

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:  CYNERGY DATA, LLC, <i>et al.</i> , <sup>1</sup>  Debtors.	Chapter 11  Case No. 09-_____ (     )  Jointly Administered
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**MOTION OF THE DEBTORS FOR INTERIM AND FINAL ORDERS  
(I) AUTHORIZING USE OF CASH COLLATERAL, (II) AUTHORIZING  
POSTPETITION FINANCING, (III) GRANTING SENIOR PRIMING LIENS AND  
SUPERPRIORITY CLAIMS, (IV) GRANTING ADEQUATE PROTECTION TO THE  
PREPETITION SECURED PARTIES, AND (V) SCHEDULING A FINAL HEARING  
TO INCUR SUCH FINANCING ON A PERMANENT BASIS**

The above-captioned debtors and debtors-in-possession herein (collectively, the “Debtors”), hereby respectfully move the Bankruptcy Court (the “Motion”) for entry of an interim order (as attached to this Motion as Exhibit A, the “Interim Order”) and a final order (the “Final Order” and, collectively with the Interim Order, the “Orders”), under sections 105(a), 361, 362, 363, and 364 of title 11 of the United States Code, 11 U.S.C. §101, et seq. (as amended, the “Bankruptcy Code”) and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 4001-2 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the Debtors to: (a) enter into the DIP Facility Documents (unless otherwise stated, all capitalized terms used but not otherwise defined shall have the meanings ascribed to them later in this Motion)); (b) use cash collateral; and (c) provide adequate protection to their prepetition secured lenders. The Debtors also

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<sup>1</sup> The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

request that the Bankruptcy Court schedule a final hearing with respect to the relief requested in this Motion. In support of this Motion, the Debtors respectfully state as follows:

**PRELIMINARY STATEMENT**

1. The Bankruptcy Court should authorize the Debtors to enter into the DIP Facility Documents because the Debtors satisfy the standard in section 364 of the Bankruptcy Code: they are unable to obtain comparable unsecured credit elsewhere and have granted adequate protection to holders of primed liens.

2. The Debtors are in need of additional financing. The DIP Facility Documents are fair and reasonable and provide significant new liquidity for the Debtors. The DIP Facilities will thus enable the Debtors to preserve their assets as a going concern, which will enable the Debtors to identify the optimum financial transaction, which may include a sale of all or substantially all of their assets pursuant to section 363 of the Bankruptcy Code. Without the financing provided for in the DIP Facility Documents, the Debtors would not be able to meet their direct operating expenses, would suffer irreparable harm, would jeopardize the prospects of completing a reorganization, including any future sale, and would probably have to liquidate their assets, which would benefit none of the constituents the Bankruptcy Code is designed to protect. Accordingly, the Bankruptcy Court should authorize the Debtors to enter into the DIP Facility Documents.

3. The Bankruptcy Court should also authorize the use of cash collateral as requested in this Motion. The Debtors are indebted to the Prepetition Senior Lenders and the Prepetition Subordinated Lenders. The Prepetition Senior Lender Indebtedness is secured by all assets of the Debtors, Prosperity, and Holdings. The Prepetition Subordinated Indebtedness is secured by third priority and continuing pledges, liens, and security interests on and in the Prepetition Lender Collateral.

4. The Prepetition Secured Parties are adequately protected. The Prepetition Secured Parties consent to the Debtors' use of cash collateral as set forth in the Interim Order. As a condition to obtaining this consent and in satisfaction of section 363(e) of the Bankruptcy Code, the Debtors will adequately protect the Prepetition Secured Parties by giving them superpriority claims under section 507(b) of the Bankruptcy Code, as well as additional and replacement security interests in and liens upon all or substantially all of the Debtors' assets, including cash collateral, as well as currently owned and after-acquired real and personal property, assets and rights, of any kind or nature, wherever located (excepting avoidance actions), and the proceeds, products, rents and profits thereof. Accordingly, the Bankruptcy Court should grant the Debtors' use of cash collateral as requested in this Motion.

#### **SUMMARY OF RELIEF REQUESTED AND LOCAL RULE 4001-2 DISCLOSURES**

5. The Debtors respectfully request the entry of an interim order:

- a. authorizing and approving, pursuant to sections 105, 361, 362, and 364 of Title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (x) Debtors to obtain postpetition financing up to the Working Capital DIP Facility Cap (as defined below) (the "Working Capital DIP Facility") from Comerica Bank ("Comerica"), as agent to the Working Capital DIP Lenders (as defined below) (in such capacity, the "Working Capital DIP Agent"), and Comerica and Wells Fargo Foothill, LLC ("Wells Fargo"), in their respective capacities as lenders under the Working Capital DIP Facility (in such capacities, collectively, the "Working Capital DIP Lenders"), pursuant to the Working Capital DIP Facility Notes (as defined below) and the other Working Capital DIP Facility Documents (as defined below) and (y) Debtors to obtain postpetition financing in an aggregate principal outstanding amount of up to \$7,500,000 (the "Interchange DIP Facility," and together with the Working Capital DIP Facility, the "DIP

Facilities”) from Harris, N.A. and Moneris Solutions, Inc. (collectively, “Harris” or the “Interchange DIP Lenders”), pursuant to the Prepetition Harris Documents as supplemented or modified by this Order (the “Interchange DIP Facility Documents”), and together with the Working Capital DIP Facility Documents, the “DIP Facility Documents”), to (A) fund, among other things, Interchange and Network Reimbursement Fees (as defined below) and ongoing working capital, general corporate, and other financing needs of Debtors, (B) provide the Prepetition Senior Agent, First Out Banks and Harris (collectively, the “Prepetition Secured Parties”) Adequate Protection (as defined below), and (C) pay fees and expenses owed under the DIP Facility Documents to the Working Capital DIP Agent, the Working Capital DIP Lenders and the Interchange DIP Lenders (other than attorney fees owed under the DIP Facility Documents, which, notwithstanding anything to the contrary in this Order, shall be accrued and included in the respective claims of those parties in accordance with their respective priority, but not paid (by transfer, setoff, recoupment or in any other manner) until the earlier of a Termination Event or the Termination Date;

b. authorizing and empowering Debtors to execute and enter into the DIP Facility Documents and to perform such other and further acts as may be required in connection with the DIP Facility Documents;

c. providing, pursuant to section 364(c) and (d) of the Bankruptcy Code, that the financing under the Working Capital DIP Facility:

(1) has priority over any and all administrative expenses, including, without limitation, the kind specified in sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other consensual or non-

consensual lien, levy or attachment, whether incurred in the Cases or any successor case (the “Working Capital DIP Facility Superpriority Claims”); provided, however, that the Working Capital DIP Facility Superpriority Claims shall be *pari passu* with the Interchange DIP Facility Superpriority Claims (as defined below) and shall be payable from and have recourse to all prepetition and postpetition property of Debtors, and

(2) be and be deemed immediately secured by valid, binding, continuing, enforceable, fully perfected and unavoidable first priority senior priming security interests and liens (the “Working Capital DIP Facility Liens”) in and on all prepetition and postpetition property and assets of Debtors, wherever located, whether real or personal, whether tangible or intangible, and whether now existing or hereafter acquired, including proceeds, products, offspring, rents and profits thereof, and including, without limitation, (i) the Prepetition Lender Collateral (as defined below); (ii) all accounts, accounts receivable, instruments, documents, drafts, notes, acceptances, chattel paper, general intangibles (including, without limitation, all goodwill, copyrights, patents, trademarks, trade names and franchises), software, contract rights, rights to payment evidenced by chattel paper, documents or instruments, deposit accounts, rights to payment for money or funds advanced or sold, causes of action, choses in action, commercial tort claims, letters of credit, letter of credit rights, supporting obligations, investment property or other property in possession or control of Working Capital DIP Lenders, all personal property received as returns and repossessions, all other forms of receivables, tax refunds of any form, all inventory, including all goods held for sale and documents evidencing inventory, all equipment (together with spare and repair parts, special tools and equipment and replacements), the proceeds of credit and other forms of insurance coverage of any of the foregoing and all books and records pertaining to all of the foregoing; and (iii) all interests in real

property and fixtures (collectively, the “Working Capital Collateral”), subject only to the Permitted Prior Liens (as defined below) and the Interchange DIP Facility Liens (as defined below) in the Interchange Collateral (as defined below); provided, however, that the Working Capital Collateral shall not include avoidance actions pursuant to sections 502(d), 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code (the “Avoidance Actions”) or proceeds of any Avoidance Actions unless approved in the Final Order (terms used but not defined herein that are defined in the Michigan Uniform Commercial Code shall have the meaning set forth therein);

d. providing, pursuant to section 364(c) and (d) of the Bankruptcy Code, that the financing under the Interchange DIP Facility:

(1) has priority over any and all administrative expenses, including, without limitation, the kind specified in sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other consensual or non-consensual lien, levy or attachment, whether incurred in the Cases or any successor case (the “Interchange DIP Facility Superpriority Claims,” and together with the Working Capital DIP Facility Superpriority Claims, the “DIP Facility Superpriority Claims”); provided, however, that the Interchange DIP Facility Superpriority Claims shall be *pari passu* with the Working Capital DIP Facility Superpriority Claims and shall be payable from and have recourse to all prepetition and postpetition property of Debtors, and

(2) be and be deemed immediately secured by valid, binding, continuing, enforceable, fully perfected and unavoidable first priority senior priming security interests and liens (the “Interchange DIP Facility Liens,” and together with the Working Capital DIP Facility Liens, the “DIP Facility Liens”) in and on all of Debtors’ ISO Revenue (as such

term is defined in the Forbearance Agreement (as defined below)), the Reserve Account, the ISO Operating Account, the Merchant Suspense Account, the ISO Clearing Account and all other of Debtors' deposit accounts maintained with the Interchange DIP Lenders, wherever located, whether now existing or hereafter acquired (collectively, the "Interchange Collateral"), subject only to the Permitted Prior Liens (as defined below) to the extent any such Permitted Prior Liens were senior in priority to the Prepetition Harris Liens (as defined below). Terms used but not defined herein that are defined in the Interchange DIP Facility Documents shall have the meaning set forth in the Interchange DIP Facility Documents.

e. authorizing Debtors, pursuant to sections 361, 363(c) and (e), and 364(d)(1) of the Bankruptcy Code, to use "cash collateral" as defined under section 363 of the Bankruptcy Code (the "Cash Collateral") to pay, first, the Prepetition Senior Lender Forbearance Indebtedness (as defined below); second, the Prepetition Senior Lender Non-Forbearance Indebtedness (as defined below); and, third, the Working Capital DIP Facility Indebtedness (as defined below), and to provide Adequate Protection to the Prepetition Secured Parties on account of their claims under the Prepetition Loan Documents (as defined below) for any diminution to the Prepetition Collateral (as defined below) caused by the use of Cash Collateral and the terms of the financing being granted herein; provided, however, that with respect to Cash Collateral arising from ISO Revenue (the "Interchange Cash Collateral"), the application of Cash Collateral provided in this subparagraph shall be net of such Interchange Cash Collateral that is used to pay the indebtedness under the Prepetition Harris Documents with respect to the funding of Interchange and Network Reimbursement Fees and the Interchange DIP Facility Indebtedness (defined below);

f. pending approval at the Final Hearing (as defined below), authorizing Debtors, pursuant to sections 363 and 364(d)(1) of the Bankruptcy Code, to borrow under the Working Capital DIP Facility in an aggregate outstanding principal amount at any one time of up to an amount equal to the lesser of (i) the amount of (A) \$9,000,000 less (B) the amount of the outstanding Prepetition Senior Lender Forbearance Indebtedness as of the Petition Date plus (C) the aggregate amount of payments or proceeds of Collateral that are applied after the Petition Date to reduce the amount of Prepetition Senior Lender Indebtedness and (ii) \$25,000,000 (the “Working Capital DIP Facility Cap”) (together with interest, fees, charges and expenses payable under the Working Capital DIP Facility Notes (as defined below)), in each case, pursuant to the terms and conditions of the Working Capital DIP Facility Documents, and to use the amounts borrowed to fund Debtors’ working capital and other general corporate needs, in accordance with the terms of the Working Capital DIP Facility Documents and this Order; and

g. pending approval at the Final Hearing, authorizing Debtors, pursuant to sections 363 and 364(d)(1) of the Bankruptcy Code, to borrow under the Interchange DIP Facility to fund Debtors’ Interchange and Network Reimbursement Fees in an aggregate outstanding principal amount at any one time of up to \$7,500,000 (together with interest, fees, charges and expenses payable under the Interchange DIP Facility Documents) pursuant to the terms and conditions of the Interchange DIP Facility Documents and this Order;

h. authorizing Debtors and the Interchange DIP Lenders, pursuant to sections 105, 363 and 365 of the Bankruptcy Code, to perform under the Interchange DIP Facility Documents in their entirety, including authorizing Interchange DIP Lenders to withhold amounts in accordance with the Interchange DIP Facility Documents regardless of whether such amounts pertain to prepetition or postpetition transactions;

i. pending approval at the Final Hearing, authorizing the waiver by Debtors of any right to surcharge against the Working Capital Collateral and Interchange Collateral;

j. scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the “Final Hearing”) before this Court to consider entry of an order (a) approving the DIP Facilities and authorizing Debtors to borrow all amounts available under the DIP Facilities and use such borrowed amounts (i) from the Working Capital DIP Facility, to fund Debtors’ working capital and other general corporate needs and pay such other amounts required or allowed to be paid pursuant to the Working Capital DIP Facility Documents, this Order and any other order of this Court, and (ii) from the Interchange DIP Facility, to fund Debtors’ Interchange and Network Reimbursement Fees and pay such other amounts required or allowed to be paid pursuant to the Interchange DIP Facility Documents, this Order and any other order of this Court, (b) authorizing the use of Cash Collateral first to pay the Prepetition Senior Lender Indebtedness until paid in full and thereafter to pay the Working Capital DIP Facility Indebtedness; provided, however, that with respect to Interchange Cash Collateral, the application of Cash Collateral provided in this Order shall be net of such Interchange Cash Collateral that is used to pay the indebtedness under the Prepetition Harris Documents with respect to the funding of Interchange and Network Reimbursement Fees and the Interchange DIP Facility Indebtedness, and (c) authorizing the grant of Adequate Protection to the Prepetition Secured Parties, pursuant to the Final Order, as set forth in the Motion; and

k. modifying the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit Debtors, the Working Capital DIP Agent, the

Working Capital DIP Lenders, and the Interchange DIP Lenders to implement the terms of this Order.

6. Pursuant to Local Bankruptcy Rule 4001-2, the following provisions are highlighted<sup>2</sup>:

a. Granting of Cross-Collateralization (Local Rule 4001-2(a)(i)(A):

None

b. Limitations on Investigation (Local Rule 4001-2(a)(i)(B)): None

c. Waiver of Surcharge Rights under § 506(c) (Local Rule 4001-2(a)(i)(C)): Upon entry of a Final Order, no cost or expenses of administration shall be imposed against the Working Capital DIP Agent, the Working Capital DIP Lenders, the Interchange DIP Lenders, any of their claims, or the Collateral under sections 105, 506(c) or 552 of the Bankruptcy Code, or otherwise, by Debtors or any other party in interest without the prior written consent of the Prepetition Senior Agent, the Working Capital DIP Agent and the Interchange DIP Lenders, and no such consent shall be implied from any action, inaction, or acquiescence by any party, including, but not limited to, funding of Debtors' ongoing operations by the Working Capital DIP Agent, Working Capital DIP Lenders and Interchange DIP Lenders. The "equities of the case" exception contained in section 552(b) of the Bankruptcy Code shall be deemed waived. Neither the Working Capital DIP Agent, nor any of the Working Capital DIP Lenders, Interchange DIP Lenders or Prepetition Secured Parties, shall be subject to the

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<sup>2</sup> This summary is qualified in all respects by the terms of the Interim Order and the DIP Facility Documents (as applicable).

equitable doctrine of “marshaling” or any similar doctrine with respect to the Collateral. (Interim Order ¶ 8).

d. Lien on Avoidance Actions (Local Rule 4001-2(a)(i)(D)): The Working Capital Collateral shall not Avoidance Actions or proceeds of any Avoidance Actions unless approved in the Final Order (Interim Order, ¶ 3(b)).

e. Limited “Roll-Over” Provision (Local Rule 4001-2(a)(i)(E)): The Order does permit the Debtor to use up to \$1,500,000 of cash collateral on a weekly basis to pay down certain prepetition indebtedness. (Interim Order, ¶ 2(a)(vi)).

f. Disparate Treatment of Professionals ((Local Rule 4001-2(a)(i)(F)): None

g. Priming of Secured Liens Without Consent (Local Rule 4001-2(a)(i)(G)): None

7. Pursuant to Bankruptcy Rule 4001(c), the following provisions are highlighted<sup>3</sup>:

a. Bankruptcy Rule 4001(c)(1)(B)(i). Grant of Priority or Lien on Property of Estate under section 364(c) or (d): Financing under the Working Capital DIP Facility: (1) has priority over any and all administrative expenses, whether or not such expenses or claims may become secured by a judgment lien or other consensual or non-consensual lien, levy or attachment, whether incurred in the Cases or any successor case (the “Working Capital DIP Facility Superpriority Claims”); provided, however, that the Working Capital DIP Facility Superpriority Claims shall be *pari passu* with the Interchange DIP Facility Superpriority Claims

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<sup>3</sup> This summary is qualified in all respects by the terms of the Interim Order and the DIP Facility Documents (as applicable).

and shall be payable from and have recourse to all prepetition and postpetition property of Debtors, and (2) is secured by valid, binding, continuing, enforceable, fully perfected and unavoidable first priority senior priming security interests and liens (the “Working Capital DIP Facility Liens”) in and on all prepetition and postpetition property and assets of Debtors, wherever located, whether real or personal, whether tangible or intangible, and whether now existing or hereafter acquired, including proceeds, products, offspring, rents and profits thereof, subject only to the Permitted Prior Liens and the Interchange DIP Facility Liens in the Interchange Collateral . (Interim Order, ¶ 3 and 4).

Financing under the Interchange DIP Facility: (1) has priority over any and all administrative expenses, whether or not such expenses or claims may become secured by a judgment lien or other consensual or non-consensual lien, levy or attachment, whether incurred in the Cases or any successor case (the “Interchange DIP Facility Superpriority Claims,” and together with the Working Capital DIP Facility Superpriority Claims, the “DIP Facility Superpriority Claims”); provided, however, that the Interchange DIP Facility Superpriority Claims shall be *pari passu* with the Working Capital DIP Facility Superpriority Claims and shall be payable from and have recourse to all prepetition and postpetition property of Debtors, and (2) is secured by valid, binding, continuing, enforceable, fully perfected and unavoidable first priority senior priming security interests and liens (the “Interchange DIP Facility Liens,” and together with the Working Capital DIP Facility Liens, the “DIP Facility Liens”) in and on all of Debtors’ ISO Revenue (as such term is defined in the Forbearance Agreement), the Reserve Account, the ISO Operating Account, the Merchant Suspense Account, the ISO Clearing Account, the ISO Settlement Account, and all other of Debtors’ deposit accounts maintained with the Interchange DIP Lenders, wherever located, whether now existing

or hereafter acquired (collectively, the “Interchange Collateral”), subject only to the Permitted Prior Liens to the extent any such Permitted Prior Liens were senior in priority to the Prepetition Harris Liens. (Interim Order, ¶ 5 and 6).

b. Bankruptcy Rule 4001(c)(1)(B)(ii). Adequate Protection or Priority for Prepetition Claims: Adequate Protection will be provided to the Prepetition Secured Parties on account of their claims under the Prepetition Loan Documents for any diminution to the Prepetition Collateral caused by the use of Cash Collateral and the terms of the financing being granted herein. (Interim Order ¶ 9 through 11)

c. Bankruptcy Rule 4001(c)(1)(B)(iii). Determination of Validity, Enforceability, and Priority of Prepetition Lien: The Interim Order provides that the Prepetition Senior Lenders’ Liens are valid and enforceable against the estates. (Interim Order ¶ D4). The Interim Order further provides that the Prepetition Subordinated Lenders’ Liens are valid and enforceable against the estates. (Interim Order ¶ E(4)). The Interim Order also provides that the Prepetition Harris Liens are valid and enforceable against the estates. (Interim Order ¶ F(8)). Pursuant to the Subordination Agreement, the Prepetition Senior Lender Indebtedness is senior in right to payment to the Prepetition Subordinated Lender Indebtedness and the Prepetition Senior Lenders’ Liens are senior in priority to the Prepetition Subordinated Lenders’ Liens on all of the Prepetition Collateral. (Subordination Agreement ¶ 2).

d. Bankruptcy Rule 4001(c)(1)(B)(iv). Waiver of Automatic Stay: The Interim Order provides that, to the extent necessary, Interchange DIP Lenders are granted relief from the automatic stay to set off, recoup or otherwise collect against the ISO Revenue or amounts maintained in Debtors’ accounts at any Interchange DIP Lender, in the ordinary course of business, all Interchange DIP Facility Indebtedness as and when such amounts are due.

(Interim Order, ¶ 2(b)(iv). Additionally, the Interim Order provides that the automatic stay is vacated and modified to the extent necessary to (a) permit Harris to perform under the Prepetition Harris Documents and, upon the occurrence of a Termination Event, to exercise all rights and remedies provided for in the Prepetition Harris Documents and (b) permit the Working Capital DIP Agent, Working Capital DIP Lenders and Interchange DIP Lenders, upon the occurrence of a Termination Event, to exercise all rights and remedies provided for in the DIP Facility Documents. (Interim Order ¶ 15). The Interim Order further provides that the Working Capital DIP Agent, any Working Capital DIP Lender, any Interchange DIP Lender, and/or any Prepetition Secured Party may, in their sole discretion, file confirm perfection of such liens, security interests, and mortgages, without seeking modification of the automatic stay. (Interim Order ¶ 13).

e. Bankruptcy Rule 4001(c)(1)(B)(v). Waiver of Right to File Plan, Seek Extension of Time to File Plan, Request Use of Cash Collateral or Request Authority to Obtain Credit under Section 364 of the Bankruptcy Code: None.

f. Bankruptcy Rule 4001(c)(1)(B)(vi). Deadlines for Filing Plan, Approval of Disclosure Statement, Plan Confirmation: None.

g. Bankruptcy Rule 4001(c)(1)(B)(vii). Waiver or Modification of Applicability of Non-Bankruptcy Law Relating to Prepetition Lien or Foreclosure: None.

h. Bankruptcy Rule 4001(c)(1)(B)(viii). Release, Waiver or Limitation on Claim or Cause of Action by the Debtors: None.

i. Bankruptcy Rule 4001(c)(1)(B)(ix). Indemnification of any Entity: None.

j. Bankruptcy Rule 4001(c)(1)(B)(x). Release, Waiver or Limitation on 506(c) Rights: The Interim Order provides for a waiver of Section 506(c) surcharge rights against the Working Capital DIP Agent, the Working Capital DIP Lenders and the Interchange DIP Lenders under entry of the Final Order. (Interim Order, ¶ 8).

k. Bankruptcy Rule 4001(c)(1)(B)(xi). Lien on Actions under sections 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a): The Working Capital Collateral shall not include Avoidance Actions or proceeds of any Avoidance Actions unless approved in the Final Order (Interim Order, ¶ 3(b)).

### **JURISDICTION AND VENUE**

8. The Bankruptcy Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

9. The statutory predicates for the relief requested are sections 105, 361, 362, 363 and 364 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001 and 9014 and Local Rule 4001-2.

### **BACKGROUND**

10. On September 1, 2009 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their property as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. No creditors' committee has yet been appointed in these cases. No trustee or examiner has been appointed.

12. A full description of the Debtors' business operations, corporate structures, capital structures, and reasons for commencing these cases is set forth in full detail in

the declaration of Charles M. Moore in Support of chapter 11 petitions and various first-day motions (the “Moore Declaration”), which is filed concomitantly herewith and which is incorporated into this Motion by reference. Additional facts in support of the specific relief sought in this Motion are set forth below.

### **DEBTORS’ PREPETITION LIEN HOLDERS**

13. Debtors are indebted to Comerica, as agent to the Prepetition Senior Lenders (as defined below) (in such capacity, the “Prepetition Senior Agent”), and to Comerica, Wells Fargo (“Comerica and Wells Fargo”, in their capacity as Prepetition Senior Lenders, are referred to collectively as the “First Out Banks”), A3 Funding LP (“A3”), Ableco Finance LLC (“Ableco”), Garrison Credit Investments I, LLC (“GCI”) and Garrison Credit Opportunities Holdings L.P. (“GCH”, together with A3, Ableco and GCI, the “Term Loan B Banks” and together with First Out Banks, the “Prepetition Senior Lenders”), as follows:

a. under a certain Master Revolving Note executed by Cynergy to the order of Comerica on July 24, 2009 in the original principal amount of \$4,316,807.50 (“Comerica Revolving Note #1”). The indebtedness under the Comerica Revolving Note #1 as of the Petition Date includes principal of \$4,316,807.50, and interest of \$28,509.70;

b. under a certain Master Revolving Note executed by Cynergy to the order of Wells Fargo on July 24, 2009 in the original principal amount of \$4,683,192.50 (“Wells Fargo Revolving Note #1”). The indebtedness under the Wells Fargo Revolving Note #1 as of the Petition Date includes principal of \$4,683,192.50, and interest of \$30,929.44.

c. under a certain Revolving Credit Note executed by Cynergy to the order of Comerica on December 15, 2008 in the original principal amount of \$10,704,245.28

(“Comerica Revolving Note #2”). The indebtedness under the Comerica Revolving Note #2 as of the Petition Date includes principal of \$10,514,549.09, and interest of \$130,993.76;

d. under a certain Revolving Credit Note executed by Cynergy to the order of Wells Fargo on December 15, 2008 in the original principal amount of \$8,195,754.72 (“Wells Fargo Revolving Note #2”). The indebtedness under the Wells Fargo Revolving Note #2 as of the Petition Date includes principal of \$7,318,126.16, and interest of \$91,171.66. The Comerica Revolving Note #1, Comerica Revolving Note #2, the Wells Fargo Revolving Note #1 and the Wells Fargo Revolving Note #2 are identified collectively as the “Prepetition Revolving Notes”;

e. under a certain Term Loan A Note executed by Cynergy to the order of Comerica on August 1, 2008 in the original principal amount of \$11,695,754.71 (“Comerica Term Loan A Note”). The indebtedness under the Comerica Term Loan A Note as of the Petition Date includes principal of \$9,155,772.78, and interest of \$114,065.66;

f. under a certain Term Loan A Note executed by Cynergy to the order of Wells Fargo on August 1, 2008 in the original principal amount of \$16,804,245.29 (“Wells Fargo Term Loan A Note”). The indebtedness under the Wells Fargo Term Loan A Note as of the Petition Date includes principal of \$13,154,845.97, and interest of \$163,887.45. The Comerica Term Loan A Note and the Wells Fargo Term Loan A Note are identified collectively as the “Prepetition Term Loan A Notes”;

g. under a certain Term Loan B Facility in the original principal amount of \$26,500,000 (“Term Loan B Facility”). The indebtedness under the Term Loan B Facility as of the Petition Date includes principal of \$26,901,732.65, and interest of \$429,867.28;

h. under a Revolving Credit Note dated December 15, 2008 in the principal amount of \$10,100,000 (the “Prosperity Note”) executed by Prosperity to the order of Comerica, and guaranteed under a guaranty (the “Prosperity Guaranty”) dated as of September 20, 2007 by Cynergy in favor of Comerica. The indebtedness under the Prosperity Note and Prosperity Guaranty as of the Petition Date includes principal of \$9,050,000, and interest of \$237,059.72; and

i. in respect of each of the foregoing, accruing interest, costs, fees and expenses.

14. As used herein, the Prepetition Revolving Notes, the Prepetition Term Loan A Notes, the Term Loan B Facility, and the Prosperity Notes are identified collectively as the “Prepetition Notes.” All of the Debtors’ obligations to the Prepetition Senior Agent and the Prepetition Senior Lenders under the Prepetition Notes, the Prosperity Guaranty, and the other documents, instruments and agreements related to or executed in connection with the Prepetition Notes and the Prosperity Guaranty (collectively, the “Prepetition Senior Loan Documents,” which includes, without limitation, that certain Amended and Restated Credit Agreement dated as of August 1, 2008 by and among Cynergy, the Prepetition Senior Agent and the Prepetition Senior Lenders (the “Cynergy Prepetition Credit Agreement”), that certain Credit Agreement dated as of September 20, 2007 between Comerica (as Agent and Lender) and Prosperity (the “Prosperity Prepetition Credit Agreement”), and that certain Forbearance Agreement dated as of July 24, 2009 (the “Forbearance Agreement”) among the Credit Parties, the Prepetition Senior Agent, the Prepetition Senior Lenders, and Harris) including, without limitation, all principal, accrued interest, unpaid fees and expenses (including attorneys’ fees) are identified as the “Prepetition Senior Lender Indebtedness.” All of Debtors’ obligations to the Prepetition Senior

Lenders under Comerica Revolving Note #2, Wells Fargo Revolving Note #2, Comerica Term Loan A Note, Wells Fargo Term Loan A Note, and Prosperity Note including, without limitation, all principal, accrued interest, and unpaid fees and expenses (including attorneys' fees), are identified as the "Prepetition Senior Lender Non-Forbearance Indebtedness."

15. The Prepetition Senior Lender Indebtedness is guaranteed by Prosperity and Holdings. The Prepetition Senior Lender Indebtedness, except for the amounts advanced under Comerica Revolving Note #1 and Wells Fargo Revolving Note #1, is guaranteed by Marcelo Paladini. Debtors and Marcelo Paladini are identified collectively as the "Credit Parties."

16. The Prepetition Senior Lender Indebtedness is secured by all assets of Debtors, including without limitation, all of their respective now owned or after acquired:

- a. accounts;
- b. chattel paper (whether tangible chattel paper or electronic chattel paper);
- c. general intangibles (including, without limitation, payment intangibles);
- d. equipment;
- e. inventory and goods;
- f. documents;
- g. instruments (including, without limitation, promissory notes);
- h. deposit accounts and any other cash collateral, deposit or investment accounts, including all cash collateral, deposit or investment accounts established or maintained pursuant to the terms of the Security Agreement (as defined below) or the other

Prepetition Senior Loan Documents, together with all cash and other assets and property from time to time deposited therein and the monies, assets and properties in the possession or control of Prepetition Senior Agent or any Prepetition Senior Lender or any affiliate, representative, agent or correspondent of Prepetition Senior Agent or any Prepetition Senior Lender;

i. computer records and software, whether relating to the foregoing collateral or otherwise, but in the case of such software, subject to the rights of any non-affiliated licensee of software;

j. investment property;

k. commercial tort claims listed in the Prepetition Senior Loan Documents, if any; and

l. the proceeds, in cash or otherwise, of any of the property described in the foregoing clauses (a) through (k) and all liens, security, rights, remedies and claims of such debtor with respect thereto;

all as more particularly described in the Security Agreement executed by Debtors in favor of Prepetition Senior Agent dated April 16, 2007 (as amended "Security Agreement"). The Prepetition Senior Lender Indebtedness is also secured by (a) all of Andres Ordonez's shares of stock of Holdings, (b) all of Marcelo Paladini's shares of stock of Holdings, and (c) all of Gustavo Ceballos's shares of stock in Holdings. The collateral securing the Prepetition Senior Lender Indebtedness that is owned by Debtors is identified collectively as the "Prepetition Lender Collateral."

17. The Debtors are also obligated to Harris under a certain BIN Sponsor Agreement dated as of November 1, 2008, as amended, restated, supplemented or otherwise modified prior to the Petition Date and other agreements with respect to amounts advanced to

Debtors by Harris to fund Interchange and Network Reimbursement Fees for Debtors and Debtors' merchants (as such term is defined in the Forbearance Agreement) (collectively, "Prepetition Harris Documents"). The indebtedness under the Prepetition Harris Documents with respect to the funding of Interchange and Network Reimbursement Fees includes principal of \$\_\_\_\_\_ and interest of \$\_\_\_\_\_, both as of [August \_\_, 2009], plus advances with respect to the funding of Interchange and Network Reimbursement Fees made after that date until the Petition Date. All of Debtors' obligations to Harris under the Prepetition Harris Documents, including, without limitation, all principal, accrued interest, unpaid fees and expenses (including attorneys' fees) are identified as the "Prepetition Harris Indebtedness". The Prepetition Senior Lender Indebtedness, and the Prepetition Harris Indebtedness and the indebtedness asserted by various holders of subordinated debt under the Financing Agreement with Debtors dated November 15, 2007, as amended, restated, supplemented or otherwise modified prepetition, and the documents, instruments and agreements executed in connection therewith are referred to, collectively, as the "Prepetition Indebtedness".

### **BASIS FOR RELIEF**

18. In order for Debtors to continue to operate their business, and preserve their goodwill and going concern value, it is necessary for Debtors to obtain immediate postpetition financing and use of Cash Collateral to enable them to pay normal operating expenses (including, without limitation, wages, salaries, insurance premiums, utilities, rent and taxes). Without such postpetition financing and use of Cash Collateral, the Debtors will be unable to operate their business. The ability of the Debtors to finance their operations and the availability to the Debtors of sufficient working capital and other financial and general corporate liquidity through postpetition financing and use of Cash Collateral is in the best interests of the Debtors and their estates. The interim financing and use of Cash Collateral authorized by this

Order is vital to avoid immediate and irreparable harm to the Debtors' business, property, and estates and to allow the orderly continuation of the Debtors' business.

19. Debtors are unable to obtain sufficient financing from sources other than the Working Capital DIP Lenders and the Interchange DIP Lenders on terms more favorable than the DIP Facilities described in this Order and pursuant to the DIP Facility Documents. Debtors have been unable to obtain unsecured credit solely under section 503(b)(1) of the Bankruptcy Code as an administrative expense. New credit is unavailable to Debtors without (a) providing the Working Capital DIP Agent and the Working Capital DIP Lenders (i) the Working Capital DIP Facility Superpriority Claims and (ii) the Working Capital DIP Facility Liens as provided herein and in the Working Capital DIP Facility Documents, (b) providing the Interchange DIP Lenders (i) the Interchange DIP Facility Superpriority Claims and (ii) the Interchange DIP Facility Liens as provided herein and in the Interchange DIP Facility Documents, (c) providing for the Adequate Protection of the Prepetition Secured Parties' interests in the Prepetition Collateral on the terms and conditions as set forth herein, (d) permitting the Interchange DIP Lenders to setoff or recoup amounts advanced under the Interchange DIP Facility with respect to Interchange and Network Reimbursement Fees, and (e) authorizing Debtors and the Interchange DIP Lenders to continue to perform postpetition under the Interchange DIP Facility Documents in their entirety, including authorizing the Interchange DIP Lenders to withhold amounts in accordance with the Interchange DIP Facility Documents regardless of whether such amounts pertain to prepetition or postpetition transactions.

**A. The Debtors' Decision to Enter Into the DIP Facility Documents**

20. At the start of 2007, the Debtors' business was growing rapidly and appeared to be quite profitable. During 2007 and 2008, however, certain errors were made in the

internal accounting and financial reporting of the Debtors that had the effect of inflating their profitability and cash flow. These errors were discovered in March of 2009.

21. An investigation of those errors by FTI Consulting, Inc. resulted in the restatement of the Debtors' financials for both 2007 and 2008. While the operations of the Debtors were and remain profitable, the level of profitability is substantially less than previously reported and, as a result of their reliance on incorrect financial information, the management of Cynergy Data made certain decisions about the use of funds that, in hindsight, may not have been made. These expenditures have resulted in a severely strained cash flow.

22. Moreover, the errors in the financial statements have also resulted in a loss of confidence in the Debtors by the Prepetition Lenders. The Debtors hired a management consultant to perform a value assessment and also engaged financial advisors to provide investment banking services in conducting an organized process intended to identify the best financial transaction possible for the Debtors. However, due to the instability of the Debtors' business from certain errors made in the internal accounting and financing report of the Debtors, the Debtors were forced to file for relief under Chapter 11 of the Bankruptcy Code to afford themselves the opportunity to identify the optimum financial transaction.

23. Once the Debtors' business has been stabilized with the help of the DIP Facilities, the Debtors plan to pursue the effort already underway to sell substantially all of their assets pursuant to section 363 of the Bankruptcy Code.

#### **B. Terms of the DIP Facility Documents**

24. The salient terms of the DIP Facility Documents are as follows:<sup>4</sup>

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<sup>4</sup> This summary is qualified in its entirety by reference to the provisions of the DIP Facility Documents. The DIP Credit Agreement will control in the event of any inconsistency between this Motion and the DIP Facility Documents.  
(continued...)

Borrower: Cynergy Data, LLC as debtor and debtor in possession in a case filed under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

Guarantor: Holdings and Prosperity acknowledge and agree that the Working Capital DIP Facility Indebtedness is guaranteed under their respective guaranties previously executed in favor of Prepetition Senior Agent and Prepetition Senior Lenders. Marcelo Paladini acknowledges and agrees that the Working Capital DIP Facility Indebtedness is guaranteed under his guaranty previously executed in favor of Prepetition Senior Agent and Prepetition Senior Lenders.

Lenders: Comerica Bank; Wells Fargo Foothill, LLC; Harris, N.A.; Moneris Solutions, Inc.;

Commitment: The Working Capital DIP Facility in an amount equal to the lesser of (i) the amount of (A) \$9,000,000 less (B) the amount of the outstanding Prepetition Senior Lender Forbearance Indebtedness as of the Petition Date plus (C) the aggregate amount of payments or proceeds of Collateral that are applied after the Petition Date to reduce the amount of Prepetition Senior Lender Indebtedness and (ii) \$25,000,000; and

The Interchange DIP Facility in an aggregate principal outstanding amount of up to \$7,500,000

Use of Proceeds: All proceeds of the DIP Facilities shall be used solely for working capital, general corporate and other financing needs of the Debtors in accordance with the Budget and any subsequent budgets and Orders.

Application of Proceeds: To fund working capital needs and to preserve asset value in anticipation of proposed Section 363 sale.

Term: Upon entry of the Interim Order, the Debtors may immediately request advances under the Working Capital DIP Facility.

The Termination Date is the earlier of (A) the date of

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(continued...)

Documents. Capitalized terms used in this summary but not otherwise defined in this Motion shall have the respective meanings ascribed to those terms in the DIP Facility Documents.

consummation of a sale of substantially all of the Debtors' assets, or October 16, 2009, 2009, unless otherwise extended in writing by the Prepetition Senior Agent, Working Capital Lenders, and Interchange DIP Lenders.

Priority and Liens:

DIP Facility Liens grants to the Lenders a valid, perfected security interest in substantially all of the property of the Debtors pursuant to Sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code. Additionally, the DIP Facility Superpriority Claims are granted pursuant to Section 365(c)(1).

Grant of Security Interest:

The Working Capital DIP Facility is secured by valid, binding, continuing, enforceable, fully perfected and unavoidable first priority senior priming security interests and liens (the "Working Capital DIP Facility Liens") in and on all prepetition and postpetition property and assets of the Debtors, wherever located, whether real or personal, whether tangible or intangible, and whether now existing or hereafter acquired, including proceeds, products, offspring, rents and profits thereof, and including, without limitation, (i) the Prepetition Lender; (ii) all accounts, accounts receivable, instruments, documents, drafts, notes, acceptances, chattel paper, general intangibles (including, without limitation, all goodwill, copyrights, patents, trademarks, trade names and franchises), software, contract rights, rights to payment evidenced by chattel paper, documents or instruments, deposit accounts, rights to payment for money or funds advanced or sold, causes of action, choses in action, commercial tort claims, letters of credit, letter of credit rights, supporting obligations, investment property or other property in possession or control of Working Capital DIP Lenders, all personal property received as returns and repossessions, all other forms of receivables, tax refunds of any form, all inventory, including all goods held for sale and documents evidencing inventory, all equipment (together with spare and repair parts, special tools and equipment and replacements), the proceeds of credit and other forms of insurance coverage of any of the foregoing and all books and records pertaining to all of the foregoing; and (iii) all interests in real property and fixtures (collectively, the "Working Capital Collateral"), subject only to the Permitted Prior Liens and the Interchange DIP Facility Liens in the Interchange Collateral; provided, however, that the Working Capital Collateral shall not include Avoidance Actions or proceeds of any Avoidance Actions.

The Interchange DIP Facility Liens are valid, binding, continuing, enforceable, fully perfected and unavoidable first priority senior priming security interests and liens in and on all of Debtors' ISO

Revenue (as such term is defined in the Forbearance Agreement), the Reserve Account, the ISO Operating Account, the Merchant Suspense Account, the ISO Clearing Account, the ISO Settlement Account, and all other of Debtors' deposit accounts maintained with the Interchange DIP Lenders, wherever located, and whether now existing or hereafter acquired (collectively, the "Interchange Collateral"), subject only to the Permitted Prior Liens to the extent any such Permitted Prior Liens were senior in priority to the Prepetition Harris Liens.

Fees:

Debtors shall reimburse the Working Capital DIP Agent, the Working Capital DIP Lenders and the Interchange DIP Lenders for their reasonable costs, fees (including, without limitation, reasonable attorneys' and financial advisors' fees and expenses), charges, and expenses incurred in connection with the Cases or under the DIP Facility Documents, whether incurred prepetition or postpetition.

To the extent provided in the Prepetition Senior Loan Documents, payments of the Comerica's reasonable fees and expenses for legal counsel, financial advisors, auditors and other professionals for services rendered prepetition or postpetition incurred as Prepetition Senior Agent, Working Capital DIP Agent, or in any other capacity, and payments of each of Wells Fargo's reasonable fees and expenses for legal counsel, auditors, financial advisors and other professionals for services rendered prepetition or postpetition whether incurred as Prepetition Senior Lender, Working Capital DIP Lender or in any other capacity.

The Budget shall provide for payment of (A) fees due and payable to the Clerk of the Court and the U.S. Trustee under 28 U.S.C. § 1930 and (B) fees and expenses incurred by professionals retained under an order of the Court capped at \$3.4 million (the "Professional Fees") through the closing of the sale.

No Collateral, no amounts borrowed under the DIP Facilities no amounts provided for in the Budget, including, without limitation, amounts budgeted for Professional Fees, and no proceeds of any of the foregoing shall include, apply to, or be used or available for, the payment or reimbursement of any fees or expenses incurred by any party, including, without limitation, the Credit Parties or the Committee, in connection with the assertion, initiation or prosecution of, or joinder in, any claims, causes of action, adversary proceedings, contested matters or other litigation against the Working Capital DIP Facility Agent, any of the Working Capital DIP Lenders, any of the Interchange DIP Lenders, Prepetition Senior Agent or any of the Prepetition

Secured Parties.

Interest Rate: Either LIBOR Based Rate or Prime Based Rate plus, in each case, an applicable margin of 10%, all as further defined in the Working Capital DIP Facility Notes

Default Interest: The non-default Interest Rate described above, plus 3%

Events of Default: A “Termination Event” is defined as (i) a default by any Debtor under the Interim Order; (ii) default by any Debtor under the Working Capital DIP Facility Documents or the Interchange DIP Facility Documents, as amended (excluding any defaults existing as of the date of entry of this Order under the Prepetition Loan Documents of which the Working Capital DIP Agent has been notified in writing); (iii) default by any Debtor under the Forbearance Agreement; (iv) failure by Debtors to employ at any time a chief restructuring office acceptable to the Working Capital DIP Agent and Working Capital DIP Lenders; (v) appointment of a trustee, examiner with expanded powers, custodian, or receiver, (vi) conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code, (vii) dismissal of any of the Cases, or (viii) with respect to the Interchange DIP Facility and use of Harris’ Cash Collateral (a) the unfunded merchant reserve under the Prepetition Harris Documents and Interchange DIP Facility Documents exceeds \$21,341,801, (b) a motion to reject the Prepetition Harris Documents is filed, or (c) Debtors accept a stalking horse bidder, qualified bidder, or winning bidder for a Sale that does not contemplate the assumption of the Prepetition Harris Documents..

Remedies on Event of Default: The Interim Order provides that, without further order of the Court, the automatic stay is vacated and modified to the extent necessary to (a) permit Harris to perform under the Prepetition Harris Documents and, upon the occurrence of a Termination Event, to exercise all rights and remedies provided for in the Prepetition Harris Documents and (b) permit the Working Capital DIP Agent, Working Capital DIP Lenders and Interchange DIP Lenders, upon the occurrence of a Termination Event, to exercise all rights and remedies provided for in the DIP Facility Documents.

### **APPLICABLE AUTHORITY**

25. If a debtor is unable to obtain unsecured credit allowable as an administrative expense under Bankruptcy Code section 503(b)(1), then the Court, after notice

and a hearing, may authorize the debtor to obtain credit or incur debt (a) with priority over any or all administrative expenses of the kind specified in Bankruptcy Code section 503(b) or 507(b); or (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or (c) secured by a junior lien on property of the estate that is subject to a lien. See 11 U.S.C. § 364(c).

26. Further, if a debtor is unable to obtain credit under the provisions of Bankruptcy Code section 364(c), the debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly called a “priming lien.” 11 U.S.C. § 364(d).

27. Bankruptcy Rule 4001(c)(2) governs the procedures for obtaining authorization to obtain postpetition financing and provides, in relevant part:

The court may commence a final hearing on a motion for authority to obtain credit no earlier than 15 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 15 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. P. 4001(c)(2).

**A. The DIP Facilities Should Be Approved**

28. Before the Petition Date, the Debtors attempted to identify potential sources of postpetition financing. During that process, the Debtors contacted multiple parties, including the Prepetition Secured Parties.

29. Based on discussions with these parties, including the Prepetition Secured Parties, the Debtors determined that it was not possible to obtain postpetition financing on an unsecured basis or on a junior priority basis to the Prepetition Secured Parties within the time period that the Debtors’ current liquidity situation permitted.

30. The Debtors negotiated the DIP Facility Documents with the Working Capital DIP Lenders and the Interchange DIP Lenders at arm's length and pursuant to their business judgment. Provided that this judgment does not run afoul of the provisions of and policies underlying the Bankruptcy Code, courts grant a debtor considerable deference in acting in accordance with its business judgment. See, e.g., Brav v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986) (approving debtor in possession financing necessary to sustain seasonal business); In re Ames Department Stores, 115 B.R. 34, 40 (S.D.N.Y. 1990) ("cases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest").

31. The financing under the DIP Facility Documents provides significant new liquidity to the Debtors and thus will enable the Debtors, inter alia: (a) to minimize disruption to the Debtors' businesses and on-going operations; (b) to preserve and maximize the value of the Debtors' estates for the benefit of all the Debtors' creditors; (c) to avoid immediate and irreparable harm to the Debtors, their creditors, their businesses, their employees, and their assets; and (d) to permit the Debtors to continue to pursue a financial transaction that will provide optimal value to the estates.

32. Such financing is the sole means of preserving and enhancing the Debtors' going concern value. Indeed, without the financing provided for in the DIP Facility Documents, the Debtors will not be able to meet their direct operating expenses, will suffer irreparable harm, and their entire reorganization effort will be jeopardized.

33. The terms and conditions of the DIP Facility Documents are fair and reasonable and were negotiated by the parties in good faith and at arms' length. Accordingly, the Working Capital DIP Lenders and the Interchange DIP Lenders should be accorded the benefits of Bankruptcy Code section 364(e) in respect of the DIP Facility Documents.

34. Based upon the foregoing, the Debtors respectfully request that the Bankruptcy Court approve the DIP Facilities in accordance with the terms set forth in the Interim Order and the DIP Facility Documents.

**B. The Court Should Authorize the Use of Cash Collateral**

35. In addition to the need for debtor in possession financing, the Debtors' other pressing concern is the need for immediate use of the Cash Collateral pending a final hearing on this Motion. The Debtors require the use of Cash Collateral to be able to pay operating expenses, including payroll, and to pay vendors to ensure a continued supply of goods and services essential to the Debtors' continued viability.

36. Bankruptcy Code section 363(c)(2) provides that the Debtors may not use, sell or lease cash collateral unless "(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2).

37. The reasons underlying the Debtors' need to use Cash Collateral during the course of these chapter 11 cases are compelling. The Prepetition Secured Parties have prepetition liens on substantially all of the Debtors' assets. Accordingly, the Debtors have no unencumbered cash and the use of Cash Collateral is required to fund day-to-day operating expenses, including payments to employees, and generally to sustain and operate the Debtors' businesses. Unless the Bankruptcy Court authorizes the use of the Cash Collateral, the Debtors

will be unable to pay for services and expenses necessary to continue their business operations, pay their employees or to maintain, let alone maximize, the value of their estates. Indeed, absent sufficient funds to support the Debtors' business operations, the Debtors' ability to pursue and consummate a reorganization, including any possible sale, would be imperiled or, at the very least, the consideration the Debtors might receive could be substantially less than if at a sale contemplating anything other than a going concern. Therefore, the authority to use Cash Collateral during the interim period is in the best interests of the Debtors' estates and their creditors.

38. The Debtors have prepared a budget, a copy of which is attached to this Motion as **Exhibit B** (the "**Budget**"). Pursuant to the Budget, the Debtors intend to use Cash Collateral, among other things, to: (a) continue operating their businesses while in chapter 11, including purchasing inventory, paying employees and employee related costs, rent, utilities and other overhead and all other expenses arising in the ordinary course of the Debtors' businesses; and (b) fund the professional and other fees (including fees payable to the Office of the United States Trustee) associated with administering and protecting these chapter 11 cases and pursuing the effort already underway to identify the optimum financial transaction, most likely a sale under section 363 of the Bankruptcy Code, and converting the Cases to cases under chapter 7 of the Bankruptcy Code (or otherwise winding down and closing the estates). Without the use of Cash Collateral, the Debtors will likely be forced to cease operations, lay off their employees, and liquidate their assets in a very short timeframe, which would ameliorate any possibility of maximizing the value of the Debtors' assets for the benefit of all creditors.

39. As previously stated, section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may not use, sell or lease cash collateral unless "(a) each entity that

has an interest in such cash collateral consents; or (b) the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2). “Cash collateral” is defined as “cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest ...”. 11 U.S.C. § 363(a). The Debtors require the use of Cash Collateral to fund their day-to-day operations. Absent such relief, the Debtors’ business will be brought to an immediate halt, with significant and damaging consequences for the Debtors, their estates, and creditors. The Prepetition Secured Parties will be protected by the adequate protection discussed in this Motion. Therefore, the Bankruptcy Court should approve the Debtors’ request to use Cash Collateral in the operation of their businesses and administration of these Cases.

**C. The Bankruptcy Court should Authorize the Debtors to Provide Adequate Protection in Connection with the DIP Facilities and the Use of Cash Collateral**

40. Section 363(e) of the Bankruptcy Code provides that, “on request of an entity that has an interest in property used ... or proposed to be used ... by [a debtor in possession], the court, with or without a hearing, shall prohibit or condition such use ... as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). Section 364(d) of the Bankruptcy Code requires that adequate protection be provided where the liens of secured creditors are being primed to secure the obligations under a debtor-in-possession financing facility. Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens, and other forms of relief. 11 U.S.C. § 361.

41. According to the legislative history, a finding of adequate protection is “left to case-by-case interpretation and development. It is expected that the courts will apply the concept in light of facts of each case and general equitable principals.” H.R. Rep. No. 595, 95th Cong., 2nd Sess. 339 (1977), reprinted in 1978 U.S.C.C.A.N. 5787, 6295. See In re O’Connor, 808 F.2d 1393, 1396-97 (10th Cir. 1987); In re Nashua Trust Co., 73 B.R. 423, 430-31 (Bankr. D. N.J. 1987). The purpose is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. See In re Swedeland Dev. Group, Inc., 16 F.3d 552, 564 (3d Cir. 1994); In re Pursuit Athletic Footwear, Inc., 193 B.R. 713, 716 (Bankr. D. Del. 1996); In re Planned Sys., Inc., 78 B.R. 852, 861-62 (Bankr. S.D. Ohio 1987).

42. The proposed DIP Facility Liens, the DIP Facility Superpriority Claims, and the other protections granted pursuant to this Order and the DIP Facility Documents are sufficient to account for any diminution in the value of the Prepetition Secured Parties’ interests and are fair and reasonable and thus, satisfy the standard in sections 363(c)(2)(B) and 364(d) of the Bankruptcy Code. Furthermore, the terms and conditions on which the Debtors may use Cash Collateral have been carefully designed to meet the goals of sections 361, 363 and 364 of the Bankruptcy Code and to avoid immediate and irreparable harm to the Debtors’ estates during the Interim Period. Accordingly, based upon the foregoing, the Debtors respectfully request that the Bankruptcy Court authorize the Debtors to provide Adequate Protection to the Prepetition Secured Parties in accordance with the terms set forth in the Interim Order and DIP Facility Documents.

**D. Modification of the Automatic Stay Is Appropriate**

43. Section 362 of the Bankruptcy Code provides for an automatic stay upon the filing of a bankruptcy petition. The proposed DIP Facility Documents contemplate a

modification of the automatic stay (as applicable), to the extent necessary to permit the Working Capital DIP Lenders and the Interchange DIP Lenders to perform any act authorized or permitted under or by virtue of the Interim Order or the DIP Facility Documents.

44. Stay modification provisions of this kind are ordinary and standard features of postpetition debtor in possession financing facilities and, in the Debtors' business judgment, are reasonable under the present circumstances. Accordingly, the Debtors respectfully request that the Bankruptcy Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim Order and DIP Facility Documents.

**E. The Bankruptcy Court Should Grant Interim Approval of the DIP Credit Facilities**

45. As stated above, Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash collateral pursuant to section 363 of the Bankruptcy Code and to obtain credit under Bankruptcy Code section 364 may not be commenced earlier than 15 days after the service of the motion. Upon request, however, the Bankruptcy Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to the debtor's estate.

46. The Debtors request that the Bankruptcy Court schedule and conduct a preliminary hearing on the Motion and authorize the Debtors from and after the entry of the Interim Order until the Final Hearing to obtain credit under the terms contained in the DIP Facility Documents and utilize Cash Collateral. However, even with the ability to use Cash Collateral under the Interim Order, pending entry of the Final Order the Debtors will require approximately \$9 million in available financing. Such interim availability will avoid a disruption in the Debtors' operations pending the Final Hearing.

47. Accordingly, based upon the foregoing, the Debtors respectfully request that the Bankruptcy Court grant interim approval of the DIP Facilities in accordance with the terms set forth in the Interim Order and the DIP Facility Documents.

**F. Establishing Notice Procedures and Scheduling Final Hearing**

48. The Debtors have provided notice of this Motion by facsimile, electronic transmission, overnight delivery, or hand delivery to: (a) the United States Trustee for the District of Delaware; (b) the Debtors' twenty-five (25) largest unsecured creditors on a consolidated basis; (c) counsel to Comerica Bank; (d) counsel to Wells Fargo Foothill LLC; (e) counsel to Dymas Funding Company LLC; (f) counsel to Ableco Finance LLC; (g) counsel to A3 Funding LP; (h) counsel to Garrison Credit Investments; (i) counsel to Harris, N.A. and (j) all other parties required to receive notice pursuant to Bankruptcy Rule 2002 (the "Initial Notice Parties"). The Debtors submit that, under the circumstances, no further notice of the hearing on the interim financing is necessary and request that any further notice be dispensed with and waived.

49. The Debtors further respectfully request that the Bankruptcy Court schedule the Final Hearing and authorize them to mail copies of the signed Interim Order, which fixes the time, date and manner for the filing of objections, to the Initial Notice Parties and: (a) any party that has filed prior to such date a request for notices with the Bankruptcy Court; (b) counsel for any official committee(s) and (c) any known holders of liens. The Debtors request that the Bankruptcy Court consider such notice of the Final Hearing, including without

limitation, notice that the Debtors will seek approval at the Final Hearing of to be sufficient notice under Bankruptcy Rule 4001 and Local Rule 2002-1.<sup>5</sup>

50. No previous request for the relief sought herein has been made to the Bankruptcy Court or any other court.

### **CONCLUSION**

WHEREFORE the Debtors respectfully request that the Bankruptcy Court (i) enter an order substantially in the form of the proposed Interim Order attached hereto as Exhibit A; (ii) after the Final Hearing, enter the Final Order substantially in the form that shall be filed with the Bankruptcy Court; and (iii) grant such other and further relief as is just and proper.

Dated: September 1, 2009  
Wilmington, Delaware

Respectfully submitted,  
  
PEPPER HAMILTON LLP

/s/ Evelyn J. Meltzer  
David B. Stratton (DE No. 960)  
Evelyn J. Meltzer (DE No. 4581)  
John H. Schanne, II (DE No. 5260)  
Hercules Plaza, Suite 5100  
1313 Market Street  
P.O. Box 1709  
Wilmington, DE 19899-1709  
Telephone: (302) 777-6500  
Facsimile: (302) 421-8390

-and-

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<sup>5</sup> Local Rule 2002-1(b) provides that “[i]n cases under chapter 11, all motions . . . shall be served only upon counsel for the debtor, the United States Trustee, counsel for all official committees, all parties who file a request for service of notices pursuant to Fed. R. Bankr. P. 2002(i), and on any party whose rights are affected by the motion. If an official unsecured creditors’ committee has not been appointed, service shall be made on the 25 largest unsecured creditors in the case in lieu of the committee.”

NIXON PEABODY LLP  
Mark N. Berman  
Dennis J. Drebsky  
Lee Harrington (DE No. 4046)  
437 Madison Avenue  
New York, New York 10022  
Telephone: (212) 940-3000  
Facsimile: (212) 940-3111

*Proposed Counsel for the Debtors  
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:  CYNERGY DATA, LLC, <i>et al.</i> , <sup>1</sup>  Debtors.	Chapter 11  Case No. 09-_____ (     )  Jointly Administered
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**INTERIM ORDER (I) AUTHORIZING USE OF CASH COLLATERAL, (II) AUTHORIZING POSTPETITION FINANCING, (III) GRANTING SENIOR PRIMING LIENS AND SUPERPRIORITY CLAIMS, (IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES, AND (V) SCHEDULING A FINAL HEARING TO INCUR SUCH FINANCING ON A PERMANENT BASIS**

This matter having come before the Court upon the **Motion for Interim Order (I) Authorizing Use Of Cash Collateral, (II) Authorizing Postpetition Financing, (III) Granting Senior Priming Liens And Superpriority Claims, (IV) Granting Adequate Protection to the Prepetition Secured Parties and (V) Scheduling A Final Hearing to Incur Such Financing On A Permanent Basis** (the “Motion”) filed on September 1, 2009 by Cynergy Data, LLC (“Cynergy”), Cynergy Data Holdings, Inc. (“Holdings”), and Cynergy Prosperity Plus, LLC (“Prosperity,” and together with Cynergy and Holdings, the “Debtors”), the debtors and debtors-in-possession in the above-captioned Chapter 11 bankruptcy cases (the “Cases”), requesting entry of an interim order (the “Order”):

(1) authorizing and approving, pursuant to sections 105, 361, 362, and 364 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (x) Debtors to obtain postpetition financing up to the Working Capital DIP Facility Cap (as defined below) (the

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<sup>1</sup> The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

“Working Capital DIP Facility”) from Comerica Bank (“Comerica”), as agent to the Working Capital DIP Lenders (as defined below) (in such capacity, the “Working Capital DIP Agent”), and Comerica and Wells Fargo Foothill, LLC (“Wells Fargo”), in their respective capacities as lenders under the Working Capital DIP Facility (in such capacities, collectively, the “Working Capital DIP Lenders”), pursuant to the Working Capital DIP Facility Notes (as defined below) and the other Working Capital DIP Facility Documents (as defined below) and (y) Debtors to obtain postpetition financing in an aggregate principal outstanding amount of up to \$7,500,000 (the “Interchange DIP Facility,” and together with the Working Capital DIP Facility, the “DIP Facilities”) from Harris, N.A. and Moneris Solutions, Inc. (collectively, “Harris” or the “Interchange DIP Lenders”), pursuant to the Prepetition Harris Documents as supplemented or modified by this Order (the “Interchange DIP Facility Documents”), and together with the Working Capital DIP Facility Documents, the “DIP Facility Documents”), to (A) fund, among other things, Interchange and Network Reimbursement Fees (as defined below) and ongoing working capital, general corporate, and other financing needs of Debtors, (B) provide the Prepetition Senior Agent, First Out Banks and Harris (collectively, the “Prepetition Secured Parties”) Adequate Protection (as defined below), and (C) pay fees and expenses owed under the DIP Facility Documents to the Working Capital DIP Agent, the Working Capital DIP Lenders and the Interchange DIP Lenders (other than attorney fees owed under the DIP Facility Documents, which, notwithstanding anything to the contrary in this Order, shall be accrued and included in the respective claims of those parties in accordance with their respective priority, but not paid (by transfer, setoff, recoupment or in any other manner) until the earlier of a Termination Event or the Termination Date;

(2) authorizing and empowering Debtors to execute and enter into the DIP Facility Documents and to perform such other and further acts as may be required in connection with the DIP Facility Documents;

(3) providing, pursuant to section 364(c) and (d) of the Bankruptcy Code, that the financing under the Working Capital DIP Facility:

a. has priority over any and all administrative expenses, including, without limitation, the kind specified in sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other consensual or non-consensual lien, levy or attachment, whether incurred in the Cases or any successor case (the “Working Capital DIP Facility Superpriority Claims”); provided, however, that the Working Capital DIP Facility Superpriority Claims shall be *pari passu* with the Interchange DIP Facility Superpriority Claims (as defined below) and shall be payable from, and have recourse to, all prepetition and postpetition property of Debtors, and

b. be and be deemed immediately secured by valid, binding, continuing, enforceable, fully perfected and unavoidable first priority senior priming security interests and liens (the “Working Capital DIP Facility Liens”) in and on all prepetition and postpetition property and assets of Debtors, wherever located, whether real or personal, whether tangible or intangible, and whether now existing or hereafter acquired, including, without limitation, proceeds, products, offspring, rents and profits thereof, and including, without limitation, (i) the Prepetition Lender Collateral (as defined below); (ii) all accounts, accounts receivable, instruments, documents, drafts, notes, acceptances, chattel paper, general intangibles (including, without limitation, all goodwill, copyrights, patents, trademarks, trade names and

franchises), software, contract rights, rights to payment evidenced by chattel paper, documents or instruments, deposit accounts, rights to payment for money or funds advanced or sold, causes of action, choses in action, commercial tort claims, letters of credit, letter of credit rights, supporting obligations, investment property or other property in possession or control of Working Capital DIP Lenders, all personal property received as returns and repossessions, all other forms of receivables, tax refunds of any form, all inventory, including all goods held for sale and documents evidencing inventory, all equipment (together with spare and repair parts, special tools and equipment and replacements), the proceeds of credit and other forms of insurance coverage of any of the foregoing and all books and records pertaining to all of the foregoing; and (iii) all interests in real property and fixtures (collectively, the “Working Capital Collateral”), subject only to the Permitted Prior Liens (as defined below) and the Interchange DIP Facility Liens (as defined below) in the Interchange Collateral (as defined below); provided, however, that the Working Capital Collateral shall not include avoidance actions pursuant to sections 502(d), 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code (the “Avoidance Actions”) or proceeds of any Avoidance Actions unless approved in the Final Order (as defined below) (terms used but not defined herein that are defined in the Michigan Uniform Commercial Code have the meaning set forth therein in the Michigan Uniform Commercial Code);

(4) providing, pursuant to section 364(c) and (d) of the Bankruptcy Code, that the financing under the Interchange DIP Facility:

a. has priority over any and all administrative expenses, including, without limitation, the kind specified in sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other consensual or non-consensual lien, levy

or attachment, whether incurred in the Cases or any successor case (the “Interchange DIP Facility Superpriority Claims,” and together with the Working Capital DIP Facility Superpriority Claims, the “DIP Facility Superpriority Claims”); provided, however, that the Interchange DIP Facility Superpriority Claims shall be *pari passu* with the Working Capital DIP Facility Superpriority Claims and shall be payable from and have recourse to all prepetition and postpetition property of Debtors, and

b. be and be deemed immediately secured by valid, binding, continuing, enforceable, fully perfected and unavoidable first priority senior priming security interests and liens (the “Interchange DIP Facility Liens,” and together with the Working Capital DIP Facility Liens, the “DIP Facility Liens”) in and on all of Debtors’ ISO Revenue (as such term is defined in the Forbearance Agreement (as defined below)), the Reserve Account, the ISO Operating Account, the Merchant Suspense Account, the ISO Clearing Account, and all other of Debtors’ deposit accounts maintained with the Interchange DIP Lenders, wherever located, whether now existing or hereafter acquired (collectively, the “Interchange Collateral”), subject only to the Permitted Prior Liens (as defined below) to the extent any such Permitted Prior Liens on such Interchange Collateral were senior in priority to the Prepetition Harris Liens (as defined below) on such Interchange Collateral. Terms used but not defined herein that are defined in the Interchange DIP Facility Documents shall have the meaning set forth in the Interchange DIP Facility Documents.

(5) authorizing Debtors, pursuant to sections 361, 363(c) and (e), and 364(d)(1) of the Bankruptcy Code, to use “cash collateral” as defined under section 363 of the Bankruptcy Code (the “Cash Collateral”) to pay, first, the Prepetition Senior Lender Forbearance Indebtedness (as defined below); second, the Prepetition Senior Lender Non-Forbearance

Indebtedness (as defined below); and, third, the Working Capital DIP Facility Indebtedness (as defined below), and to provide Adequate Protection to the Prepetition Secured Parties on account of their claims under the Prepetition Loan Documents (as defined below) for any diminution to the Prepetition Collateral (as defined below) caused by the use of Cash Collateral and the terms of the financing being granted herein; provided, however, that with respect to Cash Collateral arising from ISO Revenue (the “Interchange Cash Collateral”), the application of Cash Collateral provided in this subparagraph shall be net of such Interchange Cash Collateral that is used to pay the indebtedness under the Prepetition Harris Documents with respect to the funding of Interchange and Network Reimbursement Fees and the Interchange DIP Facility Indebtedness (defined below);

(6) pending approval at the Final Hearing (as defined below), authorizing Debtors, pursuant to sections 363 and 364(d)(1) of the Bankruptcy Code, to borrow under the Working Capital DIP Facility in an aggregate outstanding principal amount at any one time of up to an amount equal to the lesser of (i) the amount of (A) \$9,000,000 less (B) the amount of the outstanding Prepetition Senior Lender Forbearance Indebtedness as of the Petition Date plus (C) the aggregate amount of payments or proceeds of Collateral that are applied after the Petition Date to reduce the amount of Prepetition Senior Lender Indebtedness and (ii) \$25,000,000 (the “Working Capital DIP Facility Cap”) (together with interest, fees, charges and expenses payable under the Working Capital DIP Facility Notes (as defined below)), in each case, pursuant to the terms and conditions of the Working Capital DIP Facility Documents, and to use the amounts borrowed to fund Debtors’ working capital and other general corporate needs, in accordance with the terms of the Working Capital DIP Facility Documents and this Order; and

(7) pending approval at the Final Hearing, authorizing Debtors, pursuant to sections 363 and 364(d)(1) of the Bankruptcy Code, to borrow under the Interchange DIP Facility to fund Debtors' Interchange and Network Reimbursement Fees in an aggregate outstanding principal amount at any one time of up to \$7,500,000 (together with interest, fees, charges and expenses payable under the Interchange DIP Facility Documents) pursuant to the terms and conditions of the Interchange DIP Facility Documents and this Order;

(8) authorizing Debtors and the Interchange DIP Lenders, pursuant to sections 105, 363 and 365 of the Bankruptcy Code, to perform under the Interchange DIP Facility Documents in their entirety, including authorizing Interchange DIP Lenders to withhold amounts to the extent permitted under the Forbearance Agreement in accordance with the Interchange DIP Facility Documents regardless of whether such amounts pertain to prepetition or postpetition transactions;

(9) pending approval at the Final Hearing, authorizing the waiver by Debtors of any right to surcharge against the Working Capital Collateral and Interchange Collateral;

(10) scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the "Final Hearing") before this Court to consider entry of an order (a) approving the DIP Facilities and authorizing Debtors to borrow all amounts available under the DIP Facilities and use such borrowed amounts (i) from the Working Capital DIP Facility, to fund Debtors' working capital and other general corporate needs and pay such other amounts required or allowed to be paid pursuant to the Working Capital DIP Facility Documents, this Order and any other order of this Court, and (ii) from the Interchange DIP Facility, to fund Debtors' Interchange and Network Reimbursement Fees and pay such other amounts required or allowed to be paid pursuant to the Interchange DIP Facility Documents, this Order and any other order of this Court,

(b) authorizing the use of Cash Collateral first to pay the Prepetition Senior Lender Indebtedness until paid in full and thereafter to pay the Working Capital DIP Facility Indebtedness; provided, however, that with respect to Interchange Cash Collateral, the application of Cash Collateral provided in this Order shall be net of such Interchange Cash Collateral that is used to pay the indebtedness under the Prepetition Harris Documents with respect to the funding of Interchange and Network Reimbursement Fees and the Interchange DIP Facility Indebtedness, and (c) authorizing the grant of Adequate Protection to the Prepetition Secured Parties, all on a final basis (the “Final Order”), as set forth in the Motion; and

(11) modifying the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit Debtors, the Working Capital DIP Agent, the Working Capital DIP Lenders, and the Interchange DIP Lenders to implement the terms of this Order.

Pursuant to Bankruptcy Rules 4001(b) and 4001(c)(1), due and sufficient notice under the circumstances of the Motion and the interim hearing on the Motion before this Court to consider entry of this Order (the “Interim Hearing”) having been provided by Debtors as set forth in paragraph L below, and the Interim Hearing having been held on September \_\_\_\_, 2009, and upon consideration of all the pleadings filed with this Court; and any objections to the relief requested in the Motion that have not been resolved are hereby overruled; and upon the record made by Debtors at the Interim Hearing and the Declaration of Charles M. Moore in Support of Chapter 11 Petitions and First Day Pleadings, and after due deliberation and consideration and good and sufficient cause appearing therefor;

THE COURT FINDS THAT:

A. Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on September 1, 2009 (the “Petition Date”). Debtors are continuing to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. Debtors have filed a motion requesting that the Cases be jointly administered. No request has been made for the appointment of a trustee or examiner and no official committees have been appointed in these Cases.

C. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Subject to the rights of any party in interest (other than the Credit Parties (as defined below)) as provided in paragraph 7 herein, each of the Credit Parties acknowledges and stipulates that:

(1) Debtors are indebted to Comerica, as agent to the Prepetition Senior Lenders (as defined below) (in such capacity, the “Prepetition Senior Agent”), and to Comerica, Wells Fargo (Comerica and Wells Fargo, in their capacity as Prepetition Senior Lenders, are referred to collectively as the “First Out Banks”), A3 Funding LP (“A3”), Ableco Finance LLC (“Ableco”), Garrison Credit Investments I, LLC (“GCI”) and Garrison Credit Opportunities Holdings L.P. (“GCH”, together with A3, Ableco and GCI, the “Term Loan B Banks” and together with First Out Banks, the “Prepetition Senior Lenders”), as follows:

a. under a certain Master Revolving Note executed by Cynergy to the order of Comerica on July 24, 2009 in the original principal amount of \$4,316,807.50

(“Comerica Revolving Note #1”). The indebtedness under the Comerica Revolving Note #1 as of the Petition Date includes principal of \$4,316,807.50, and interest of \$28,509.70;

b. under a certain Master Revolving Note executed by Cynergy to the order of Wells Fargo on July 24, 2009 in the original principal amount of \$4,683,192.50 (“Wells Fargo Revolving Note #1”). The indebtedness under the Wells Fargo Revolving Note #1 as of the Petition Date includes principal of \$4,683,192.50, and interest of \$30,929.44;

c. under a certain Revolving Credit Note executed by Cynergy to the order of Comerica on December 15, 2008 in the original principal amount of \$10,704,245.28 (“Comerica Revolving Note #2”). The indebtedness under the Comerica Revolving Note #2 as of the Petition Date includes principal of \$10,514,549.09, and interest of \$130,993.76;

d. under a certain Revolving Credit Note executed by Cynergy to the order of Wells Fargo on December 15, 2008 in the original principal amount of \$8,195,754.72 (“Wells Fargo Revolving Note #2”). The indebtedness under the Wells Fargo Revolving Note #2 as of the Petition Date includes principal of \$7,318,126.16, and interest of \$91,171.66. The Comerica Revolving Note #1, Comerica Revolving Note #2, the Wells Fargo Revolving Note #1 and the Wells Fargo Revolving Note #2 are identified collectively as the “Prepetition Revolving Notes”;

e. under a certain Term Loan A Note executed by Cynergy to the order of Comerica on August 1, 2008 in the original principal amount of \$11,695,754.71 (“Comerica Term Loan A Note”). The indebtedness under the Comerica Term Loan A

Note as of the Petition Date includes principal of \$9,155,772.78, and interest of \$114,065.66;

f. under a certain Term Loan A Note executed by Cynergy to the order of Wells Fargo on August 1, 2008 in the original principal amount of \$16,804,245.29 (“Wells Fargo Term Loan A Note”). The indebtedness under the Wells Fargo Term Loan A Note as of the Petition Date includes principal of \$13,154,845.97, and interest of \$163,887.45. The Comerica Term Loan A Note and the Wells Fargo Term Loan A Note are identified collectively as the “Prepetition Term Loan A Notes”;

g. under a certain Term Loan B Facility in the original principal amount of \$26,500,000 (“Term Loan B Facility”). The indebtedness under the Term Loan B Facility as of the Petition Date includes principal of \$26,901,732.65, and interest of \$429,867.28;

h. under a Revolving Credit Note dated December 15, 2008 in the principal amount of \$10,100,000 (the “Prosperity Note”) executed by Prosperity to the order of Comerica, and guaranteed under a guaranty (the “Prosperity Guaranty”) dated as of September 20, 2007 by Cynergy in favor of Comerica. The indebtedness under the Prosperity Note and Prosperity Guaranty as of the Petition Date includes principal of \$9,050,000, and interest of \$237,059.72; and

i. in respect of each of the foregoing, accruing interest, costs, fees and expenses.

