

**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 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**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), hereby file this application (the “Application”) to employ and retain Unicorn Partners, LLC (“Unicorn Partners”) as a consultant to the Debtors. In support of this Application, the Debtors submit the declaration of Dean M. Leavitt (the “Leavitt Affidavit”), attached hereto as Exhibit A. In further support of the Motion, the Debtors, by and through their undersigned attorneys, respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 327(a) and 329. Such relief is warranted pursuant to Bankruptcy Rules 2014 and 2016.

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.

BACKGROUND

3. On the date hereof (the "Petition Date"), the Debtors filed their respective voluntary petitions for relief under chapter 11 of the Bankruptcy Code.
4. The Debtors continue to manage and operate their businesses as debtors-in-possession under Bankruptcy Code sections 1107 and 1108.
5. No creditors' committee has been appointed in these cases. No trustee or examiner has been appointed.
6. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the declaration of Dean M. Leavitt, filed concurrently herewith and fully incorporated herein by reference (the "Declaration").² Additional facts in support of the specific relief sought in this Motion are set forth below.

RELIEF REQUESTED

7. By this Application, the Debtors seek authority, pursuant to § 327(a) of the Bankruptcy Code, as modified by § 1107(b) of the Bankruptcy Code, to employ Unicorn Partners as a consultant to perform a variety of advisory services and to provide strategic alternatives. The Debtors are seeking the retention of Unicorn Partners nunc pro tunc to the Petition Date.
8. The Debtors have selected Unicorn Partners as their consultant because of Unicorn Partners' extensive experience in and knowledge of the electronic payments industry.

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

9. The founder, chairman, and chief executive officer of Unicorn Partners, Dean M. Leavitt, has served as Cynergy Data's interim president since December 2008. Mr. Leavitt brings deep industry expertise to his role, including:

- (a) Chairman and CEO of US Wireless Data, a publicly traded wireless transaction and electronic payment servicing company;
- (b) Founder and President of US Data Capture, Inc., a New York based electronic payment servicing company; and
- (c) Member of Presidential Advisory Board of Electronic Transactions Association.

SERVICES TO BE RENDERED

10. Unicorn Partners will work in conjunction with Cynergy Data's chief restructuring officer to plan and effect Cynergy Data's reorganization. Unicorn Partners will provide industry expertise to the team.

11. Unicorn Partners has indicated its willingness to act as an industry consultant to the Debtors. Applicant respectfully submits that the retention of Unicorn Partners to perform such services is appropriate pursuant to § 327(a) of the Bankruptcy Code and in the best interests of the Debtors' estate and creditors generally.

COMPENSATION AND RETAINER

12. Dean M. Leavitt has provided services to Cynergy Data since December 2008.

13. It is anticipated that Unicorn Partners' fees and expenses will be funded by the Debtors upon application therefor in accordance of the provisions of the Bankruptcy Code or in accordance with any other order establishing procedures for the payment of professionals in these cases. Unicorn Partners intends to apply to the Court for all such post-petition fees and expenses.

14. Subject to this Court's approval and in accordance with Bankruptcy Code §§ 330 and 331, the Federal Rules of Bankruptcy Procedure, the Debtors request that Unicorn Partners be compensated \$10,000 per week, as a bankruptcy professional, plus reasonable out-of-pocket expenses incurred on behalf of the Debtors. The Company has also agreed to pay Unicorn a success fee in connection with the consummation of a sale of the Company, its subsidiaries or its affiliates or any assets thereof ("Sale") in an amount equal to the greater of (a) two hundred fifty thousand dollars (\$250,000) or (b) the sum of i) one half of one percent (.5%) of the aggregate value of such transaction between one dollar (\$1.00) and fifty million dollars (\$50,000,000), plus ii) 1% of the aggregate value of such transactions in excess of fifty million (\$50,000,000) ("Success Fee").

NOTICE

15. The Debtors have provided notice of this Application 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.

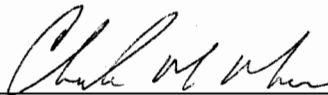
16. No previous application for the relief sought herein has been made by Applicant to this or any other Court.

WHEREFORE, Applicant respectfully requests entry of the attached order authorizing it to employ and retain Unicorn Partners as an industry consultant and granting such other and further relief as is just and proper.

Dated: 8/31/09

Respectfully submitted,

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

By: 

Name: Charles M. Moore

Title: Chief Restructuring Officer

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

CYNERGY DATA, LLC, ET AL.,¹

Debtors.

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)
) Chapter 11

) Case No. 09-[13038] (KG)
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**DECLARATION OF DEAN M. LEAVITT
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 THE EMPLOYMENT AND RETENTION OF
UNICORN PARTNERS, LLC AS ADVISERS TO THE DEBTORS**

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

1. I, Dean M. Leavitt, am founder, chairman, and chief executive officer of Unicorn Partners, LLC ("Unicorn Partners"), a New York-based investment and advisory company. I am authorized to execute this Declaration on behalf of Unicorn Partners. I submit this Declaration in support of the application (the "Application") 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 Unicorn Partners as an industry consultant to 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.

¹ The Debtors are the following entities (with the first four digits of the 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.

QUALIFICATIONS OF PROFESSIONALS

2. Unicorn Partners is an investment and advisory company that operates throughout the United States. As Founder and Chairman, my experiences include:

- Chairman and CEO of US Wireless Data, a publicly traded wireless transaction and electronic payment servicing company;
- Founder and President of US Data Capture, Inc., a New York based electronic payment servicing company; and
- Member of Presidential Advisory Board of Electronic Transactions Association.

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 Unicorn Partners by the Debtors; (iii) the Debtors' unsecured creditors; (iv) the Debtors' pre- and post-petition lenders; and (v) 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, that the following are the only connections with the Debtors, their creditors, the U.S. Trustee, or any other party with an actual or potential interest in these Chapter 11 cases, or their respective attorneys or accountants: (a) The Amparo Malberti Grantor Trust f/b/o Marcelo Paladini invested \$500,000 in Volume One Entertainment, LLC ("V1"), a New York and Los Angeles-based feature film production company, for which it received a passive 12.5% interest in the company. Unicorn Partners owns 65.65% of V1; (b) in 2000, I received compensation from ComVest Ventures Partners, L.P. ("CVP"), an affiliate of ComVest Investment Partners III, L.P. (the "Stalking Horse" bidder) through certain common owners, in

the form of a limited partnership interest in CVP, for providing consulting services to that entity. Since January 1, 2007, I have received a total of \$10,039 in distributions from CVP and no additional amounts are expected to be paid, as CVP is now in the final stages of being wound down; and (c) in 2000, Commonwealth Associates, L.P., an affiliate of the Stalking Horse bidder through certain common owners, acted as placement agent in connection with a private capital raise of approximately \$56 million for U.S. Wireless Data, Inc (“USWD”), of which I was chairman and CEO. I have not been affiliated with USWD since 2004.

a. From time to time, Unicorn Partners may have provided services to parties adverse to the Debtors in matters wholly unrelated to these Chapter 11 cases. However, Unicorn Partners has undertaken a detailed search to determine, and to disclose, whether it is providing or has provided services to any significant creditors, equity security holders, insiders, or other parties in interest in such unrelated matters.

b. Unicorn Partners personnel may have business associations with certain creditors of the Debtors unrelated to these Chapter 11 cases. In addition, in the ordinary course of its business, Unicorn Partners 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 these cases.

4. To the best of my knowledge, insofar as I have been able to ascertain after reasonable inquiry, neither I, nor Unicorn Partners, 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 Unicorn Partners to be a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code.

5. If Unicorn Partners’ proposed retention is approved by this Court, Unicorn Partners 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. Unicorn Partners 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 Unicorn Partners’ connections with parties-in-interest in this case, because the Debtors have numerous creditors and other relationships, Unicorn Partners is unable to state with certainty that every client relationship or other connection has been disclosed. If Unicorn Partners discovers additional information that requires disclosure, Unicorn Partners will file supplemental disclosures with the Court as promptly as possible.

7. The indemnification provision attached as Schedule II to the letter agreement between Unicorn Partners and Cynergy Data, LLC, dated July 13, 2009 (the “Letter Agreement”) (attached hereto as Exhibit 2), is hereby modified as follows:

a. subject to the provisions of subparagraph (c), infra, the Debtors are authorized to indemnify, and shall indemnify, Unicorn Partners in accordance with the Letter Agreement, 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 Letter Agreement to the contrary, the Debtors shall have no obligation to indemnify Unicorn Partners, or to provide contribution or reimbursement to Unicorn Partners, 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 Unicorn Partners; or (b) settled prior to a judicial determination as to Unicorn Partners' 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 Unicorn Partners should not receive indemnity, contribution or reimbursement under the terms of the Letter Agreement 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, 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 Letter Agreement (as modified by this Order), including without limitation the advancement of defense costs, Unicorn Partners must file an application therefor 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 Debtors' obligation to indemnify Unicorn Partners.

8. During the 90 days prior to the Petition Date, Unicorn Partners' fees and expenses relating to services rendered by Unicorn Partners to the Debtors were approximately \$103,982. The Debtors have satisfied all fees and expenses that have been due on a pro rata basis through regular payments of Unicorn Partners' invoices and through the application of a \$25,000 retainer. Unicorn Partners 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 Unicorn Partners 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 Unicorn Partners and me to provide industry expertise and related strategic advisory services, including but not limited to, assisting in the management of day-to-day operations of the Company and assisting in the sale process.

11. Unicorn Partners and its affiliates shall not act in any other capacity (e.g., without limitation, as Chief of Reorganization, claims agent/claims administrator, or investor/acquirer) in connection with these bankruptcy cases.

12. No principal, employee or independent contractor of Unicorn Partners shall serve as director of the Debtors during the pendency of these bankruptcy cases.

COMPENSATION OF PROFESSIONALS

13. Unicorn Partners' fees will be as established in the Letter Agreement that is attached hereto as Exhibit 2.

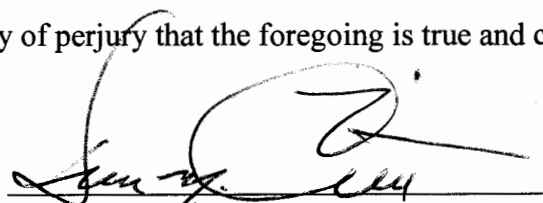
14. This compensation arrangement is consistent with and typical of arrangements entered into by Unicorn Partners and similar advisory firms with respect to the provision of similar services to clients such as the Debtors, both in and out of Chapter 11.

15. I, as well as other Unicorn Partners 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 agreement with the Debtors and orders of the Court related to this retention.

16. I have not shared or agreed to share any of my compensation with any other person, other than a principal, professional or employee of Unicorn Partners, as permitted by section 504 of the Bankruptcy Code. The proposed engagement of Unicorn Partners is not prohibited by Bankruptcy Rule 5002.

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

Dated: August __, 2009



Dean M. Leavitt
Founder, Chairman, CEO
Unicorn Partners, LLC

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

Unicorn Partners, LLC

527 Madison Avenue
New York, NY 10019
Phone: (212) 750-7771

July 13, 2009

Private and Confidential

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

Re: Consulting Services

Dear Mr. Paladini:

This letter agreement outlines the understanding (this "Agreement") between Unicorn Partners, LLC ("Unicorn") and Cynergy Data, LLC ("Cynergy" or the "Company") for the engagement of Unicorn to provide certain consulting services 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 Unicorn, 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, Unicorn has commenced services effective as of July 1, 2009 (the "Commencement Date").

Objectives and Tasks

Unicorn will make Dean M. Leavitt Unicorn's designated representative (the "Designated Representative"), available to provide the Company with the Services hereunder. The Designated Representative will assume the title of "Interim President" during the term of this Agreement. The Designated Representative will report 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, the Designated Representative will assist the Company in evaluating and implementing strategic and tactical options during the restructuring process. The role of the Designated Representative will include working with you and your team to do the following:

- Assist in sales and marketing activities;
- Assist in revenue generation initiatives;
- Assist in capital-raising activities;
- Assist in balance sheet restructuring activities;
- Assist in merger, acquisition and disposition activities; and
- Assist with such other matters as may be requested that fall within the expertise of the Designated Representative and that are mutually agreeable.

Fees

For the Services hereunder, the Company shall pay Unicorn a fee of ten thousand dollars (\$10,000.00) per week (the "Weekly Fee"). The Company shall pay Unicorn the Weekly Fee on Friday of each week, unless such Friday is not a business day, then the Company shall pay Unicorn on the immediately preceding business day. Payment is due upon receipt of invoice via wire transfer in accordance with the accompanying instructions.

The Company shall also pay Unicorn or its designees a success fee in connection with the consummation of a sale of Company, its subsidiaries or its affiliates or any assets thereof ("Sale") in an amount equal to the greater of (a) two hundred fifty thousand dollars (\$250,000.00) or (b) the sum of i) one half of one percent (.5%) of the aggregate value of such transaction between one dollar (\$1.00) and fifty million dollars (\$50,000,000.00), plus ii) 1% of the aggregate value of such transaction in excess of fifty million dollars (\$50,000,000.00) ("Success Fee")

For the purposes of this Agreement:

- (a) A "Sale" of the Company shall mean any transaction or series or combination of transactions, other than in the ordinary course of trade or business, involving an acquisition of all or a material portion of the equity or equity-linked securities, senior debt, subordinated debt, assets or business of the Company, measured on a consolidated basis, is acquired by or combined with any person or entity, whether or not such transaction is effectuated in-court, out-of-court, through a credit bid in a bankruptcy proceeding, or through the confirmation of a plan of reorganization or liquidation of the Company (excluding a Chapter 7 liquidation prior to or after the occurrence of a transaction that qualifies as a Sale hereunder (in which case the Financial Advisors shall only be entitled to a success fee with respect to such Sale)) or otherwise under Title 11 of the United States Code ("Bankruptcy Code"), and whether through a sale or exchange of capital stock, debt or assets, a lease of assets with or without a purchase option, a merger or consolidation, a tender or exchange offer, a leveraged buy-out, the formation of a joint venture or partnership, a proceeding under Chapter 11 (a "Chapter 11 Proceeding") of the Bankruptcy Code (including a Section 363 sale), or any other business combination or similar transaction.
- (b) Except as provided in subsection (c) below, "Consideration" shall mean the full transaction value of any Sale of the Company including, without limitation, the total value of all cash (including escrowed funds), securities, other property and any contingent, earned or other consideration paid or payable, directly or indirectly, by an acquiring party to a selling party or to a participant in the transaction in connection with a Sale of the Company. The value of any such securities (whether debt or equity) or other property or items of value shall be determined as follows: (i) the value of securities that are freely tradable in an established public market shall be the last closing market price of such securities prior to the public announcement of the Sale; (ii) the value of securities which are not freely tradable or which have no established public market, or if the Consideration utilized consists of property other than securities, the value of such securities or other property shall be the fair market value thereof (without any discount for minority interest or non-marketability); and (iii) the

sum of all assumed lease payments. Consideration shall also include the face value of any indebtedness (including trade and other assumed ordinary course liabilities) to which the Sale of the Company is subject or to which the Company (or portion thereof to be sold) remains obligated, or indebtedness that is assumed in connection therewith, the value of any consulting, severance or employment agreements received by the principals of the Company in excess of their historical salary levels, and the value of any payments to be received by the principals of the Company for entering into non-compete, no-shop, standstill or similar agreements. In the case of a recapitalization, Consideration shall include the aggregate amount of indebtedness incurred or equity raised by the Company or a successor thereof in connection with such recapitalization. If a Sale of the Company is structured such that it involves a direct or indirect transfer of more than half of the outstanding equity interests in the Company, the Consideration involved in that transaction shall be deemed increased to include the value of any equity interests in the Company that are not transferred in the transaction by the owners thereof, with such value calculated at the price or implied price per share paid for or with respect to interests of the same class in the transaction (without any discount for minority interest or for non-marketability). If any Consideration to be paid is computed in a foreign currency, the value of such foreign currency shall, for purposes hereof, be converted into U.S. Dollars at the prevailing exchange rate on the date or dates on which such Consideration is paid.

- (c) If the Sale of the Company is structured in such a way as to provide for the transfer of only part of the assets of the Company or one or more of the Businesses of the Company and the retention of other assets or Business(es), including, but not limited to, cash, cash equivalents, investments, inventories and receivables, such retained assets or Businesses shall be deemed to be part of the Consideration received in connection with the Sale of the Company, as follows: (A) with respect to investments, in an amount equal to the market value of such investments, (B) with respect to inventories and receivables, in an amount equal to the book value thereof, and (C) with respect to any other assets or Businesses, in an amount to be reasonably determined by the parties.

In addition, Unicorn requires a retainer of twenty-five thousand dollars (\$25,000.00) to be paid upon the execution of this Agreement. Unicorn shall apply the retainer as follows:

- (a) in the event that the Company intends to file for bankruptcy protection, immediately prior to the filing of its bankruptcy petition, Unicorn 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 Unicorn but not billed prior to the date the Company intends to file a bankruptcy petition. The excess retainer, if any, will be held by Unicorn 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 Unicorn'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 request an increase in our retainer amount accordingly.

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

Reimbursement of Expenses

The Company shall promptly reimburse Unicorn on demand for any reasonable out-of-pocket expenses that Unicorn incurs in connection with performing the Services, including, without limitation, travel expenses, lodging expenses, telecommunication expenses and any other fees and expenses that may reasonably be incurred by Unicorn or its employees or agents in connection with the rendering of any of the Services.

Relationship of the Parties

The parties intend that an independent contractor relationship will be created by this Agreement. As an independent contractor, Unicorn will have complete and exclusive control 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 Designated Representative nor Unicorn 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. Unicorn will be responsible for all employment, withholding, income and other taxes incurred in connection with the operation and conduct of its business. The Designated Representative will not be considered an employee of the Company.

Confidentiality

Unicorn agrees to keep confidential all information obtained from the Company and neither Unicorn nor its Designated Representative 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 Unicorn or the Designated Representative from disclosure pursuant to a valid subpoena or court order, but neither Unicorn nor the Designated Representative shall encourage, suggest, invite or request, or assist in securing, any such subpoena or court order. The Designated Representative shall immediately give notice of any such subpoena or court order by fax transmission to the Company and give the Company a reasonable opportunity to take such action as may be necessary to prevent disclosure of Information. Furthermore, Unicorn and the Designated Representative may make reasonable disclosures of Information to the assignments hereunder. In addition, Unicorn and the Designated Representative will have the right to disclose to others in the normal course of business its involvement with the Company.

Mr. Marcelo Paladini

July 13, 2009

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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 Designated Representative 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 Unicorn at any time in any manner or for any purpose other than accomplishing the tasks referred to herein, without Unicorn's prior approval (which shall not be unreasonably withheld), except as required by law.

Framework of the Engagement

The Company acknowledges that it is engaging the Designated Representative 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 SSCS or other such state and national professional bodies.

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 Unicorn 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 New York with respect to contracts made and to be performed entirely therein and without regard to choice of law or principles thereof.

Term; Termination and Survival

The term of this Agreement will continue from the Commencement Date until October 31, 2009 (the "Term"), unless the Parties agree in writing to extend the Term for a longer period. Following the Term, either Party may terminate this Agreement by providing the other party with at least 30 days' prior written notice of such Party's intent to terminate this Agreement; provided, however, that notwithstanding such termination, Unicorn will be entitled to any unpaid fees and expenses as of the effective date of such termination. The sections of this Agreement regarding Fees, Reimbursement of Expenses, Confidentiality, Indemnification, and Governing Law shall survive any such Agreement.

{Signature page follows}

Mr. Marcelo Paladini

July 13, 2009

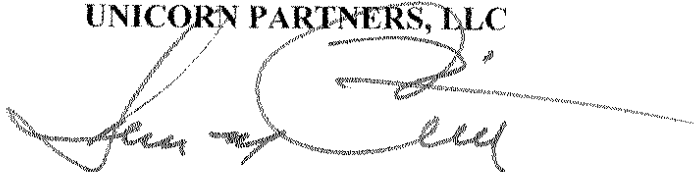
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If these terms meet with your approval, please sign and return the enclosed copy of this Agreement along with the retainer.

We look forward to working with you.

Sincerely,

UNICORN PARTNERS, LLC

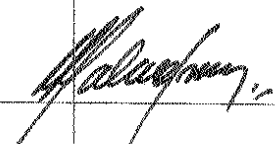


Dean M. Leavitt
Managing Member

Acknowledged and Agreed to:

Cynergy Data, LLC

By: _____



Marcelo Paladini
Chief Executive Officer

Date: _____

July 17, 2009

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 Unicorn, its affiliates and its personnel in the performance of the Services.
Party or Parties	A party or the parties to this Agreement (as the case may be).
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 Unicorn under this Agreement.

Schedule II – Indemnification

In the event that Unicorn 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, directors, or officers of the Company, in connection with or as a result of either Unicorn's engagement (including, any matters relating to any of Unicorn's current or former employees serving in any capacity as director, officer or employee of the Company, regardless of whether such activities occurred prior to or after the Commencement Date) or any matter referred to in this Agreement, the Company will reimburse 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, subject to receipt of detailed invoices setting forth the legal or other services rendered; 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 reimbursed 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 Unicorn's engagement (including, any matters relating to any of Unicorn's current or former employees serving in any capacity as director, officer or employee of the Company, regardless of whether such activities occurred prior to or after the Commencement Date) 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, at the Company's election, have the option to 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 the Indemnified Person is advised by the Company's 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 (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.

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 Unicorn in writing thereof (if not previously so notified) and, if requested by Unicorn, 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 Unicorn.

**WIRE TRANSFER INSTRUCTIONS
TO UNICORN PARTNERS, LLC**

Federal Tax ID: 20-1890212

Retainer:

Bank Name: Signature Bank
Address: 950 Third Ave
New York, New York 10022
ABA Routing #: 026013576
Bank Contact: John Gonzalez
Phone Number: (646) 822-1502
Account Name: Unicorn Partners, LLC
Account #: 1500653775

Any Billings Thereafter:

Bank Name: Signature Bank
Address: 950 Third Ave
New York, New York 10022
ABA Routing #: 026013576
Bank Contact: John Gonzalez
Phone Number: (646) 822-1502
Account Name: Unicorn Partners, LLC
Account #: 1500653775

**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 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) 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, it is:

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.

ORDERED, that the Application is granted; and it is further

ORDERED, that in accordance with § 327(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; and it is further

ORDERED, that the compensation to be paid to Unicorn Partners for professional services rendered and expenses incurred shall be as determined by this Court upon proper application therefor pursuant to §§ 330 and 331 of 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.

This order is effective immediately once this Court retains jurisdiction.

Dated: _____, 2009

UNITED STATES BANKRUPTCY JUDGE