

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

In re:

CD LIQUIDATION CO., LLC, f/ka  
CYNERGY DATA, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

**Objection Deadline: 4:00 p.m. (EST) on the date that is seven (7) business days from the date of this Cure Resolution Notice**

Related Docket Nos. 106, 121, 223, 258 and 389

**NOTICE OF CURE RESOLUTION**

**PLEASE TAKE NOTICE THAT:**

1. The Debtors hereby serve notice (the “Cure Resolution Notice”) of their proposed resolution of a certain cure dispute.
2. On October 9, 2009, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an Order approving the sale of substantially all of the above-referenced Debtors’ assets (the “Sale”) pursuant to an Asset Purchase Agreement (the “APA”).
3. In connection with the APA, the Debtors also served notice of their intention to assume and assign certain executory contracts and leases (the “Cure Notice”).
4. By the objection deadline of October 6, 2009, the Debtors received a number of objections (the “Cure Amount Objections”) from non-debtor counterparties to executory contracts and leases (the “Objecting Parties”) disputing the stated cure costs found in the Cure Notice.
5. Since the Cure Objection Deadline, the Debtors have been working diligently to resolve the Cure Amount Objections.
6. Attached as Exhibit A hereto is an agreement setting forth the resolution (the “Cure Resolution”) of a Cure Amount Objection with Objecting Party, CPS of New York, Inc.
7. Objections, if any, to the Cure Resolution must be made in writing, filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), 824 Market Street, Wilmington, Delaware 19801, and served so to be received no later than **4:00 p.m. Prevailing Eastern Time on the date that is seven (7) business days from the date hereof** upon:

David B. Stratton, Esq.  
Evelyn J. Meltzer, Esq.  
Pepper Hamilton LLP  
Hercules Plaza, Suite 5100  
1313 Market Street  
P.O. Box 1709  
Wilmington, Delaware 19899-1709

Mark N. Berman  
Dennis J. Drebsky  
Lee Harrington (DE No. 4046)  
Nixon Peabody, LLP  
437 Madison Avenue  
New York, New York 10022

**IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE  
CURE RESOLUTION WILL BE DEEMED ALLOWED WITHOUT FURTHER ORDER  
OF THE COURT.**

Dated: March 3, 2010  
Wilmington, Delaware

Respectfully submitted,

PEPPER HAMILTON LLP

/s/ Evelyn J. Meltzer

David B. Stratton (DE No. 960)  
Evelyn J. Meltzer (DE No. 4581)  
John H. Schanne, II (DE No. 5260)  
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-and-

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*Counsel for the Debtors  
and Debtors in Possession*

# **EXHIBIT A**

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

In re:

CD LIQUIDATION CO., LLC, f/ka  
CYNERGY DATA, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

**Objection Deadline: 4:00 p.m. (EST) on the date that is seven (7) business days from the date of this Cure Resolution Notice**

**CURE RESOLUTION NOTICE AND  
STIPULATION IN SATISFACTION OF  
THE OBJECTION BY CPS OF NEW YORK, INC.  
TO THE DEBTORS' CURE NOTICE**

This Stipulation (the "Stipulation") is entered into by and among: the above-captioned debtors (the "Debtors") and CPS of New York, Inc. ("CPS"), by and through their respective attorneys. The Debtors and CPS are collectively referred to hereinafter as the "Parties."

WHEREAS, on September 1, 2009 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code; and

WHEREAS, on or about September 24, 2009, the Debtors served on certain non-debtor parties to unexpired leases and executory contracts, including CPS, the Notice of Debtors' Intent to Assume and Assign Unexpired Leases and Executory Contracts and Setting Forth Cure Amounts (the "Cure Notice") in which the Debtors set forth the cure amounts with respect to certain unexpired leases and executory contracts; and

WHEREAS, pursuant to the Cure Notice, the Debtors scheduled the cure amount owing to CPS as \$0.00 (the "CPS Cure Amount"); and

WHEREAS, on October 6, 2009, CPS filed an Objection to the Cure Notice by which it disputed, among other things, the CPS Cure Amount [Dkt # 219] (the "CPS Cure Objection"); and

WHEREAS, CPS maintains that the Debtors are in default and obligated to pay \$26,292.08 to cure defaults under the ISO Agreement between the Debtors and CPS, comprised of certain unpaid suspended funds related to discrepancies calculated in monthly account reconciliations (the “CPS Cure Claim”); and

WHEREAS, the Debtors have disputed the CPS Cure Claims and various amounts set forth by CPS in the CPS Cure Objection; and

WHEREAS, on October 9, 2009, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an Order (the “Sale Order”) approving the sale of substantially all of the above-referenced Debtors’ assets (the “Sale”) pursuant to an Asset Purchase Agreement (the “APA”); and

WHEREAS, the Sale Order required, *inter alia*, the Debtors to establish, and in accordance with the Sale Order the Debtors did establish, a reserve in an amount sufficient to pay in full all Cure Amounts (the “Cure Reserve”) relating to any default identified by the Debtors in the Cure Notice and any higher amount identified by any Non-Debtor Parties in the Cure Objections and, accordingly the Debtors placed \$38,000,000 in the Cure Reserve; and

WHEREAS, a portion of the Cure Reserve relates to funds in the Debtors’ unfunded merchant rolling reserves (the “Rolling Reserves”) the nature of which is currently the subject of a dispute (the “Unfunded Rolling Reserve Dispute”) among various parties including, without limitation, Ableco Finance LLC, A3 Funding LP, Garrison Credit Investments I, LLC, and Garrison Credit Opportunities Holdings L.P. (collectively, the “Term B Lenders”), Comerica Bank and Dymas Funding Company (“Dymas” and, with the Term B Lenders, the “Term B Parties”) and Harris Bank, N.A. (“Moneris”); and

WHEREAS, on November 20, 2009, the Bankruptcy Court entered its Order (i) Authorizing The Debtors To Direct Disbursements From Escrow And (ii) Approving The Procedure For Escrow

Disbursements Pursuant To 11 U.S.C. § 363 and 365 (the “Escrow Disbursement Order”), requiring, among other things, notice to all parties in interest of any resolution of an objection to the Cure Notice; and

WHEREAS, the parties to this Stipulation have now had an opportunity to discuss and consider the CPS Cure Objection and have reached a consensual resolution of their dispute.

NOW THEREFORE, it is hereby stipulated and agreed by and among the Debtors and CPS, pursuant to Sections 362, 363, 365, 1106 and any and all other applicable provisions of the United States Bankruptcy Code and Fed. R. Bankr. P. 3007 and any and all other applicable Bankruptcy Rules and Local Rules:

1. The Parties hereto agree that no provision of this Stipulation shall be construed as an admission of any liability, wrongdoing or violation of any federal, state or local law or statute by all or any of the Parties.

2. This Stipulation, the contents hereof, its existence, and any actions related to it shall not be admissible as evidence for any reason in any court or administrative proceeding, except in an action to enforce its provisions.

3. Pursuant to the terms of the Escrow Disbursement Order, following the expiration of seven (7) business days from the date of the filing of this Stipulation, unless a party in interest timely files an objection to this Stipulation in accordance with the Escrow Disbursement Order, on account of the Cure Notice and the proposed assumption and assignment of the Debtors’ agreement with CPS, the Debtors shall direct the Escrow Agent, as defined in the Escrow Disbursement Order, to release the funds from the Cure Reserve to CPS in the amount of \$26,292.08 for payment in full and complete satisfaction of the CPS Cure Claim.

4. The Debtors hereby state that the funds paid from the Cure Reserve to pay the CPS Cure Claim shall not reduce the level of the funds in the Cure Reserve implicated in the Unfunded Rolling Reserve Dispute. After satisfaction of the CPS Cure Claim as set forth herein, sufficient funds shall be retained in the Cure Reserve to satisfy all other outstanding cure obligations in these cases.

5. Any Cure Payment that implicates the Unfunded Rolling Reserve is expressly subject to a Final Order of the Bankruptcy Court in the Unfunded Rolling Reserve Dispute and will be funded, if at all, from the Cure Reserve in accordance with that Final Order.

6. Upon receipt of the Debtors' payment of funds pursuant to paragraph 3 above, the CPS Cure Objection shall be deemed resolved. Nothing herein shall preclude CPS' exercise of its rights neither with respect to the Unfunded Rolling Reserve Dispute nor to receive any distribution from the Cure Reserve to which CPS is entitled.

7. Nothing contained herein shall limit, impair or otherwise effect CPS's rights under § 365 of the United States Bankruptcy Code with respect to its agreements with the Debtors or any third party, other than by fixing the partial cure amounts and related relief as agreed to herein.

8. The terms of this Stipulation shall be binding upon any superseding trustee in this Chapter 11 case, or, in the event of a conversion to a Chapter 7 case, upon the Chapter 7 trustee.

9. This Bankruptcy Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

10. The Parties agree that each was given a reasonable period of time within which to consider the Stipulation and that they have carefully read the Stipulation, know the contents

thereof, consulted with an attorney, freely and voluntarily assent to all of the terms and conditions thereof, and sign the same as their own free act.

11. The invalidity, illegality or unenforceability of any provision hereof or any particular application thereof shall not be deemed to affect or impair in any manner the validity, legality or enforceability of any other provision of this Stipulation, and the Stipulation shall continue in full force and effect and shall be interpreted so as to implement as nearly as possible the intention of all parties in the absence of such provision or application.

12. Any breach of the terms of this Stipulation shall be considered material.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

13. This Stipulation may be executed in one or more counterpart copies, each of which shall be deemed an original, which together shall constitute one and the same instrument.

**PEPPER HAMILTON LLP**

**CPS OF NEW YORK, INC.**

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

/s/ Oleg Firer  
By: Oleg Firer  
Title: Director and Chairman of the Board of  
CPS of New York , Inc.

Dated: March 3, 2010

-and-

**NIXON PEABODY LLP**

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

*Counsel for the Debtors  
and Debtors in Possession*

Dated: March 3, 2010

**CERTIFICATE OF SERVICE**

I, Evelyn J. Meltzer, hereby certify that on the 3<sup>rd</sup> day of March, 2010, I caused the foregoing **Notice of Proposed Amended Cure Amounts** to be served upon the following individuals by facsimile.

David P. Primack, Esq.  
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/s/ Evelyn J. Meltzer  
Evelyn J. Meltzer (DE No. 4581)