

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

In re:

CD LIQUIDATION CO. PLUS, LLC, f/k/a
CYNERGY DATA, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

Related Docket No.: 1135

**PLAN SUPPLEMENT TO JOINT PLAN OF LIQUIDATION OF CD LIQUIDATION CO.,
LLC, CD LIQUIDATION CO. PLUS, LLC, AND CYNERGY DATA HOLDINGS, INC.**

Dated: December 6, 2010
Wilmington, Delaware

Respectfully submitted,

PEPPER HAMILTON LLP

/s/ Evelyn J. Meltzer

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*Counsel for the Debtors
and Debtors in Possession*

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.



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Document

Exhibit

Liquidation Trust Agreement..... A

The documents contained in the Plan Supplement are in substantially final form but remain subject to further negotiation, comment, and change among the various parties thereto. Accordingly, the Debtors reserve the right to alter, amend, update, supplement, or modify the documents contained in the Plan Supplement.

EXHIBIT A

LIQUIDATION TRUST AGREEMENT

This *Liquidation Trust Agreement* (the “Agreement”) is entered into as of the ____ day of _____, 2010, by and among CD Liquidation Co., LLC, *f/k/a* Cynergy Data, LLC, CD Liquidation Co. Plus, LLC, *f/k/a* Cynergy Prosperity Plus, LLC, and Cynergy Data Holdings, Inc. (collectively, the “Debtors”) and Charles M. Moore (the “Liquidation Trustee” and, together with the Debtors, the “Parties”).

WITNESSETH:

WHEREAS, on September 1, 2009, each of the Debtors filed a *Voluntary Petition* for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), thereby initiating the Debtors’ cases, jointly administered under Case No. 09-13038 (KG) (collectively, the “Cases”); and

WHEREAS, on _____, 2010, the Bankruptcy Court entered an order, pursuant to Section 1129 of the Bankruptcy Code, confirming the *Joint Plan of Liquidation of CD Liquidation Co., LLC, CD Liquidation Co. Plus, LLC, and Cynergy Data Holdings, Inc.* (the “Plan”) proposed by the Debtors and the Official Committee of Unsecured Creditors (the “Committee”) appointed in the Debtors’ Cases; and

WHEREAS, together with certain other provisions, the Plan provides for the Debtors and the Liquidation Trustee to enter into this Agreement relative to the administration of the Liquidation Trust Assets (as defined below) subsequent to the Effective Date of the Plan; and

WHEREAS, the Liquidation Trustee is willing to accept the duties of Liquidation Trustee upon such terms and conditions as are hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained, pursuant to the Plan, the Parties do hereby covenant and agree as follows:

ARTICLE I

Definitions; Interpretive Rules.

1.1 *Terms.* For purposes of this Agreement, all capitalized terms shall have the meanings ascribed to them herein, and the following terms shall have the following meanings:

(a) *Beneficiary* means any holder of an Allowed Claim entitled, under the terms of the Plan, to a distribution from the Liquidation Trust Assets.

(b) *Permitted Investments* means any of the following: (i) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency thereof maturing or redeemable within one hundred eighty (180) days from the date of acquisition thereof; (ii) certificates of deposit, maturing no more than one hundred eighty (180) days from the date of creation thereof, issued by commercial banks incorporated under the laws

of the United States of America or any state thereof or the District of Columbia having membership in the Federal Deposit Insurance Corporation and in amounts not exceeding the maximum amounts insured thereunder; (iii) time deposits, maturing no more than thirty (30) days from the date of creation thereof with commercial banks or savings banks each having membership in the Federal Deposit Insurance Corporation and in amounts not exceeding the maximum amounts insured thereunder; (iv) money market funds managed by nationally recognized firms and making only investments qualified under (i), (ii), (iii) or (v) herein; (v) variable rate demand notes with a rating from Standard & Poor's of "A-1" or better or from Moody's of "P-1" or better; or (vi) demand deposits at any bank or savings institution organized under the laws of the United States of America or any state thereof or the District of Columbia having membership in the Federal Deposit Insurance Corporation; *provided, however*, such demand deposits shall be in amounts not to exceed the maximum amounts insured by the Federal Deposit Insurance Corporation.

a. (c) *Liquidation Trust Assets* means all assets and property of every kind and nature, owned by any of the Debtors as of the Effective Date or subsequently acquired by any of them, including, without limitation, all property of Estates, all Causes of Action, all proceeds from any sale or other disposition of any such asset, and any interest in any insurance policies or proceeds thereof, but excluding the Settlement Escrowed Funds. Without limiting the foregoing, the Liquidation Trust Assets include interests in i) any funds remaining in the Cure Escrow Account other than Settlement Escrowed Funds and ii) the Senior Subordinated Promissory Note issued by Cynergy Operations LLC dated October 26, 2009 in the principal amount of \$14 million and any and all payments or other proceeds thereof.

(d) *Capitalized Terms in Plan*. Any capitalized term not defined herein shall have the meaning assigned to it in the Plan.

1.2 *Interpretive Rules*. For purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires: (i) references to "Articles," "Sections" and other subdivisions, without reference to a document, are to designated Articles, Sections and other subdivisions of this Agreement; (ii) the use of the term "including" means "including but not limited to"; and (iii) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision. The enumeration and headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting the same. The singular shall include the plural, and the plural the singular, wherever the context so requires, and the masculine, the feminine and the neuter genders shall be mutually inclusive.

ARTICLE II

Purpose; Administration.

2.1 *Purpose of Agreement*. The Parties hereby enter into this Agreement for the purposes of: (a) liquidating the Liquidation Trust Assets in the manner prescribed by the Plan as rapidly as market conditions allow, consistent with the objective of maximizing value; (b) distributing the net proceeds thereof in accordance with the terms of the Plan; and (c) engaging in any and all other activities incidental to the foregoing. All activities of the

Liquidation Trustee shall be reasonably necessary to, and consistent with the accomplishment of, these purposes.

2.2 *Administration of the Liquidation Trust Assets.* From and after the Effective Date, the Liquidation Trustee shall manage, administer, invest and reinvest all of the Liquidation Trust Assets, collect the income therefrom, and distribute the proceeds, all pursuant to the terms and conditions of the Plan and this Agreement and in consultation with the Creditor Representative.

2.3 *Creditor Representative.*

(a) On the Effective Date, Comerica Bank, as agent for the Senior First Lien Lenders and the Prosperity Lenders shall serve as the initial Creditor Representative until such time that the Claims of the Senior First Lien Lenders and the Prosperity Lenders have been paid in full in accordance with the Plan. Following payment in full of the Claims of Class 1 and Class 2, Dymas, as agent for the Junior First Lien Lenders and the Second Lien Lenders shall serve as Creditor Representative until such time that the Claims of the Junior First Lien Lenders and the Second Lien Lenders have been paid in full in accordance with the Plan. Following payment in full of the Claims of Class 3 and Class 4, and to the extent that Liquidation Trust Assets remain to be administered in accordance with the Plan and this Agreement, the Liquidation Trustee may designate one or more Creditors from the remaining Classes created under the Plan to serve as the Creditor Representative.

(b) [Intentionally Omitted].

(c) The Creditor Representative shall oversee, but not control, the liquidation of the Liquidation Trust Assets and the prosecution of claims and Causes of Action pursuant to the terms of the Plan and of the Liquidation Trust Agreement (other than claims against a Creditor Representative or entities that have designated a Creditor Representative), and shall oversee the activities of the Liquidation Trustee. Nothing contained herein shall modify, impair or limit any release of claims and Causes of Action pursuant to the Final DIP Order, the Sale Order, the Settlement Order, the Plan or the Confirmation Order. The Creditor Representative shall have all of the powers provided in this Agreement, including, without limitation, the power to remove and replace the Liquidation Trustee.

(d) The Creditor Representative shall be reimbursed by the Liquidation Trustee for his or her reasonable and necessary out-of-pocket expenses incurred in performing his or her duties upon presentation of invoices and supporting documentation.

(e) In the event of the death or resignation of the Creditor Representative, the constituency that had designated such Credit Representative may, but need not, designate a replacement. If no replacement is designated, the successor shall be the next designated Creditor Representative identified in Section 2.3(a) without regard to the payment in full of the Claims of the prior Class. Unless and until such vacancy is filled, the Liquidation Trustee may continue to manage the Liquidation Trust Assets without a Creditor Representative.

(f) In the event that a Creditor whose representative serves as the Creditor Representative should assign its Claim or release the Debtors from further distribution on such Claim, such assignment or release shall constitute the resignation of such creditor's representative as the Creditor Representative.

(g) The Creditor Representative shall not be in any way liable for any acts or omissions in connection with the Liquidation Trust, except for acts undertaken in bad faith, gross negligence or willful misconduct in the performance of his or her duties as the Creditor Representative. The Liquidation Trust shall indemnify and hold harmless the Creditor Representative from and against any and all liabilities, expenses, claims, damages or losses incurred by them in direct result of acts or omissions taken by it in good faith in his or her capacity as the Creditor Representative.

(h) The role of the Creditor Representative shall terminate upon the earlier to occur of (i) the termination of the Liquidation Trust; and (ii) the entry of a final decree by Bankruptcy Court in the Debtors' Chapter 11 Cases.

ARTICLE III

Post-Effective Date Management.

3.1 *Post-Effective Date Management.* The Liquidation Trustee, subject to the oversight of the Creditor Representative, shall have the exclusive right and duty to manage the Liquidation Trust Assets, subject, however, to certain limitations of liability as set forth herein.

ARTICLE IV

Duties, Rights and Powers of Liquidation Trustee.

4.1 *Liquidation Trustee's Duties.* The Liquidation Trustee shall, subject to the oversight of the Creditor Representative, manage the Liquidation Trust Assets, collect the income and make any distributions, including final distribution, as provided under the Plan and shall thereupon take such steps as provided herein and as otherwise necessary and proper to close the Cases.

4.2 *Liquidation Trustee's Rights and Powers.* The Liquidation Trustee shall have the powers and authority as set forth herein and in the Plan necessary to manage the Liquidation Trust Assets and effect the disposition, orderly liquidation and distribution of all the Liquidation Trust Assets, all in compliance with the Budget. The Liquidation Trustee is not authorized in his capacity as such to engage in any trade or business. The rights and powers shall include, subject to the limitations set forth in the Plan and this Agreement, the right and power to:

- (a) Effect all actions and execute all agreements, instruments and other documents necessary to implement the Plan;
- (b) Accept, preserve, receive, collect, manage, invest, supervise, prosecute, settle and protect the Liquidation Trust Assets (directly or through an agent), each in accordance with the Plan and Liquidation Trust Agreement;

(c) Establish and administer the Trust Accounts and, if necessary, any additional trust accounts;

(d) Comply with the Plan and exercise the Liquidation Trustee's rights and fulfill his or her obligations thereunder;

(e) Subject to the approval of the Creditor Representative, sell at public or private sale, or exchange, transfer, convey, liquidate, distribute or otherwise dispose of the Liquidation Trust Assets or any part thereof or any interest therein on such terms and conditions, and at such time or times as the Liquidation Trustee shall determine, any or all of the Liquidation Trust Assets (whether tangible or intangible) and, to that end, grant options, make contracts, retain brokers, and sign, seal, acknowledge, and deliver any and all proper deeds, or other instruments of conveyance or transfer thereof; and delegate to an attorney in fact the power to execute all documents necessary to accomplish a sale, lease, transfer, or exchange of any such property provided, however, that disposition of Liquidation Trust Assets of less than fifty thousand dollars (\$50,000) shall not require prior approval of the Creditor Representative;

(f) Subject to the approval of the Creditor Representative, prepare an operating budget for the Liquidation Trust (the "Budget");

(g) Subject to the approval of the Creditor Representative, obtain financing and incur debt on such terms and conditions, and at such time or times as the Liquidation Trustee shall determine and grant a subordinate security interest in the Liquidation Trust Assets (whether tangible or intangible) as security for such obligations;

(h) Obtain and maintain such space, facilities, equipment, supplies and personnel as shall be reasonably necessary for the performance of the Liquidation Trustee's duties hereunder and under the Plan;

(i) Subject to the limitations contained in the Plan and herein, review, reconcile, pay, compromise, settle, adjust, agree to, investigate, pursue, contest, prosecute or object to any and all Claims, other matters, or taxes;

(j) Pay all expenses and obligations of the Estates out of the Liquidation Trust Assets including, without limitation, the costs and expenses of the Settlement Escrow Account and any Administrative Claims approved by the Bankruptcy Court that accrued prior to, but remained unpaid as of, the Effective Date provided, however, that sufficient funds to pay such Administrative Claims are reserved and turned over to the Liquidation Trust on or before the Effective Date;

(k) Investigate, prosecute and, if necessary, litigate, any Cause of Action, including, but not limited to, Recovery Actions, or any other causes of action, rights to payments, or claims, that may belong to the Debtors or to the Estates, which, on the Effective Date, shall vest in the Liquidation Trust for the benefit of the Estates pursuant to the terms of the Plan; *provided, however*, that (1) the Liquidation Trustee shall not consult with the Creditor Representative with respect to claims against the Creditor Representative or entity that has designated a member of the Creditor Representative and

shall have the sole authority to investigate, prosecute and, with Bankruptcy Court approval, settle such claims and (2) nothing contained herein shall modify, impair or limit any release of claims and Causes of Action pursuant to the Final DIP Order, the Sale Order, the Settlement Order, the Plan or the Confirmation Order;

(l) Employ professionals, including Professionals already retained by the Estates or the Committee, to represent the Liquidation Trust with respect to its responsibilities;

(m) Consult with counsel retained by the Liquidation Trust with the approval of the Creditor Representative, and employ other individuals in connection with the administration of the liquidation, and pay all reasonable and necessary costs of any litigation directly or indirectly involving the liquidation;

(n) File a suit in interpleader or in the nature of interpleader in the Bankruptcy Court and obtain an order requiring all persons and parties involved to litigate in such court their respective claims arising out of or in connection with this Agreement;

(o) File any other appropriate action for relief in an appropriate court of competent jurisdiction;

(p) File appropriate Tax returns and other reports on behalf of the Liquidation Trust and the Debtors and pay Taxes or other obligations owed by the Liquidation Trust and the Debtors;

(q) Exercise such other powers as may be vested in the Liquidation Trustee or as deemed by it to be necessary and proper to implement the provisions of the Plan and the this Agreement in consultation with the Creditor Representative;

(r) Take such actions as are necessary or appropriate to close or dismiss any or all of the Chapter 11 Cases; and

(s) Dissolve the Liquidation Trust in accordance with the terms of this Agreement.

4.3 *Limitations on Liquidation Trustee's Liabilities as to Losses.* The Liquidation Trustee shall not be responsible, and shall have no liability whatsoever, to any person for any loss to the Liquidation Trust or the amount of interest thereon resulting from the investment thereof in any Permitted Investments. The Liquidation Trustee shall not invest or reinvest any the Liquidation Trust Assets in a security or instrument that does not constitute a Permitted Investment. The Liquidation Trustee shall not have any liability to any retirement, employee benefit or pension plan of the Debtors in excess of the amounts available to be distributed from such Plans.

4.4 *Agents and Counsel.* The Liquidation Trustee shall retain (i) Jager Smith P.C. as counsel to the Liquidation Trust and (ii) Stout Risius Ross, Inc. as financial advisor to the Liquidation Trust. As long as the Liquidation Trustee is in compliance with the Budget, he may select, determine compensation for, and employ brokers, consultants, custodians, investment

advisors, asset services, auditors, accountants, and other agents as may be approved by the Creditor Representative. The Liquidation Trustee shall avail himself of the services of counsel or special counsel subject to the oversight of, but not the direction of, the Creditor Representative. Subject to the Budget, the Plan and the consent of the Creditor Representative, the Liquidation Trustee may pay the salaries, fees, and expenses of such professionals out of the Liquidation Trust Assets. The Liquidation Trustee shall not be liable for any loss to the Liquidation Trust or any Beneficiary by reason of any mistake or default of any such agent or consultant unless such mistake or default breaches the standard of care set forth in Section 4.7(a).

4.5 *Signature.* As of the Effective Date, the Liquidation Trustee and the Liquidation Trustee's agent, Jesse L. York, shall have signature power and authority to (a) open and close accounts with any banking, financial or investment institution; (b) make deposits and withdrawals of cash and other property into or from any such account; (c) make or endorse checks with respect to any such account; (d) effectuate purchases and sales of securities and give security purchase and sale orders to brokers or any other third parties; (e) complete and file federal and state tax returns on behalf of the Estates; and (f) execute any and all documents reasonably necessary in furtherance of the Liquidation Trustee's rights and powers under Section 4.2 of this Agreement and the exercise of such power and authority shall be deemed to be authorized by and to represent the decision of the Liquidation Trustee then entitled to make such decision.

4.6 *Maintenance of Register.* The Liquidation Trustee shall at all times maintain a register of the names, addresses and amounts of the Claims asserted against the Debtors, as revised from time to time.

4.7 *Liability of Liquidation Trustee.*

(a) *Standard of Care.* The Liquidation Trustee shall not be liable for any action taken or omitted to be taken by him in good faith and in the exercise of reasonable judgment and believed to be within the discretion or power conferred by this Agreement, or be responsible for the consequences of any act or failure to act, except for gross negligence or willful misconduct. The Liquidation Trustee shall not have any fiduciary relationship with any party by virtue of this Agreement except as specifically set forth in this Agreement.

(1) The Liquidation Trustee shall not, solely by virtue of his position as Liquidation Trustee, be liable or in any way responsible for the acts or omissions of the Debtors, their boards of managers, board of directors, officers, employees or agents, prior to the Effective Date.

(2) Unless indemnified to his satisfaction against liability and expense, the Liquidation Trustee shall not be compelled to do any act or to take any action toward the execution or enforcement of the powers created under the Plan or this Agreement or to prosecute or defend any suit in respect hereof. If the Liquidation Trustee requests approval from the Bankruptcy Court with respect to any act or action in connection with the Plan or this Agreement, the Liquidation Trustee shall be entitled (but shall not be required) to refrain (without incurring any liability to any person by so refraining) from such act or action unless and until he has received such instructions of approval. In no event, however, shall the Liquidation

Trustee or any of his representatives be required to take any action which he reasonably determines could lead to criminal or civil liability.

(3) The Liquidation Trustee shall not be responsible in any manner to the Debtors, the Estates, any Beneficiary, or any other party-in-interest for any of the following: (i) the effectiveness, enforceability, genuineness, validity, or any due execution of the Plan or this Agreement as to any person other than the Liquidation Trustee; (ii) any representation, warranty, document, certificate, report, or statement made herein or furnished hereunder or in connection with the Plan or this Agreement not constituting a breach of the standard of care set forth in this Section 4.7(a) on the part of the Liquidation Trustee; (iii) the existence, priority or perfection of any existing Lien; or (iv) the observation or compliance with any of the terms, covenants, or conditions of the Plan or this Agreement on the part of any party thereto other than the Liquidation Trustee.

(4) The Liquidation Trustee shall be entitled to act on negative notice to any Beneficiary. Any Beneficiary that fails to object in writing so as to be received by the Liquidation Trustee on or before ten (10) business days after service by the Liquidation Trustee of a proposed action (or determination not to take action) shall be deemed to have consented to such action or determination not to take action.

(5) The Beneficiaries, by voting for the Plan and/or accepting the benefits thereof, have agreed not to sue or otherwise pursue or seek damages from the Liquidation Trustee pursuant to the Plan or this Agreement, except for actions or omissions which violate the standard of care set forth in this Section 4.7(a).

(b) *No Liability for Acts of Predecessor.* No successor Liquidation Trustee shall be in any way responsible for the acts or omissions of any Liquidation Trustee in office prior to the date on which such person becomes a Liquidation Trustee, nor shall he be obligated to inquire into the validity or propriety of any such act or omission unless such successor Liquidation Trustee expressly assumes such responsibility. Any successor Liquidation Trustee shall be entitled to accept as conclusive any final accounting and statement of the Liquidation Trust Assets furnished to such successor Liquidation Trustee by such predecessor Liquidation Trustee and shall further be responsible only for those the Liquidation Trust Assets included in such statement.

(c) *No Implied Obligations.* The Liquidation Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and in the Plan, and no other or further covenants or obligations shall be implied into this Agreement. The Liquidation Trustee shall not be responsible in any manner whatsoever for the correctness of any recitals, statements, representations, or warranties herein or in any documents or instrument evidencing or otherwise constituting a part of the Liquidation Trust Assets. The Liquidation Trustee makes no representations as to the value of the Liquidation Trust Assets or any part thereof, nor as to the validity, execution, enforceability, legality, or sufficiency of this Agreement; and the Liquidation Trustee shall incur no liability or responsibility with respect to any such matters.

(d) *Reliance by Liquidation Trustee on Documents or Advice of Counsel or Other Persons.* Except as otherwise provided herein, the Liquidation Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report

notice, request, consent, order, and other paper or document reasonably believed to be genuine and to have been signed or presented by the proper party or parties, and shall have no liability or responsibility with respect to the form, execution, or validity thereof; nor shall the Liquidation Trustee be liable for any act which he may do or omit to do hereunder, all subject only to the limitation that the Liquidation Trustee acts in accordance with the standard of care set forth in Section 4.7(a). None of the provisions hereof shall require the Liquidation Trustee to expend or risk his own funds or otherwise incur financial liability or expense in the performance of any duties hereunder. The Liquidation Trustee may consult with legal counsel retained by him, subject to the oversight, but not the approval, of the Creditor Representative, and shall not be liable for any action taken or suffered in reliance upon the advice of such counsel.

(e) *No Personal Obligation for Liabilities of the Debtors.* Beneficiaries and other persons dealing with the Liquidation Trustee in his capacity as Liquidation Trustee within the scope of this Agreement shall look only to the Liquidation Trust Assets to satisfy any liability incurred by the Liquidation Trustee to such person in carrying out the terms of this Agreement, and the Liquidation Trustee shall have no personal or individual obligation to satisfy any such liability.

4.8 *Reports and Fees.* The Liquidation Trustee shall provide quarterly statements of receipts and disbursements to the Office of the United States Trustee and the Creditor Representative, such reports to be based upon a calendar year. The Liquidation Trustee will be responsible for timely payment of United States Trustee fees incurred pursuant to 28 U.S.C. § 1930(a)(b) subsequent to the Effective Date of the Plan.

4.9 *Tax Returns; Tax Treatment of the Liquidation Trust.* From and after the Effective Date, the Liquidation Trustee shall be responsible for the filing of any and all local, state, and federal tax returns as required by law to be filed on behalf of the Estates, including the final tax returns, and shall pay all tax liabilities arising from such tax returns out of the Liquidation Trust Assets. Beneficiaries shall be treated as the beneficiaries and deemed owners of the Liquidation Trust. The Liquidation Trustee shall file tax returns for the Liquidation Trust as a grantor trust pursuant to 1.671-4(a) of the Income Tax Regulations promulgated pursuant to the United States Internal Revenue Code. The Liquidation Trustee may require any Beneficiary to furnish to the Liquidation Trustee its, his or her employer or taxpayer identification number (“TIN”) as assigned by the Internal Revenue Service, and the Liquidation Trustee may condition any distribution to any such Beneficiary upon receipt of such identification number. If a Beneficiary shall fail to provide the Liquidation Trustee with any requested TIN within one hundred eighty (180) days after the request, such failure shall be deemed a waiver of all of such Beneficiary’s interests in the Liquidation Trust and rights to distribution under the Plan. Distributions that would have been made to such Beneficiary shall be distributed to the other Beneficiaries based on their pro rata interests in the Liquidation Trust.

4.10 *Final Decree.* After the Estates are fully administered pursuant to the terms of the Plan and this Agreement, the Liquidation Trustee shall file with the Bankruptcy Court a motion requesting the entry of a final decree closing the Cases.

4.11 *Liquidation Trustee’s Compensation.* It is not anticipated that the Liquidation Trustee will need to devote his full business time to his duties as such, but rather it is anticipated that the Liquidation Trustee can fulfill his duties on a part-time basis. The Liquidation Trustee’s

compensation shall be based upon hourly rates typically charged in the conduct of the Liquidation Trustee's business. The Liquidation Trustee shall be paid his compensation from time to time but not more often than every thirty (30) days.

4.12 *Reimbursements.* The Liquidation Trustee and any agents, attorneys or consultants employed pursuant to this Agreement shall be reimbursed from the Liquidation Trust Assets for all reasonable out-of-pocket expenses incurred in the performance of their duties hereunder in addition to any compensation received.

4.13 *Indemnification.* Pursuant to this Agreement and the Plan, the Liquidation Trustee shall be indemnified by, held harmless, and receive reimbursement solely from the Liquidation Trust Assets for any and all claims, actions, demands, losses, damages, expenses, and liabilities, including without limitation court costs, attorneys' fees and accountants' fees as long as he was not in violation of the standard of care set forth in Section 4.7(a). Notwithstanding the above, the Liquidation Trustee shall not be entitled to indemnification in the event that a court of competent jurisdiction determines that he has incurred losses or claims as a result of his actions or omissions that breach that standard of care.

ARTICLE V

Distributions.

5.1 *Distributions.* The Liquidation Trustee shall exercise its best efforts to make an initial distribution to Holders of Allowed General Unsecured Claims as soon as reasonably practicable after: (i) payment or provision for payment of Allowed Administrative Claims and Allowed Priority Claims; (ii) payment of all Allowed Secured Claims; (iii) reservation of the Distribution Reserve; (iv) reservation of the Liquidation Trust Expenses, including the costs and expenses of the Settlement Escrow Account; and (v) liquidation of some or all of the Liquidation Trust Assets. Furthermore, the Liquidation Trustee shall make subsequent distributions under the Plan at such times and in such amounts as required thereby and shall make such additional distributions with the oversight of the Creditor Representative in accordance with the Plan.

5.2 *Legal Proceedings.* If any Recovery Actions are initiated or prosecuted against any Beneficiary pursuant to the Plan and this Agreement or asserted as an objection to any Claim, then notwithstanding anything to the contrary contained in the Plan, until such Recovery Action is finally resolved and any payments to the Estates required by such resolution have been made, such Beneficiary shall only receive distributions under the Plan to the extent that the distributions to which such Beneficiary is otherwise entitled exceed the maximum liability of such Beneficiary to the Estates asserted in such Recovery Action.

ARTICLE VI

Appointment, Removal and Resignation of Liquidation Trustee.

6.1 *Appointment of Liquidation Trustee; Acceptance of Appointment.* Charles M. Moore of Conway MacKenzie, Inc. is hereby appointed to serve as the initial Liquidation Trustee hereunder, and pursuant to the Plan. Charles M. Moore is willing, and does hereby accept the appointment, to serve as the initial Liquidation Trustee, and to hold and administer the

Liquidation Trust Assets pursuant to the terms of the Plan and this Agreement. The Liquidation Trustee shall serve at the pleasure of the Creditor Representative.

6.2 *Removal of Liquidation Trustee.* A Liquidation Trustee appointed pursuant to this Agreement may be removed with or without cause by order of the Bankruptcy Court after notice and opportunity for a hearing. If a Liquidation Trustee is removed for cause, such Liquidation Trustee shall not be entitled to any accrued but unpaid fees, reimbursements or other compensation under this Agreement or otherwise. For purposes of this Agreement, the term “cause” shall mean: (a) the Liquidation Trustee’s gross negligence or willful failure to perform his duties under this Agreement; (b) the Liquidation Trustee’s misappropriation or embezzlement of any Liquidation Trust Assets or the proceeds thereof, or (c) the Liquidation Trustee’s continued or repeated neglect of or failure to perform his duties hereunder. If a Liquidation Trustee is removed by order of the Bankruptcy Court other than for cause, or is unwilling or unable to serve (1) by virtue of his inability to perform his duties under this Agreement due to death, illness or other physical or mental disability, (2) following the liquidation of all or substantially all of the Liquidation Trust Assets, or (3) for any other reason whatsoever other than for “cause,” subject to a final accounting, such Liquidation Trustee shall be entitled to all accrued and unpaid fees, reimbursement, and other compensation, to the extent incurred or arising or relating to events occurring before such removal, and to any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties and all rights to any successor Liquidation Trustee, as long as they are in compliance with the Budget.

6.3 *Resignation of Liquidation Trustee.* A Liquidation Trustee may resign upon motion to the Bankruptcy Court, which resignation shall become effective at the time specified by the Bankruptcy Court, contemporaneous with the appointment of a successor Liquidation Trustee. If a Liquidation Trustee resigns from his position hereunder, subject to a final accounting and the approval of the Bankruptcy Court, such Liquidation Trustee shall be entitled to all accrued unpaid fees, reimbursement, and other compensation to the extent incurred or arising or relating to events occurring before such resignation, and any out-of-pocket expenses reasonably incurred in compliance with the Budget in connection with the transfer of all powers and duties to the successor Liquidation Trustee.

6.4 *Successor Liquidation Trustee.* In the event that a Liquidation Trustee is removed, resigns, or otherwise ceases to serve as Liquidation Trustee, a successor Liquidation Trustee shall be appointed by the Creditor Representative, subject to approval by the Bankruptcy Court.

ARTICLE VII

Effect of Agreement on Third Parties.

There is no obligation on the part of any purchaser or purchasers from the Estates, the Debtors or the Liquidation Trustee or any agent of the Liquidation Trustee, or on the part of any other person dealing with the Estates, the Debtors, the Liquidation Trust or the Liquidation Trustee or any agent of the Liquidation Trustee, to see to the application of the purchase money or other consideration paid or delivered to the Liquidation Trustee, or any agent of the Liquidation Trustee, or to inquire into the validity, expediency, or propriety of any such transaction, or the authority of the Liquidation Trustee, or any agent of the

Liquidation Trustee, to enter into or consummate the same upon such terms as the Liquidation Trustee may deem advisable.

ARTICLE VIII

No Waiver.

No failure or delay of any party to exercise any right or remedy pursuant to this Agreement shall affect such right or remedy or constitute a waiver by such party of any right or remedy pursuant thereto. Resort to one form of remedy shall not constitute a waiver of alternative remedies.

ARTICLE IX

Termination of the Agreement; Amendment of the Agreement.

9.1 *Termination of the Agreement.* The Agreement will terminate upon the earlier of (i) entry of an order of the Bankruptcy Court terminating the Liquidation Trust and (ii) seven (7) years from and after the Effective Date; *provided, however*, that, on or prior to the date of such termination, the Liquidation Trustee may extend the term of the Liquidation Trust for a finite period, if such an extension is necessary to liquidate the Liquidation Trust Assets or for other good cause. Multiple extensions may be obtained so long as the Liquidation Trustee extends such terms prior to the expiration of each extended term; *provided, however*, that, each such extension is approved by the Bankruptcy Court within six months after the beginning of such extended term and the Liquidation Trustee receives an opinion of counsel or a favorable ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Liquidation Trust as a grantor trust for federal income tax purposes. .

9.2 *Amendment of Agreement.* Except as otherwise set forth herein, any provisions of the Agreement may, consistent with the terms of the Plan, be amended, modified, terminated, revoked or altered only upon Bankruptcy Court approval.

ARTICLE X

Miscellaneous.

10.1 *Severability.* If any one or more of the provisions herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect, and of the remaining provisions, shall not be in any way impaired or affected. In such event, there shall be added as part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable. The effective date of the added provision shall be the date upon which the prior provision was held to be invalid, illegal or unenforceable.

10.2 *Entire Agreement.* This Agreement, the Plan and the Confirmation Order constitute the entire agreement of the Parties and there are no representations, warranties, covenants or obligations except as set forth herein or therein. This Agreement, the Plan and the Confirmation Order supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. In the event of any inconsistency between this Agreement and the Plan, the Plan shall govern. Except as otherwise specifically provided herein, nothing in this

Agreement is intended or shall be construed to confer upon or to give any person other than the parties hereto and their respective heirs, administrators, executors, successors, and assigns any rights or remedies under or by reason of this Agreement.

10.3 *Jurisdiction; Venue, Etc.* The Parties agree that any suit, action or proceeding with respect to this Agreement shall be brought in the Bankruptcy Court , and that if for any reason such submission to jurisdiction is invalid, then such action, suit or proceeding shall be brought in the Superior Court of the State of Delaware, New Castle County, the Delaware Court of Chancery, New Castle County, or in the United States District Court for the District of Delaware, and by execution and delivery of this Agreement, the Parties (i) irrevocably submit to each such jurisdiction and venue; (ii) waive, to the fullest extent permitted by law, any objection which they may have to the laying of the venue of any such suit, action or proceeding brought in such court and any argument that such suit, action or proceeding has been brought in an inconvenient forum; and (iii) agree that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding and may be enforced in any court to the jurisdiction of which the Parties are subject by a suit upon such judgment, provided that service of process is effected as otherwise permitted by law.

10.4 *Waiver of Jury Trial.* The Parties hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or the transactions contemplated hereby.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the day and year first above written to evidence their consent and agreement with the terms and provisions of this Agreement.

CD LIQUIDATION CO., LLC
f/k/a CYNERGY DATA, LLC

By: _____
Name:
Title:

CD LIQUIDATION CO. PLUS, LLC
f/k/a CYNERGY PROSPERITY PLUS, LLC

By: _____
Name:
Title:

CYNERGY DATA HOLDINGS, INC.

By: _____
Name:
Title:

LIQUIDATION TRUSTEE

By: _____
Name: Charles M. Moore