

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

In re:

CYNERGY DATA, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

*Related Docket No. 75*

**EMERGENCY ORDER UNDER 11 U.S.C. §§ 105(a), 345, 363, 364, AND 503(b)(1)  
AUTHORIZING (A) CONTINUED MAINTENANCE OF EXISTING BANK  
ACCOUNTS, (B) CONTINUED USE OF EXISTING BUSINESS FORMS, (C)  
CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, (D) CONTINUED  
PAYMENTS TO ISOs AND MERCHANTS IN ACCORDANCE WITH CUSTOMARY  
PRACTICE, (E) WAIVER OF CERTAIN GUIDELINES RELATING TO BANK  
ACCOUNTS, AND (F) SCHEDULING A FINAL HEARING**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for an Order, under Bankruptcy Code sections 105, 345, 363, 364, and 503(b)(1) of the Bankruptcy Code, authorizing (a) continued maintenance of existing bank accounts; (b) continued use of existing business forms; (c) continued use of existing cash management system; (d) continued payment of ISOs (defined below) and Merchants (defined below) in accordance with customary practice; (e) a waiver of certain operating guidelines relating to bank accounts; and (f) scheduling a final hearing; and upon the Moore Declaration; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that the Rule 6003(b) standard has been met; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtors, their estates, their creditors and

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



other parties in interest; and after due deliberation thereon and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED as set forth in this Order.

**II. MAINTENANCE OF BANK ACCOUNTS.**

2. Subject to the Interim Order (I) Authorizing Use Of Cash Collateral, (II) Authorizing Postpetition Financing, (III) Granting Senior Priming Liens And Superpriority Claims, (IV) Granting Adequate Protection to the Prepetition Secured Parties and (V) Scheduling A Final Hearing to Incur Such Financing On A Permanent Basis (the "Interim DIP Order") and the Prepetition Senior Loan Documents and the Working Capital DIP Facility Documents (as defined in the Interim DIP Order), under sections 105 and 363 of the Bankruptcy Code, the Debtors are authorized, but not directed, to (a) designate, maintain and continue to use any and all of their respective Bank Accounts in existence as of the Petition Date, with the same account numbers, including, without limitation, the accounts identified in Exhibit A annexed hereto; (b) if necessary, open new accounts and give the U.S. Trustee prompt notice of each such newly opened account, wherever they are needed, whether or not such banks are designated depositories in the District of Delaware; provided, however, that any new bank account shall be with a bank that is insured by the FDIC or FSLIC and organized under the laws of the United States of America or any state therein and shall be designated a "debtor-in-possession" or "DIP" account by the respective bank; (c) treat the Bank Accounts and any such newly opened accounts for all purposes as accounts of the Debtors in their capacity as debtors-in-possession and (d) to pay their tax obligations out of their existing Bank Accounts rather than opening new Bank Accounts solely for tax payments.

### **III. USE OF BUSINESS FORMS.**

3. The Debtors are authorized to continue to use their existing business forms and checks without alteration or change and without the designation "Debtor In Possession" or a "debtor in possession case number" imprinted upon them provided, however, in the event that the Debtors need to purchase new check stock or any other business forms during the pendency of these chapter 11 cases, such check stock or other business forms will include a legend referring to the Debtors as "Debtor-in-Possession" or "DIP".

### **IV. CASH MANAGEMENT SYSTEM.**

4. The Debtors are authorized to continue to use their existing cash management system, and shall maintain through the use thereof detailed records reflecting all transfers of funds under the terms and conditions provided for by the existing agreements with the institutions participating in the Debtors' cash management system, except as modified by this Order. In connection with the ongoing utilization of the cash management systems, the Debtors shall continue to maintain records with respect to all transfers of cash so that all transactions may be readily ascertained, traced and recorded properly on the applicable accounts.

5. Other than payments to the ISOs, which will be considered by the Court at the first day hearing on the Motion scheduled for September 2, 2009 at 10:00 am, the Debtors are authorized, in connection with maintaining their cash management system, to continue to satisfy, postpetition, the Operating Obligations, including any of those obligations that arose prepetition.

6. Debtors are authorized to perform all of their obligations under the Prepetition Harris Documents, and Harris shall perform all of its obligations under the Prepetition Harris Documents (provided, that Debtors and their Merchants are in compliance with their respective obligations thereunder.)

7. After the Petition Date, and subject to the terms of this Order, all Banks at which the Bank Accounts are maintained are authorized to continue to administer the Bank Accounts as such accounts were maintained prepetition, without interruption and in the usual and ordinary course, and to pay any and all checks, wire transfers, ACH transfers, electronic fund transfers or other items presented, issued or drawn on the Bank Accounts on account of a claim arising on or after the Petition Date, so long as sufficient funds are in the Bank Accounts.

8. Subject to the provisions of this Order, the Banks are authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires or ACH transfers should be honored or dishonored consistent with any order(s) of this Court and governing law, whether such checks, drafts, wires or ACH transfers are dated prior to, on or subsequent to the Petition Date. To the extent that the Debtors direct that any prepetition checks, drafts, wires or ACH Transfers be dishonored, the Debtors may issue replacement checks, drafts, wires or ACH Transfers to pay the amounts related to such dishonored checks, drafts, wires or ACH Transfers consistent with the orders of this Court.

9. Each Bank that maintains any checking account shall implement reasonable handling procedures designed to effectuate the terms of this Order. No Bank that implements such handling procedures and then honors a prepetition check, draft, wire, ACH transfer (excluding any ACH Transfer that the Banks are obligated to settle) or other item presented, issued or drawn on any Bank Account that is the subject of this Order (a) at the direction of the Debtors to honor such prepetition check, draft, ACH transfer or other item, (b) in good-faith belief that the Court has authorized such prepetition check, draft, wire, ACH transfer or other item to be honored or (c) as a result of an innocent mistake made despite implementation of such

handling procedures shall be deemed to be liable to the Debtors or their estates or otherwise in violation of this Order.

10. Nothing contained in this Order shall prevent the Debtors and the Banks from implementing reasonable changes to the Debtors' cash management system, including, but not limited to, the opening of any additional bank accounts or closing of any Bank Account(s) as they may deem necessary and appropriate, and the Banks are authorized to honor the Debtors' requests to open or close, as the case may be, such Bank Accounts; provided, however, that any new account shall be with a Bank that is insured by the FDIC or the FSLIC and organized under the laws of the United States of America or any state therein and shall be designated a "debtor-in-possession" or "DIP" account by the respective Bank.

#### **V. INVESTMENT GUIDELINES.**

11. The Debtors are authorized to deposit and invest funds in accordance with the Investment Guidelines (as they may be modified by the requirements of any order of the Court approving the proposed postpetition financing), notwithstanding that the Investment Guidelines may not strictly comply in all respects with the investment guidelines expressly set forth in section 345 of the Bankruptcy Code. The Debtors' Banks are authorized and directed to accept and hold funds, at the Debtors' direction, in accordance with the Investment Guidelines.

12. The Debtors are hereby authorized to take such actions and execute such documents as may be required to carry out the intent and purpose of this Order.

13. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

14. To the extent there are any inconsistencies between the terms of this Order and any debtor-in-possession financing order entered in these cases, the terms of such debtor-in-possession order shall govern.

15. **This Order shall expire by its terms at 11:59 pm on September 2, 2009.**

16. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: September 1, 2009

  
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THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A**

**Debtors' Bank Accounts**

<b><u>BANK NAME</u></b>	<b><u>ACCOUNT NUMBER</u></b>
Capital One	5024020686
Capital One	5224006733
Comerica	1852184116/366000 23300
Comerica	1852252996
Comerica	1852196722
Comerica	1852252988
Comerica	ORJ896667
Comerica	Multiple Accounts
Harris	2362556
Harris	2781011
Wells Fargo	32722514
Wells Fargo	412150772
Sterling National Bank	4400123745