As used herein, the Prepetition Revolving Notes, the Prepetition Term Loan A Notes, the Term Loan B Facility and the Prosperity Notes are identified collectively as the “Prepetition Notes.” All of Debtors’ obligations to the Prepetition Senior Agent and the Prepetition Senior Lenders

under the Prepetition Notes, the Prosperity Guaranty, and the other documents, instruments and agreements related to or executed in connection with the Prepetition Notes and the Prosperity Guaranty (collectively, the “Prepetition Senior Loan Documents,” which includes, without limitation, that certain Amended and Restated Credit Agreement dated as of August 1, 2008 by and among Cynergy, the Prepetition Senior Agent and the Prepetition Senior Lenders (the “Cynergy Prepetition Credit Agreement”), that certain Credit Agreement dated as of September 20, 2007 between Comerica (as Agent and lender) and Prosperity (the “Prosperity Prepetition Credit Agreement”), and that certain Forbearance Agreement dated as of July 24, 2009 (the “Forbearance Agreement”) among the Credit Parties, the Prepetition Senior Agent, the Prepetition Senior Lenders, and Harris) including, without limitation, all principal, accrued interest, unpaid fees and expenses (including attorneys’ fees) are identified as the “Prepetition Senior Lender Indebtedness.” All of Debtors’ obligations to the Prepetition Senior Lenders under Comerica Revolving Credit Note #1 and Wells Fargo Revolving Credit Note #1, including, without limitation, all principal, accrued interest, and unpaid fees and expenses (including attorneys’ fees), are identified as the “Prepetition Senior Lender Forbearance Indebtedness.” All of Debtors’ obligations to the Prepetition Senior Lenders under Comerica Revolving Note #2, Wells Fargo Revolving Note #2, Comerica Term Loan A Note, Wells Fargo Term Loan A Note and Prosperity Note including, without limitation, all principal, accrued interest, and unpaid fees and expenses (including attorneys’ fees), are identified as the “Prepetition Senior Lender Non-Forbearance Indebtedness.”

(2) The Prepetition Senior Lender Indebtedness is guaranteed by Prosperity and Holdings. The Prepetition Senior Lender Indebtedness, except for the amounts advanced under Comerica Revolving Note #1 and Wells Fargo Revolving Note #1, is guaranteed by

Marcelo Paladini. Debtors and Marcelo Paladini are identified collectively as the “Credit Parties.”

(3) The Prepetition Senior Lender Indebtedness is secured by all assets of Debtors, including without limitation, all of their respective now owned or after acquired:

- a. accounts;
- b. chattel paper (whether tangible chattel paper or electronic chattel paper);
- c. general intangibles (including, without limitation, payment intangibles);
- d. equipment;
- e. inventory and goods;
- f. documents;
- g. instruments (including, without limitation, promissory notes);
- h. deposit accounts and any other cash collateral, deposit or investment accounts, including all cash collateral, deposit or investment accounts established or maintained pursuant to the terms of the Security Agreement (as defined below) or the other Prepetition Senior Loan Documents, together with all cash and other assets and property from time to time deposited therein and the monies, assets and properties in the possession or control of Prepetition Senior Agent or any Prepetition Senior Lender or any affiliate, representative, agent or correspondent of Prepetition Senior Agent or any Prepetition Senior Lender;

i. computer records and software, whether relating to the foregoing collateral or otherwise, but in the case of such software, subject to the rights of any non-affiliated licensee of software;

j. investment property;

k. commercial tort claims listed in the Prepetition Senior Loan Documents, if any; and

l. the proceeds, in cash or otherwise, of any of the property described in the foregoing clauses (a) through (k) and all liens, security, rights, remedies and claims of such debtor with respect thereto;

all as more particularly described in the Security Agreement executed by Debtors in favor of Prepetition Senior Agent dated April 16, 2007 (as amended "Security Agreement"). The Prepetition Senior Lender Indebtedness is also secured by (a) all of Andres Ordonez's shares of stock of Holdings, (b) all of Marcelo Paladini's shares of stock of Holdings, and (c) all of Gustavo Ceballos's shares of stock in Holdings. The collateral securing the Prepetition Senior Lender Indebtedness that is owned by Debtors is identified collectively as the "Prepetition Lender Collateral."

(4) As of the Petition Date and immediately prior to giving effect to this Order, (a) the Prepetition Senior Loan Documents are valid and binding agreements and obligations of Debtors and are enforceable against Debtors in accordance with their terms, (b) the first priority and continuing pledges, liens and security interests granted by Debtors to and/or for the benefit of the Prepetition Senior Agent and Prepetition Senior Lenders (the "Prepetition Senior Lenders' Liens") (i) constitute valid, binding, enforceable and perfected first priority security interests and liens, subject only to the liens permitted under the Prepetition

Senior Loan Documents, but only to the extent such permitted liens (including the Prepetition Harris Liens, solely to the extent (including as to scope of collateral and obligations secured) that the Prepetition Harris Liens are senior in priority to the Prepetition Lenders' Liens with respect to any Prepetition Harris Collateral that also constitutes Prepetition Lender Collateral (the "Prepetition Common Collateral") pursuant to the terms of the Harris Intercreditor Agreement (defined below)) are (x) valid, enforceable, non-avoidable liens and security interests that are perfected prior to the Petition Date (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code), (y) not subject to avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (z) senior in priority to the Prepetition Senior Lenders' Liens under applicable law and after giving effect to any applicable subordination or intercreditor agreements, including the Harris Intercreditor Agreement and the Subordination Agreement (each as defined below) (such permitted liens that meet the requirements of clauses (x), (y) and (z) above, the "Permitted Prior Liens" (for the avoidance of doubt, the Prepetition Senior Lenders' Liens shall not constitute Permitted Prior Liens)), and (ii) are not subject to avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law except as provided by the Harris Intercreditor Agreement and the Subordination Agreement, (c) the Prepetition Senior Lender Indebtedness constitutes legal, valid and binding obligations of Debtors, and the Prepetition Senior Lender Indebtedness, and any amounts paid at any time to the Prepetition Senior Agent or any Prepetition Senior Lender on account thereof or with respect thereto, are not subject to (i) any objection, offset, defense or counterclaim of any kind or nature, or (ii) avoidance, reduction, disallowance, impairment, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law except as provided by Harris

Intercreditor Agreement and the Subordination Agreement, and (d) no claims exist against the Prepetition Senior Agent or any of or any Prepetition Secured Lender under any contract or tort (including, without limitation, lender liability) theories of recovery or pursuant to section 105 of the Bankruptcy Code.

(5) The Credit Parties have waived, discharged and released any and all rights to challenge any of the Prepetition Senior Lender Indebtedness and the security for those obligations, and to assert any offsets, defenses, claims, objections, challenges, causes of action and/or choses of action against the Prepetition Senior Agent or any Prepetition Senior Lender and/or any of their respective affiliates, parents, subsidiaries, agents, attorneys, advisors, professionals, officers, directors and employees.

E. Subject to the rights of any party in interest (other than the Credit Parties) as provided in paragraph 7 herein, each of the Credit Parties acknowledges and stipulates that:

(1) Debtors are also obligated to Harris under a certain BIN Sponsor Agreement dated as of November 1, 2008, as amended, restated, supplemented or otherwise modified prior to the Petition Date and other agreements with respect to amounts advanced to Debtors by Harris to fund Interchange and Network Reimbursement Fees for Debtors and Debtors' merchants (as such term is defined in the Forbearance Agreement (collectively, "Prepetition Harris Documents"). The indebtedness under the Prepetition Harris Documents with respect to the funding of Interchange and Network Reimbursement Fees includes principal of \$\_\_\_\_\_ and interest of \$\_\_\_\_\_, both as of [August \_\_, 2009], plus advances with respect to the funding of Interchange and Network Reimbursement Fees made after that date until the Petition Date. All of Debtors' obligations to Harris under the Prepetition Harris Documents, including, without limitation, all principal, accrued interest, unpaid fees and

expenses (including attorneys' fees) are identified as the "Prepetition Harris Indebtedness". The Prepetition Senior Lender Indebtedness, and the Prepetition Harris Indebtedness and the indebtedness asserted by various holders of subordinated debt under the Financing Agreement with Debtors dated November 15, 2007, as amended, restated, supplemented or otherwise modified prepetition, and the documents, instruments and agreements executed in connection therewith are referred to, collectively, as the "Prepetition Indebtedness".

(2) Debtors derive a substantial portion of their revenue from merchants whose customers pay with VISA U.S.A. Inc. or MasterCard International Incorporated and possibly other credit cards' associations (the "Associations"). Debtors' ability to provide merchants with access to any process merchant payment transactions with the Associations is vital to their ongoing business as an independent sales organization. In order to be in a position to accept and receive credit for purchases made with a VISA or MasterCard credit card, merchants must be a party to a merchant services agreement or similar agreement with a party that has access to the VISA/MasterCard payment and collection systems. Harris currently is such a party that has access to the VISA/MasterCard payment and collection systems.

(3) Pursuant to the Interchange DIP Facility Documents, among other things (a) Harris accepts sales slips submitted by Debtors' merchants whose customers use their VISA or MasterCard credit cards; (b) Harris sponsors Debtors into the Associations as an independent sales organization and establishes and maintains a dedicated, segregated Association Bank Identification Number (BIN) and Interbank Card Association (ICA) for Debtors; (c) Harris makes payment to VISA or MasterCard for fees; and (d) Harris then makes certain settlement payments to Debtors, subject to, among other things, Harris's rights of recoupment, retention, offset, and other rights set forth in the Interchange DIP Facility Documents.

(4) Due to the nature of the above-described transaction, Harris contends that it is at risk for Debtors' future performance because it is liable to the customers who make purchases with the VISA or MasterCard credit cards and have a right to receive a credit if Debtors and/or their merchants fail to perform and that Debtors are then ultimately liable to Harris.

(5) Pursuant to the Prepetition Harris Documents, Debtors granted to and for the benefit of Harris, to secure the Prepetition Harris Indebtedness (subject, however, to the terms of the Harris Intercreditor Agreement), rights of offset and recoupment and liens and security interests (the "Prepetition Harris Liens," and together with the Prepetition Senior Lenders' Liens, the "Prepetition Liens") on and in all of Debtors' right, title and interest, whether now owned or existing or hereafter acquired or arising, in, to or under the ISO Revenue, the Reserve Account, the ISO Operating Account, the Merchant Suspense Account, the ISO Clearing Account, and the funds and proceeds thereof, the "Prepetition Harris Collateral," and together with the Prepetition Lender Collateral, the "Prepetition Collateral"). The Prepetition Harris Liens shall only be senior to the Prepetition Senior Lenders' Liens for and to the extent (including as to scope of collateral and obligations secured) that such liens would be senior to the Prepetition Senior Lenders' Liens under the Harris Intercreditor Agreement with respect to the Prepetition Common Collateral as of the Petition Date and otherwise in the absence of the commencement of these Cases.

(6) The Credit Parties have acknowledged and agreed to duly perform all of their obligations under, and stay in full compliance with, the Interchange DIP Facility Documents (provided, however, that Debtors have not yet determined whether they will assume or reject the BIN Sponsor Agreement or each and every Merchant Agreement and the documents

related thereto), and have agreed to maintain and preserve the Prepetition Harris Collateral securing the Prepetition Harris Liens in accordance with the terms of the applicable documents.

(7) Pursuant to that certain letter agreement dated as of April 28, 2009 by and among the Prepetition Senior Agent, Harris and others (as amended, supplemented, restated or otherwise modified prior to the Petition Date, the “Harris Intercreditor Agreement”; the Prepetition Senior Loan Documents, the Prepetition Senior Debt Documents, the Subordination Agreement, the Prepetition Harris Documents and the Harris Intercreditor Agreement are referred to, collectively, as the “Prepetition Loan Documents”), the Prepetition Harris Liens on the Prepetition Harris Collateral are senior to the Prepetition Senior Lenders’ Liens and other liens, to the extent (including as to scope of collateral and obligations secured) set forth in the Harris Intercreditor Agreement.

(8) As of the Petition Date and immediately prior to giving effect to this Order, (a) the Prepetition Harris Documents are valid and binding agreements and obligations of Debtors and are enforceable against Debtors in accordance with their terms, (b) the Prepetition Harris Liens (i) constitute valid, binding, enforceable and perfected security interests and liens and (ii) are not subject to avoidance, reduction, disallowance, impairment or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law except as provided by the Harris Intercreditor Agreement, (c) the Prepetition Harris Indebtedness constitutes legal, valid and binding obligations of Debtors, and the Prepetition Harris Indebtedness, and any amounts paid at any time to Harris on account thereof or with respect thereto, are not subject to (i) any objection, offset, defense or counterclaim of any kind or nature, or (ii) avoidance, reduction, disallowance, impairment, recharacterization or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law except as provided by the Harris Intercreditor Agreement and

the Subordination Agreement, and (d) no claims exist against Harris under any contract or tort (including, without limitation, lender liability) theories of recovery or pursuant to section 105 of the Bankruptcy Code.

(9) The Credit Parties have waived, discharged and released any and all rights to challenge any of the Prepetition Harris Indebtedness and the security for those obligations, and to assert any offsets, defenses, claims, objections, challenges, causes of action and/or choses of action against Harris and/or any of its respective affiliates, parents, subsidiaries, agents, attorneys, advisors, professionals, officers, directors and employees.

F. In order for Debtors to continue to operate their businesses, and preserve their goodwill and going concern value, it is necessary for Debtors to obtain immediate postpetition financing and use of Cash Collateral to enable it to pay normal operating expenses (including, without limitation, wages, salaries, insurance premiums, utilities, rent and taxes). Without such postpetition financing and use of Cash Collateral, Debtors will be unable to operate their business. The ability of Debtors to finance their operations and the availability to Debtors of sufficient working capital and other financial and general corporate liquidity through postpetition financing and use of Cash Collateral is in the best interests of Debtors and their estates. The interim financing and use of Cash Collateral authorized by this Order are vital to avoid immediate and irreparable harm to Debtors' businesses, properties and estates and to allow the orderly continuation of Debtors' businesses. Among other things, Debtors must be able to process VISA and/or MasterCard credit cards and obtain funds to continue the operation of their businesses. The continued performance under the Prepetition Harris Documents is vital to Debtors' continued and ongoing business operations and it is in the best interests of Debtors to continue to perform thereunder.

G. Debtors are unable to obtain sufficient financing from sources other than Working Capital DIP Lenders and the Interchange DIP Lenders on terms more favorable than the DIP Facilities described in this Order and pursuant to the DIP Facility Documents. Debtors have been unable to obtain unsecured credit solely under section 503(b)(1) of the Bankruptcy Code as an administrative expense. New credit is unavailable to Debtors without (a) providing the Working Capital DIP Agent and the Working Capital DIP Lenders (i) the Working Capital DIP Facility Superpriority Claims and (ii) the Working Capital DIP Facility Liens as provided herein and in the Working Capital DIP Facility Documents, (b) providing the Interchange DIP Lenders (i) the Interchange DIP Facility Superpriority Claims and (ii) the Interchange DIP Facility Liens as provided herein and in the Interchange DIP Facility Documents, (c) providing for the Adequate Protection of the Prepetition Secured Parties' interests in the Prepetition Collateral on the terms and conditions as set forth herein, (d) permitting the Interchange DIP Lenders to setoff or recoup amounts advanced under the Interchange DIP Facility with respect to Interchange and Network Reimbursement Fees, and (e) authorizing Debtors and the Interchange DIP Lenders to continue to perform postpetition under the Interchange DIP Facility Documents in their entirety, including authorizing the Interchange DIP Lenders to withhold amounts in accordance with the Interchange DIP Facility Documents to the extent permitted under the Forbearance Agreement regardless of whether such amounts pertain to prepetition or postpetition transactions.

H. Based upon the record presented by Debtors to this Court: (i) the terms of the DIP Facilities and use of Cash Collateral described in this Order are the best available under the circumstances, reflect Debtors' exercise of prudent business judgment consistent with their fiduciary duty, and are supported by reasonably equivalent value and fair consideration; and (ii) the DIP Facilities and use of Cash Collateral described in this Order have been negotiated in

good faith and at arm's length among Debtors, Working Capital DIP Agent, Working Capital DIP Lenders, Interchange DIP Lenders, Prepetition Senior Agent, and Prepetition Senior Lenders, and any loans, use of Cash Collateral or other financial accommodations set forth in this Order shall be deemed to have been extended, issued, made, or consented to, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code.

I. The Working Capital DIP Agent, Working Capital DIP Lenders, Interchange DIP Lenders, and Prepetition Secured Parties have indicated a willingness to provide financing to Debtors and/or permit the use of Cash Collateral by Debtors (or to otherwise refrain from objecting to such financing or use of Cash Collateral) subject to (i) the entry of this Order, (ii) the terms and conditions of the DIP Facility Documents, and (iii) findings by the Court that such postpetition financing and use of Cash Collateral is essential to Debtors' estates, that the terms of such financing and use of Cash Collateral were negotiated in good faith and at arm's length, and that the DIP Facility Liens, the DIP Facility Superpriority Claims, and the other protections granted pursuant to this Order and the DIP Facility Documents will not be affected by any subsequent reversal, modification, vacatur, or amendment of this Order or any other order, as provided in section 364(e) of the Bankruptcy Code. The Working Capital DIP Agent, Working Capital DIP Lenders, Interchange DIP Lenders and Prepetition Secured Parties have each acted in good faith in, as applicable, negotiating, consenting to and agreeing to provide the postpetition financing arrangements and/or use of Cash Collateral (or otherwise not opposing such financing or use of Cash Collateral) contemplated by this Order and the other DIP Facility Documents, and the reliance of Working Capital DIP Agent, Working Capital DIP Lenders, Interchange DIP Lenders and Prepetition Secured Parties on the assurances referred to above is in good faith.

J. The Budget (as defined below), is achievable and will allow Debtors to operate in the Case, sell certain assets and pay administrative expenses as they become due. The Working Capital DIP Agent, Working Capital DIP Lenders, Interchange DIP Lenders, First Out Banks and Prepetition Secured Parties are relying upon Debtors' compliance with the Budget in accordance with this Order in determining to enter into the DIP Facility Documents and consent to the use of Cash Collateral.

K. The Credit Parties consent to the terms and conditions of this Order.

L. Telephonic, facsimile or overnight mail notice of the Interim Hearing and the proposed entry of this Order has been provided to (i) the thirty (30) largest creditors of Debtors on a consolidated basis, (ii) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), (iii) counsel to the official committee of unsecured creditors, if appointed (the "Committee"), (iv) counsel to the Working Capital DIP Agent, (v) counsel to the Interchange DIP Lenders and Harris, (vi) counsel to the Prepetition Senior Agent, (vii) each of Debtors' cash management banks, (viii) all known parties asserting a lien against the Collateral, and (ix) any other party that has filed a request for notice pursuant to Bankruptcy Rule 2002 or is required to receive notice under the Bankruptcy Rules (collectively, the "Notice Parties"). Under the exigent circumstances of this case, the requisite notice of the Motion and the relief requested thereby and this Order has been provided in accordance with Bankruptcy Rule 4001 and Local Bankruptcy Rule 9013-1(m), which notice is sufficient for all purposes under the Bankruptcy Code, including, without limitation, sections 102(1) and 364 of the Bankruptcy Code, and no other notice need be provided for entry of this Order.

M. Debtors have requested immediate entry of this Order under Rules 4001(b)(2) and 4001(c)(2) of the Federal Rules of Bankruptcy Procedure. Absent

immediate entry of this Order, Debtors' businesses, properties and estates will be irreparably harmed.

N. None of the Prepetition Secured Parties have opposed the terms and conditions of this Order, including the priming under section 364(d) of the Bankruptcy Code as provided for herein. The consent of the Prepetition Secured Parties is expressly limited to (i) Debtors' use of Cash Collateral solely on the terms and conditions set forth in this Order (ii) the postpetition financing being provided by the Working Capital DIP Agent and Working Capital DIP Lenders as contemplated by this Order and the Working Capital DIP Facility Documents and (iii) the postpetition financing being provided by the Interchange DIP Lenders as contemplated by this Order and the Interchange DIP Facility Documents. The Adequate Protection granted in this Order constitutes "adequate protection necessary" of the Prepetition Secured Parties' interests in the Prepetition Collateral, including Cash Collateral, with respect to Debtors' use of Cash Collateral, the Postpetition Indebtedness (as defined below) and the priming of the Prepetition Liens as authorized herein. This Order is in lieu of all further hearings on the issue of Adequate Protection with respect to the Prepetition Secured Parties unless there is a material adverse change postpetition, in which case nothing in this Order shall preclude any Prepetition Secured Party from asserting that it is entitled to more or different adequate protection. Nothing in this Order, including, without limitation, any of the provisions herein with respect to Adequate Protection, shall constitute, or be deemed to constitute, a finding that the interests of any Prepetition Secured Party are or will be adequately protected with respect to any non-consensual use of Cash Collateral or priming of the Prepetition Liens.

Under consideration of the above findings, which are incorporated into this Order, IT IS THEREFORE ORDERED:

1. Disposition. The Motion is granted as set forth in this Order. Any objections that have not previously been withdrawn are hereby overruled. The Order shall immediately become effective upon its entry pursuant to Rules 4001(b)(2) and 4001(c)(2) of the Bankruptcy Rules.

2. Authorization to Borrow and Use Cash Collateral. Subject to the terms and conditions of this Order and the DIP Facility Documents, Debtors may use Cash Collateral and obtain postpetition financing from the Working Capital DIP Lenders and the Interchange DIP Lenders as follows:

(a) Working Capital DIP Facility.

(i) The Working Capital DIP Facility will be governed by the Prepetition Senior Loan Documents, as supplemented or modified by this Order, and the other Working Capital DIP Facility Documents.

(ii) Under no circumstances will there be any further advances or other extensions of credit under the Prepetition Notes.

(iii) The postpetition revolving credit in the total amount of the Working Capital DIP Facility Cap shall be evidenced by a \$\_\_\_\_\_ revolving credit note in favor of Comerica in the form attached as Exhibit A for \_\_\_% of the Working Capital DIP Facility Cap and a \$\_\_\_\_\_ revolving credit note in favor of Wells Fargo in the form attached as Exhibit B for \_\_\_% of the Working Capital DIP Facility Cap (collectively, the “Working Capital DIP Facility Notes”). All of Debtors’ obligations arising under the Working Capital DIP Facility, including, without limitation, all principal, interest, attorneys’ fees and other expenses are identified as the “Working Capital DIP Facility Indebtedness.” The Working Capital DIP Facility Notes and all other documents related to or executed in connection with the

Working Capital DIP Facility, as they may be amended, restated, supplemented or otherwise modified from time to time, including, without limitation, the Prepetition Senior Loan Documents, shall be identified collectively as the “Working Capital DIP Facility Documents.”

(iv) Subject to the terms and conditions of the Working Capital DIP Facility Documents and this Order, Debtors are authorized to receive advances under the Working Capital DIP Facility, and the DIP Lenders are authorized to fund advances under the Working Capital DIP Facility, notwithstanding (A) that the provisions of Section 5.16 of the Prepetition Credit Agreement may not be satisfied at the time of any such advances due to defaults existing as of the date of entry of this Order under the Prepetition Senior Loan Documents of which Working Capital DIP Lenders have been notified in writing, and (B) any notice that the Term Loan B Banks have provided to Prepetition Senior Agent under Section 2.17 of the Prepetition Credit Agreement.

(v) Debtors may immediately request advances under the Working Capital DIP Facility; provided, that the principal amount of each such requested advance and all other postpetition advances outstanding as of the date of such request, are consistent with the budget attached as Exhibit E, as modified from time to time with the prior consent of the Working Capital DIP Agent and the Working Capital DIP Lenders (the “Budget”), do not exceed the budgeted DIP Balance referenced in the Budget for such period, and the total amount advanced does not exceed the Working Capital DIP Facility Cap.

(vi) Commencing on September 1, 2009, and continuing each Tuesday thereafter, Debtors shall deliver to the Working Capital DIP Agent and Harris a report regarding actual collections and disbursements for the previous week, including a comparison to the projections for such week provided in the Budget. 100% of Debtors’ cash inflows (net of (i)

certain fees and processing charges due to First Data and amounts due to Harris as provided in the Prepetition Harris Documents, subject to and as modified by the Forbearance Agreement dated July 24, 2009, and this Order, and (ii) unless and until the earliest of a Termination Event, the Termination Date or notification by Working Capital DIP Agent to Debtors to the contrary, up to a maximum of \$1,500,000 cash (the “Permitted Working Capital Amount”) will be applied as follows: first, to the Prepetition Senior Agent for application to the Prepetition Senior Lender Forbearance Indebtedness in accordance with the Prepetition Senior Loan Documents until paid in full; second, to the Prepetition Senior Agent for application to the Prepetition Senior Non-Forbearance Indebtedness in accordance with the applicable Prepetition Senior Loan Documents until paid in full; third, to the Working Capital DIP Agent for application to the Working Capital DIP Facility Indebtedness, in accordance with the Working Capital DIP Facility Documents until paid in full; and thereafter, to any other Prepetition Senior Lender Indebtedness and Working Capital DIP Facility Indebtedness in accordance with the respective lien priorities of the holders of such indebtedness in such Collateral as set forth in this Order or any Prepetition Senior Loan Document. Any Advances under the Working Capital DIP Facility Notes that are made from time to time by the Working Capital DIP Lenders, may be used by Debtors solely and exclusively as provided for in the Budget as and when budgeted, measured weekly for total budgeted disbursements only (with an adverse variance on budgeted disbursements measured on a cumulative basis of up to 10% but in no event shall the cumulative variance on all budgeted disbursements exceed \$1 million; provided, however, Debtors cannot use a positive variance in one line item to increase the budgeted amount for professional fees in aggregate or individually). The “working capital” line item which covers reserves, chargebacks, rejects and merchant finance and the debit network line which covers inflows and outflows related to the debit

network are not subject to the budget variance test, unless there is a permanent, material adverse change in the working capital line item. Debtors warrant and represent that the Budget includes all reasonable, necessary, and foreseeable expenses to be incurred in the ordinary course of business in connection with the operation of their businesses for the period set forth in the Budget. Without limitation, the failure to comply with any covenant set forth in this paragraph, including the use of Advances for any other purposes or in amounts in excess of the Budget shall constitute an immediate default under this Order.

(vii) The Budget shall provide for payment of (A) fees due and payable to the Clerk of the Court and the U.S. Trustee under 28 U.S.C. § 1930 and (B) fees and expenses incurred by professionals retained under an order of the Court capped at the amounts set forth in the Budget (the “Professional Fees”), which fees and expenses may only be paid by Debtors to the extent accrued before the earlier of (x) the occurrence of a default by any Debtors under this Order which is not waived by the Working Capital DIP Lenders; provided, that accrued and unpaid fees and expenses incurred after a default that is waived or cured, shall also be payable under the Budget (so long as no unwaived or uncured default has occurred and is continuing) or (y) the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code; provided, that the payment of such fees and expenses must be in accordance with any other order of this Court. In no event shall any amount budgeted for Professional Fees be used to pay any fees or expenses of any person retained in a chapter 7 case under sections 326, 327 or 328 of the Bankruptcy Code. Any amounts budgeted for Professional Fees or otherwise provided for in the Budget are subject to the restrictions set forth in paragraph 7(d) of this Order. Nothing contained in this paragraph shall (i) be construed to exempt those attorneys, accountants, and other professionals retained in this case under sections 327 and 1103 of the Bankruptcy Code by

Debtors and by the Committee receiving interim compensation payments or reimbursement of expenses from compliance with any Court approved procedure for compensation or otherwise from applicable provisions of bankruptcy law, including but not limited to requirements that such compensation or reimbursement be allowed on a final basis after the filing of appropriate fee applications, and when applicable, any subsequent order of this Court requiring that such payments be disgorged, (ii) be construed as consent to the allowance of any fees and expenses referred to above, or (iii) be construed to affect any right of any person to object to the reasonableness of such amounts.

(b) Interchange DIP Facility.

(i) The Interchange DIP Facility will be governed by the Interchange DIP Facility Documents.

(ii) Subject to the terms and conditions of the Interchange DIP Facility Documents and this Order, Debtors are authorized to receive postpetition advances of Interchange and Network Reimbursement Fees up to \$7,500,000 under the Interchange DIP Facility, and the Interchange DIP Lenders are authorized and agree to fund the advances and settle by setoff, recoupment or otherwise from ISO Revenue or any of Debtors' accounts maintained with any Interchange DIP Lender on a monthly basis, in accordance with past practice and the Interchange DIP Facility Documents, provided, however, that the setoff and recoupment rights of the Interchange DIP Lenders with respect to postpetition advances of Interchange and Network Reimbursement Fees are not greater than the prepetition rights of Harris under paragraph 2 of the Forbearance Agreement for setoff or recoupment for the Interchange and Network Reimbursement Fees advanced prepetition.

(iii) All of Debtors' postpetition obligations to the Interchange DIP Lenders under the Interchange DIP Facility Documents and this Order, including, without limitation, all principal, accrued interest, unpaid fees and expenses (including attorneys' fees) are identified, collectively, as the "Interchange DIP Facility Indebtedness" (the Interchange DIP Facility Indebtedness and the Working Capital DIP Facility Indebtedness are, collectively, the "Postpetition Indebtedness").

(iv) Interchange DIP Lenders are allowed to set off, recoup or otherwise collect against the ISO Revenue or amounts maintained in Debtors' accounts at any Interchange DIP Lender, in the ordinary course of business, all Interchange DIP Facility Indebtedness as and when such amounts are due; provided, however, that the setoff and recoupment rights of the Interchange DIP Lenders with respect to postpetition advances of Interchange and Network Reimbursement Fees are not greater than the prepetition rights of Harris under paragraph 2 of the Forbearance Agreement for setoff or recoupment for the Interchange and Network Reimbursement Fees advanced prepetition. To the extent necessary, Interchange DIP Lenders are granted relief from the automatic stay to set off or recoup such amounts.

(c) General.

(i) Debtors' ability to request advances under the Working Capital DIP Facility and the Interchange DIP Facility shall terminate upon a Termination Event (as defined below) or on the "Termination Date," which is the earlier of (A) the date of consummation of a sale of substantially all of Debtors' assets ("Sale"), or (B) October 16, 2009, unless otherwise extended in writing by Prepetition Senior Agent, Working Capital DIP Lenders, and Interchange DIP Lenders. "Termination Event" is defined as (i) a default by any Debtor

under this Order; (ii) default by any Debtor under the Working Capital DIP Facility Documents or the Interchange DIP Facility Documents, as amended (excluding any defaults existing as of the date of entry of this Order under the Prepetition Loan Documents of which the Working Capital DIP Agent has been notified in writing); (iii) default by any Debtor under the Forbearance Agreement; (iv) failure by Debtors to employ at any time a chief restructuring officer acceptable to the Working Capital DIP Agent and Working Capital DIP Lenders; (v) appointment of a trustee, examiner with expanded powers, custodian or receiver, (vi) conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code, (vii) dismissal of any of the Cases, or (viii) with respect to the Interchange DIP Facility and use of Harris' Cash Collateral (a) the unfunded merchant reserve under the Prepetition Harris Documents and Interchange DIP Facility Documents exceeds \$21,341,801, (b) a motion to reject the Prepetition Harris Documents is filed, or (c) Debtors accept a winning bidder for a Sale that does not contemplate the assumption of the Prepetition Harris Documents, provided however, notwithstanding anything in this Order to the contrary, the Debtor may continue to holdback and use cash collateral to the extent necessary to allow it to pay all expenses incurred prior to the Termination Event or Termination Date to the extent such expenses have been provided for in the Budget through such date.

(ii) Debtors shall provide Working Capital DIP Lenders and Interchange DIP Lenders, on or before the following dates, all of the following with respect to the Sale:

(A) On or before September [30], 2009, Debtors shall obtain entry of an order ("Sale Procedures Order"), by the Court approving the procedures governing the Sale, substantially in the form and content approved prepetition by the Working Capital DIP

Lenders, Interchange DIP Lenders, with a closing date for the Sale on or before October 16, 2009;

(B) Debtors shall close the Sale on or before October 16, 2009.

Without limitation, Debtors will be in default under this Order if it fails to meet any of the deadlines referenced in this paragraph 2(c)(ii), unless it receives the prior written extension or waiver of the Prepetition Senior Agent, Working Capital DIP Lenders, Term Loan B Banks and Interchange DIP Lenders.

(iii) On the date of entry of this Order, Debtors shall pay to Working Capital DIP Agent the Revolving Credit Commitment Fee (as defined in the Cynergy Prepetition Credit Agreement) for the pro rata benefit of Working Capital DIP Lenders.

(iv) Debtors shall supply financial information and information relating to the Collateral as required by any of the DIP Facility Documents or at the request of Working Capital DIP Agent, Working Capital DIP Lenders, Term Loan B Agent or Interchange DIP Lenders. Without limitation, Debtors shall deliver to Working Capital DIP Agent, Working Capital DIP Lenders, Term Loan B Agent and Interchange DIP Lenders: (A) as and when filed, all reports and other documents and pleadings filed by Debtors with the Court or the U.S. Trustee; (B) a weekly cash flow statement, comparing actual receipts and disbursements to the projected receipts and disbursements set forth in the Budget; (C) daily reconciliations regarding the unfunded rolling merchant reserve; and (D) daily merchant activity reports.

(v) Upon the occurrence of the Termination Date pursuant to clause (A) of the definition thereof, all cash and cash equivalents (including any Cash Collateral) shall be applied as follows: first, to fund a reserve equal to the amount provided for in the Budget with respect to all unpaid expenses incurred through that date in accordance with the Budget plus

wind down expenses from and after the occurrence of such Termination Date; and thereafter, to the Prepetition Senior Lender Indebtedness and the Working Capital DIP Facility Indebtedness in accordance with the respective lien priorities of the holders of such indebtedness in such Collateral.

(vi) Except as modified by the DIP Facility Documents or this Order, all of the provisions of the Prepetition Senior Loan Documents and Prepetition Harris Documents are ratified and confirmed by Debtors and the other Credit Parties.

(vii) Debtors are authorized to perform all of their obligations under the Prepetition Harris Documents, and Harris shall perform all of its obligations thereunder and, except as otherwise set forth in this Order or the Forbearance Agreement, retain all of its rights, privileges, priorities and benefits under the Prepetition Harris Documents (provided, that Debtors and their merchants are in compliance with their respective obligations thereunder as modified by the Forbearance Agreement and this Order) for a limited time pending assumption of the Prepetition Harris Documents, pursuant to a final order acceptable to Harris. Harris is authorized in accordance with the Prepetition Harris Documents to settle, withhold, setoff and recoup amounts in accordance with the Prepetition Harris Documents regardless of whether such amounts pertain to prepetition or postpetition transactions; provided, however, that the setoff and recoupment rights of Harris are as provided under paragraph 2 of the Forbearance Agreement. Except as set forth in this Order, nothing herein shall be construed to alter the liens, rights and priorities granted to, and obligations of, Harris under the Prepetition Harris Documents, which liens, rights and priorities and obligations shall continue postpetition.

(viii) Marcelo Paladini, by his consent to this Order, affirms and ratifies his guaranty to Prepetition Senior Agent. Holdings and Prosperity acknowledge and agree that

the Prepetition Senior Lender Indebtedness and the Working Capital DIP Facility Indebtedness are guaranteed under their respective guaranties previously executed in favor of Prepetition Senior Agent and Prepetition Senior Lenders. Marcelo Paladini acknowledges and agrees that the Prepetition Senior Lender Indebtedness (except, however, for amounts advanced under Comerica Revolving Note #1 and Wells Fargo Revolving Note #1) and the Working Capital DIP Facility Indebtedness are guaranteed under his guaranty previously executed in favor of Prepetition Senior Agent and Prepetition Senior Lenders.

3. Working Capital DIP Facility Superpriority Claims. For all of the Working Capital DIP Facility Indebtedness, the Working Capital DIP Agent and Working Capital DIP Lenders are each granted, pursuant to section 364(c)(1) of the Bankruptcy Code, the allowed Working Capital DIP Facility Superpriority Claims, which claims shall be payable from and have recourse to, in addition to the Collateral, any unencumbered prepetition or postpetition property of Debtors whether now existing or hereafter acquired. The Working Capital DIP Facility Superpriority Claims shall be deemed legal, valid, binding, enforceable, and perfected claims, not subject to subordination, impairment or avoidance other than as specifically provided for herein, for all purposes in the Cases and any successor case.

4. Working Capital DIP Facility Liens. Under section 364(c)(2), (c)(3), and (d) of the Bankruptcy Code, the Working Capital DIP Facility Indebtedness shall be secured by, and Working Capital DIP Agent, for the benefit of itself and the Working Capital DIP Lenders, and Working Capital DIP Lenders are hereby granted (without the necessity of the execution by Debtors, or the filing or recordation, of mortgages, security agreements, account control agreements, financing statements, or otherwise), the Working Capital DIP Facility Liens. The Working Capital DIP Facility Liens are valid, binding, enforceable and fully perfected as of the

date hereof, not subject to subordination, impairment or avoidance other than as specifically provided for herein, for all purposes in these Cases and any successor case. The Working Capital DIP Facility Liens granted herein shall prime and be senior in all respects to the Prepetition Liens (other than the Permitted Prior Liens) and the Replacement Liens (as defined below) pursuant to section 364(d) of the Bankruptcy Code; provided, however, that the priority of Working Capital DIP Facility Liens and the Interchange DIP Facility Liens with respect to the Working Capital Collateral that is also Interchange Collateral (the “DIP Common Collateral”) shall be subject to the same order of priority that the Prepetition Harris Liens and the Prepetition Lenders’ Liens are subject to in accordance with the terms of the Harris Intercreditor Agreement. Upon entry of this Order, all possessory collateral held by the Prepetition Senior Agent shall be deemed to have been transferred to the Working Capital DIP Agent, and all lockbox, blocked account or similar control agreements shall be deemed assigned to the Working Capital DIP Agent, on behalf of the Working Capital DIP Lenders.

5. Interchange DIP Facility Superpriority Claims. For all of the Interchange DIP Facility Indebtedness, the Interchange DIP Lenders are each granted, pursuant to section 364(c)(1) of the Bankruptcy Code, the allowed Interchange DIP Facility Superpriority Claims, which claims shall be payable from and have recourse to, in addition to the Collateral, any unencumbered prepetition or postpetition property of Debtors whether now existing or hereafter acquired. The Interchange DIP Facility Superpriority Claims shall be deemed legal, valid, binding, enforceable, and perfected claims, not subject to subordination, impairment or avoidance other than as specifically provided for herein, for all purposes in these Cases and any successor case.

6. Interchange DIP Facility Liens. Under section 364(c)(2), (c)(3), and (d) of the Bankruptcy Code, the Interchange DIP Facility Indebtedness shall be secured by, and the Interchange DIP Lender are hereby granted (without the necessity of the execution by Debtors, or the filing or recordation, of mortgages, security agreements, account control agreements, financing statements, or otherwise), the Interchange DIP Facility Liens. The Interchange DIP Facility Liens are valid, binding, enforceable and fully perfected as of the date hereof, not subject to subordination, impairment or avoidance other than as specifically provided for herein, for all purposes in these Cases and any successor case. The Interchange DIP Facility Liens granted herein shall prime and be senior (subject, however, to the Prepetition Lenders' Liens and the Working Capital DIP Facility Liens on the same basis as, and to the same extent that, the Prepetition Harris Liens are subject to the Prepetition Lenders' Liens pursuant to the terms of the Harris Intercreditor Agreement) in all respects to the Prepetition Liens (other than the Permitted Prior Liens) and the Replacement Liens (as defined below) pursuant to section 364(d) of the Bankruptcy Code; provided, however, that the priority of Working Capital DIP Facility Liens and the Interchange DIP Facility Liens with respect to the DIP Common Collateral shall be subject to the same order of priority that the Prepetition Harris Liens and the Prepetition Lenders' Liens are subject to in accordance with the terms of the Harris Intercreditor Agreement.

7. Investigation Rights.

(a) Investigation Rights With Respect to Prepetition Senior Agent and Prepetition Senior Lenders. Notwithstanding anything herein to the contrary, including the Credit Parties' stipulations and releases herein solely as they relate to the Prepetition Secured Parties (i) the Committee, if appointed, shall have until the later of (x) 60 days from the date of appointment of the Committee and (y) 75 days from the entry of this Order, and (ii) any other

party in interest (including, without limitation, any receiver, administrator or trustee appointed or elected in any of the Cases or any successor case or in any jurisdiction) (other than the Credit Parties) shall have until 75 days from the entry of this Order (the applicable date, the “Prepetition Senior Investigation Termination Date”) to investigate the validity, perfection, and enforceability of the Prepetition Senior Lenders’ Liens and the amount and allowability of the Prepetition Senior Lender Indebtedness, or to assert any other claims or causes of action against the Prepetition Senior Agent or any of the Prepetition Senior Lenders. If the Committee (if appointed), or any other party in interest (other than the Credit Parties), determines that there may be a challenge by the Prepetition Senior Investigation Termination Date, upon five (5) days’ written notice to Debtors and the Prepetition Senior Agent, such Committee (if appointed) or other party in interest (other than the Credit Parties) shall have only until the Prepetition Senior Investigation Termination Date to commence an adversary proceeding or contested matter (each, a “Challenge”), as required by the applicable Bankruptcy Rules, on behalf of Debtors’ estates setting forth the basis of any such Challenge. In no event shall the filing of any such Challenge affect any of the rights, privileges, powers or remedies of the Prepetition Secured Parties under this Order or the Prepetition Loan Documents pending a ruling on such Challenge. If no Challenge is filed on or before the Prepetition Senior Investigation Termination Date (or such other later date as extended by the written consent of Debtors and the Prepetition Senior Agent), then the agreements, acknowledgements, releases and stipulations contained in this Order shall be irrevocably binding on the estate, the Committee (if appointed) and all other parties in interest (including, without limitation, any receiver, administrator, or trustee appointed in any of these Cases or any successor case or in any jurisdiction) without further action by any party or this Court, and the Committee and any other party in interest (including without limitation a receiver,

administrator, or trustee appointed in any of the Cases or any successor case or in any jurisdiction) shall thereafter be forever barred from bringing any Challenge with respect to the Prepetition Senior Agent, or any Prepetition Senior Lender. If a Challenge is timely filed on or before the Prepetition Senior Investigation Termination Date, all claims and actions against the Prepetition Senior Agent or any Prepetition Senior Lender not expressly asserted in such Challenge shall be deemed, immediately and without further notice, motion or application to, order of, or hearing before, this Court, to have been forever relinquished, discharged, released and waived. Nothing in this Order (I) confers standing on any party to file or prosecute such Challenge or (II) precludes the Prepetition Senior Agent or any Prepetition Senior Lenders from seeking allowance of all or any portion of the Prepetition Senior Lender Indebtedness prior to the occurrence of the Prepetition Senior Investigation Termination Date. If a Challenge is successful, the rights of parties to request a remedy from the Court is reserved.

(b) Investigation Rights With Respect to Harris. Notwithstanding anything herein to the contrary, including the Credit Parties' stipulations and releases herein solely as they relate to the Prepetition Secured Parties, (i) the Committee, if appointed, shall have until the later of (x) 60 days from the date of appointment of the Committee and (y) 75 days from the entry of this Order, and (ii) any other party in interest (including, without limitation, any receiver, administrator or trustee appointed or elected in any of the Cases or any successor case or in any jurisdiction) (other than the Credit Parties) shall have until 75 days from the entry of this Order (the applicable date, the "Harris Investigation Termination Date") to investigate the validity, perfection, and enforceability of the Prepetition Harris Liens and the amount and allowability of the Prepetition Harris Indebtedness, or to assert any other claims or causes of action against Harris. If the Committee (if appointed), or any other party in interest (other than

the Credit Parties), determines that there may be a challenge by the Harris Investigation Termination Date, upon five (5) days' written notice to Debtors and Harris, such Committee (if appointed) or other party in interest (other than the Credit Parties) shall have only until the Harris Investigation Termination Date to commence a Challenge as required by the applicable Bankruptcy Rules, on behalf of Debtors' estates setting forth the basis of any such Challenge. In no event shall the filing of any such Challenge affect any of the rights, privileges, powers or remedies of the Prepetition Secured Parties under this Order or the Prepetition Loan Documents pending a ruling on such Challenge. If no Challenge is filed on or before the Harris Investigation Termination Date (or such other later date as extended by the written consent of Debtors and Harris), then the agreements, acknowledgements, releases and stipulations contained in this Order shall be irrevocably binding on the estates, the Committee (if appointed) and all other parties in interest (including, without limitation, any receiver, administrator, or trustee appointed in any of the Cases or any successor case or in any jurisdiction) without further action by any party or this Court, and the Committee and any other party in interest (including without limitation a receiver, administrator, or trustee appointed in any of the Cases or any successor case or in any jurisdiction) shall thereafter be forever barred from bringing any Challenge with respect to Harris. If a Challenge is timely filed on or before the Harris Investigation Termination Date, all claims and actions against Harris not expressly asserted in such Challenge shall be deemed, immediately and without further notice, motion or application to, order of, or hearing before, this Court, to have been forever relinquished, discharged, released and waived. Nothing in this Order (iii) confers standing on any party to file or prosecute such Challenge or (iv) precludes Harris from seeking allowance of all or any portion of the Prepetition Harris Indebtedness prior to the occurrence of the Harris Investigation Termination Date.

(c) Notwithstanding anything herein to the contrary, no Prepetition Collateral, Working Capital Collateral, Interchange Collateral, or Cash Collateral (collectively, the “Collateral”), no amounts borrowed under the DIP Facilities, no amounts provided for in the Budget, including, without limitation, amounts budgeted for Professional Fees, and no proceeds of any of the foregoing shall include, apply to, or be used or available for, the payment or reimbursement of any fees or expenses incurred by any party, including, without limitation, the Credit Parties or the Committee, in connection with (i) the assertion, initiation or prosecution of, or joinder in, any claims, causes of action, adversary proceedings, contested matters or other litigation against the Working Capital DIP Facility Agent, any of the Working Capital DIP Lenders, any of the Interchange DIP Lenders, Prepetition Senior Agent or any of the Prepetition Secured Parties, including, without limitation, challenging the amount, validity, extent, perfection, priority, characterization, or enforceability of, or asserting any defense, counterclaim, or offset to, the Prepetition Indebtedness, the Prepetition Liens, the Adequate Protection, the Postpetition Indebtedness, the DIP Facility Superpriority Claims, or the DIP Facility Liens, (ii) any claims or causes of action, seeking to hinder or delay the assertion or enforcement of the DIP Facility Liens, the Prepetition Senior Lenders’ Liens or the Replacement Liens, or realization on the Collateral, by the Working Capital DIP Facility Agent, any Working Capital DIP Facility Lender, any Interchange DIP Facility Lender, Prepetition Senior Agent or any Prepetition Secured Party, in accordance with the DIP Facility Documents or this Order, or (iii) any Avoidance Actions.

8. Section 506(c) and 552(b) Waivers. Upon entry of a Final Order, no cost or expenses of administration shall be imposed against the Working Capital DIP Agent, the Working Capital DIP Lenders, the Interchange DIP Lenders, any of their claims, or the

Collateral under sections 105, 506(c) or 552 of the Bankruptcy Code, or otherwise, by Debtors or any other party in interest without the prior written consent of the Prepetition Senior Agent, the Working Capital DIP Agent and the Interchange DIP Lenders, and no such consent shall be implied from any action, inaction, or acquiescence by any party, including, but not limited to, funding of Debtors' ongoing operations by the Working Capital DIP Agent, Working Capital DIP Lenders and Interchange DIP Lenders. The "equities of the case" exception contained in section 552(b) of the Bankruptcy Code shall be deemed waived. Neither the Working Capital DIP Agent, nor any of the Working Capital DIP Lenders, Interchange DIP Lenders or Prepetition Secured Parties, shall be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral.

9. Prepetition Senior Agent and Prepetition Senior Lenders' Adequate Protection. In consideration for the use of Cash Collateral and the priming of the Prepetition Senior Lenders' Liens (solely upon the terms and conditions of this Order), the Prepetition Senior Agent and Prepetition Senior Lenders shall receive the following (collectively, the "Prepetition Senior Lender Adequate Protection"):

(a) To the extent there is any diminution in Prepetition Lenders' interest in the Prepetition Lender Collateral (whether the reason for such diminution is as a result of, arises from, or is attributable to, the imposition of the automatic stay, the priming of the Prepetition Senior Lenders' Liens, the use of Cash Collateral, or the physical deterioration, consumption, use, sale, lease, disposition, shrinkage, or decline in market value of the Prepetition Lender Collateral), the Prepetition Senior Agent, for the benefit of itself and the Prepetition Senior Lenders, and the Prepetition Senior Lenders are each granted continuing replacement liens and security interests on and in all of the Collateral, subject to the Harris Intercreditor

Agreement (the “Prepetition Senior Lender Replacement Liens”), which liens are valid, binding, enforceable and fully perfected as of the date hereof and shall be subordinate only to the DIP Facility Liens, Permitted Prior Liens, Prepetition Harris Liens (solely to the extent (including as to scope of collateral and obligations secured) that Prepetition Lenders’ Liens are subordinate to the Prepetition Harris Liens in the Prepetition Common Collateral pursuant to the terms of the Harris Intercreditor Agreement), Harris Replacement Liens (solely to the extent (including as to scope of collateral and obligations secured) that the Prepetition Lenders’ Liens are subordinate to the Prepetition Harris Liens in the Prepetition Common Collateral pursuant to the terms of the Harris Intercreditor Agreement), and Prepetition Senior Lenders’ Liens; and

(b) An allowed administrative claim in favor of the Prepetition Senior Lenders, or any of them, (the “Prepetition Senior Lender Administrative Claim”) against Debtors’ estates under section 507(b) of the Bankruptcy Code to the extent that the Prepetition Senior Lender Replacement Liens do not adequately protect the diminution in the value of the Prepetition Lender Collateral, which Prepetition Senior Lender Administrative Claim, if any, shall be junior and subordinate only to the DIP Facility Superpriority Claims and shall be *pari passu* with the Harris Administrative Claim (as defined below).

10. Harris Adequate Protection. In consideration for the use of Cash Collateral and the priming of the Prepetition Harris Liens (solely upon the terms and conditions of this Order), Harris shall receive the following (collectively the “Harris Adequate Protection”, and together with the Prepetition Senior Adequate Protection, the “Adequate Protection”):

(a) To the extent there is a diminution in Harris’ interests in the Prepetition Harris Collateral (whether the reason for such diminution is as a result of, arises from, or is attributable to, the imposition of the automatic stay, the priming of the Prepetition

Harris Liens, the use of Cash Collateral or the physical deterioration, consumption, use, sale, lease, disposition, shrinkage, or decline in market value of the Prepetition Harris Collateral), Harris is granted continuing replacement liens and security interests on and in all of the Interchange Collateral, subject to the Harris Intercreditor Agreement (the “Harris Replacement Liens”, and together with the Prepetition Senior Replacement Liens, the “Replacement Liens”), which liens are valid, binding, enforceable and fully perfected as of the date hereof and shall be subordinate, subject to the Harris Intercreditor Agreement, only to the DIP Facility Liens (to the extent that Prepetition Senior Lenders’ Liens are senior to the Prepetition Harris Liens in the Prepetition Common Collateral pursuant to the terms of the Harris Intercreditor Agreement (including as to scope of collateral and obligations secured)), Permitted Prior Liens, Prepetition Senior Lenders’ Liens (to the extent that Prepetition Senior Lenders’ Liens are senior to the Prepetition Harris Liens in the Prepetition Common Collateral pursuant to the terms of the Harris Intercreditor Agreement (including as to scope of collateral and obligations secured)) and Prepetition Senior Lender Replacement Liens (to the extent that Prepetition Senior Lenders’ Liens are senior to the Prepetition Harris Liens in the Prepetition Common Collateral pursuant to the terms of the Harris Intercreditor Agreement (including as to scope of collateral and obligations secured));

(b) The right to continue to withdraw, setoff or recoup from ISO Revenue or any of Debtors’ accounts maintained at Harris amounts advanced by Harris in accordance with the Prepetition Harris Documents, including, without limitation, with respect to Interchange and Network Reimbursement Fees whether such amounts were advanced prepetition or postpetition or whether such amounts pertain to prepetition or postpetition transactions;

provided, however, that the setoff and recoupment rights of Harris are as provided under paragraph 2 of the Forbearance Agreement;

(c) An allowed administrative claim in favor of Harris (the “Harris Administrative Claim”) against Debtors’ estates under section 507(b) of the Bankruptcy Code to the extent the Harris Replacement Liens do not adequately protect Harris for any diminution in the value of the Prepetition Harris Collateral, which Harris Administrative Claim, if any, shall be junior and subordinate only to the DIP Facility Superpriority Claims and shall be *pari passu* with the Prepetition Senior Lender Administrative Claim.

11. Restrictions on Debtors. Other than the Permitted Prior Liens, no claim or lien having a priority superior or *pari passu* with those granted by this Order to the Working Capital DIP Agent, the Working Capital DIP Lenders, the Interchange DIP Lenders or any of the Prepetition Senior Secured Parties shall be granted by any Debtor, while any portion of the Postpetition Indebtedness (or refinancing thereof) or the Prepetition Indebtedness, or any commitment under the DIP Facilities, remains outstanding, without the written consent of the Working Capital DIP Agent, the Working Capital DIP Lenders, the Interchange DIP Lenders and the Prepetition Senior Agent. Except as expressly permitted by the DIP Facility Documents and this Order, Debtors will not, at any time during the Case, grant mortgages, security interests, or liens in the Collateral or any portion thereof pursuant to section 364(d) of the Bankruptcy Code or otherwise.

12. Additional Perfection Measures. Neither the Working Capital DIP Agent, nor any of the Working DIP Lenders, Interchange DIP Lenders or Prepetition Secured Parties, shall be required to file financing statements, mortgages, deeds of trust, security deeds, notices of lien, or similar instruments in any jurisdiction, or take any other action, to attach or perfect the

security interests and liens granted under the DIP Facility Documents and this Order (including, without limitation, the taking possession of any of the Collateral, or the taking of any action to have security interests or liens noted on certificates of title or similar documents). Notwithstanding the foregoing, the Working Capital DIP Agent, any Working Capital DIP Lender, any Interchange DIP Lender, and/or any Prepetition Secured Party may, in their sole discretion, file this Order or such financing statements, mortgages, deeds of trust, notices of lien, or similar instruments, or otherwise confirm perfection of such liens, security interests, and mortgages, without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, and all such documents shall be deemed to have been filed or recorded on the Petition Date, with the priorities set forth herein.

13. Access to Collateral – No Landlord’s Liens. Upon approval at the Final Hearing, notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the Working Capital DIP Agent, for the ratable benefit of the Working Capital DIP Lenders, contained in this Order or the Working Capital DIP Facility Documents, or otherwise available at law or in equity, and subject to the terms of the Working Capital DIP Facility Documents, upon written notice to the landlord of any leased premises that an Event of Default has occurred and is continuing under the Working Capital DIP Facility Documents, the Working Capital DIP Agent may, subject to any separate agreement by and between such landlord and the Working Capital DIP Agent (the “Separate Agreement”), enter upon any leased premises of Debtors for the purpose of exercising any remedy with respect to Collateral located thereon and, subject to the Separate Agreement, shall be entitled to all of Debtors’ rights and privileges as lessee under such lease without interference from such landlord; provided, that, subject to the Separate Agreement, the Working Capital DIP Agent shall only pay

rent of Debtors that first accrues after the written notice referenced above and that is payable during the period of such occupancy by the Working Capital DIP Agent, calculated on a per diem basis. Nothing herein shall require the Working Capital DIP Agent to assume any lease as a condition to the rights afforded to the Working Capital DIP Agent in this paragraph.

14. Automatic Stay. Without further order from this Court, the automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to (a) permit Harris to perform under the Prepetition Harris Documents and, upon the occurrence of a Termination Event, to exercise all rights and remedies provided for in the Prepetition Harris Documents and (b) permit the Working Capital DIP Agent, Working Capital DIP Lenders and Interchange DIP Lenders, upon the occurrence of a Termination Event, to exercise all rights and remedies provided for in the DIP Facility Documents; provided, however, that prior to the exercise of any enforcement or liquidation remedies against the Collateral, the party exercising such rights or remedies shall be required to give three (3) business days' prior written notice to Debtors, counsel to Debtors, counsel to the Committee (if appointed), counsel to the Prepetition Senior Agent, counsel to Harris, and the U.S. Trustee; provided, however, that such notice shall not be required prior to the exercise of any right or remedy to (i) freeze monies or balances in Debtors' accounts, (ii) set off monies or balances of Debtors in accounts maintained by Harris, the Working Capital DIP Agent, any Working Capital DIP Lender or any Interchange DIP Lender, (iii) charge default rates of interest, (iv) terminate commitments and cease funding under the DIP Facility Documents, or (v) revoke consent to the use of Cash Collateral; provided, further, however, that except as set forth in the Harris Intercreditor Agreement or the Forbearance Agreement no notice is required for Harris or any Interchange DIP Lender to exercise any and all contractual rights under the Prepetition Harris Documents or

the Interchange DIP Facility Documents, including, without limitation, the withholding and retention of all amounts under such documents, to the extent permitted therein, whether before or after the Petition Date, the assessment of fees, adjustments, chargebacks, charges and/or credits permitted by such documents, and the exercise of the rights of recoupment, setoff and the like that may be exercised in the ordinary course of performance under said documents. Notwithstanding the occurrence of a Termination Event, all of the rights, remedies, benefits, and protections provided to Harris, the Working Capital DIP Agent, the Working Capital Lenders, and the Interchange DIP Lenders under the DIP Facility Documents and this Order shall survive the Termination Date. Debtors and/or the Committee (if appointed) shall have the initial burden of proof at any hearing on any request by Debtors and/or the Committee to re-impose or continue the automatic stay with respect to Harris, the Working Capital DIP Agent, the Working Capital DIP Lenders or the Interchange DIP Lenders; provided, however, that the only issue to be determined at such hearing shall be whether a Termination Event has occurred, and if a Termination Event is determined to have occurred, the automatic stay will not be re-imposed or continue with respect to Harris, the Working Capital DIP Agent, the Working Capital DIP Lenders, and the Interchange DIP Lenders. This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this paragraph and relating to the application, re-imposition or continuance of the automatic stay with respect to Harris, the Working Capital DIP Agent, Working Capital DIP Lenders, or Interchange DIP Lenders.

15. Binding Effect. The provisions of this Order shall be binding upon and inure to the benefit of the Working Capital DIP Agent, the Working Capital DIP Lenders, the Interchange DIP Lenders, the Prepetition Senior Lenders, Debtors, the Committee (if appointed),

and their respective successors and assigns, including any trustee hereafter appointed for the estates of Debtors, whether in these Cases or any successor case, including the conversion of any of the Cases to a case under Chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Order.

16. Survival. Except as otherwise provided in this Order, the provisions of this Order and any actions taken pursuant hereto shall survive the Termination Date and the entry of any order (a) confirming any plan under Chapter 11 of the Bankruptcy Code in the Cases (and, to the extent not satisfied in full in cash, the Postpetition Indebtedness shall not be discharged by the entry of any such order, or pursuant to section 1141(d)(4) of the Bankruptcy Code, each Debtor having hereby waived such discharge); (b) approving any sale under section 363 of the Bankruptcy Code, (c) converting any of the Cases to a Chapter 7 case unless permitted under the Working Capital DIP Facility Documents, or (d) dismissing any of the Cases unless permitted under the Working Capital DIP Facility Documents; and, notwithstanding the entry of any such order, the terms and provisions of this Order shall continue in full force and effect, and the DIP Facility Superpriority Claims, DIP Facility Liens, and Adequate Protection granted pursuant to this Order and/or the DIP Facility Documents shall continue in full force and effect and shall maintain their priority as provided by this Order and the DIP Facility Documents to the maximum extent permitted by law until all of the Postpetition Indebtedness is indefeasibly paid in full in cash.

17. After-Acquired Property. Except as otherwise provided in this Order, pursuant to section 552(a) of the Bankruptcy Code, all property acquired by Debtors after the Petition Date, including, without limitation, all Collateral pledged or otherwise granted to (x) the Working Capital DIP Agent, on behalf of the Working Capital DIP Lenders, pursuant to the

Working Capital DIP Facility Documents and this Order, and (y) the Interchange DIP Lenders pursuant to the Interchange DIP Facility Documents and the Order, is not and shall not be subject to any lien of any person or entity resulting from any security agreement entered into by any Debtor prior to the Petition Date, except to the extent that such property constitutes proceeds, products, offspring or profits of property of Debtors that is subject to a valid, enforceable, perfected, and unavoidable lien as of the Petition Date which is not subject to subordination under section 510(c) of the Bankruptcy Code or other provision or principles of applicable law.

18. Access to Debtors. Debtors shall provide the Working Capital DIP Agent, the Working Capital DIP Lenders, the Interchange DIP Lenders, and each of their respective attorneys, accountants, representatives, agents, and/or employees reasonable access to Debtors' premises and books and records during normal business hours (without unreasonable interference with the proper operation of Debtors' businesses) for the purpose of audit, examination, and inspection thereof, and observation of Debtors' operations, and shall provide all reasonable information and documents requested by the Working Capital DIP Agent, the Working Capital DIP Lenders, or the Interchange DIP Lenders, or their designated agents. Without limiting the generality of the foregoing, Working Capital DIP Agent, the Working Capital DIP Lenders, the Interchange DIP Lenders and their attorneys, accountants, representatives, agents, and/or employees shall have the right to enter Debtors' business premises during reasonable business hours for the purpose of examining and appraising the Collateral. Debtors shall pay the cost of any audit requested or performed by Working Capital DIP Agent, the Working Capital DIP Lenders, or the Interchange DIP Lenders.

19. Authorization to Act. Debtors are authorized to do and perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the

execution of security agreements, mortgages and financing statements), and to pay interest, fees and all other amounts as provided under this Order and the DIP Facility Documents, which may be reasonably required or necessary for Debtors' full and timely performance under the DIP Facility Documents and this Order, including, without limitation:

(a) the execution of the Working Capital DIP Facility Documents and the Interchange DIP Facility Documents;

(b) the modification or amendment of the DIP Facility Documents without further order of this Court, in such form as Debtors, the Working Capital DIP Agent, and the Working Capital DIP Lenders may agree in the case of the Working Capital DIP Facility Documents, or Debtors and Interchange DIP Lenders may agree in the case of the Interchange DIP Facility Documents, in each case in accordance with the terms of the applicable DIP Facility Documents; provided, however, that notice of any material modification or amendment shall be provided to counsel for the Committee (if appointed), counsel for the Prepetition Senior Agent, counsel for Harris, and the U.S. Trustee, each of which will have five (5) days from the date of delivery of such notice within which to object in writing; provided, further, that if such objection is timely provided, then such modification or amendment shall be permitted only pursuant to an order of the Court; and

(c) the non-refundable payments to the Working Capital DIP Agent, the Working Capital DIP Lenders or the Interchange DIP Lenders, as the case may be, of the fees referred to in this Order and the DIP Facility Documents, and of the reasonable costs and expenses as may be due from time to time, including, without limitation, reasonable attorneys' and other professional fees and disbursements as provided in the DIP Facility Documents.

20. Insurance Policies. Upon entry of this Order, the Working Capital DIP Agent and Working Capital DIP Lenders shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees on each insurance policy maintained by Debtors which in any way relates to the Collateral. Any insurance proceeds or other receipts from any source that relate to the Collateral and are paid to any Prepetition Secured Party shall be immediately delivered to Debtors and subject to the DIP Facility Liens and the terms of this Order and the DIP Facility Documents.

21. Waiver. Working Capital DIP Agent, Working Capital DIP Lenders and Interchange DIP Lenders, in their sole discretion, may in writing waive any covenant or term of this Order imposed upon Debtors for the benefit of Working Capital DIP Agent, Working Capital DIP Lenders or Interchange DIP Lenders.

22. Harris Disgorgement. To the extent that Harris or the Interchange DIP Lenders are required to disgorge amounts received or recouped with respect to the Interchange and Network Reimbursement Fees, Prepetition Senior Agent, Prepetition Senior Lenders, Working Capital DIP Agent and Working Capital DIP Lenders, each acknowledge and agree that it will transfer to Harris or the Interchange DIP Lenders, as applicable, any amounts received by it with respect to such disgorged amounts.

23. Subsequent Reversal. If any or all of the provisions of this Order or the DIP Facility Documents are hereafter modified, vacated, amended or stayed by subsequent order of this Court or any other court: (a) such modification, vacatur, amendment or stay shall not affect: (i) the validity of any obligation of Debtors to the Working Capital DIP Agent, Working Capital DIP Lenders, Interchange DIP Lenders, Prepetition Senior Agent or any Prepetition Secured Party that is or was incurred prior to such party receiving written notice of the effective

date of such modification, vacatur, amendment, or stay (the “Effective Date”), or (ii) the validity, enforceability or priority of the DIP Facility Superpriority Claims, DIP Facility Liens, Adequate Protection or other grant authorized or created by this Order and the DIP Facility Documents; (b) the Postpetition Indebtedness and Adequate Protection pursuant to this Order and the DIP Facility Documents arising prior to the Effective Date; and (c) the use of Cash Collateral and the validity of any financing provided or security interest granted pursuant to this Order and the DIP Facility Documents, each of which are and shall be protected by section 364(e) of the Bankruptcy Code; or (d) the conduct of Prepetition Senior Agent, Working Capital DIP Agent, Working Capital DIP Lenders and Interchange DIP Lenders with respect to the rights granted to Prepetition Senior Agent, Working Capital DIP Agent, Working Capital DIP Lenders and Interchange DIP Lenders in this Order prior to the Effective Date, all amounts owed to Prepetition Senior Agent, Working Capital DIP Agent, Working Capital DIP Lenders and Interchange DIP Lenders by Debtors under this Order prior to the Effective Date, shall be governed in all respects by the original provisions of this Order in effect immediately prior to the Effective Date and Prepetition Senior Agent, Working Capital DIP Agent, Working Capital DIP Lenders and Interchange DIP Lenders shall be entitled to all the rights, privileges and benefits, including the security interests and priorities granted herein, with respect to all such advances and the course of conduct established in connection therewith.

24. Effect of Dismissal of Cases. If the Cases, or any of them, is dismissed, converted or substantively consolidated, then neither the entry of this Order nor such dismissal, conversion or substantive consolidation of shall affect the rights of the Working Capital DIP Agent, Working Capital DIP Lenders, Interchange DIP Lenders, and Prepetition Secured Parties (to the extent of Adequate Protection provided hereunder) under their respective documents or

this Order, and all of the respective rights and remedies thereunder of the Working Capital DIP Agent, Working Capital DIP Lenders, Interchange DIP Lenders, and Prepetition Secured Parties (to the extent of Adequate Protection provided hereunder) shall remain in full force and effect as if none of the Cases had been dismissed, converted, or substantively consolidated. If an order dismissing any of the Cases is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (a) the DIP Facility Liens and DIP Facility Superpriority Claims granted to and conferred upon the Working Capital DIP Agent, Working Capital DIP Lenders and/or Interchange DIP Lenders DIP Agent and the protections afforded to the Working Capital DIP Agent, Working Capital DIP Lenders and/or Interchange DIP Lenders pursuant to this Order and the DIP Facility Documents shall continue in full force and effect and shall maintain their priorities as provided in this Order until all Postpetition Indebtedness shall have been paid and satisfied in full in cash and that such DIP Facility Liens, DIP Facility Superpriority Claims, and other protections shall, notwithstanding such dismissal, remain binding on all interested parties, (b) the Adequate Protection granted to and conferred upon the Prepetition Secured Parties shall continue in full force and effect and shall maintain their priorities as provided in this Order until such Adequate Protection has been satisfied, (c) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing the DIP Facility Liens, Prepetition Liens, DIP Facility Superpriority Claims, and Adequate Protection, and (d) any hearing on any motion to dismiss any of the Cases shall require at least twenty (20) days' prior notice to the Working Capital DIP Agent, Interchange DIP Lenders and the Prepetition Senior Agent.

25. Certain Rights under the Bankruptcy Code. Notwithstanding anything to the contrary herein or in any DIP Facility Document nothing shall waive, prejudice or modify

any interested parties rights under section 363 or 365 of the Bankruptcy Code with respect to any sale of the Debtors' assets.

26. Findings of Fact and Conclusions of Law. This Order constitutes findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon the entry thereof.

27. Controlling Effect of Order. To the extent any provision of this Order conflicts with any provision of the Motion, any documents executed or delivered prior to the Petition Date, or any DIP Facility Documents, the provisions of this Order shall control.

28. Final Hearing. If an objection is timely filed, the Final Hearing on the Motion shall be heard before this Court on September \_\_\_\_, 2009 at \_\_\_\_ \_\_ .m. (eastern) at the United States Bankruptcy Court for the District of Delaware, Bankruptcy Court, 824 North Market Street, 6th Floor, Courtroom #2, Wilmington, Delaware 19801. If no objections are timely filed, this Order shall become the Final Order.

29. Adequate Notice. The notice given by Debtors of the Interim Hearing was given in accordance with Bankruptcy Rule 4001(c)(2). Within three (3) business days after the Court's entry of this Order, Debtors shall mail copies of this Order and notice of the Final Hearing to the Notice Parties. Any party-in-interest objecting to the relief sought in the Final Order shall file a written objection with the Court (with a courtesy copy to chambers) by, and serve such objection so as to be received no later than, **September \_\_\_\_, 2009 at \_\_\_\_\_ .m. (eastern)** on the following:

(a) **Nixon Peabody LLP**, 437 Madison Avenue, New York, New York 10022 (Attn: Mark N. Berman, Dennis J. Drebsky, and Lee Harrington), and **Pepper Hamilton LLP**, Hercules Plaza, Suite 5100, 1313 Market Street, P.O. Box 1709, Wilmington,

Delaware 19899-1709 (Attn: David B. Stratton, Evelyn J. Meltzer, and John H. Schanne),  
proposed counsel to Debtors;

(b) **Bodman LLP**, 6th Floor at Ford Field, 1901 St. Antoine Street,  
Detroit, Michigan 48226 (Attn: Robert J. Diehl, Jr.), and **Buchanan Ingersoll & Rooney PC**,  
The Brandywine Building, 1000 West Street, Suite 1410, Wilmington, Delaware 19801-1054  
(Attn: Mary F. Caloway), counsel to the Working Capital DIP Agent and Prepetition Senior  
Agent;

(c) **Torlys LLP**, 237 Park Avenue, New York, New York 10017  
(Attn: Alison D. Bauer and William F. Gray, Jr.) and **Drinker, Biddle & Reath LLP**, 1100 N.  
Market Street, Wilmington, Delaware 19801-1254 (Attn: Howard A. Cohen and David P.  
Primack), counsel to Harris and the Interchange DIP Lenders;

(d) **Office of the United States Trustee for the District of Delaware**,  
844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 .

Dated: September \_\_\_\_, 2009  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

Cynergy Data  
Budget

In \$000's								CF - 10/16	CF Post 10/16	WC Adj.	
	1	2	3	4	5	6	7	Total	Post Trans Total	Accrued Total	Wind-down Total
	9/4/09	9/11/09	9/18/09	9/25/09	10/2/09	10/9/09	10/16/09				
<b>Beginning Cash</b>	504	155	-	-	-	-	-	504	-		
<b>Receipts</b>											
Discount Revenue Net of Interchange Fees	-	14,540	564	-	-	13,223	495	28,821	6,980	6,980	-
Assessments & Processing Fees	-	(2,299)	-	-	-	(1,909)	-	(4,207)	(1,089)	(1,089)	-
<b>Total Receipts for Debt Paydown</b>	-	12,242	564	-	-	11,314	495	24,614	5,891	5,891	-
<b>Operating Expenses</b>											
Processing Fees	-	(1,706)	-	(591)	-	(1,314)	-	(3,611)	(2,912)	(2,912)	-
Commissions	-	(1,134)	-	(7,169)	-	-	(977)	(9,281)	(10,811)	(10,811)	-
Payroll	-	-	(358)	-	(408)	-	(408)	(1,173)	(204)	(204)	-
Operating Expenses	(150)	(135)	(157)	(36)	(32)	(52)	(66)	(628)	-	-	-
Professional Fees	(165)	(65)	(15)	(15)	(15)	(601)	(15)	(891)	(2,773)	(2,523)	(250)
<b>Operating Expenses Total</b>	(315)	(3,040)	(530)	(7,811)	(454)	(1,967)	(1,466)	(15,584)	(16,700)	(16,450)	(250)
<b>Non Operating Cash Items</b>											
CAPEX	-	-	-	-	-	-	-	-	-	-	-
Debit Networks	-	(541)	418	638	75	(562)	(464)	(438)			
Debt & Interest	(35)	(50)	-	-	(34)	(46)	-	(164)	(85)	(85)	-
Working Capital	-	-	-	-	-	-	-	-	-	-	-
<b>Total Non Operating Cash Items</b>	(35)	(592)	418	638	40	(608)	(464)	(602)	(85)	(85)	-
<b>Cash Gain/(Loss)</b>	(350)	(3,632)	(113)	(7,173)	(414)	(2,575)	(1,931)	(16,186)	(10,895)	(10,645)	(250)
<b>Cash Balance Before Revolver</b>	155	(3,477)	(113)	(7,173)	(414)	(2,575)	(1,931)	(15,682)	(10,895)	(10,645)	(250)
Revolver Draw	-	3,477	113	7,173	414	2,575	1,931	15,682	-	-	-
<b>Available Cash</b>	155	-	-	-	-	-	-	-	(10,895)	(10,645)	(250)
<b>Revolver Balance</b>	-	3,477	3,590	10,763	11,177	13,751	15,682	15,682			
<b>Availability</b>	-	8,764	9,216	2,043	1,629	10,368	8,932	8,932			
<b>Forbearance Revolver</b>	9,000	-	-	-	-	-	-	-			
<b>Term Loan A</b>	22,050	18,808	18,244	18,244	18,244	6,931	6,436	6,436			
<b>Senior Revolver</b>	17,770	17,770	17,770	17,770	17,770	17,770	17,770	17,770			
<b>Pre-Petition Debt</b>	48,820	36,579	36,015	36,015	36,015	24,701	24,206	24,206			