG”).

WHEREAS, concurrently with the execution and delivery of this Agreement, Parent, iPayment MergerCo, Inc., a Delaware corporation (“MergerCo”), and iPayment, Inc., a Delaware corporation (the “Company”), are entering into an Agreement and Plan of Merger, of even date herewith (the “Merger Agreement”), which provides, among other things, for the merger of MergerCo with and into the Company, with the Company continuing as the surviving corporation (the “Merger”);

WHEREAS, as of the date hereof, each of GSD and CAG is the beneficial owners of, and has the sole right to vote and dispose of, that number of shares of common stock, par value $0.01 per share, of the Company (“Common Stock”), set forth opposite his name on Annex A hereto (such shares, the “GSD Shares” and “CAG Shares,” respectively);

WHEREAS, certain other persons identified on Annex A (the “Daily Holders”) and Annex B (the “Stream Holders”) hereto are the beneficial owners of, and have the sole right to vote and dispose of, that number of shares of Common Stock set forth opposite such person’ s name on Annex A hereto (such shares, the “Daily Shares”) and Annex B hereto (such shares, the “Stream Shares”), respectively;

WHEREAS, GSD and CAG have agreed to contribute, or cause to be contributed, to Parent, immediately prior to the Effective Time and subject to the satisfaction of the conditions to closing set forth in the Merger Agreement, equity to Parent, in the form of Shares and/or cash, having a value of up to $206.6 million;

WHEREAS, capitalized terms used herein and not otherwise defined will have the respective meanings attributed to them in the Merger Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and warranties contained herein, the parties hereto agree as follows:

1. Share Exchange.

(a) Immediately prior to the Effective Time, (i) GSD will assign, transfer, convey and deliver the GSD Shares to Parent and, in exchange for such Shares, Parent will issue and deliver to GSD the number of shares of Parent common stock (“Parent Shares”) set forth opposite his name on Annex A hereto; (ii) CAG will assign, transfer, convey and deliver the CAG Shares to Parent and, in exchange for such Shares, Parent will issue and deliver to CAG the number of

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Parent Shares set forth opposite his name on Annex A hereto; (iii) GSD will cause the Daily Holders to assign, transfer, convey and deliver the Daily Shares to Parent and, in exchange for such Shares, Parent will issue and deliver to each such Daily Holder the number of Parent Shares set forth opposite such Daily Holder' s name on Annex A hereto; (iv) CAG will cause one or more of the Stream Holders to assign, transfer, convey and deliver to Parent 170,500 of the Stream Shares and, in exchange for such Shares, Parent will issue and deliver to such Stream Holder(s) such number of Parent Shares as shall be agreed, but if not so agreed, based on the exchange ratio reflected in Annex A hereto; and (v) solely in the event, and to the extent, that additional equity is needed in order to satisfy the closing conditions under the financing agreements contemplated by the Commitment Letters, (x) CAG will cause one or more of the Stream Holders to assign, transfer, convey and deliver to Parent up to the remaining Stream Shares and (y) GSD and CAG will cause to be contributed to Parent additional equity in the form of either cash or Shares in an amount equal to up to $18,750,000 (with any Shares so contributed being valued for such purpose at $43.50 per Share), and, in each such case, in exchange for such Shares or other equity, Parent will issue and deliver to the person(s) contributing the same such number of Parent Shares as shall be agreed, but if not so agreed, based on the exchange ratio reflected in Annex A hereto.

(b) All Shares delivered pursuant to paragraph (a) of this Section 1 are referred to herein as "Rollover Shares," each such person delivering any such Shares is referred to as an "Investor," and the exchange contemplated by paragraph (a) of this Section 1 (including the contribution of any cash pursuant to clause (v)(y) thereof) is referred to as the "Exchange."

(c) In the event that the Exchange is consummated but the Merger Agreement is terminated in accordance with its terms, then the Exchange will be void *ab initio* and deemed not to have occurred and each Investor will deliver to Parent the number of Parent Shares received by such person pursuant to paragraph (a) of this Section 1 and Parent will deliver to each Investor the Rollover Shares (and any cash) previously delivered by such Investor to Parent.

2. Closing.

(a) The closing of the transactions contemplated by this Agreement will take place at the offices of Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022, immediately prior to the Closing under the Merger Agreement.

(b) At the Closing, each Investor will deliver to Parent stock certificates duly endorsed for transfer to Parent, or accompanied by stock powers

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duly endorsed in blank, and representing the Rollover Shares, and Parent will deliver to each Investor (or such Investor' s nominee) the number of Parent Shares provided for herein or otherwise agreed to.

3. Representations and Warranties of the Investors. GSD represents and warrants as to himself and each Daily Holder, and CAG represents as to himself and each Stream Holder, severally but not jointly, as follows:

(a) Binding Agreement. GSD and CAG each has the capacity to execute and deliver this Agreement and to consummate the transactions contemplated hereby. Such Investor has duly and validly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of such Investor, enforceable against such Investor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is considered in a proceeding in equity or at law).

(b) Ownership of Shares. Such Investor is the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended, which meaning will apply for all purposes of this Agreement) of, and has the sole power to vote and dispose of the number of shares of Common Stock set forth opposite such Investor' s name in Annex A hereto, free and clear of any security interests, liens, charges, encumbrances, equities, claims, options or limitations of whatever nature and free of any other limitation or restriction (including any restriction on the right to vote, sell or otherwise dispose of such shares), except as may exist by reason of this Agreement, any agreement solely between the Investors or pursuant to applicable law. Except as provided for in this Agreement, the Merger Agreement or the other agreements contemplated hereby and thereby, there are no outstanding options or other rights to acquire from such Investor, or obligations of such Investor to sell or to dispose of, any of such shares.

(c) No Conflict. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the performance of such Investor' s obligations hereunder will (a) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, or acceleration) under any contract, agreement, instrument, commitment, arrangement or understanding to which such Investor is a party, or result in the creation of a security interest, lien, charge, encumbrance, equity or claim with respect to such Investor' s Rollover Shares, or (b) require any material consent, authorization or approval of any person, entity or government entity, or (c) violate or conflict with

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any writ, injunction or decree applicable to such Investor or such Investor' s Rollover Shares.

(d) Accredited Investor. Such Investor is an "accredited investor" as such term is defined in Rule 501(a) promulgated under the Securities Act.

(e) Investor' s Experience. (A) Such Investor' s financial situation is such that the Investor can afford to bear the economic risk of holding the shares of Parent stock to be received by such Investor, (B) such Investor can afford to suffer complete loss of his investment in such shares of Parent stock, and (C) such Investor' s knowledge and experience in financial and business matters are such that the Investor is capable of evaluating the merits and risks of the Investor' s investment in such shares of Parent stock.

(f) Investment Intent. Such Investor is acquiring the shares of Parent stock solely for the Investor' s own account for investment and not with a view to or for sale in connection with any distribution thereof. The Investor agrees that the Investor will not, directly or indirectly, offer, transfer, sell, pledge, hypothecate or otherwise dispose of any of the shares of Parent stock (or solicit any offers to buy, purchase or otherwise acquire or take a pledge of shares of Parent stock), except in compliance with (i) the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, (ii) applicable state and non-U.S. securities or "blue sky" laws and (iii) the provisions of this Agreement and any stockholders agreement entered into by the Investors.

4. Conditions Precedent. The obligations of each Investor to consummate the transactions contemplated hereby are subject to the conditions set forth in Article VI of the Merger Agreement being satisfied or waived by the Company or Parent, as the case may be.

5. Miscellaneous.

(a) Binding Effect; Benefits. This Agreement will be binding upon the successors, heirs, executors and administrators of the parties hereto. Nothing in this Agreement, express or implied, is intended or will be construed to give any person other than the parties to this Agreement and their respective successors or permitted assigns any legal or equitable right, remedy or claim under or in respect of any agreement or any provision contained herein. No party will have liability for any breach of any representation or warranty contained herein, except for any knowing or intentional breach thereof.

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(b) Amendments. This Agreement may not be modified, amended, altered or supplemented except upon the execution and delivery of a written agreement executed by all of the parties hereto.

(c) Assignability. Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof will be assignable by any Investor without the prior written consent of Parent.

(d) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof).

(e) Counterparts. This Agreement may be executed by facsimile and in two or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument.

(f) Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated herein are not affected in any manner materially adverse to any party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner.

(g) Waiver. Any party to this Agreement may waive any condition to their obligations contained herein.

(h) Termination. This Agreement will terminate on the earliest to occur of (i) the termination of the Merger Agreement in accordance with its terms and (ii) an agreement of the parties hereto to terminate this Agreement. Termination will not relieve any party from liability for any intentional breach of its obligations hereunder committed prior to such termination.

[*Signature Page Follows*]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

iPAYMENT HOLDINGS, INC.

By: /s/ Gregory S. Daily
Name: Gregory S. Daily
Title: President

GREGORY S. DAILY

/s/ Gregory S. Daily

CARL A. GRIMSTAD

/s/ Carl A. Grimstad

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Annex A

Name of Investor	Rollover Shares	Parent Shares
Daily, Gregory S.	1,925,294	19,253
Grimstad, Carl A.	1,243,704	12,437
GSD Trust Partners, LLC	426,215	4,262
Daily Family Foundation	47,445	474
Daily Trust (Austin)	23,722	237
Daily Trust (Chase)	23,722	237
Daily Trust (Courtney)	23,722	237
Daily Trust (Grayson)	23,722	237

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Annex B

Name of Investor	Rollover Shares
Stream Family Ltd. Partners	200,056
Stream III, Harold H.	142,334
Stream Miller, Sandra	94,889
M.G. Stream Trust – FBO Harold H Stream III	23,722
M.G. Stream Trust – FBO Sandra Gray Stream	23,722
M.G. Stream Trust – FBO William Gray Stream	23,723
Opal Gray Trust	72,384

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Exhibit 7

Form of Side Letter

December ___, 2005

iPayment Holdings, Inc.
c/o 40 Burton Hills Boulevard, Suite 415
Nashville, Tennessee 37215
Attn: Gregory Daily and Carl Grimstad

Exchange Agreement

Reference is made to the Exchange Agreement (the "Exchange Agreement"), dated as of the date hereof, between iPayment Holdings, Inc. ("Parent"), Gregory S. Daily ("GSD") and Carl A. Grimstad ("CAG"), pursuant to which each of GSD and CAG has agreed, subject to the terms and conditions set forth in the Exchange Agreement, to (i) contribute all of his shares of common stock ("Company Stock") of iPayment, Inc. (the "Company") to Parent in exchange for shares of common stock ("Parent Stock") of Parent and (ii) cause certain other persons to contribute shares of Company Stock to Parent in exchange for shares of Parent Stock.

The undersigned hereby represents, warrants and covenants to Parent as follows:

1. The undersigned owns the number of shares of Company Stock set forth opposite the name of the undersigned on Annex [A][B] of the Exchange Agreement.

2. The undersigned will contribute such shares of Company Stock to Parent, free and clear of any security interests, liens, charges, encumbrances, equities, claims, options or limitations of whatever nature, in exchange for shares of Parent Stock, on the terms and subject to the conditions set forth in the Exchange Agreement.

This letter constitutes the legally binding commitment of the undersigned, to be governed by and construed in accordance with the laws of the State of New York (without regard to the principles or rules of conflicts of laws thereof to the extent that such principles or rules would require the application of the laws of another jurisdiction).

Sincerely,

By: ______________________________
Name:
Title:

ACCEPTED AND AGREED
on behalf of iPayment Holdings, Inc.
as of December ___, 2005

By: ______________________________
Name: Gregory S. Daily
Title: President

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Exhibit 8

EXECUTION COPY

GUARANTEE

Guarantee, dated as of December 27, 2005 (this "Guarantee"), by Gregory S. Daily (the "Guarantor") in favor of iPayment, Inc. (the "Guaranteed Party").

1. GUARANTEE. To induce the Guaranteed Party to enter into the Agreement and Plan of Merger, dated as of the date hereof, (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Merger Agreement"; capitalized terms used herein but not defined shall have the meanings given thereto in the Merger Agreement), among iPayment Holdings, Inc., a Delaware corporation ("Parent"), iPayment MergerCo, Inc., a Delaware corporation ("MergerCo", and together with Parent, "Buyer") and the Guaranteed Party, pursuant to which Parent will acquire 100% of the outstanding common stock of the Guaranteed Party, the Guarantor hereby absolutely, unconditionally and irrevocably guarantees to the Guaranteed Party, the due and punctual payment of one-half of any damages payable by Buyer under the Merger Agreement as a result of the breach by Buyer of its obligations thereunder (the "Obligation"); provided, that in no event shall Guarantor' s liability under this Guarantee exceed $20 million (the "Cap"), and provided, further, that this Guarantee will expire and will have no further force or effect, and the Guaranteed Party will have no rights hereunder, in the event that the Closing occurs. In furtherance of the foregoing, the Guarantor acknowledges that Carl A. Grimstad (the "Other Guarantor") has provided a guarantee as of the date hereof (the "Other Guarantee") in favor of the Guaranteed Party in respect of the Obligation and that the Guaranteed Party may, in its sole discretion, bring and prosecute a separate action against the Guarantor regardless of whether action is brought against Buyer, the Other Guarantor, or any other Person liable with respect to the Obligation or whether Buyer, the Other Guarantor, or any other such Person is joined in any such action or actions.

2. NATURE OF GUARANTEE. The Guaranteed Party shall not be obligated to file any claim relating to the Obligation in the event that Buyer becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of the Guaranteed Party to so file shall not affect the Guarantor' s obligations hereunder. In the event that any payment to the Guaranteed Party in respect of the Obligation is rescinded or must otherwise be returned for any reason whatsoever, the Guarantor shall remain liable hereunder with respect to the Obligation as if such payment had not been made. This is an unconditional guarantee of payment and not of collectibility.

3. CHANGES IN OBLIGATIONS, CERTAIN WAIVERS. The Guarantor agrees that the Guaranteed Party may at any time and from time to time, without notice to or further consent of the Guarantor, extend the time of payment of the Obligation, and may also make any agreement with Buyer or any Person liable with respect to the Obligation or interested in the transactions contemplated in the Merger Agreement, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between the Guaranteed Party and Buyer or any such other Person without in any way impairing or affecting the Guarantor' s obligations under this Guarantee. The Guarantor agrees that the obligations of the Guarantor hereunder shall not be released or discharged, in whole or in part, or otherwise affected by (a) the failure of the

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Guaranteed Party to assert any claim or demand or to enforce any right or remedy against Buyer or any other Person interested in the transactions contemplated by the Merger Agreement; (b) any change in the time, place or manner of payment of the Obligation or any rescission, waiver, compromise, consolidation or other amendment or modification of any of the terms or provisions of the Merger Agreement or any other agreement evidencing, securing or otherwise executed in connection with the Obligation; (c) the addition, substitution or release of any Person primarily or secondarily liable for the Obligation; (d) any change in the corporate existence, structure or ownership of Buyer or any other Person liable with respect to the Obligation; (e) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Buyer or any other Person liable with respect to the Obligation; (f) the existence of any claim, set-off or other right which the Guarantor may have at any time against Buyer or the Guaranteed Party or any of its Affiliates, whether in connection with the Obligation or otherwise; (g) the adequacy of any other means the Guaranteed Party may have of obtaining payment of the Obligation; (h) any other act or omission which might in any manner or to any extent vary the risk of the Guarantor or otherwise operate as a release or discharge of the Guarantor, all of which may be done without notice to the Guarantor; or (i) any other event or circumstances, whether similar or dissimilar to the foregoing (other than final payment in full of the Obligation). To the fullest extent permitted by law, the Guarantor hereby expressly waives any and all rights or defenses arising by reason of any law which would otherwise require any election of remedies by the Guaranteed Party. The Guarantor waives promptness, diligence, notice of the acceptance of this Guarantee and of the Obligation, presentment, demand for payment, notice of non-performance, default, dishonor and protest, notice of the incurrence of the Obligation and all other notices of any kind, all defenses which may be available by virtue of any valuation, stay, moratorium law or other similar law now or hereafter in effect, any right to require the marshalling of assets of Buyer or any other Person primarily or secondarily liable with respect to the Obligation, and all suretyship defenses generally (other than defenses to the payment of the Obligation that are available to Buyer under the Merger Agreement or a breach by the Guaranteed Party of the Guarantee). The Guarantor hereby unconditionally and irrevocably waives any duty on the part of the Guaranteed Party to disclose to the Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of Buyer or any of its Affiliates now or hereafter known by the Guaranteed Party. The Guarantor acknowledges that it will receive substantial direct and indirect benefits from the transactions contemplated by the Merger Agreement and that the waivers set forth in this Guarantee are knowingly made in contemplation of such benefits.

The Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against Buyer or any other Person liable with respect to the Obligation that arise from the existence, payment, performance, or enforcement of the Guarantor' s obligation under or in respect of this Guarantee or any other agreement in connection therewith, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Guaranteed Party against Buyer or such other Person, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from Buyer or such other Person, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until the Obligation and all other amounts payable under this

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Guarantee shall have been paid in full in cash. If any amount shall be paid to the Guarantor in violation of the immediately preceding sentence at any time prior to the payment in full in cash of the Obligation and all other amounts payable under this Guarantee, such amount shall be received and held in trust for the benefit of the Guaranteed Party, shall be segregated from other property and funds of the Guarantor and shall forthwith be paid or delivered to the Guaranteed Party in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the Obligation and all other amounts payable under this Guarantee, in accordance with the terms of the Merger Agreement, whether matured or unmatured, or to be held as collateral for the Obligation or other amounts payable under this Guarantee thereafter arising. Notwithstanding anything to the contrary contained in this Guarantee, the Guaranteed Party hereby agrees that to the extent any of Buyer' s representations, warranties, covenants or agreements contained in the Merger Agreement are waived in writing by the Guaranteed Party, then such waiver shall extend to the Guarantor solely with respect to such representation(s), warranty(ies), covenant(s) or agreement(s) waived thereby.

4. NO WAIVER; CUMULATIVE RIGHTS. No failure on the part of the Guaranteed Party to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Guaranteed Party of any right, remedy or power hereunder or under the Merger Agreement or otherwise preclude any other or future exercise of any right, remedy or power hereunder. Each and every right, remedy and power hereby granted to the Guaranteed Party or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the Guaranteed Party at any time or from time to time.

5. REPRESENTATIONS AND WARRANTIES. The Guarantor hereby represents and warrants that:

(a) the Guarantor has the power and authority to execute, deliver and perform this Guarantee and the execution, delivery and performance of this Guarantee by the Guarantor do not contravene any agreement or other document to which the Guarantor is a party or any law, regulation, rule, decree, order, judgment or contractual restriction binding on the Guarantor or the Guarantor' s assets;

(b) all consents, approvals, authorizations, permits of, filings with and notifications to, any governmental authority necessary for the due execution, delivery and performance of this Guarantee by the Guarantor have been obtained or made and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with, any governmental authority or regulatory body is required in connection with the execution, delivery or performance of this Guarantee; and

(c) this Guarantee constitutes a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

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6. NO ASSIGNMENT. Neither the Guarantor nor the Guaranteed Party may assign its rights, interests or obligations hereunder to any other person (except in the case of an assignment by Guaranteed Party by operation of law) without the prior written consent of the Guaranteed Party (in the case of an assignment by the Guarantor) or the Guarantor (in the case of an assignment by the Guaranteed Party).

7. NOTICES. All notices, requests, demands, waivers and other communications required or permitted to be given under this Guarantee shall be in writing and shall be given by personal delivery or sending by United States Postal Service Express Mail or an overnight courier service, proof of delivery requested, or sent by telecopy, to the following addresses:

(a) if to the Guaranteed Party, to it at:

iPayment, Inc.
40 Burton Hills Boulevard
Suite 415
Nashville, Tennessee 37215
Attention: Afshin Yazdian, Esq.
Fax: (615) 665-8434

and

Special Committee of the Board of Directors of iPayment, Inc.
40 Burton Hills Boulevard
Suite 415
Nashville, Tennessee 37215
Attention: David M. Wilds
Fax: (615) 665-8434

with copies (which shall not constitute notice) to:

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036
Attention: Mark L. Mandel, Esq.
Fax: (212) 354-8113

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and

Akin Gump Strauss Hauer & Feld LLP
590 Madison Avenue
New York, NY 10022
Attention: Patrick J. Dooley, Esq.
Fax: (212) 872-1002

and

McDermott Will & Emery LLP
50 Rockefeller Plaza
New York, NY 10020-1605
Attention: Stephen E. Older, Esq.
Fax: (212) 547-5444

(b) if to the Guarantor, to it at:

Gregory S. Daily
40 Burton Hills Boulevard
Suite 415
Nashville, Tennessee 37215
Fax: (615) 665-8434

with a copy (which shall not constitute notice) to:

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Attention: Jeffrey J. Rosen, Esq. and
Gregory V. Gooding, Esq.
Fax: (212) 909-6836

or to such other Person or address as a party shall specify by notice in writing to the other party. All such notices, requests, demands, waivers and communications shall be deemed to have been given on the date of personal receipt or proven delivery or, in the case of notice by telecopier, when receipt thereof is confirmed by telephone.

8. CONTINUING GUARANTEE. This Guarantee shall remain in full force and effect and shall be binding on the Guarantor, its successors and assigns until the Obligation are satisfied in full. Notwithstanding the foregoing, this Guarantee shall terminate and the Guarantor shall have no further obligations under this Guarantee as of the earlier of (i) the Closing (as defined in the Merger Agreement) and (ii) the first anniversary of any termination of the Merger Agreement in accordance with its terms if the Guaranteed Party has not presented a claim for payment of the Obligation to either Buyer or the Guarantor by such first anniversary.

9. NO RECOURSE. The Guaranteed Party acknowledges that recourse against the Guarantor under this Guarantee (and against the Other Guarantor under the Other

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Guarantee) constitutes the sole and exclusive remedy of the Guaranteed Party against the Guarantor, the Other Guarantor and all other direct and indirect current and prospective shareholders of Parent in respect of any liabilities or obligations arising under, or in connection with the Merger Agreement, the Exchange Agreement and the transactions contemplated thereby, whether by the enforcement of any assessment, or by any legal or equitable proceeding or by virtue of any statute, regulation or other applicable law, provided that this provision will not be deemed to limit any liability or obligation that the Guarantor (or the Other Guarantor) may have in his capacity as an officer or director of the Guaranteed Party.

10. GOVERNING LAW. This Guarantee shall be governed by, and construed in accordance with, the laws of the State of New York. Each of the parties hereto (i) consents to submit itself to the personal jurisdiction of the United States District Court for the Southern District of New York or any court of the State of New York located in such district in the event any dispute arises out of this Guarantee or any of the transactions contemplated by this Guarantee, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction or venue by motion or other request for leave from any such court and (iii) agrees that it will not bring any action relating to this Guarantee or any of the transactions contemplated by this Guarantee in any court other than such courts sitting in the State of New York. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER IN ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS GUARANTEE.

10. COUNTERPARTS. This Guarantee may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

[*Signature Page Follows*]

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IN WITNESS WHEREOF, the Guarantor has caused this Guarantee to be executed and delivered as of the date first written above.

/s/ Gregory S. Daily
Gregory S. Daily

IPAYMENT, INC.

By: /s/ Afshin M. Yazdian
Name: Afshin M. Yazdian
Title: Executive Vice President, General Counsel and Secretary

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Exhibit 9

EXECUTION COPY

GUARANTEE

Guarantee, dated as of December 27, 2005 (this "Guarantee"), by Carl A. Grimstad (the "Guarantor") in favor of iPayment, Inc. (the "Guaranteed Party").

1. GUARANTEE. To induce the Guaranteed Party to enter into the Agreement and Plan of Merger, dated as of the date hereof, (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Merger Agreement"; capitalized terms used herein but not defined shall have the meanings given thereto in the Merger Agreement), among iPayment Holdings, Inc., a Delaware corporation ("Parent"), iPayment MergerCo, Inc., a Delaware corporation ("MergerCo", and together with Parent, "Buyer") and the Guaranteed Party, pursuant to which Parent will acquire 100% of the outstanding common stock of the Guaranteed Party, the Guarantor hereby absolutely, unconditionally and irrevocably guarantees to the Guaranteed Party, the due and punctual payment of one-half of any damages payable by Buyer under the Merger Agreement as a result of the breach by Buyer of its obligations thereunder (the "Obligation"); provided, that in no event shall Guarantor' s liability under this Guarantee exceed $10 million (the "Cap"), and provided, further, that this Guarantee will expire and will have no further force or effect, and the Guaranteed Party will have no rights hereunder, in the event that the Closing occurs. In furtherance of the foregoing, the Guarantor acknowledges that Gregory S. Daily (the "Other Guarantor") has provided a guarantee as of the date hereof (the "Other Guarantee") in favor of the Guaranteed Party in respect of the Obligation and that the Guaranteed Party may, in its sole discretion, bring and prosecute a separate action against the Guarantor regardless of whether action is brought against Buyer, the Other Guarantor, or any other Person liable with respect to the Obligation or whether Buyer, the Other Guarantor, or any other such Person is joined in any such action or actions.

2. NATURE OF GUARANTEE. The Guaranteed Party shall not be obligated to file any claim relating to the Obligation in the event that Buyer becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of the Guaranteed Party to so file shall not affect the Guarantor' s obligations hereunder. In the event that any payment to the Guaranteed Party in respect of the Obligation is rescinded or must otherwise be returned for any reason whatsoever, the Guarantor shall remain liable hereunder with respect to the Obligation as if such payment had not been made. This is an unconditional guarantee of payment and not of collectibility.

3. CHANGES IN OBLIGATIONS, CERTAIN WAIVERS. The Guarantor agrees that the Guaranteed Party may at any time and from time to time, without notice to or further consent of the Guarantor, extend the time of payment of the Obligation, and may also make any agreement with Buyer or any Person liable with respect to the Obligation or interested in the transactions contemplated in the Merger Agreement, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between the Guaranteed Party and Buyer or any such other Person without in any way impairing or affecting the Guarantor' s obligations under this Guarantee. The Guarantor agrees that the obligations of the Guarantor hereunder shall not be released or discharged, in whole or in part, or otherwise affected by (a) the failure of the

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Guaranteed Party to assert any claim or demand or to enforce any right or remedy against Buyer or any other Person interested in the transactions contemplated by the Merger Agreement; (b) any change in the time, place or manner of payment of the Obligation or any rescission, waiver, compromise, consolidation or other amendment or modification of any of the terms or provisions of the Merger Agreement or any other agreement evidencing, securing or otherwise executed in connection with the Obligation; (c) the addition, substitution or release of any Person primarily or secondarily liable for the Obligation; (d) any change in the corporate existence, structure or ownership of Buyer or any other Person liable with respect to the Obligation; (e) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Buyer or any other Person liable with respect to the Obligation; (f) the existence of any claim, set-off or other right which the Guarantor may have at any time against Buyer or the Guaranteed Party or any of its Affiliates, whether in connection with the Obligation or otherwise; (g) the adequacy of any other means the Guaranteed Party may have of obtaining payment of the Obligation; (h) any other act or omission which might in any manner or to any extent vary the risk of the Guarantor or otherwise operate as a release or discharge of the Guarantor, all of which may be done without notice to the Guarantor; or (i) any other event or circumstances, whether similar or dissimilar to the foregoing (other than final payment in full of the Obligation). To the fullest extent permitted by law, the Guarantor hereby expressly waives any and all rights or defenses arising by reason of any law which would otherwise require any election of remedies by the Guaranteed Party. The Guarantor waives promptness, diligence, notice of the acceptance of this Guarantee and of the Obligation, presentment, demand for payment, notice of non-performance, default, dishonor and protest, notice of the incurrence of the Obligation and all other notices of any kind, all defenses which may be available by virtue of any valuation, stay, moratorium law or other similar law now or hereafter in effect, any right to require the marshalling of assets of Buyer or any other Person primarily or secondarily liable with respect to the Obligation, and all suretyship defenses generally (other than defenses to the payment of the Obligation that are available to Buyer under the Merger Agreement or a breach by the Guaranteed Party of the Guarantee). The Guarantor hereby unconditionally and irrevocably waives any duty on the part of the Guaranteed Party to disclose to the Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of Buyer or any of its Affiliates now or hereafter known by the Guaranteed Party. The Guarantor acknowledges that it will receive substantial direct and indirect benefits from the transactions contemplated by the Merger Agreement and that the waivers set forth in this Guarantee are knowingly made in contemplation of such benefits.

The Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against Buyer or any other Person liable with respect to the Obligation that arise from the existence, payment, performance, or enforcement of the Guarantor’ s obligation under or in respect of this Guarantee or any other agreement in connection therewith, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Guaranteed Party against Buyer or such other Person, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from Buyer or such other Person, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until the Obligation and all other amounts payable under this

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Guarantee shall have been paid in full in cash. If any amount shall be paid to the Guarantor in violation of the immediately preceding sentence at any time prior to the payment in full in cash of the Obligation and all other amounts payable under this Guarantee, such amount shall be received and held in trust for the benefit of the Guaranteed Party, shall be segregated from other property and funds of the Guarantor and shall forthwith be paid or delivered to the Guaranteed Party in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the Obligation and all other amounts payable under this Guarantee, in accordance with the terms of the Merger Agreement, whether matured or unmatured, or to be held as collateral for the Obligation or other amounts payable under this Guarantee thereafter arising. Notwithstanding anything to the contrary contained in this Guarantee, the Guaranteed Party hereby agrees that to the extent any of Buyer's representations, warranties, covenants or agreements contained in the Merger Agreement are waived in writing by the Guaranteed Party, then such waiver shall extend to the Guarantor solely with respect to such representation(s), warranty(ies), covenant(s) or agreement(s) waived thereby.

4. NO WAIVER; CUMULATIVE RIGHTS. No failure on the part of the Guaranteed Party to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Guaranteed Party of any right, remedy or power hereunder or under the Merger Agreement or otherwise preclude any other or future exercise of any right, remedy or power hereunder. Each and every right, remedy and power hereby granted to the Guaranteed Party or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the Guaranteed Party at any time or from time to time.

5. REPRESENTATIONS AND WARRANTIES. The Guarantor hereby represents and warrants that:

(a) the Guarantor has the power and authority to execute, deliver and perform this Guarantee and the execution, delivery and performance of this Guarantee by the Guarantor do not contravene any agreement or other document to which the Guarantor is a party or any law, regulation, rule, decree, order, judgment or contractual restriction binding on the Guarantor or the Guarantor's assets;

(b) all consents, approvals, authorizations, permits of, filings with and notifications to, any governmental authority necessary for the due execution, delivery and performance of this Guarantee by the Guarantor have been obtained or made and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with, any governmental authority or regulatory body is required in connection with the execution, delivery or performance of this Guarantee; and

(c) this Guarantee constitutes a legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law).

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6. NO ASSIGNMENT. Neither the Guarantor nor the Guaranteed Party may assign its rights, interests or obligations hereunder to any other person (except in the case of an assignment by Guaranteed Party by operation of law) without the prior written consent of the Guaranteed Party (in the case of an assignment by the Guarantor) or the Guarantor (in the case of an assignment by the Guaranteed Party).

7. NOTICES. All notices, requests, demands, waivers and other communications required or permitted to be given under this Guarantee shall be in writing and shall be given by personal delivery or sending by United States Postal Service Express Mail or an overnight courier service, proof of delivery requested, or sent by telecopy, to the following addresses:

(a) if to the Guaranteed Party, to it at:

iPayment, Inc.
40 Burton Hills Boulevard
Suite 415
Nashville, Tennessee 37215
Attention: Afshin Yazdian, Esq.
Fax: (615) 665-8434

and

Special Committee of the Board of Directors of iPayment, Inc.
40 Burton Hills Boulevard
Suite 415
Nashville, Tennessee 37215
Attention: David M. Wilds
Fax: (615) 665-8434

with copies (which shall not constitute notice) to:

White & Case LLP
1155 Avenue of the Americas
New York, NY 10036
Attention: Mark L. Mandel, Esq.
Fax: (212) 354-8113

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and

Akin Gump Strauss Hauer & Feld LLP
590 Madison Avenue
New York, NY 10022
Attention: Patrick J. Dooley, Esq.
Fax: (212) 872-1002

and

McDermott Will & Emery LLP
50 Rockefeller Plaza
New York, NY 10020-1605
Attention: Stephen E. Older, Esq.
Fax: (212) 547-5444

(b) if to the Guarantor, to it at:

Carl A. Grimstad
40 Burton Hills Boulevard
Suite 415
Nashville, Tennessee 37215
Fax: (615) 665-8434

with a copy (which shall not constitute notice) to:

Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
Attention: Jeffrey J. Rosen, Esq. and
Gregory V. Gooding, Esq.
Fax: (212) 909-6836

or to such other Person or address as a party shall specify by notice in writing to the other party. All such notices, requests, demands, waivers and communications shall be deemed to have been given on the date of personal receipt or proven delivery or, in the case of notice by telecopier, when receipt thereof is confirmed by telephone.

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9. NO RECOURSE. The Guaranteed Party acknowledges that recourse

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against the Guarantor under this Guarantee (and against the Other Guarantor under the Other Guarantee) constitutes the sole and exclusive remedy of the Guaranteed Party against the Guarantor, the Other Guarantor and all other direct and indirect current and prospective shareholders of Parent in respect of any liabilities or obligations arising under, or in connection with the Merger Agreement, the Exchange Agreement and the transactions contemplated thereby, whether by the enforcement of any assessment, or by any legal or equitable proceeding or by virtue of any statute, regulation or other applicable law, provided that this provision will not be deemed to limit any liability or obligation that the Guarantor (or the Other Guarantor) may have in his capacity as an officer or director of the Guaranteed Party.

10. GOVERNING LAW. This Guarantee shall be governed by, and construed in accordance with, the laws of the State of New York. Each of the parties hereto (i) consents to submit itself to the personal jurisdiction of the United States District Court for the Southern District of New York or any court of the State of New York located in such district in the event any dispute arises out of this Guarantee or any of the transactions contemplated by this Guarantee, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction or venue by motion or other request for leave from any such court and (iii) agrees that it will not bring any action relating to this Guarantee or any of the transactions contemplated by this Guarantee in any court other than such courts sitting in the State of New York. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER IN ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS GUARANTEE.

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[*Signature Page Follows*]

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IN WITNESS WHEREOF, the Guarantor has caused this Guarantee to be executed and delivered as of the date first written above.

/s/ Carl A. Grimstad
Carl A. Grimstad

IPAYMENT, INC.

By: /s/ Afshin M. Yazdian
Name: Afshin M. Yazdian
Title: Executive Vice President,
General Counsel and Secretary

Signature Page to Guarantee

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