

**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

**APPLICATION OF DEBTORS PURSUANT TO 11 U.S.C. § 363 FOR ENTRY OF AN
ORDER AUTHORIZING THE 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 AND LORRAINE B.
OSSOLINSKI OF CM&D MANAGEMENT SERVICES, LLC AS INTERIM CHIEF
FINANCIAL OFFICER NUNC PRO TUNC TO THE PETITION DATE**

The above-captioned debtors, (the “Debtors”), as debtors and debtors in possession, hereby submit this motion (the “Application”) for entry of an order authorizing the Debtors’ employment of CM&D Management Services, LLC, (“CM&D”), effective as of the Petition Date (defined below) and the appointment of Charles M. Moore of CM&D as Chief Restructuring Officer of the Debtors, effective as of the Petition Date, pursuant to section 363 of title 11 of the United States Code, 11 U.S.C. §101, et seq. (as amended, the “Bankruptcy Code”). In support of this Application, the Debtors submit the declaration of Charles M. Moore (the “Moore Retention Declaration”), a copy of which is attached hereto as Exhibit A. In further support of this Application, the Debtors respectfully state as follows:

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.

JURISDICTION AND VENUE

1. The Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue lies properly with this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105(a) and 363(b) of the Bankruptcy Code.

BACKGROUND

3. On the date hereof (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.

4. No trustee, examiner, creditors' committee, or other official committee has been appointed in the Debtors' chapter 11 cases.

5. 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 applications and motions (the "Moore Declaration"), filed contemporaneously herewith. Additional facts in support of the specific relief sought in this Motion are set forth below.

RELIEF REQUESTED

6. By way of this Motion, the Debtors seek (i) to employ CM&D effective as of the Petition Date, to, inter alia, provide certain officers (i.e. the "CRO") and other temporary staff (collectively with the CRO, the "Temporary Staff") to supply interim management and direction and assist the Debtors in their restructuring efforts and (ii) to appoint Charles M. Moore as Chief Restructuring Officer of the Debtors (the "CRO") and Lorraine B. Ossolinski as Interim

Chief Financial Officer (the “Interim CFO”), effective as of the Petition Date, pursuant to Bankruptcy Code section 363, on terms set forth herein and in the engagement letter between the Debtors and CM&D, dated May 8, 2009, as amended and as modified herein (the “Engagement Letter”). A copy of the Engagement Letter is attached hereto as Exhibit B.

7. Pursuant to the Engagement Letter, CM&D has provided Charles M. Moore to manage this project and act as CRO. Charles M. Moore will be supported by the CM&D team of resources as required. In this capacity, the CRO will assist the Debtors with their operations and management of the Debtors’ restructuring efforts.

8. Pursuant to the Engagement Letter, CM&D has provided Lorraine B. Ossolinski to supervise the accounting area and act as Interim CFO. Lorraine B. Ossolinski will be supported by the CM&D team of resources as required. In this capacity, the Interim CFO will assist the Debtors with their operations and management of the Debtors’ internal and external financial reporting .

9. The Debtors believe that CM&D and Charles M. Moore and Lorraine B. Ossolinski are well suited to provide the restructuring and management services required by the Debtors.

SERVICES TO BE PROVIDED BY CM&D

10. Among other things, CM&D will provide Charles M. Moore to manage this engagement and Charles M. Moore will utilize the Temporary Staff including, but not limited to, Lorraine B. Ossolinski, Robert Kolb, and Jesse L. York, from time to time, as appropriate, to accomplish engagement objectives and assist the Debtors with respect to implementing and developing business and financial plans, their efforts to restructure their assets, support and assist the asset sale process, and general assistance and support related to these Chapter 11 cases.

11. Pursuant to the Engagement Letter, CM&D will provide such interim management and restructuring services as CM&D and the Debtors deem appropriate and feasible in order to manage and advise the Debtors in the course of these Chapter 11 cases, including, but not limited to:

- a. Assist in managing the “working group” professionals who are assisting the Debtors in the reorganization process or who are working for the Debtors’ various stakeholders to improve coordination of their effort and individual work produce to be consistent with the Debtors’ overall restructuring goals;
- b. Work with the Debtors to identify and implement both short-term as well as long term liquidity generating initiatives as appropriate;
- c. Assist in developing and implementing cash management strategies, tactics, and process. Work with the Debtors’ treasury department and other professionals and coordinate the activities of the representatives of other constituencies in the cash management process;
- d. Assist with the development of the Debtors’ revised business plan and such other related forecasts as may be required by the secured lender in connection with negotiations or by the Debtors for other corporate purposes;
- e. Assist in communication and/or negotiation with outside constituents, including the senior lenders, subordinated lender, and auditors;
- f. Assist with such other matters as may be requested that fall within the expertise of the CFO and other Temporary Staff and that are mutually agreeable;
- g. Assist with any financing issues during the restructuring process;
- h. Assist in identifying and implementing other alternatives, as necessary, to maximize the business enterprise value for the benefit of the stakeholders;
- i. Supervise the internal and external financial reporting; and
- j. Perform such other tasks as appropriate as may reasonably be requested by the Debtors’ management or counsel.

12. CM&D will implement appropriate procedures to ensure minimal duplication of effort, if any, of the services to be rendered by other professionals retained or to be retained by the Debtors in these Chapter 11 cases.

13. 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 these bankruptcy cases.

14. No principal, employee or independent contractor of CM&D shall serve as director of the Debtors during the pendency of these bankruptcy cases.

CM&D'S COMPENSATION

15. During the 90 days prior to the Petition Date, CM&D's fees and expenses relating to services rendered by CM&D to the Debtors were approximately \$1,111,834.28. The Debtors have satisfied all those fees and expenses through regular payments of CM&D's invoices and the application of a \$120,000 retainer. As such, CM&D does not have a pre-petition claim against the Debtors.

16. As set forth in the Engagement Letter, CM&D was retained May 8, 2009 to provide interim management and direction to the Debtors. The Engagement Letter further contemplates retention of Charles M. Moore as the CRO. As set forth above, as of May 8, 2009, CM&D commenced providing interim management services to the Debtors and Charles M. Moore took on the affirmative responsibility of acting as CRO.

17. The Engagement Letter further contemplates retention of Lorraine B. Ossolinski as Interim CFO, as set forth in the amendment to the Engagement letter. As set forth above, as of August 24, 2009, CM&D commenced providing CFO services to the Debtors and Lorraine B. Ossolinski took on the affirmative responsibility of Interim CFO.

18. By way of this Application, the Debtors requests approval of the terms of compensation to CM&D and Charles R. Moore, *nunc pro tunc* to the Petition Date, as set forth in detail in the Engagement Letter. Specifically, the Engagement Letter provides for compensation at the following hourly rates:

Managing and Senior Managing Directors	\$375 - \$525
Senior Associates and Directors	\$285 - \$395

19. The current hourly rates of the Temporary Staff that CM&D is presently expected to utilize in these cases are as follows:

Name	Description	Hourly Rate
Charles M. Moore	Chief Restructuring Officer	\$450
Lorraine B. Ossolinski	Interim Chief Financial Officer	\$395
Robert F. Kolb	Cash and Restructuring Support	\$325
Jesse L. York	Cash & Restructuring Support	\$325

20. In addition, reasonable travel and other out-of-pocket expenses will be charged at actual cost and included in the total amount billed.

21. It is anticipated that CM&D's fees and expenses will be funded by the Debtors upon application therefore in accordance of the provisions with the Bankruptcy Code or in accordance with any other order establishing procedures for the payment of professionals in these cases. CM&D intends to apply to the Court for all such postpetition fees and expenses.

INDEMNIFICATION

22. The indemnification provisions found in the Employment Agreement are hereby modified as follows:

a. subject to the provisions of subparagraph (c), *infra*, the Debtors are authorized to indemnify, and shall indemnify, CM&D in accordance with the Engagement Letter, for any claim arising from, related to, or in connection with the services described therein, unless such other services and indemnification therefore are approved by the court;

b. notwithstanding any provisions of the Engagement Letter to the contrary, the Debtors shall have no obligation to indemnify CM&D, or to provide contribution or reimbursement to CM&D, for any claim or expense to the extent that any losses, claims, damages or liabilities (or expenses relating thereto) are (a) judicially determined by a court of competent jurisdiction (the determination having become final) to have primarily resulted from the bad faith, gross negligence or willful misconduct of CM&D; or (b) settled prior to a judicial determination as to CM&D bad faith, gross negligence or willful misconduct, but determined by this Court after notice and a hearing, to be a claim or expense for which CM&D should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter as modified by this Order; and

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, CM&D 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, CM&D must file an application therefore with this Court, and the Debtors may not pay any such amounts to CM&D 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 CM&D for indemnification, contribution, or reimbursement and not a provision limiting the duration of the Debtors' obligation to indemnify CM&D.

BASIS AND AUTHORITY FOR RELIEF REQUESTED

23. Section 363 of the Bankruptcy Code authorizes the Debtors to enter into certain transactions and use property of the estate in the ordinary course of business.

24. Arguably, entering into contractual agreements for the provision of interim management is within the ordinary course of the Debtors' business. Corporations routinely hire and fire senior executives and the absence of executives capable of achieving a successful reorganization would severely hinder a debtor's ability to reorganize in an efficient and effective manner.

25. The Debtors are permitted to retain the CRO in the ordinary course under section 363 of the Bankruptcy Code. The following cases have authorized retention of officers under section 363: In re Meadowcraft, Inc., Case No. 09-10988 (BLS) (Bankr. D. Del. 2009); In re DHP Holdings Corp., Case No. 08-13422 (MFW) (Bankr. D. Del. 2009); In re Landsource Comtys. Dev. LLC, Case No. 08-11111 (KJC) (Bankr. D. Del. 2008); In re SHC, Inc., Case No. 03-12002 (MFW) (Bankr. D. Del. 2003); In re Bill's Dollar Stores, Inc., Case No. 01-0435 (PJW) (Bankr. D. Del. 2001); In re Integrated Health, Case No. 00-389 (MFW) (Bankr. D. Del. 2000).

26. The Debtors request that the Court authorize the employment and indemnification of the CRO, CM&D, and the Temporary Staff, in the ordinary course of business, as the Debtors have demonstrated a sound business justification for doing so. See In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983); In re Delaware Hudson Ry. Co., 124 B.R. 169, 179 (Bankr. D. Del. 1991).

27. Once a debtor articulates a valid business justification, "the business judgment rule 'is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company'". In re Integrated Res., Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992).

28. The business judgment rule has vitality in chapter 11 cases and shields debtor's management from judicial second-guessing. *Id.* The CRO is qualified for the position for which he is being employed. The Debtors have determined that the terms of the Engagement Letter are within the range of those for officers with companies of comparable size, value, and reputation. Accordingly, the Debtors' decision to enter into the Engagement Letter reflects an exercise of the Debtors' sound business judgment.

NOTICE

29. The Debtors have provided notice of this Motion 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 Debtors submit that, under the circumstances, no other or further notice is necessary.

WHEREFORE, the applicant respectfully requests that the Court enter an order (i) granting the relief sought herein; and (ii) granting to the Debtors such other and further relief as the Court may deem proper.

Dated: 8/31/09

Respectfully submitted,

CYNERGY DATA, LLC
CYNERGY DATA HOLDINGS, INC.
CYNERGY PROSPERITY PLUS, LLC


By: 
Name: Charles M. Moore
Title: Chief Restructuring Officer

EXHIBIT A

**N 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

**DECLARATION OF CHARLES M. MOORE PURSUANT TO 28 U.S.C. §1746 IN
SUPPORT OF APPLICATION FOR ORDER UNDER 11 U.S.C. §§ 363 AND 105 AND
FED. R. BANKR. P. 2014(a) AUTHORIZING AND APPROVING EMPLOYMENT AND
RETENTION 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
AND LORRAINE B. OSSOLINSKI OF CM&D MANAGEMENT SERVICES, LLC AS
INTERIM CHIEF FINANCIAL OFFICER NUNC PRO TUNC
TO THE PETITION DATE**

CHARLES M. MOORE of full age, under penalty of perjury, by way of declaration pursuant to 28 U.S.C. §1746 states as follows:

1. I am a Senior Managing Director of CM&D Management Services LLC (“CM&D”), a firm providing specialized, turnaround consulting and litigation support services. CM&D maintains offices in: (1) Atlanta, Georgia located at 7000 Central Parkway, NE, Suite 1325, Atlanta, GA 30328; (2) Chicago, Illinois located at 303 W. Madison St., Suite 1600, Chicago, IL 60606; (3) Dallas, Texas located at 3102 Maple Avenue, Suite 400, Dallas, TX 75201; (4) Dayton, Ohio located at 109 North Main Street, 500 Performance Place, Dayton, OH 45402; (5) Detroit, Michigan located at 401 S. Old Woodward Ave., Suite 340, Birmingham, MI 48009; (6) Houston, Texas located at 1301 McKinney, Suite 2025, Houston, TX 77010; (7) New

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.

York City located at 1270 Avenue of the Americas, Suite 2340, New York, NY 10020; and (8) Shanghai, China located at 31/F Jin Mao Tower, 88 Shi Ji Avenue, Pudong, Shanghai 200120. I am authorized to execute this Declaration on behalf of CM&D. I submit this Declaration in support of the motion (the "Motion") of the above-captioned debtors and debtors-in-possession herein (collectively, the "Debtors") pursuant to section 363 of title 11 of the United States Code, 11 U.S.C. §101, et seq. (as amended, the "Bankruptcy Code") for the entry of an Order authorizing the employment of CM&D and Charles M. Moore as Chief Restructuring Officer (the "CRO") for the Debtors. Except as otherwise indicated, I have personal knowledge of the matters set forth herein and, if called as a witness, would testify competently thereto.

QUALIFICATIONS OF PROFESSIONALS

2. CM&D is a firm of management and financial consultants operating throughout the United States and the world. CM&D delivers hands-on financial, operational, and strategic services that help healthy companies grow and troubled companies get back on track. CM&D has been retained as interim executives, crisis managers, and management consultants to Debtors, creditors, creditors' committees, investors, and others for more than 20 years.

DISINTERESTEDNESS OF PROFESSIONALS

3. I have reviewed the list of parties-in-interest as they are currently known, including without limitation (i) the Debtors and their affiliates; (ii) the Debtors' directors and officers and certain of their most significant business affiliations, as provided to CM&D by the Debtors; (iii) the Debtors' shareholders, (iv) the Debtors' unsecured creditors; (v) the Debtors' pre- and post-petition lenders; and (vi) other significant parties-in-interest, as identified by the Debtors (the "Searched Parties"). A list of the Searched Parties is attached to this Declaration as **Exhibit 1**. I have determined, to the best of my knowledge, information and belief, insofar as I

have been able to ascertain after reasonable inquiry, other than in connection with this case, neither I, nor CM&D, nor any of its principals, employees, agents or affiliates², have any connection with the Debtors, their creditors, the U.S. Trustee or any other party with an actual or potential interest in this Chapter 11 case or their respective attorneys or accountants, except as set forth and the client match list (the "Client Match List") attached hereto as **Exhibit 2**:

a. CM&D has in the past been retained by, and presently and likely in the future will provide services for, certain creditors of the Debtors, other parties-in-interest, and their respective attorneys and accountants in matters unrelated to such parties' claims against the Debtors or interests in these Chapter 11 cases. CM&D currently performs or has previously performed such services for the creditors and/or parties-in-interest listed on the attached Exhibit 2. CM&D's fees from any individual parties-in-interest did not exceed 2% of CM&D's 2007, 2008 and YTD 2009.

b. As part of its practice, CM&D appears in many cases, proceedings, and transactions involving many different law firms, financial consultants, and investment bankers in matters wholly unrelated to this bankruptcy. CM&D has not identified any material relationships or connections with any law firm, financial consultant or investment banker involved in these Chapter 11 cases that would cause it to be adverse to the Debtors, the Debtors' estates, any creditor or any other party-in-interest, or that would otherwise affect either CM&D's judgment or ability to perform services for the Debtors.

c. CM&D personnel may have business associations with certain creditors of the Debtors unrelated to this Chapter 11 case. In addition, in the ordinary course of

² CM&D's efforts in making a review of the Searched Parties included not only those records of CM&D, but all of its affiliate entities, including, without limitation, Conway MacKenzie, Inc. (the "CM&D Affiliates").

its business, CM&D may engage counsel or other professionals in unrelated matters who now represent, or who may in the future represent, creditors or other interested parties in this case.

4. To the best of my knowledge, insofar as I have been able to ascertain after reasonable inquiry, neither I, nor CM&D, nor any of its principals, employees, agents, or affiliates holds or represents an interest adverse to the Debtors' estates, is a creditor, an equity security holder, or an insider of the Debtors, is or was within two (2) years before the Petition Date, a director, officer, or employee of the Debtors or has an interest materially adverse to the interest of the Debtors' estates or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in the Debtors, or for any other reason. Accordingly, I believe CM&D, including, without limitation, all CM&D Affiliates, to be a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code.

5. If CM&D's proposed retention is approved by this Court, CM&D will not accept any engagement or perform any service for any entity or person other than the Debtors in connection with or related to these Chapter 11 cases. CM&D will, however, continue to provide professional services to entities or persons that may be creditors of the Debtors or parties-in-interest in these Chapter 11 cases, provided that such services do not relate to, or have any direct connection with, these Chapter 11 cases.

6. Despite the efforts described above to identify and disclose CM&D's connections with parties-in-interest in this case, because the Debtors have numerous creditors and other relationships, CM&D is unable to state with certainty that every client relationship or other connection has been disclosed. If CM&D discovers additional information that requires disclosure, CM&D will file supplemental disclosures with the Court as promptly as possible.

7. The indemnification provisions found in the Employment Agreement are hereby modified as follows:

a. subject to the provisions of subparagraph (c), *infra*, the Debtors are authorized to indemnify, and shall indemnify, CM&D in accordance with the Engagement Letter, for any claim arising from, related to, or in connection with the services described therein, unless such other services and indemnification therefore are approved by the court;

b. notwithstanding any provisions of the Engagement Letter to the contrary, the Debtors shall have no obligation to indemnify CM&D, or to provide contribution or reimbursement to CM&D, for any claim or expense to the extent that any losses, claims, damages or liabilities (or expenses relating thereto) are (a) judicially determined by a court of competent jurisdiction (the determination having become final) to have primarily resulted from the bad faith, gross negligence or willful misconduct of CM&D; or (b) settled prior to a judicial determination as to CM&D bad faith, gross negligence or willful misconduct, but determined by this Court after notice and a hearing, to be a claim or expense for which CM&D should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter as modified by this Order; and

c. if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in this case (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing this chapter 11 case, CM&D 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, CM&D must file an application therefore with this Court, and the Debtors may not pay any such amounts to CM&D 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 CM&D for indemnification, contribution, or reimbursement and not a provision limiting the duration of the Debtor's obligation to indemnify CM&D.

8. During the 90 days prior to the Petition Date, CM&D's fees and expenses relating to services rendered by CM&D to the Debtors were approximately \$1,111,834.28. The Debtors have satisfied all those fees and expenses through regular payments of CM&D's invoices and the application of a \$120,000 retainer. CM&D does not have a pre-petition claim against the Debtors.

9. I am not related or connected to and, to the best of my knowledge, no other professional of CM&D is related or connected to any United States Bankruptcy Judge or District Judge for the District of Delaware or the United States Trustee for the District of Delaware or to any employee in the office thereof.

SERVICES TO BE PROVIDED

10. The Debtors have represented that they desire to retain CM&D and me to provide such professional services as the Debtor and I find mutually agreeable. Throughout the course of this engagement, I will utilize temporary staff (collectively with me, the "Temporary Staff"), from time to time, as appropriate, to accomplish engagement objectives. These engagement objectives may include, but shall not be limited to, the following:

- a. Assist in managing the "working group" professionals who are assisting the Debtors in the reorganization process or who are working for the Debtors' various stakeholders to improve coordination of their effort and individual work produce to be consistent with the Debtors' overall restructuring goals;
- b. Work with the Debtors to identify and implement both short-term as well as long term liquidity generating initiatives as appropriate;

- c. Assist in developing and implementing cash management strategies, tactics, and process. Work with the Debtors' treasury department and other professionals and coordinate the activities of the representatives of other constituencies in the cash management process;
- d. Assist with the development of the Debtors' revised business plan and such other related forecasts as may be required by the secured lender in connection with negotiations or by the Debtors for other corporate purposes;
- e. Assist in communication and/or negotiation with outside constituents, including the senior lenders, subordinated lender, and auditors;
- f. Assist with such other matters as may be requested that fall within the expertise of the CFO and other Temporary Staff and that are mutually agreeable;
- g. Assist with any financing issues during the restructuring process;
- h. Assist in identifying and implementing other alternatives, as necessary, to maximize the business enterprise value for the benefit of the stakeholders;
- i. Perform such other tasks as appropriate as may reasonably be requested by the Debtors' management or counsel.

11. 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 case.

12. No principal, employee or independent contractor of CM&D shall serve as director of the Debtors during the pendency of the bankruptcy case.

COMPENSATION OF PROFESSIONALS

13. CM&D's fees will be based on the time required to complete the engagement plus out-of-pocket expenses. Fees related to work performed by the Temporary Staff will be based on the time required to complete such tasks as directed by me, plus out-of-pocket expenses. Standard hourly rates for the Temporary Staff are as follows:

Managing and Senior Managing Directors	\$375 - \$525
Senior Associates and Directors	\$285 - \$395

14. The current hourly rates of the Temporary Staff that CM&D is presently expected to utilize in these cases are as follows:

Name	Description	Hourly Rate
Charles M. Moore	Chief Restructuring Officer	\$450
Lorraine B. Ossilinski	Interim Chief Financial Officer	\$395
Robert F. Kolb	Cash and Restructuring Support	\$325
Jesse L. York	Cash & Restructuring Support	\$325

15. In the normal course of business, the CM&D revises its hourly rates and requests that the aforementioned rates be revised to the regular hourly rates which will be in effect at that time. Expenses will be charged at actual costs incurred (and will include charges for typing, copying, telephone, transportation, etc.). Out-of-pocket fees and expenses incurred by me and the Temporary Staff in this case, and fees associated with administration, filings and reporting required by the Court related to the Debtors' retention of CM&D as the CRO will be billed.

16. This compensation arrangement is consistent with and typical of arrangements entered into by CM&D and other financial advisory firms with respect to the rendition of similar services to clients such as the Debtors, both in and out of Chapter 11.

17. I, as well as the Temporary Staff, will maintain detailed records of any actual and necessary costs and expenses incurred in connection with the aforementioned services and will file all appropriate applications for allowances of compensation and expenses with the Court in accordance with terms of the Engagement Letter and orders of the Court related to this retention.

18. I have not shared or agreed to share any of my compensation with any other person, other than a principal, professional or employee of CM&D, as permitted by section

504 of the Bankruptcy Code. The proposed engagement of CM&D is not prohibited by Bankruptcy Rule 5002.

19. I hereby declare under penalty of perjury that the foregoing is true and correct.

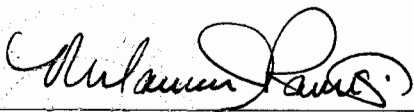
Dated: August 31, 2009



Charles M. Moore
Senior Managing Director
CM&D Management Services LLC

Sworn to and subscribed before me

this 31 day of August 2009



Melanis A. Ramos
Notary Public, State of New York
No. 012R46082490
Qualified in Bronx County
Commission Expires Oct. 28, 20 10

Exhibit 1- Searched Parties

Entities

Cynergy Data, LLC
Cynergy Data Holdings, Inc.
Cynergy Prosperity Plus, LLC

Shareholders

Marcelo Paladini
Gustavo Ceballos
Andres Ordonez
John Martillo (Former Shareholder)

Lenders and Banks

Comerica Bank
Wells Fargo
Dymas Funding/Cerberus
Garrison Investments
Harris Bank

Attorneys

Milbank, Tween, Hadley & McCloy LLP
Paul, Hastings, Janofsky & Walker LLP
Proskauer Rose LLP
Bodman LLP
Torys LLP
Nixon Peabody LLP
Jaffe, Raitt, Heuer & Weiss LLP
Pepper Hamilton LLP

Investment Bankers

Stifel Nicolaus
Peter J. Solomon

Top 20 Unsecured Creditors

PROCESS AMERICA
PAYMENTECH
TSYS
MERCHANT PROCESSING SERVICES, CORP
FAST TRANSACT
PIVOTAL PAYMENTS
SignaPay
SECOND SOURCE
DEBIT TECHNOLOGIES, INC
EPAY DATA
CPS OF NEW YORK INC.
B. R. FRIES & ASSOCIATES
SWIPE PAYMENT SOLUTIONS
GRAVITY PAYMENTS
AFFINISCAPE MERCHANT SERVICES
SIGNAPAY
EQUITY COMMERCE LP
EQUITY COMMERCE LP
CYNERGY DATA USA
BANKCARD LIBERTY

Exhibit 2- Client Match List

Lenders and Banks

Comerica Bank

Wells Fargo

Dymas Funding/Cerberus

Harris Bank

Attorneys

Bodman LLP

EXHIBIT B



Management Services LLC

401 South Old Woodward Avenue
Suite 340
Birmingham, Michigan 48009
(248) 433-3100 | (248) 433-3143 FAX
www.c-m-d.com

ATLANTA | CHICAGO | DALLAS | DETROIT | HOUSTON | NEW YORK | SHANGHAI | DAYTON

May 8, 2009

Private and Confidential
Via Electronic Mail

Mr. Dean M. Leavitt
President
Cynergy Data, LLC
30-30 47th Avenue, 9th Floor
Long Island City, NY 11101

Re: Interim Management Services

Dear Mr. Leavitt:

This letter outlines the understanding (“Agreement”) between CM&D Management Services, LLC (“CMS”) and Cynergy Data, LLC (“Cynergy” or the “Company”) for the engagement of CMS to provide certain temporary employees to the Company to assist it in its restructuring as described below

All defined terms shall, unless the context otherwise requires, have the meanings ascribed to them in Schedule I.

Generally, the engagement of CMS, including any CMS employees who serve in Executive Officer positions, shall be under the approval and the direct supervision of the Company’s Board of Directors or the Members (as the case may be). Per your request, we have commenced services effective as of May 6, 2009.

Objectives and Tasks

CMS will provide Charles M. Moore to serve as the Company’s Chief Restructuring Officer (“CRO”), reporting to the Company’s Board of Directors or the Members (as the case may be). Working collaboratively with the senior management team and other Company professionals, Mr. Moore will assist the Company in evaluating and implementing strategic and tactical options during the restructuring process. In addition to the ordinary course duties of the CRO, the roles of the CRO and other Temporary Staff (as hereinafter defined) will include working with you and your team to do the following:

- Assist in negotiations with stakeholders and their representatives.

-
- Assist in managing the “working group” professionals who are assisting the Company in the reorganization process or who are working for the Company’s various stakeholders to improve coordination of their effort and individual work product to be consistent with the Company’s overall restructuring goals.
 - Work with you and your team to further identify and implement both short-term as well as long-term liquidity generating initiatives as appropriate.
 - Assist in developing and implementing cash management strategies, tactics and processes. Work with the Company’s treasury department and other professionals and coordinate the activities of the representatives of other constituencies in the cash management process.
 - Assist with the development of the Company’s revised business plan and such other related forecasts as may be required by the secured lender in connection with negotiations or by the Company for other corporate purposes.
 - Assist in communication and/or negotiation with outside constituents, including the senior lenders, subordinated lender and auditors.
 - Assist with such other matters as may be requested that fall within the expertise of the CFO and other Temporary Staff and that are mutually agreeable.
 - Assist with any financing issues during the restructuring process.
 - Assist in identifying and implementing other alternatives, as necessary, to maximize the business enterprise value for the benefit of the stakeholders.

Staffing

CMS will provide the individuals set forth on Exhibit A hereto as temporary employees of the Company (herein referred to as the “Temporary Staff”), subject to the terms and conditions of this Agreement with the titles, pay rates and other descriptions set forth therein.

We will keep you informed as to our staffing and will not add additional Temporary Staff to the assignment without first consulting with you to obtain your concurrence that such additional resources are required and do not duplicate the activities of other employees or professionals. Temporary Staff may be assisted by other professionals at various levels who would also become Temporary Staff, as the tasks require.

Fees

CMS and other Temporary Staff shall be compensated for their Services on a weekly basis under this Agreement at the rates set forth on Exhibit A. Fees for our services will be based upon the actual number of hours incurred at hourly rates and will be billed weekly, together with out-of-pocket expenses incurred. Such billings are due upon receipt. Hourly rates are subject to periodic adjustment. Payment is due upon receipt of invoice via wire transfer in accordance with the accompanying instructions. In addition, we require a retainer of \$50,000. The retainer will be deposited into our client trust account and be applied as follows:

Mr. Dean M. Leavitt

May 8, 2009

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(A) in the event that the Company intends to file for bankruptcy protection, immediately prior to the filing of its bankruptcy petition, CMS will apply the retainer to all amounts due to it; provided that amounts drawn against the retainer may include an estimate of fees and expenses incurred by CMS but not billed prior to the date the Company intends to file a bankruptcy petition. The excess retainer, if any, will be held by CMS for application to post-petition fees and expenses that are allowed by the bankruptcy court. If no such fees are allowed by the bankruptcy court, the excess retainer will be refunded to the Company, without interest, at the conclusion of the engagement, or

(B) if the Company does not file a bankruptcy petition, the retainer will be applied to CMS's final invoice at the conclusion of the engagement and any excess retainer will be refunded to you, without interest, at that time.

If circumstances dictate, we reserve the right to increase our retainer amount accordingly.

Payment is due upon receipt of invoices via wire transfer of U.S. funds in accordance the accompanying instructions.

Disclosures

To the best of our knowledge, we believe that CMS, its employees and its affiliates do not have any financial interest or business connection with the Company other than as contemplated by this Agreement and we know of no fact or situation that would represent a conflict of interest for us with regard to the Company. As previously disclosed, CMS and/or affiliates have in the past and from time to time does represent Cynergy's Agent lender, Comerica Bank ("Comerica"), along with other lenders or lender affiliates to the Company, including Cerberus and Wells Fargo, in matters unrelated to the Company. Consequently, at the present time, CMS knows of no facts or circumstances that would represent a conflict of interest for it with regard to its engagement by the Company in connection with the aforementioned services.

By execution of this letter, Cynergy hereby (1) waives any conflict of interest relating to performance of professional services by CMS for Comerica, Cerberus and Wells Fargo, (2) consents to the performance of professional services by CMS for Comerica, Cerberus and Wells Fargo in unrelated matters, and (3) releases CMS of any claim or liability relating to CMS's engagement by the Company, including its shareholders, officers, directors and assignees, as authorized representatives of the Company.

Relationship of the Parties

The parties intend that an independent contractor relationship will be created by this Agreement. As an independent contractor, CMS will have complete and exclusive charge of the management and operation of its business, including hiring and paying the wages and other compensation of all its employees and agents and paying all bills, expenses and other charges incurred or payable with respect to the operation of its business. Neither the Temporary Staff nor CMS will be entitled to receive from the Company any vacation pay, sick leave, retirement, pension or social security benefits, workers' compensation, disability, unemployment insurance benefits or any other employee benefits. CMS will be responsible for all employment, withholding, income and

other taxes incurred in connection with the operation and conduct of its business. Temporary Staff will not be considered employees of the Company except for purposes of this Agreement.

Confidentiality

CMS agrees to keep confidential all information obtained from the Company and neither CMS nor the Temporary Staff will disclose to any other person or entity, or use for any purpose other than specified herein, any information pertaining to the Company or any affiliate thereof which is either non-public, confidential or proprietary in nature ("Information") that it obtains or is given access to during the performance of the services provided hereunder. The foregoing is not intended to nor shall be construed as prohibiting CMS or the Temporary Staff from disclosure pursuant to a valid subpoena or court order, but neither CMS nor such Temporary Staff shall encourage, suggest, invite or request, or assist in securing, any such subpoena or court order and the Temporary Staff shall immediately give notice of any such subpoena or court order by fax transmission to the Company. Furthermore, CMS and the Temporary Staff may make reasonable disclosures of Information to the assignments hereunder. In addition, CMS and the Temporary Staff will have the right to disclose to others in the normal course of business its involvement with the Company.

Information includes data, plans, reports, schedules, drawings, accounts, records, calculations, specifications, flow sheets, computer programs, source or object codes, results, models, or any work product relating to the business of the Company, its subsidiaries, distributors, affiliates, vendors, customers, employees, contractors and consultants.

The Company acknowledges that all information (written or oral) generated by the Temporary Staff in connection with their engagement is intended solely for the benefit and use of the Company (limited to its management) in considering the transactions to which it relates. The Company agrees that no such information shall be used for any other purpose or reproduced, disseminated, quoted or referred to with attribution to CMS at any time in any manner or for any purpose other than accomplishing the tasks referred to herein, without CMS's prior approval (which shall not be unreasonably withheld) except as required by law.

Framework of the Engagement

The Company acknowledges that it is hiring the Temporary Staff purely to assist the Company in the management and restructuring of the Company. This engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting or consulting engagement that is subject to the rules of the AICPA, the SACS or other such state and national professional bodies.

Covenant Regarding Hiring of CMS Employees

The Company agrees to notify CMS if it extends an offer of employment to an employee of CMS working on this engagement ("CMS engagement employee"). In recognition of the training, time, and other resources CMS invests in the development of CMS's employees, in the building of relationships between clients and CMS employees, the loss of client billable time that is necessitated by the transition of client files from a departing employee to another employee, and the difficulty of placing a monetary value on these investments by CMS, the Company further agrees that if it hires any CMS engagement employee up to two years subsequent to the date of the final invoice rendered by CMS for this engagement, the Company will pay CMS a cash fee in the amount \$1 million. Such cash fee shall be paid upon the Company's hiring of such CMS engagement employee. This

Mr. Dean M. Leavitt

May 8, 2009

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agreement does not prohibit the Company from making general solicitations for employment or from soliciting for employment any individuals who have ceased to be employees or agents of CMS prior to such solicitation.

Indemnification

In consideration of our agreement to act on the Company's behalf in connection with this engagement, the Company agrees to indemnify, hold harmless, and defend CMS and certain other entities and persons as set forth on the attached Schedule II.

Governing Law

This letter agreement is governed by and construed in accordance with the laws of the State of Michigan with respect to contracts made and to be performed entirely therein and without regard to choice of law or principles thereof.

Termination and Survival

This Agreement to provide Temporary Staff hereunder may be terminated at any time by written notice by one Party to another; provided, however, that notwithstanding such termination, CMS will be entitled to any unpaid fees and expenses as of the effectiveness date of such termination. The sections of this Agreement regarding Fees, Confidentiality, Indemnification, and Governing Law shall survive any such Agreement.

If these terms meet with your approval, please sign and return the enclosed copy of this Agreement along with the retainer.

We look forward to working with you.

Sincerely,

CM&D MANAGEMENT SERVICES, LLC



Charles M. Moore

Acknowledged and Agreed to:

Cynergy Data, LLC

By: _____

Date: _____

Name: _____

Exhibit A

Compensation

Name	Description	Hourly Rate
Charles M. Moore	Chief Restructuring Officer	\$450
Lorraine B. Ossilinski	Cash & Restructuring Support	\$395
Jesse L. York	Cash & Restructuring Support	\$325

The parties agree that Exhibit A can be amended from time-to-time to add or delete staff and the Monthly Staff Reports shall be treated by the parties as such amendments.

Our fees of our other personnel that may become Temporary Staff for the Company from time to time under this Agreement will be based on the hours charged at our hourly rates, as follows:

Managing and Senior Managing Directors \$375 - \$525

Senior Associates and Directors \$285 - \$395

Schedule I

Definitions and Interpretation

Agreement	The terms and conditions set out in this letter.
Confidential Information	All written information and materials which are marked confidential or which are by their nature clearly confidential obtained under or in connection with this Agreement other than: <ul style="list-style-type: none">• any information which is already in the public domain otherwise than as a result of a breach of this Agreement;• any information which was rightfully in the possession of a Party prior to the disclosure by the other Party and acquired from sources other than the other Party, or• any information obtained from a third party who is free to divulge such information.
Expenses	Costs and expenses which are incurred by CMS, its affiliates and its personnel in the performance of the Services.
Fees	The fees payable by the Company to CMS in accordance with <u>Exhibit A</u> .
General Terms and Conditions	The terms and conditions attached to and forming part of this Agreement.
Party or Parties	A party or the parties to this Agreement (as the case may be).
Personnel	Directors, officers, employees, agents, contractors and subcontractors.
Schedules	The Schedules attached to and forming part of this Agreement, as such schedules may be amended from time-to-time in accordance with this Agreement.
Services	The services to be provided by CMS under this Agreement.
Termination Date	The date on which this Agreement shall terminate.

Schedule II

In the event that CMS or any of its affiliates, partners, officers, directors, shareholders, agents, employees or controlling persons (collectively, the “Indemnified Persons” and each, an “Indemnified Person”) becomes involved in any capacity in any claim, action, proceeding or investigation (collectively, “Actions”) brought by or against any person, including equity holders of the Company, in connection with or as a result of either CMS’s engagement or any matter referred to in this Agreement, the Company periodically will advance to the Indemnified Persons amounts necessary to pay their reasonable out-of-pocket legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith; provided, however, that if it is finally found (in a non-appealable judgment) by a court of competent jurisdiction that any loss, claim, judgment, damage or liability of an Indemnified Person has resulted primarily from the gross negligence or willful misconduct of such Indemnified Person in performing the services that are the subject of this Agreement, such Indemnified Person shall repay such portion of the advanced amounts that is attributable to expenses incurred in relation to the act or omission of such Indemnified Person that is the subject of such non-appealable judgment. The Company also will indemnify and hold the Indemnified Persons harmless from and against any and all losses, claims, judgments, damages or liabilities to which such Indemnified Person may become subject under any applicable law, or otherwise, that is related to, arising out of, or in connection with either CMS’s engagement or any matter referred to in this Agreement and without regard to the exclusive or contributory negligence of any Indemnified Person except to the extent that it is finally found (in a non-appealable judgment) that any such loss, claim, damage or liability resulted primarily from the gross negligence or willful misconduct bad faith of the Indemnified Persons in performing the services that are the subject of this Agreement.

Upon receipt by an Indemnified Person of actual notice of an Action against such Indemnified Person with respect to which indemnity may be sought under this Agreement, such Indemnified Person shall promptly notify the Company in writing; provided that failure to so notify the Company shall not relieve the Company from any liability that the Company may have on account of this indemnity or otherwise, except to the extent the Company shall have been materially prejudiced by such failure. The Company shall, if requested by the Indemnified Person, assume the defense of any such Action, including the employment of counsel reasonably satisfactory to the Indemnified Person. An Indemnified Person may retain separate counsel to represent it in the defense of any Action, which shall be at the expense of the Company if (i) the Indemnified Party does not request the Company to assume the defense of any such Action or the Company does not assume the defense of the Action within a reasonable period of time after being requested to assume the defense of the Action, or (ii) the Indemnified Person is advised by counsel in writing that there is an actual or potential conflict in the Company’s and the Indemnified Person’s respective interests or additional defenses are available to the Indemnified Person, which makes representation by the same counsel inappropriate; provided that in no event shall the Company be obligated to pay expenses for more than one counsel in any one jurisdiction for all Indemnified Persons in connection with any Action.

No Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company or its equity holders or creditors related to, arising out of, or in connection with, advise or services rendered or to be rendered by any Indemnified Person pursuant to this Agreement, the transactions contemplated in this Agreement or any Indemnified Person’s actions or inactions in connection with any such advise, services or transactions except to the extent any loss, claim, judgment, damage or liability is finally found

Mr. Dean M. Leavitt

May 8, 2009

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(in a non-appealable judgment) by a court of competent jurisdiction to have resulted from the Indemnified Person's gross negligence or willful misconduct.

If for any reason the foregoing indemnification is unavailable to an Indemnified Person or insufficient to hold it harmless, then the Company shall contribute to the amount paid or payable by the Indemnified Person as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect (i) the relative economic benefits to the Company and its equity holders, on the one hand, and to the Indemnified Persons, on the other hand, of the matters covered by this engagement; or (ii) if the allocation provided by the immediately preceding clause is not permitted by applicable law, not only such relative economic benefits but also the relative fault of the Company, on the one hand, and the Indemnified Persons, on the other hand, with respect to such loss, claim, damage or liability and any other relevant equitable considerations. For purposes of this paragraph, the relative economic benefits to the Indemnified Persons of the matters contemplated in this Agreement, shall be deemed to be the fees paid or to be paid to CMS under this Agreement; provided, however, that, to the extent permitted by applicable law, in no event shall the Indemnified Persons be required to contribute an aggregate amount in excess of the aggregate fees actually paid to CMS under this Agreement.

The reimbursement, indemnity and contribution obligations of the Company in this Schedule II shall be in addition to any liability which the Company may otherwise have, shall extend upon the same terms and conditions to any affiliate of the Indemnified Persons, and shall be binding upon and inure to the benefit of any successors, heirs and personal representatives of the Company, the Indemnified Persons, any such affiliate and any such person.

The Company shall not be required to indemnify an Indemnified Person for any amount paid or payable by the Indemnified Person in the settlement of any action, proceeding or investigation without the written consent of the Company, which consent shall not be unreasonably withheld. Prior to entering into any agreement or arrangement with respect to, or effecting, any proposed sale, exchange, dividend or other distribution or liquidation of all or a significant portion of its assets in one of a series of transactions or any significant recapitalization or reclassification of its outstanding securities that does not directly or indirectly provide for the assumption of the obligations of the Company set forth in this Schedule II, the Company will notify CMS in writing thereof (if not previously so notified) and, if requested by CMS, shall arrange in connection therewith alternative means of providing for the obligations of the Company set forth in this Schedule II, including the assumption of such obligations by another party, insurance, surety bonds or the creation of an escrow, in each case in an amount and upon terms and conditions reasonably satisfactory to CMS.

Mr. Dean M. Leavitt

May 8, 2009

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**WIRE TRANSFER INSTRUCTIONS
TO CM&D MANAGEMENT SERVICES, LLC**

Federal Tax ID: 20-0217399

Retainer:

Fidelity Bank
1040 East Maple Road
Birmingham, Michigan 48009
ABA Routing #072412655
(248) 642-1901

CM&D Management Services, LLC
Account #00-820-454

Any Billings Thereafter:

Fidelity Bank
1040 East Maple Road
Birmingham, Michigan 48009
ABA Routing #072412655
(248) 642-1901

CM&D Management Services, LLC
Account #00-155-995



Management Services LLC

401 South Old Woodward Avenue
Suite 340
Birmingham, Michigan 48009
(248) 433-3100 | (248) 433-3143 FAX
www.c-m-d.com

ATLANTA | CHICAGO | DALLAS | DETROIT | HOUSTON | NEW YORK | SHANGHAI | DAYTON

August 24, 2009

Private and Confidential
Via Electronic Mail

Mr. Marcelo Paladini
Chief Executive Officer
Cynergy Data, LLC
30-30 47th Avenue, 9th Floor
Long Island City, NY 11101

Re: Amendment to Engagement for Interim Chief Financial Officer Services

Dear Mr. Paladini:

This letter amends our engagement as detailed in the agreement dated May 8, 2009 between CM&D Management Services, LLC ("CMS") and Cynergy Data, LLC ("Cynergy" or the "Company") for the engagement of CMS to provide certain Interim Chief Financial Officer (the "Interim CFO") services to the Company as described below

All defined terms shall, unless the context otherwise requires, have the meanings ascribed to them in Schedule I of the engagement letter dated May 8, 2009.

Generally, the engagement of CMS, including any CMS employees who serve in Executive Officer positions, shall be under the approval and the direct supervision of the Company's Board of Directors or the Members (as the case may be). Pursuant to your request, we have commenced Interim CFO services effective as of August 24, 2009.

Mr. Marcelo Paladini

August 24, 2009

Page 2 of 3

CMS will provide Lorraine B. Ossolinski to serve as the Company's Interim Chief Financial Officer (interim "CFO"), reporting to the Chief Restructuring Officer. Working collaboratively with the senior management team and other Company professionals, Ms. Ossolinski will assist the Company in the preparation of the internal and external financial reporting during the restructuring process. In addition to the ordinary course duties of the CFO, the roles of the CFO will include working with you and your team to do the following:

- Perform Interim Chief Financial Officer duties, including without limitation:
 1. Assuming responsibility for overseeing the compilation of all financial reports;
 2. Liaison with Company's consultants and tax advisors;
 3. Provide operational supervision of the Company's Finance Department and maintenance of appropriate controls therein; and
 4. Such duties as Company's Executive Management and members may from time to time specify, consistent with the position of an Interim Chief Financial Officer.
- Analyze the Company's financial and capital needs, including any significant underlying assumptions.
- Review past performance and current financial trends.
- Preparation of cash flow forecasts to understand and refine the liquidity outlook.
- Review of existing projections, current performance, variances, monthly and quarterly financials.
- Communicate and interface with the Company's creditors and stakeholders.
- Perform other tasks and duties related to this engagement as are reasonably requested by the Company's Chief Restructuring Officer and other executives.

* * * * *

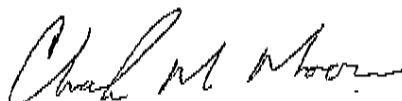
Mr. Marcelo Paladini
August 24, 2009
Page 3 of 3

All other terms as defined in our engagement letter dated May 8, 2009 remain unchanged. If these terms meet with your approval, please sign and return the enclosed copy of this Amendment.

We look forward to continue working with you.

Sincerely,

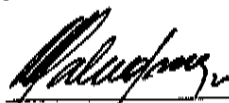
CM&D MANAGEMENT SERVICES, LLC



Charles M. Moore

Acknowledged and Agreed to:

Cynergy Data, LLC

By:  _____

Date: 8/26/09

Name: MARCELO PALADINI

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

In re: CYNERGY DATA, LLC, <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 09- <u>13038</u> (KG) Jointly Administered
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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 (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 best interests of the Debtors, their estates and creditors; and good and sufficient cause having been shown;

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.

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 Engagement Letter, subject to the following terms, which apply notwithstanding anything contained to the contrary in the Engagement Letter (including any exhibits thereto):

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 case.

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, or (ii) 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 shall serve as director of the Debtors during the pendency of the bankruptcy case.

e. Compensation to be paid CM&D for professional services rendered and expenses incurred shall be as determined by this Court upon proper application therefor pursuant to the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure or as otherwise prescribed by any Order of this Court setting forth the procedures for the payment of professionals in this case.

f. The indemnification provisions found in the Employment Agreement are hereby modified as follows:

- subject to the provisions of subparagraph (c), *infra*, the Debtors are authorized to indemnify, and shall indemnify, CM&D in accordance with the Engagement Letter, for any claim arising from, related to, or in connection with the services described therein, unless such other services and indemnification therefore are approved by the court;
- notwithstanding any provisions of the Engagement Letter to the contrary, the Debtors shall have no obligation to indemnify CM&D, or to provide contribution or reimbursement to CM&D, for any claim or expense to the extent that any losses, claims, damages or liabilities (or expenses relating thereto) are (a) judicially determined by a court of competent jurisdiction (the determination having become final) to have primarily resulted from the bad faith, gross negligence or willful misconduct of CM&D; or (b) settled prior to a judicial determination as to CM&D bad faith, gross negligence or willful misconduct, but determined by this Court after notice and a hearing, to be a claim or expense for which CM&D should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter as modified by this Order; and
- if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in this case (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing this chapter 11 case, CM&D 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, CM&D must file an application therefore with this Court, and the Debtors may not pay any such amounts to CM&D

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 CM&D for indemnification, contribution, or reimbursement and not a provision limiting the duration of the Debtor's obligation to indemnify CM&D.

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

h. Pursuant to the "one hat" policy, after accepting an engagement in one capacity, CM&D and affiliates shall not accept another engagement for the same or affiliated debtors in another capacity. For a period of one year after the conclusion of the engagement, CM&D shall not make any investments in the debtors or reorganized debtors where CM&D or another affiliate has been engaged.

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

Dated: _____, 2009
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE