

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

In re:

CYNERGY DATA, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered
Related Docket No. 28

**ORDER AUTHORIZING EMPLOYMENT OF CM&D MANAGEMENT SERVICES,
LLC NUNC PRO TUNC TO THE PETITION DATE AND THE APPOINTMENT OF
CHARLES M. MOORE OF CM&D MANAGEMENT SERVICES, LLC AS CHIEF
RESTRUCTURING OFFICER NUNC PRO TUNC TO THE PETITION DATE**

This matter having come before the Court by way of application for the entry of an order pursuant to 11 U.S.C. § 363 authorizing the employment of CM&D Management Services LLC (“CM&D”) effective as of the Petition Date and the appointment of Charles M. Moore of CM&D as Chief Restructuring Officer of the Debtors, effective as the Petition Date and Lorraine B. Ossolinski as Interim Chief Financial Officer of the Debtors, effective as of the Petition Date (the “Application”)², filed by the debtors and debtors-in-possession herein (the “Debtors”); the Court having reviewed the Application and related Declaration and having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. § 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b) and (iv) notice of the Application was sufficient under the circumstances; after due deliberation the Court having determined that the relief requested in the Application is necessary and essential for the Debtor’s reorganization and such relief is in the

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

² All Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.

best interests of the Debtors, their estates and creditors; and good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

1. The Application is **GRANTED** as follows:

2. Pursuant to section 363 of the Bankruptcy Code, the Debtors shall and hereby are authorized to retain CM&D effective as of the Petition Date and appoint Charles M. Moore of CM&D as Chief Restructuring Officer of the Debtors, effective as of the Petition Date in these Chapter 11 cases pursuant to the terms of the Application and the Engagement Letter, subject to the following terms, which apply notwithstanding anything contained to the contrary in the Application or the Engagement Letter or any exhibits related to the Application or the Engagement Letter to the contrary:

a. CM&D and its affiliates shall not act in any other capacity (e.g., without limitation, as a financial advisor, claims agent/claims administrator or investor/acquirer) in connection with the bankruptcy cases.

b. In the event the Debtors seeks to have CM&D personnel assume executive officer positions that are different than the positions disclosed in the Application, or to materially change the terms of the Engagement Letter, as modified herein, by either (i) modifying the functions of the personnel, (ii) adding new personnel or (iii) altering or expanding the scope of the Engagement Letter as modified herein, a motion to modify the retention shall be filed.

c. CM&D shall file monthly with the Court, with copies to the United States Trustee for the District of Delaware (the "U.S. Trustee") and all official committees, a

report of staffing on the engagement for the previous month. Such report shall include the names and functions filled and of the individuals assigned. All staffing shall be subject to review by the Court in the event an objection is filed.

d. No principal, employee or independent contractor of CM&D and its affiliates shall serve as director of the Debtors during the pendency of the bankruptcy cases.

e. CM&D shall file with the Court, and provide notice to the US Trustee and all official committees, reports of compensation earned and expenses incurred on a monthly basis. Such reports shall contain summary charts which describe the services provided, identify the compensation earned by each executive officer and staff employee provided, and itemize the expenses incurred. Time records shall (i) be appended to the reports; (ii) contain detailed time entries describing the task(s) performed and (iii) be organized by project category. Where personnel are providing services at an hourly rate, the time entries shall identify the time spent completing each task in 1/10 hour increments and the corresponding charge (time multiplied by hourly rate) for each task; where personnel are providing services at a "flat" rate, the time entries shall be kept in hourly increments. All compensation shall be subject to review by the Court in the event an objection is filed.

f. Payment to CM&D on account of its fees and expenses shall be governed by the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals and Committee Members.

g. Success fees, transaction fees, or other back-end fees shall be approved by the Court at the conclusion of the cases on a reasonableness standard and are not being pre-approved by entry of this Order. No success fee, transaction fee or back-end fee shall

be sought upon conversion of the cases, dismissal of the cases for cause, or appointment of a trustee.

h. The Debtors are permitted to indemnify those persons serving as executive officers on the same terms as provided to the Debtors' other officers and directors under the corporate bylaws and applicable state law, along with insurance coverage under the Debtors' D&O policy.

i. There shall be no indemnification of CM&D or its affiliates for gross negligence or willful misconduct but in all other respects the indemnification provision of the Engagement letter shall be in full force effect.

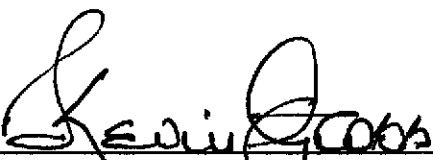
j. For a period of three years after the conclusion of the engagement, neither CM&D nor any of its affiliates shall make any investments in the Debtor(s) or the Reorganized Debtors.

k. CM&D shall disclose any and all facts that may have a bearing on whether the firm, its affiliates, and/or any individuals working on the engagement hold or represent any interest adverse to the Debtors, their creditors, or other parties in interest. The obligation to disclose identified in this subparagraph is a continuing obligation.

3. This Court retains jurisdiction over this Order and all related proceedings.

4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: September¹⁵, 2009
Wilmington, Delaware



THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE