

B 10 (Custom Form 10) (04/09)

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE		PROOF OF CLAIM
Indicate the Debtor against which you assert a claim by checking the appropriate box below. <b>(Check only one Debtor per claim form)</b> <input checked="" type="checkbox"/> Cynergy Data, LLC – (Case No. 09-13038) <input type="checkbox"/> Cynergy Data Holdings, Inc. – (Case No. 09-13039) <input type="checkbox"/> Cynergy Prosperity Plus, LLC – (Case No. 09-13040)		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Cinergy Health Inc.		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. <b>Court Claim Number:</b> _____ (if known)  Filed on: _____
Name and address where notices should be sent:    Name ID: 8455734    Pack No. 754  Cinergy Health Inc. Daniel Touizer 19495 Biscayne Blvd., Ste 604 Aventura, FL 33180  Telephone No. (305) 792-9996		
Name and address where payment should be sent (if different from above):     Telephone No. _____		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. <b>Amount of Claim as of Date Case Filed:</b> \$ 150,090.36 plus interest and attorney fees as applicable If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or charges		5. <b>Amount of claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.</b>  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commission (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, which ever is earlier -- 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan -- 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use -- 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units -- 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other -- Specify applicable paragraph of 11 U.S.C. § 507(a)(____).  <b>Amount entitled to priority:</b> \$ _____  * Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with response to cases commenced on or after the date of adjustment.
2. <b>Basis for Claim:</b> merchant processing agreement (see attached) (See instruction #3a on reverse side.)		
3. <b>Last four digits of any number by which creditor identifies debtor:</b> _____  3a. <b>Debtor may have scheduled account as:</b> _____ (See instruction #3a on reverse side.) 3b. <b>Creditor Tax ID #</b> 20-2372436		
4. <b>Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <b>Describe:</b>  <b>Value of Property:</b> \$ _____ <b>Annual Interest Rate:</b> _____ %  <b>Amount of arrearage and other charges as of time case filed included in secured claim,</b> <b>if any:</b> \$ _____ <b>Basis for Perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____ <b>Amount Unsecured:</b> \$ _____		
6. <b>Section 503(b)(9) Claim Amount:</b> _____ <input type="checkbox"/> Check this box if your claim is for the value of goods received by the debtor within 20 days before the date of commencement of the case (11 U.S.C. §503(b)(9)). Include the amount of such claim in the space for "Section 503(b)(9) Claim Amount" above.		
7. <b>Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
8. <b>Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)		
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENT MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: 1-27-10	Signature: <u>Howard Markowitz, CFO</u> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.	

**Penalty for presenting fraudulent claim:** *Fine of up to \$500,000 or imprisonment for up to 5 years.*



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## **ATTACHMENT A**

### **EXPLANATION OF CLAIM**

This Proof of Claim is based on amounts due the Creditor (the "Indebtedness") pursuant to that certain merchant agreement by and between Creditor and Debtor, a copy of which is attached hereto as Exhibit "1" (the "Merchant Agreement"). In addition, to the extent as allowed by applicable law, Creditor is entitled to post petition interest on unpaid amounts and attorneys' fees and costs in connection with the collection of the Indebtedness and/or this bankruptcy proceeding.

## MERCHANT APPLICATION



Merchant # \_\_\_\_\_

☐ New Location ☐ Additional Location

5605 N. MacArthur BLVD. • 11th Floor • Irving, TX 75038

Tel: 800-944-1399 Fax: 214-260-9320 www.signapay.net

ISO#: \_\_\_\_\_

## ► Business Information

Legal Name: Cinergy Health, Inc.			Name of Account (Doing Business As):		
Legal Address: 19495 Biscayne Blvd., Suite 604			Physical Street Address (No P.O. Box):		
City: Aventura	State: FL	Zip: 33180	City:	State:	Zip:
Phone #: (305) 792-9996	Contact: Howard Markowitz	DBA Phone #: ( )			
Must Choose One Mailing Address: <input type="checkbox"/> DBA Address <input checked="" type="checkbox"/> Legal Address		E-Mail Address: HMarkowitz@cinergyhealth.com		Website Address: www.cinergyhealth.com	
Federal Tax # 2   0   2   3   7   2   4   3   6		# of Locations 1	Years in Business 2	Years Owned Business 2	
Bank Reference: Citibank		Contact: J. Courtney Williams	Phone #: (305) 705-1017		

## ► Owners or Officers • Individual Ownership Must be Equal to or Greater than 50%

Name: 1. Daniel Touizer	Title: President/CEO	Date of Birth: 06/12/1973	Applicant's SS #: 590-84-9224	% Equity Ownership: 50%
Residence Address: 21213 NE 38th Ave		City: Aventura	State: FL	Zip: 33180
# Years: 3	Driver's Lic. #: T260-160-73-212-0	State: FL	Home Phone: (305) 934-7566	
Name: 2.	Title:	Date of Birth:	Applicant's SS #:	% Equity Ownership:
Residence Address:		City:	State:	Zip:
# Years:	Driver's Lic. #:	State:	Home Phone: ( )	

## ► Business Profile

Type of Ownership: ☐ Sole Proprietor ☐ Partnership ☐ PA or PC  
☒ Corporation ☐ Limited Liability Company ☐ Not For Profit

Type of Goods or Services Sold: SIC Code:

Discount Medical Plans

Do you currently accept Visa/Mastercard? ☒ Yes ☐ No

(If yes, you should submit 3 current months' statements.) Name of Current Processor: Global

Has Merchant or any associated principal disclosed below filed ☐ Yes Date: \_\_\_\_\_  
bankruptcy or been subject to involuntary bankruptcy? ☒ No

## ► Sales Profile

Merchant Type:	Visa/MasterCard Sales Profile (Be Accurate):
<input type="checkbox"/> Retail	Card Swipe %
<input type="checkbox"/> Restaurant	Manual Key Entry with Imprint, Card Present %
<input type="checkbox"/> Lodging	Mail Order/Telephone 90 %
<input checked="" type="checkbox"/> Service	Internet 10 %
<input type="checkbox"/> Internet	Total = 100%
<input type="checkbox"/> Home Based	
<input type="checkbox"/> Other	

## ► Business Trade Suppliers • List Two

Name: Proving Ground Media	Address: Forest Hill, MD 21050	Contact: Debra Payne	Phone #: (410) 420-6343
Name: Gerstle, Rosen & Assoc	Address: Aventura, FL 33180	Contact: Brian Goldenberg	Phone #: (305) 937-0116

## ► Merchant Site Survey Report • To Be Completed by Sales Representative

Merchant Location: <input type="checkbox"/> Retail Location with Store Front <input checked="" type="checkbox"/> Office Building <input type="checkbox"/> Internet <input type="checkbox"/> Residence <input type="checkbox"/> Other	Area Zoned: <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Residential	Square Footage: <input type="checkbox"/> 0-250 <input type="checkbox"/> 251-500 <input type="checkbox"/> 501-2,000 <input type="checkbox"/> 2,001+
Does the amount of inventory and merchandise on shelves and floor appear consistent with this type of business? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If No, explain:		
The Merchant: <input type="checkbox"/> Owns <input checked="" type="checkbox"/> Leases the Business Premises		
Landlord Name & Phone #: Turnberry Associates 305-936-2455		
Further Comments by Inspector (Must Complete)		

I hereby verify that this application has been fully completed by merchant applicant and that I have physically inspected the business premises of the merchant at this address and the information stated above is true and correct to the best of my knowledge and belief.

Verified and Inspected by: \_\_\_\_\_ Office #: \_\_\_\_\_ Representative #: \_\_\_\_\_ Representative Signature: \_\_\_\_\_ Date: \_\_\_\_\_

X

X

**► Visa / Mastercard Standard Retail / High Risk Retail Rates**

Merchant Chooses to accept the following:

VS/MC (Other Cards) Discount Rate:	_____ %
VS/MC Debit Card Discount Rate:	_____ %
AMEX Discount Rate:	_____ %
Discover Discount Rate:	_____ %

**► Fees**

VS/MC Transaction Fee:	_____	Per Item
Non-Bankcard Transaction Fee:	_____	Per Item
Statement Fee:	_____	Monthly
VIMAS Online Service:	_____	Monthly
Monthly Minimum:	_____	Monthly
Annual Fee:	_____	Per Year
Debit Transaction Fee Plus Network Fees:	_____	Per Item
EBT Transaction Fee:	_____	Per Item
EBT Statement Fee:	_____	Monthly
Batch Fee:	_____	Per Batch
Manual Imprinter:	QTY: _____	One Time
Chargeback Fee:	\$25.00	Per Item
ACH Reject Fee:	\$25.00	Per Item
Retrieval Fee:	\$5.00	Per Item
Voice Authorization Fee:	.95	Per Call
AVS Surcharge	_____	Per Item
Early Termination Fee:	\$295.00	One Time
Others (please specify):	_____	

**► Mail / Phone / Internet / Touchtone Rates**

Merchant Chooses to accept the following:

VS/MC (Other Cards) Discount Rate:	Interchange + 0.50 %
VS/MC Debit Card Discount Rate:	Interchange + 0.50 %
AMEX Discount Rate:	N/A %
Discover Discount Rate:	N/A %

**► Fees**

VS/MC Transaction Fee:	\$0.20	Per Item
Non-Bankcard Transaction Fee:	\$0.20	Per Item
Statement Fee:	\$5.00	Monthly
VIMAS Online Service:	\$5.00	Monthly
Monthly Minimum:	\$20.00	Monthly
Annual Fee:	N/A	Per Year
MOTO/Internet Surcharge:	N/A	Per Item
AVS Surcharge:	N/A	Per Item
Batch Fee:	\$0.20	Per Batch
Manual Imprinter:	QTY: _____	One Time
Chargeback Fee:	\$25.00	Per Item
ACH Reject Fee:	\$25.00	Per Item
Retrieval Fee:	\$5.00	Per Item
Voice Authorization Fee:	.95	Per Call
Early Termination Fee:	\$295.00	One Time
Others (please specify):	_____	

- 1) I/we understand and agree to the following: that my/our discount rate as stated above will be charged on all electronically authorized bankcard transactions that are in batches closed daily (qualified rate);  
2) and that all bankcard transactions that do not meet the requirements stated in number 1 above may be charged up to 1.99% + .10¢ higher than my/our discount rate. Visa/Mastercard business transactions may be charged up to 1.99% + .10¢ above qualified rate.

**► Merchant Benefits Club**

☐ Yes, I want to participate in the optional Merchant Benefits Club which includes equipment support and replacement for an additional \$9.50 per terminal per month. Initials: X

**► American Express**

By signing below, I represent that the information I have provided on the Application is complete and accurate and I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information on this Application and to receive and exchange information about me, including, requesting reports from consumer reporting agencies. If I ask American Express whether or not a consumer report was requested, American Express will tell me, and if American Express received a report, American Express will give me the name and address of the agency that furnished it. I understand that upon American Express' approval of the business entity indicated above to accept the American Express Card, the Terms and Conditions for American Express® Card Acceptance ("Terms and Conditions") will be sent to such business entity along with a Welcome Letter. By accepting the American Express card for the purchase of goods and/or services, you agree to be bound by the Terms and Conditions.

Signature: X

Date: \_\_\_\_\_

**► Discover**

I agree to accept Discover® Network Cards. Discover Network will deliver a starter kit with my merchant services agreement and materials.

**► Debit/Credit Authorization • Staple Voided Check Here**

Merchant authorizes Processor or Bank to present Automated Clearing House credits, Automated Clearing House debits, wire transfers, or depository transfer checks to and from the following account and to and from any other account for which Processor or Bank are authorized to perform such functions under the Merchant Processing Agreement, for the purposes set forth in the Merchant Processing Agreement. This authorization extends to such entries in said account concerning lease, rental or purchase agreements for POS terminals and/or accompanying equipment and/or check guarantee fees and amounts due for supplies and materials. This Automated Clearing House authorization cannot be revoked until all Merchant obligations under this Agreement are satisfied, and Merchant gives Cynergy Data written notice of revocation.

DDA: 3200583362

ABA Routing: 266086554

**INVESTIGATIVE CONSUMER REPORT:** An investigative or consumer report may be made in connection with application. MERCHANT authorizes BANK or any of its agents to investigate the references provided or any other statements or data obtained from MERCHANT, from any of the undersigned individual credit or financial responsibility. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

AVERAGE TICKET SIZE: \$125.00

AVERAGE MONTHLY VOLUME: \$100,000 - \$150,000

Each person certifies that the average ticket size and sales volume indicated is accurate and agrees that any transaction or monthly volume that exceeds either of the above amounts could result in delayed and/or withheld settlement of funds. Also, see paragraphs 4c and 13b of the MERCHANT Processing Agreement regarding suspension and termination of MERCHANT.

**IMPORTANT NOTICE:** All information contained in this application was completed, supplied and/or reviewed by the undersigned Merchant. Processor shall not be responsible for any change in printed terms unless specifically agreed to in writing by an officer of Processor and/or Bank of America, N.A., Charlotte, NC. By signing below you are agreeing to the provisions stated within this merchant application, on the reverse side (the Merchant Agreement) and acknowledge receipt of the merchant operating guide. Those provisions must be read before signing. By signing below, you agree to the terms on the front and back of this MERCHANT Processing Agreement and the merchant operating guide.

**► Individual Guaranty • No Titles**

As a primary inducement to Processor and Bank to enter into this Agreement, the undersigned Guarantor(s), by signing this Agreement, jointly and severally, unconditionally and irrevocably, personally guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to Processor and Bank under this Agreement or any other agreement currently in effect or in the future entered into between Merchant or its principals and Processor or Bank, as such agreements now exist or are amended from time to time, with or without notice. Guarantor(s) understands further that Processor or Bank may proceed directly against Guarantor(s) without first exhausting their remedies against any other person or entity responsible to it or any security held by Processor and Bank or Merchant. This guarantee will not be discharged or affected by the death of the undersigned, will bind all heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor of Processor and Bank. Guarantor(s) understand that the inducement to Processor and Bank to enter into this agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the Guarantor(s) receive no additional benefit from the guaranty.

AGREED AND ACCEPTED

X D. J. Lee 1-24-07  
#1 From Application - Signature Date  
X  
#2 From Application - Signature Date

**► For All Corporations • Corporate Resolution**

The indicated officer(s) identified in numbers 1 and/or 2 below have the authorization to execute the MERCHANT Processing Agreement on behalf of the here within named corporation. MERCHANT UNDERSTANDS THAT THIS AGREEMENT SHALL NOT TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY BANK AND A MERCHANT NUMBER IS ISSUED.

Cinergy Health, Inc.

Print Legal Name of Merchant Business

X D. J. Lee 1-24-07  
#1 From Application - Signature Date  
X  
#2 From Application - Signature Date  
X  
Accepted by Processor Date  
X  
Accepted by Bank of America, N.A., Charlotte, NC. Date

Member Bank: Bank of America, N.A., Charlotte, NC.

➤➤ 09/26/06



#### A. Security Interests.

**B. Reserve Account.**

B. Termination. The Agreement may be terminated by Bank or Merchant to be effective at the end of the Initial Term or any Renewal Term.





105 Decker Court  
Suite 650  
Irving, TX 75062  
Tel: 800-944-1399  
Fax: 214-260-9320

**Merchant Processing Agreement**  
**ADDITIONAL LOCATION FORM**

Merchant # \_\_\_\_\_

Office #: ISO10687

\*\*\*\*\* Original Signer Must Sign For All Additional Locations \*\*\*\*\*

\*\* Merchant Account Entry Form must be included \*\*

**Business Information**

Business Legal Name: CINERGY HEALTH INC  
Business DBA Name: CINERGY HEALTH AND LIFE INSURANCE  
Mailing / Business Address: 19495 BISCAYNE BLVD., SUITE 604  
City, State, Zip Code: AVENTURA, FL 33180  
Contact Name: HOWARD MARKOWITZ  
Phone #: 305-792-9996 EXT 104 Fax #: 305-792-9669  
Location Address: 19495 BISCAYNE BLVD., SUITE 604  
City, State, Zip Code: AVENTURA, FL 33180  
Contact Name: HOWARD MARKOWITZ  
Phone: 305-792-9996 EXT 104 Fax #: 305-792-9669  
Corporate Merchant ID #: \_\_\_\_\_

**Electronic Debit/Credit Authorization**

Merchant hereby authorizes Bank, in accordance with the Merchant Processing Agreement to initiate debit/credit entries to Merchant's deposit account, as indicated below this account will be deemed the "Designated Account" for all purposes under the Merchant Processing Agreement. This authority is to remain in full force and effect until (a) Bank has received written notification from Merchant of its termination, in such a manner as to afford Bank reasonable opportunity to act on it and (b) all obligations of Merchant to Bank that have arisen under this Agreement have been paid in full.

**Checking Account Only – A Voided Check From This Account Must Be Attached**

Bank Name and Phone #: \_\_\_\_\_  
Address, City, State, Zip Code: \_\_\_\_\_  
Transit #: \_\_\_\_\_ DDA #: \_\_\_\_\_

I (print name) DANIEL TOUIZER hereby authorize SignalPay to add this additional location to my current credit card processing account. I understand that, all terms and conditions set forth in my original application, and in the original Merchant Processing Agreement, including but not limited to the Personal warranty apply to this additional location.

Signature: [Signature] Title: PRES/CEO Name: DANIEL TOUIZER Date: 11/27/07

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_



Cynergy Data  
109-15 14th Ave.  
College Point NY, 11356  
Tel: 800-933-0064  
Fax: 718-463-6095

## Merchant Reserve Acknowledgment

This will acknowledge that as a condition of approval or continuance of the Merchant's (indicated below) credit card processing account, Cynergy Data and its agents, including its processing bank, have the authority to establish a reserve account in accordance with Section 7.B of the Merchant Processing Agreement ("MPA") and the following:

1. The reserve account will be established by:

\_\_\_\_\_ A. A certified check made payable to Cynergy Data in the  
Initials amount of \$\_\_\_\_\_.

10 B. Withholding 10 % from each gross deposit.  
Initials

2. The reserve account will be used to offset any amounts owed by the Merchant under the MPA. Merchant will forward to Cynergy Data funds to replenish the reserve account if any funds are debited from it.

3. The balance of the reserve account, if any, will be returned to Merchant up to 210 days after termination of the MPA or Merchant's last transmission of sales drafts, whichever is later.

I acknowledge that if there is any conflict between the terms of this letter and the terms of the MPA, the terms of the MPA will govern.

Cinergy Health, Inc.

Business Legal Name or D.B.A.

  
Signature

Daniel Rouizer

Printed Name

Its: President / Owner (Circle One)

01-30-2007

Date





Cynergy Data  
109-15 14th Ave.  
College Point NY, 11356  
Tel: 800-933-0064  
Fax: 718-468-6095

## Merchant Reserve Acknowledgment

This will acknowledge that as a condition of approval or continuance of the Merchant's (indicated below) credit card processing account, Cynergy Data and its agents, including its processing bank, have the authority to establish a reserve account in accordance with Section 7.B of the Merchant Processing Agreement ("MPA") and the following:

1. The reserve account will be established by:

\_\_\_\_\_ A. A certified check made payable to Cynergy Data in the  
Initials amount of \$\_\_\_\_\_.

\_\_\_\_\_ B. Withholding 10 % from each gross deposit.  
Initials (To be reviewed quarterly)

2. The reserve account will be used to offset any amounts owed by the Merchant under the MPA. Merchant will forward to Cynergy Data funds to replenish the reserve account if any funds are debited from it.

3. The balance of the reserve account, if any, will be returned to Merchant up to 210 days after termination of the MPA or Merchant's last transmission of sales drafts, whichever is later.

I acknowledge that if there is any conflict between the terms of this letter and the terms of the MPA, the terms of the MPA will govern.

Cinergy Health, Inc. /DBA - Cinergy Health and Life, Inc.

Business Legal Name or D.B.A.

Signature

Daniel Rouizer

Printed Name

Its: President / Owner (Circle One)

11-28-07

Date

## Merchant Reserve Acknowledgment

This will acknowledge that as a condition of approval or continuance of the Merchant's (indicated below) credit card processing account, Cynergy Data and its agents, including its processing bank, have the authority to establish a reserve account in accordance with Section 7.B of the Merchant Processing Agreement ("MPA") and the following:

1. The reserve account will be established by:

\_\_\_\_\_ A. A certified check made payable to Cynergy Data in the  
Initials amount of \$ \_\_\_\_\_.

D-T B. Withholding 20 % from each gross deposit.  
Initials

2. The reserve account will be used to offset any amounts owed by the Merchant under the MPA. Merchant will forward to Cynergy Data funds to replenish the reserve account if any funds are debited from it.

3. The balance of the reserve account, if any, will be returned to Merchant up to 210 days after termination of the MPA or Merchant's last transmission of sales drafts, whichever is later.

I acknowledge that if there is any conflict between the terms of this letter and the terms of the MPA, the terms of the MPA will govern.

Cinergy Health, Inc. /DBA - Cinergy Health and Life, Inc.

Business Legal Name or D.B.A.

D-T  
Signature

Daniel Touizer

Printed Name

Its: President / Owner (Circle One)

12-05-2007

Date