

**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. 29, 113

**ORDER GRANTING APPLICATION FOR ORDER PURSUANT TO
11 U.S.C. §§ 327(a) AND 329 AND BANKRUPTCY RULES 2014 AND 2016
AUTHORIZING THE EMPLOYMENT AND RETENTION OF
UNICORN PARTNERS, LLC AS ADVISERS TO THE DEBTORS**

Upon the Application of the above-referenced debtors and debtors-in-possession (the "Debtors"), for an order, pursuant to § 327(a) and § 328(a) of title 11, United States Code (the "Bankruptcy Code"), authorizing the Debtors to employ and retain Unicorn Partners, LLC ("Unicorn Partners") as their advisers, *nunc pro tunc* to Petition Date² (the "Application"); and upon the affidavit of Dean M. Leavitt (the "Leavitt Affidavit"), which is annexed to such Application; and it appearing that the Court has jurisdiction to consider the Application; and it appearing that Unicorn Partners is a "disinterested" person within the meaning of § 101(14) and 327(a) of the Bankruptcy Code; and that the relief requested in the Application is in the best interests of the Debtors, their creditors, and all parties-in-interest; and it appearing that due and appropriate notice of the Application has been given under the circumstances; and it appearing that no other or further notice need be given; and upon the Application and all of the proceedings before the Court; and after due deliberation; and sufficient cause appearing therefor:

¹ 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.

² Terms not defined herein shall have the meaning ascribed to them in the Application.

IT IS HEREBY ORDERED THAT:

1. The Application is GRANTED.
2. In accordance with §§ 327(a) and 328(a) of the Bankruptcy Code, the Debtors be, and hereby are, authorized to employ and retain Unicorn Partners as their advisers to perform all of the services set forth in the Application, on the terms set forth in the Application and in the Leavitt Affidavit *nunc pro tunc* to the Petition Date.
3. Notwithstanding anything to the contrary in this Order, the US Trustee shall retain the right and be entitled to object to each Unicorn Partners fees and expenses based on the reasonableness standard under Bankruptcy Code sections 330 and 331. The Debtors and Unicorn Partners further stipulate and agree that this Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the US Trustee to challenge the reasonableness of each Unicorn Partners' compensation under Bankruptcy Code sections 330 and 331. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the US Trustee, on appeal or otherwise, with respect to the reasonableness of each Unicorn Partners' compensation.
4. The indemnification provisions found in the Engagement Letter are hereby modified as follows:
 - a. subject to the provisions of subparagraph (c), infra, the Debtors are authorized to indemnify, and to provide contribution and reimbursement to, and shall indemnify, and provide contribution and reimbursement to, Unicorn Partners in accordance with the Engagement Letter, for any claim arising from, related to, or in connection with the services described therein;

b. notwithstanding any provisions of the Engagement Letter to the contrary, the Debtors shall have no obligation to indemnify Unicorn Partners, or to provide contribution or reimbursement to Unicorn Partners, (i) for any claim or expense that is judicially determined (the determination having become final) to have arisen from Unicorn Partners' bad faith, self-dealing, breach of fiduciary duty (if any), willful misconduct or gross negligence, (ii) for a contractual dispute in which the Debtors allege the breach of Unicorn Partners' contractual obligations if the Court determines that the indemnification, contribution, or reimbursement would not be permissible pursuant to In re United Artists Theatre Company, et al., 315 F.3d 217 (3d Cir. 2003), or (iii) for any claim or expense that is settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by the Court, after notice and a hearing pursuant to subparagraph (c), infra, to be a claim or expense for which Unicorn Partners should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter, as modified by this Order;

c. if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these chapter 11 cases, Unicorn Partners believes that it is entitled to payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Letter (as modified by this Order), including without limitation the advancement of defense costs, Unicorn Partners must file an application therefore with this Court, and the Debtors may not pay any such amounts to Unicorn Partners before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by Unicorn Partners for indemnification,

contribution, or reimbursement and not a provision limiting the duration of the Debtor's obligation to indemnify Unicorn Partners.

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

This Order shall be immediately effective and enforceable upon its entry.

Dated: September 16, 2009



THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE