

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

In re:

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

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

Objection Deadline: 11/5/10 at 4:00 pm EST**Hearing Date: 11/12/10 at 11:00 am EST**

**MOTION FOR ORDER (A) APPROVING DISCLOSURE STATEMENT;
(B) FIXING VOTING RECORD DATE; (C) APPROVING SOLICITATION
AND VOTING PROCEDURES WITH RESPECT TO DEBTORS' JOINT
CHAPTER 11 PLAN OF LIQUIDATION; (D) APPROVING FORM OF
SOLICITATION PACKAGE AND NOTICES; AND (E) SCHEDULING
CERTAIN DATES IN CONNECTION THEREWITH**

CD Liquidation Co., LLC, f/k/a Cynergy Data, LLC ("CD"), Cynergy Data Holdings, Inc. ("Holdings"), CD Liquidation Co. Plus, LLC, f/k/a Cynergy Prosperity Plus, LLC ("Prosperity", and with CD and Holdings, each a "Debtor" and collectively, the "Debtors"), by this motion (the "Motion"), seek the entry of an order in substantially the form of **Exhibit A** hereto (the "Disclosure Statement Order") (a) approving the proposed *Disclosure Statement Regarding Debtors' Joint Plan Of Liquidation Under Chapter 11 Of The Bankruptcy Code* (as may be amended or supplemented from time to time and including all exhibits and supplements thereto, the "Disclosure Statement") in connection with the *Debtors' Joint Plan Of Liquidation Under Chapter 11 Of The Bankruptcy Code* (as may be amended or supplemented from time to time and including all exhibits and supplements thereto, the "Plan")², (b) fixing a voting record

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 meanings ascribed to them in the Plan.



date pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for determining, among other things, those creditors entitled to receive ballots and materials necessary for voting on the Plan, as specified in Bankruptcy Rule 3017(d), (c) approving solicitation and voting procedures with respect to the Plan, (d) approving the form of the solicitation package and the notices to be distributed with respect thereto and (e) approving certain deadlines in connection with the hearing on the adequacy of the Disclosure Statement (“Disclosure Statement Hearing”) scheduled for November 12, 2010 at 11:00 a.m. (prevailing Eastern Time), and the hearing on confirmation of the Plan (“Confirmation Hearing”) scheduled for December 21, 2010 at 3:30 p.m. (prevailing Eastern Time) In support of this Motion, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. As the Debtors stated in the Declaration of Charles M. Moore filed in support of the Debtors’ chapter 11 petitions and various first day applications and motions (the “Moore Declaration”) filed on September 1, 2009, the most significant effort in these Chapter 11 cases, and the reason they were filed, was to effectuate a sale of substantially all of the Debtors’ assets under section 363 of the Bankruptcy Code (the “363 Sale”).

2. The Sale Order was entered on October 9, 2009. The Debtors consummated the 363 Sale on October 26, 2009. Since the closing, the Debtors have distributed the cash proceeds of that §363 Sale either a) into an escrow account to satisfy the allowed claims of executory contract counterparties who, in connection with the transfer of their contracts with the Debtors to the Purchaser, have the right to have all defaults under those contracts cured by the Debtors, or b) to satisfy loans made to the Debtors either during or prior to the Petition Date. Accordingly, the Debtors, with the consent of the Committee, have prepared a liquidating plan in an effort to maximize recovery to all creditors and other parties-in-interest and to efficiently distribute the

Debtors' remaining assets.

3. This Motion seeks approval of the Disclosure Statement and certain solicitation and voting procedures and deadlines in order to enable the Debtors to achieve these goals and consummate their liquidating Plan.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

6. The predicates for the relief requested herein are sections 105(a), 1125, 1126 and 1128 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") and Bankruptcy Rules 2002, 3003, 3017, 3018 and 3020.

BACKGROUND

7. On September 1, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under the Bankruptcy Code.

8. The Debtors managed and operated their businesses as debtors-in-possession under Bankruptcy Code sections 1107 and 1108 through the sale of substantially all of their assets, which sale closed on October 26, 2009.

9. No trustee or examiner has been appointed in the Debtors' chapter 11 cases. On September 10, 2009, the United States Trustee appointed an official committee of unsecured creditors (the "Committee").

10. Reference is made to the Moore Declaration, which is fully incorporated herein by reference, for a description of the Debtors' business, the capital structure, and the circumstances leading to the chapter 11 filings.

RELIEF REQUESTED

11. By this Motion, the Debtors request, among other things, that the Court enter the Disclosure Statement Order, in substantially the form of **Exhibit A** hereto, (a) approving the Disclosure Statement, (b) fixing a voting record date (“Voting Record Date”) pursuant to Bankruptcy Rule 3018(a) for determining, among other things, those creditors entitled to receive ballots and materials necessary for voting on the Plan, as specified in Bankruptcy Rule 3017(d), (c) approving solicitation and voting procedures with respect to the Plan, (d) approving the form of the Solicitation Package (as defined herein) and the notices to be distributed with respect thereto, and (e) establishing the following deadlines related to confirmation of the Plan:³

November 12, 2010 at 11:00 a.m. EST	Voting Record Date
Three (3) Business Days after Entry of the Disclosure Statement Order ⁴	Distribution of Solicitation Packages
December 6, 2010 at 5:00 p.m. EST	Deadline to file exhibits to Plan
December 14, 2010 at 5:00 p.m. EST	Voting Deadline & Plan Objection Deadline
December 16, 2010 at 5:00 p.m. EST	Deadline for Debtors’ Reply in Support of Confirmation
December 21, 2010 at 3:30 p.m. EST	Confirmation Hearing

³ All times are prevailing Eastern Time.

⁴ Assuming the Disclosure Statement Order is entered on November 12, 2010, the deadline for distribution of the Solicitation Packages will be November 17, 2010.

BASIS FOR RELIEF

A. Approval of the Form and Manner of Notice of the Disclosure Statement Hearing and Deadline for Filing Objections Thereto

12. Bankruptcy Rule 3017(a) provides, in relevant part:

[A]fter a disclosure statement is filed in accordance with [Bankruptcy] Rule 3016(b), the court shall hold a hearing on at least 25 days' notice to the debtor, creditors, equity security holders and other parties-in-interest as provided in [Bankruptcy] Rule 2002 to consider the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission, and any party-in-interest who requests in writing a copy of the statement or plan.

Fed. R. Bankr. P. 3017(a). Bankruptcy Rules 2002(b) and (d) require notice to all creditors, indenture trustees, and equity security holders of the time set for filing objections to, and the hearing to consider the approval of, a disclosure statement.

13. The Debtors request that the Court establish **November 5, 2010 at 5:00 pm** (prevailing Eastern Time) as the deadline to object to the Disclosure Statement. In accordance with Bankruptcy Rules 2002(b) and (d) and 3017(a), the Debtors, with the assistance of their Voting Agent (as defined below), will serve at least 28 days (or such shorter period as the Court may approve on motion of the Debtors) in advance of the deadline to object to the Disclosure Statement:

- a. A copy of the notice of the Disclosure Statement Hearing in the form attached to the proposed Disclosure Statement Order as **Exhibit 1** (the "Disclosure Statement Notice") and a copy of the Disclosure Statement (including the Plan attached as Exhibit A thereto) by first-class mail upon (i) the United States Trustee for this District (the "US Trustee"), (ii) the Securities and Exchange Commission (the "SEC"), (iii) counsel for the Committee and (iv) any party-in-interest who specifically requests the Disclosure Statement and Plan in the manner specified in the Disclosure Statement Notice and/or Bankruptcy Rule 3017(a); and

- b. A copy of the Disclosure Statement Notice by first class mail to the Debtors' creditor matrix, including: (i) the Office of the United States Attorney for the District of Delaware, (ii) the Internal Revenue Service, (iii) all known holders of claims against and equity interests in the Debtors, and (iv) all parties that have filed and not withdrawn requests for notices pursuant to Bankruptcy Rule 2002 (the "2002 List").

The Debtors submit that the objection deadline, hearing date and service of the Disclosure Statement Notice with respect to the Disclosure Statement comply with the notice requirements of the Bankruptcy Rules and the Bankruptcy Code.

B. Approval of Disclosure Statement

14. Section 1125(b) of the Bankruptcy Code prohibits the postpetition solicitation of a chapter 11 plan unless the plan (or summary thereof) and a written disclosure statement, approved by the bankruptcy court as containing adequate information, are transmitted to those persons whose votes are being solicited. The Debtors request that the Court approve the Disclosure Statement as providing "adequate information" within the meaning of section 1125(a)(1) of the Bankruptcy Code:

'[A]dequate information' means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1).

15. The primary purpose of a disclosure statement is to provide information that is "reasonably practicable" to permit an "informed judgment" by those entitled to vote on the plan. *See Century Glove, Inc. v. First Am. Bank of New York*, 860 F.2d 94, 100 (3d Cir. 1988) ("... § 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote."); *see also In re Phoenix Petroleum, Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001).

16. The Court has broad discretion to determine whether the information contained in a disclosure statement is “adequate.” See *Kirk v. Texaco, Inc.*, 82 B.R. 678, 682 (S.D.N.Y. 1988) (“The legislative history could hardly be more clear in granting broad discretion to bankruptcy judges under § 1125(a) . . .”); see also *Oneida Motor Freight, Inc. v. United Jersey Bank et al.*, 848 F.2d 414, 417 (3d Cir. 1988); *Texas Extrusion Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.)*, 844 F.2d 1142, 1157 (5th Cir. 1988) (“The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court.”).

17. The Court’s determination should take account of the expertise and resources, including outside advisors and relevant information already possessed or publicly available, of the hypothetical investor of each class of claims or interests in a debtor’s chapter 11 cases from which classes the post-petition acceptance or rejection of the plan is solicited. See *In re Zenith Elecs. Corp.*, 241 B.R. 92, 99-100 (Bankr. D. Del. 1999).

18. The Disclosure Statement contains the pertinent information necessary for those creditors entitled to vote to make an informed decision whether to accept or reject the Plan. The Debtors respectfully submit that the Disclosure Statement complies with all aspects of section 1125 of the Bankruptcy Code and should be approved.

C. Fixing A Voting Record Date

19. Bankruptcy Rule 3017(d) provides that, for the purposes of soliciting votes in connection with the confirmation of a Chapter 11 plan, “creditors and equity security holders shall include holders of stocks, bonds, debentures, notes and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.” Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes.

20. The Debtors request that the Court exercise its authority under Bankruptcy Rules 3017(d) and 3018(a) to establish **November 12, 2010 at 11:00 a.m. EST**, as the record date (the “Voting Record Date”) for determining: (a) those creditors entitled to receive the Solicitation Package pursuant to the Solicitation Procedures (as defined below); (b) those creditors entitled to vote to accept or reject the Plan; and (c) whether claims have been properly transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of the assigned claim.

D. Approval of Solicitation Procedures and Forms of Solicitation Documents and Notices

21. To conduct an effective solicitation of acceptances or rejections of the Plan, consistent with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and due process, the Debtors request that the Court approve the below-described solicitation, transmittal, balloting, tabulation and related activities to be undertaken by them and Kurtzman Carson Consultants, LLC (“KCC”), the Debtors’ claims agent, in connection with the Chapter 11 Cases (collectively, the “Solicitation Procedures”). The Debtors believe the Solicitation Procedures are well-designed and specifically tailored to effectively solicit acceptances or rejections of the Plan.

22. To the extent that circumstances requiring a further modification or amendment of the Solicitation Procedures arise, the Debtors hereby reserve the right to supplement or amend the Solicitation Procedures as appropriate to better facilitate the solicitation process.

Duties of Voting Agent

23. KCC shall act as voting agent (the “Voting Agent”) pursuant to this Court’s *Order Pursuant to 28 U.S.C. § 156(c), Bankruptcy Rule 2002(f) and Local Bankruptcy Rule 2002-1(f) Authorizing (A) the Retention of Kurtzman Carson Consultants, LLC as Claims, Noticing Solicitation, Balloting and Tabulation Agent for the Debtors and (B) appointment of*

Kurtzman Carson Consultants, LLC as Agent of the Bankruptcy Court on September 2, 2009 (the “KCC Retention Order”) (D.I. 50). Pursuant to the provisions of the KCC Retention Order, KCC is authorized and directed to assist the Debtors in (i) distributing the Solicitation Packages, (ii) receiving, tabulating and reporting on Ballots (defined below) cast for or against the Plan by holders of claims against the Debtors, (iii) responding to inquiries from creditors, equity holders, and other parties-in-interest relating to the Plan, the Disclosure Statement, the Ballots, the Solicitation Procedures, and all other Solicitation Package (defined and described below) materials and matters related thereto, including, without limitation, the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan, (iv) soliciting votes on the Plan, and (v) if necessary, contacting creditors and equity holders regarding the Plan.

Determination of Treatment of Certain Claims for Notice and Voting Purposes

24. As set forth in the Disclosure Statement and Plan, the Debtors, with the support and consent of the Committee, propose to file a liquidating plan to resolve the outstanding creditor claims against, and equity interests in, the Debtors through the establishment of a liquidation trust.

25. While the Debtors’ chapter 11 cases have been consolidated for procedural purposes only, and are being jointly administered pursuant to an order of the Court, the Plan contemplates and moves for the substantive consolidation of the Debtors for voting and distribution purposes pursuant to sections 105 and 1123 (a)(5)(C) of the Bankruptcy Code.

26. Pursuant to the Plan, the Debtors will satisfy all Allowed Administrative Claims and Allowed Other Priority Claims including Allowed Priority Tax Claims in full, and such claims shall not be classified and the holders of such claims are not entitled to vote on the Plan. The following summary chart sets forth the rights of each class of claims and equity interests to

vote, or not vote, on the Plan:

Summary of Status and Voting Rights			
Class	Designation	Impairment	Entitled to Vote
1	Allowed Secured Claims of Senior First Lien Lenders Against CD, Holdings or Prosperity	Impaired	Entitled to Vote on the Plan
2	Allowed Secured Claims of Prosperity Lenders Against CD, Holdings or Prosperity	Impaired	Entitled to Vote on the Plan
3	Allowed Secured Claims of Junior First Lien Lenders Against CD, Holdings or Prosperity	Impaired	Entitled to Vote on the Plan
4	Allowed Secured Claims of Second Lien Lenders Against CD, Holdings or Prosperity	Impaired	Entitled to Vote on the Plan
5	Allowed Other Secured Claims Against CD, Holdings or Prosperity	Impaired	Entitled to Vote on the Plan
6	Priority Claims Other Than Tax Priority Claims	Impaired	Entitled to Vote on the Plan
7	Allowed General Unsecured Claims Against CD, Holdings or Prosperity	Impaired	Entitled to Vote on the Plan
8	Allowed Interests in CD, Holdings or Prosperity	Impaired	Not Entitled to Vote on the Plan (Deemed to Reject Plan)

Approval of Form of Notice of Non-Voting Status

27. Consistent with section 1126 of the Bankruptcy Code and Bankruptcy Rule 3017(d), and in an effort to conserve the resources of the Debtors' estates, unless specifically requested, the Debtors propose that they not be required to send Solicitation Packages to those creditors and equity interest holders who are not entitled to vote on the Plan. However, a copy of

the Plan and Disclosure Statement will be posted on the Voting Agent's website for this case and will be available for viewing without charge at www.kccllc.net/cynergydata.

28. As reflected above and in the Plan, Class 8 holders of equity interests are not entitled to vote to accept or reject the Plan because such class is likely receiving no distribution under the Plan and therefore are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.⁵

29. In lieu of Solicitation Packages, the Debtors will send these equity holders in Class 8, in accordance with section 1123(a)(1) of the Bankruptcy Code, both a Confirmation Hearing Notice (defined below) and the *Notice of Non-Voting Status With Respect To Impaired Class Deemed To Reject the Plan* substantially in the form attached to the proposed Disclosure Statement Order as **Exhibit 3** (the "Notice of Non-Voting Status").

30. The Notice of Non-Voting Status provides: (i) notice of the approval of the Disclosure Statement, (ii) notice of the filing of the Plan and (iii) directions for obtaining copies of the Plan and Disclosure Statement. The Debtors submit that such notice satisfies the requirements of the Bankruptcy Code and the Bankruptcy Rules.

Establishing the Voting Deadline

31. Pursuant to Bankruptcy Rule 3017(c), at the time of the approval of the Disclosure Statement, or earlier, "the court shall fix a time within which the holders of claims and interests may accept or reject the Plan." Fed. R. Bankr. P. 3017(c). The Debtors request that

⁵ Section 1126(g) of the Bankruptcy Code provides:

Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

11 U.S.C. § 1126(g).

the Court establish **December 14, 2010 at 5:00 pm (prevailing Eastern Time)**, a date that is seven (7) days before the proposed Confirmation Hearing, as the voting deadline (“Voting Deadline”).⁶ The proposed Voting Deadline is twenty-seven (27) days after the date Solicitation Packages are expected to be distributed. The Debtors propose that the Plan Objection Deadline (as defined below) also be set for **December 14, 2010 at 5:00 pm (prevailing Eastern Time)**.

Approval of the Form of Ballots

32. Bankruptcy Rule 3018(c) provides, in relevant part, as follows:

An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form.

Fed. R. Bankr. P. 3018(c). All votes must be cast by using the appropriate ballot (singularly, the “Ballot”, collectively, the “Ballots”).⁷ The Debtors, in accordance with Bankruptcy Rule 3018(c), will prepare the Ballots for Classes 1, 2, 3, 4, 5, 6 and 7, which are the only classes entitled to vote to accept or reject the Plan.

33. By this Motion, the Debtors seek approval of, and authority to use, the Ballots, in substantially the form attached as **Exhibit 4** to the Disclosure Statement Order. The form of the Ballots complies with Bankruptcy Rule 3018(c) and is based on Official Form No. 14, as modified to address the particular needs of the Debtors’ chapter 11 cases.

34. The Ballots may not be used for any purpose other than to vote to accept or reject the Plan. The Ballots do not constitute, and shall not be deemed to be, a proof of Claim or an

⁶ The Debtors are reserving the right to amend from time to time the Plan (subject to compliance with the requirements of section 1127 of the Bankruptcy Code and the terms of the Plan regarding modifications). The Bankruptcy Code requires the Debtors to disseminate additional solicitation materials if the Debtors make material changes to the Plan or if the Debtors waive a material condition to Plan confirmation. In that event, the Voting Deadline will be extended or re-opened to the extent directed by the Court.

⁷ The defined term “Ballot” shall include all ancillary and related information and any amendments or supplements thereto necessary for completing the Ballot.

assertion or admission of a Claim. At the time the Ballot is transmitted, claimants should not surrender certificates, instruments, or other documents representing or evidencing their Claims.

Approval of Solicitation Packages and Procedures for Distribution Thereof

35. Bankruptcy Rule 3017(d) sets forth the materials that must be provided to holders of claims and equity interests for purposes of soliciting their votes and providing adequate notice of a plan confirmation hearing. Upon approval of the Disclosure Statement, the Debtors propose that within three (3) business days after entry of the Disclosure Statement Order, they, or the Voting Agent, will serve the holders of Classes 1, 2, 3, 4, 5, 6 and 7 claims (as of the Voting Record Date) the following:

- the Confirmation Hearing Notice;
- appropriate Ballots and a pre-addressed, postage pre-paid return envelope, together with voting instructions;
- the Disclosure Statement and the Plan; and
- the Disclosure Statement Order

(collectively, the "Solicitation Package").

36. The Debtors also intend to serve all of the documents in the Solicitation Package (except for Ballots), on (i) the US Trustee; (ii) counsel to the Committee; (iii) the 2002 List and (iv) counsel for (each of) (a) Comerica Bank, ("Comerica"), Bodman LLP, 6th Floor at Ford Field, 1901 St. Antoine Street, Detroit, Michigan 48226, Attn: Robert J. Diehl, Jr., (b) Wells Fargo Foothill LLC ("Wells"), Paul, Hastings, Janofsky & Walker LLP, 515 South Flower Street, Twenty-Fifth Floor, Los Angeles, CA 90071, Attn: Peter S. Burke (c) Dymas Funding Company LLC, Ableco Finance LLC and A3 Funding LP (collectively, the "Dymas Group"), Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, NY 10005, Attn: Gregory A. Bray, Esq., and (d) Garrison Credit Investments ("Garrison"), Proskauer Rose

LLP, 1585 Broadway, New York, NY 10036, Attn: Peter J. Antoszyk, Esq. (Comerica, Wells, the Dymas Group and Garrison, together with any of their respective successors or assigns, (the “Secured Lenders”); (e) counsel to Harris, Torys LLP, 237 Park Avenue, New York, NY 10017, Attn: Alison D. Bauer, Esq., (f) counsel to the Purchaser, Akerman Senterfitt LLP, 335 Madison Ave., Suite 2600, New York, NY 10017, Attn: Susan F. Balaschak, Esq. and (g) Pipeline Data, Inc. 4400 North Point Parkway, Alpharetta, GA 30022, Attn: Sheila Corvino, Esq.

37. The Debtors further propose to send Confirmation Hearing Notice to all known creditors and equity security holders not otherwise receiving such notice, if any.

38. Moreover, as noted above, a copy of the Plan and Disclosure Statement will be posted on the Voting Agent’s website for this case and will be available for viewing without charge at www.kccllc.net/cynergydata.

39. To save substantial expense in connection with solicitation of the Plan, the Debtors intend to distribute the Plan, the Disclosure Statement and the Disclosure Statement Order (including the exhibits thereto) in CD-ROM format. The Debtors note, however, that the Ballots and the Confirmation Hearing Notice will only be provided in paper format. Any party who receives a CD-ROM, but who would prefer paper format, may contact the Voting Agent and request paper copies of the corresponding materials at the Debtors’ expense.

40. The Debtors submit that the Solicitation Procedures satisfy the requirements of the Bankruptcy Code and the Bankruptcy Rules and should be approved.

Approval of Voting and Tabulation Procedures

41. Section 1126(c) of the Bankruptcy Code provides:

A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or

rejected the plan.

11 U.S.C. § 1126(c). Further, Bankruptcy Rule 3018(a) provides that “the court after notice and hearing may temporarily allow [an objected to] claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.” Fed. R. Bankr. P. 3018(a). So as to avoid uncertainty, to provide guidance to the Debtors and the Voting Agent, and to avoid the potential for inconsistent results, the Debtors respectfully request that the Court approve the following voting and tabulation procedures, in accordance with section 1126(c) of the Bankruptcy Code and Bankruptcy Rule 3018(a).

42. Voting Class. The Plan contemplates that seven impaired classes will be entitled to vote on the Plan. The Debtors respectfully request that the Court order that only those holders of claims in Classes 1, 2, 3, 4, 5, 6 and 7 be entitled to vote to accept or reject the Plan.

43. Votes Counted. The Debtors propose that any Ballot timely received, properly executed, and containing sufficient information to permit the identification of the claimant and cast as either an acceptance or rejection of the Plan be counted as an acceptance or rejection, as the case may be, of the Plan. The Debtors propose the following voting procedures:

- a. Any proof of claim for which the Debtors have not filed an objection prior to the Voting Record Date shall be deemed temporarily allowed for voting purposes in the unsecured nonpriority amount stated on the face of the proof of claim. Any proof of claim that includes both a liquidated amount and an unliquidated or contingent amount shall be temporarily allowed for voting purposes in only the liquidated, non-contingent amount, and the unliquidated or contingent amount shall be deemed temporarily disallowed for voting purposes.
- b. Any timely filed proof of claim (i) marked as contingent or unliquidated on the face of the proof of claim and/or (ii) not otherwise specifying a fixed or liquidated amount on the face of the proof of claim, shall be temporarily allowed for voting purposes in the amount of \$1.00.

- c. If a holder of a claim identifies on the Ballot a claim amount that is less than the scheduled or filed amount of its claim, then the claim will be temporarily allowed for voting purposes in the lesser amount identified on the Ballot.
- d. If a claim has been estimated by an order of the Court, then such claim shall be temporarily allowed for voting purposes only in the estimated amount.
- e. Unless temporarily allowed for voting purposes by the Court, a claim listed in the Debtors' schedules as contingent, unliquidated, or disputed, and for which a proof of claim was not (i) filed by the bar date for filing proofs of claim as established by the Court or (ii) deemed timely filed by an order of the Court prior to the Voting Deadline, shall be temporarily disallowed for voting purposes.
- f. Notwithstanding anything else provided herein, if (i) the Debtors or another party-in-interest has objected to a claim by serving an objection, motion, adversary proceeding or otherwise to a claim or a portion of a claim on or before the Voting Record Date and (ii) such claim or portion of a claim has not been temporarily allowed by an order of the Court for voting purposes, then the claim shall be deemed disallowed for voting purposes or shall be allowed only in the undisputed amount set forth in the objection.
- g. Unless temporarily allowed for voting purposes by the Court, if a proof of claim asserts a claim that is not in U.S. dollars, such claim shall be treated as unliquidated and allowed for voting purposes only in the amount of \$1.00.

44. Votes Not Counted. The Debtors propose that the following Ballots not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected unless otherwise agreed to by the Debtors:

- a. Any Ballot received after the Voting Deadline, even if postmarked prior to the Voting Deadline;
- b. Any Ballot that is illegible or contains insufficient information to permit the identification of the claimant;
- c. Any Ballot that indicates neither acceptance nor rejection or that indicates both acceptance and rejection of the Plan;
- d. Any Ballot cast by a person or entity that does not hold a claim in a class that is entitled to vote to accept or reject the Plan;

- e. Any unsigned Ballot;
- f. Any form of Ballot other than the official form sent by the Voting Agent or a copy thereof;
- g. Any copy of a Ballot without an original signature; and
- h. Any Ballot that is sent by facsimile transmission or via electronic mail.

45. Changing Votes. Notwithstanding Bankruptcy Rule 3018(a), the Debtors propose that whenever two or more Ballots are cast voting the same Claim prior to the Voting Deadline, the Ballot dated latest, but received prior to the Voting Deadline, will be deemed to reflect the voter's intent, and, thus, to supersede any prior Ballots, without prejudice to the Debtors' right to object to the validity of the latest Ballot, including under Bankruptcy Rule 3018(a) and, if the objection is sustained, to count the first Ballot for all purposes. This procedure of counting the last Ballot received is consistent with practice under various state and federal corporate and securities laws. Moreover, it will spare the Court and the Debtors the time and expense associated with responding to motions under Bankruptcy Rule 3018(a) attempting to show cause for changing votes.

46. No Division of Claims or Votes. The Debtors propose that the Court clarify that creditors may not divide their claims within a particular class, or the votes associated therewith, and order that creditors must vote all of their claims within such class either to accept or reject the Plan. The Debtors further propose that a Ballot partially accepting and partially rejecting the Plan or otherwise voted inconsistently shall not be counted for any purposes.

47. Voting Report. The Debtors will file with the Court a voting report (the "Voting Report") by **December 16, 2010 at 5:00 p.m. (prevailing Eastern Time)**. The Voting Report shall, among other things, delineate every Ballot that does not conform to the voting instructions or that contains any form of irregularity (each an "Irregular Ballot") including, but not limited to, those Ballots that are late, illegible, damaged, unidentifiable, lacking signatures, lacking

necessary information, or received via facsimile or electronic mail. Unless otherwise directed by the Court, delivery of a defective or Irregular Ballot will not be deemed to have been made until such defect or irregularity has been cured or waived by the Debtors. Any waiver by the Debtors of a defect or irregularity in any Ballot will be detailed in the Voting Report filed with the Court by the Voting Agent. None of the Debtors or any other person or entity will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification. The Voting Report also shall indicate the Debtors' intentions with regard to such Irregular Ballots.

Returned Solicitation Packages or Notices

48. The Debtors seek the Court's approval for a departure from the Bankruptcy Rules as follows: (a) the Debtors shall be excused from giving notice or providing service of any kind upon any person or entity to whom the Debtors mailed a notice regarding the Disclosure Statement Hearing and received any of such notice returned by the United States Postal Service marked "undeliverable as addressed", "moved – left no forwarding address", or "forwarding order expired", or similar reason, unless the Debtors have been informed in writing or by electronic mail by such person or entity of that person's or entity's new address; and (b) the Debtors shall be excused from re-mailing such Solicitation Package, or other notices, as the case may be, to those entities whose addresses differ from the addresses in the claims register or the Debtors' records as of the Voting Record Date, except to the extent that a Solicitation Package is returned with a forwarding address listed. If a creditor has changed its mailing address after entry of the Disclosure Statement Order, the burden shall be on the creditor or party-in-interest to advise the Voting Agent and the Debtors of the new address.

49. The Debtors believe that the requested procedures and other relief requested herein are cost-effective, provide adequate notice and an opportunity to be heard, and are in the best interests of the Debtors' estates, their creditors, and other parties-in-interest. Accordingly, the Debtors submit that they have shown good cause for the relief requested herein.

E. Establishing Notice and Objection Procedures in Respect of Confirmation of the Plan

Confirmation Hearing

50. Bankruptcy Rule 3017(c) provides:

On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

Fed. R. Bankr. Proc. 3017(c). In accordance with Bankruptcy Rule 3017(c), the Debtors request that this Court schedule the Confirmation Hearing for **December 21, 2010 at 3:30 p.m. (prevailing Eastern Time)**, which is approximately 34 days after the Solicitation Package is distributed to voting creditors. The date of the Confirmation Hearing may be continued from time to time by the Court or the Debtors without further notice other than adjournments announced in open court. The proposed timing for the Confirmation Hearing will enable the Debtors to pursue confirmation of the Plan in a timely fashion in order to ensure confirmation and consummation of the Plan within the timeframe contemplated by the Debtors.

Approval of Confirmation Hearing Notice

51. The Solicitation Package includes the notice required by Bankruptcy Rules 2002(b) and 2002(d) to all creditors and equity interest holders of the time set for filing objections to confirmation of a chapter 11 plan and the hearing to consider confirmation of such plan (the "**Confirmation Hearing Notice**"), substantially in the form attached as **Exhibit 2** to the proposed Disclosure Statement Order. The Debtors request approval of the Confirmation

Hearing Notice which contains, among other things: (a) the Plan Objection Deadline; (b) the Confirmation Hearing date and time; (c) the Voting Deadline; and (d) the Voting Record Date. The Confirmation Hearing Notice will also instruct creditors and interested parties on how they may obtain copies of the Disclosure Statement, Plan, Disclosure Statement Order, and all other Solicitation Package materials (except Ballots). The Debtors respectfully request that the Court find that the Confirmation Hearing Notice complies with the requirements of Bankruptcy Rules 2002(b), 2002(c)(3), and 2002(d).

52. Furthermore, the Debtors propose to publish the Confirmation Hearing Notice once in *USA Today* not more than seven (7) business days after entry of the Disclosure Statement Order. Bankruptcy Rule 2002(l) permits the Court to “order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement notice.” Fed. R. Bankr. P. 2002(l). The Debtors believe publication of the Confirmation Hearing Notice will provide sufficient notice of the Plan Objection Deadline, the Confirmation Hearing date and time, and other relevant voting and objection deadlines to persons who may not otherwise receive notice by mail. The Debtors submit that publication of the Confirmation Hearing Notice as set forth above is adequate and sufficient notice to such creditors, equity holders, and other parties-in-interest under the circumstances.

Exhibits to Plan

53. All exhibits to this Plan will be filed with the Bankruptcy Court no later than **December 6, 2010 at 5:00 p.m.** (prevailing Eastern Time). The Plan Proponents (as defined in the Plan) jointly reserve the right to amend, modify, supplement, restate or withdraw the exhibits after they are filed with the Bankruptcy Court.

Establishing Procedures for Filing Objections to Confirmation of the Plan

54. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served “within a time fixed by the court”. Fed. R. Bankr. P. 3020(b)(1). Unless otherwise ordered by the Court, Bankruptcy Rule 2002(b) requires at least twenty-eight (28) days’ notice by mail to all creditors of the plan objection deadline.

55. The Confirmation Hearing Notice provides, and the Debtors request that the Court direct, that objections to confirmation of the Plan must:

- a. be made in writing;
- b. comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware;
- c. state the name and address of the objecting party and the amount and nature of the claim or interest of such party against or in the Debtors, their estates, or their property;
- d. state with particularity the legal and factual bases and nature of any objection to the Plan, including specific reference to the text of the Plan to which the objection is made and, if practicable, proposed modification to the Plan that would resolve such objection; and
- e. be filed, together with proof of service, with the Court and served by personal service, overnight delivery, first class mail or facsimile, so that they are RECEIVED by the parties identified in the Confirmation Hearing Notice, no later than **5:00 p.m. (prevailing Eastern Time), on December 14, 2010** (the “Plan Objection Deadline”).

56. The proposed timing for filing and service of any objections to confirmation of the Plan will afford the Court, the Debtors, and other parties-in-interest sufficient time to consider the objections prior to the Confirmation Hearing. The Debtors request that the Court consider only timely filed and served written objections to confirmation of the Plan, and that objections not timely filed and/or served in accordance with the above provisions be overruled.

57. The Debtors request that they be allowed to file their reply to any objections filed

by the Plan Objection Deadline by no later than **5:00 p.m. (prevailing Eastern Time) on December 16, 2010.**

NOTICE AND PRIOR MOTIONS

58. Notice of this Motion has been given to: (i) the United States Trustee for this District (the “US Trustee”), (ii) counsel for the Committee, and (iii) all parties that have filed and not withdrawn requests for notices pursuant to Bankruptcy Rule 2002. Under the circumstances, the Debtors submit that no other or further notice is required.

59. No previous request for the relief sought has been made by to this or any other court.

WHEREFORE, the Debtors respectfully request that this Court enter the Disclosure Statement Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other and further relief as is just and proper under the circumstances.

Dated: September 27, 2010
Wilmington, Delaware

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)
Hercules Plaza, Suite 5100
1313 Market Street
P.O. Box 1709
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-and-

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*Counsel for the Debtors
and Debtors in Possession*

12879696

EXHIBIT A

Disclosure Statement Order

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

In re: CD LIQUIDATION CO., LLC, f/ka CYNERGY DATA, LLC, <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 09-13038 (KG) Jointly Administered Related Docket No. ____
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**ORDER (A) APPROVING DISCLOSURE STATEMENT; (B) FIXING
THE VOTING RECORD DATE; (C) APPROVING SOLICITATION AND
VOTING PROCEDURES WITH RESPECT TO DEBTORS' CHAPTER 11 PLAN;
(D) APPROVING FORM OF SOLICITATION PACKAGE AND NOTICES; AND
(E) SCHEDULING CERTAIN DATES IN CONNECTION THEREWITH**

Upon the motion ("Motion")² the above-captioned Debtors and Debtors-in-Possession (collectively, the "Debtors") seeking entry of an order (a) approving the proposed *Disclosure Statement Regarding Debtors' Joint Plan Of Liquidation Under Chapter 11 Of The Bankruptcy Code* (as may be amended or supplemented and including all exhibits and supplements thereto, the "Disclosure Statement") in connection with the proposed *Debtors' Joint Plan Of Liquidation Under Chapter 11 Of The Bankruptcy Code* (as may be amended or supplemented and including all exhibits and supplements thereto, the "Plan"), (b) fixing a voting record date pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for determining, among other things, the creditors and interest holders entitled to receive ballots and materials necessary for voting on the Plan, as specified in Bankruptcy Rule 3017(d), (c) approving solicitation and voting procedures with respect to the Plan, (d) approving the form of the

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 meanings ascribed to them in the Motion.

solicitation package and the notices to be distributed with respect thereto, and (e) scheduling certain dates, including the following: (i) establishing deadlines for filing objections, if any, to the Plan and respective replies thereto; and (ii) establishing the voting deadline to accept or reject the Plan; and the Court having conducted the Disclosure Statement Hearing on November 12, 2010; and the Court having scheduled the Confirmation Hearing for December 21, 2010 at 3:30 p.m. (prevailing Eastern Time); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due, adequate, and sufficient notice of the Motion, the time fixed for filing objections and the Disclosure Statement Hearing having been given in accordance with Bankruptcy Rules 2002 and 3017; and it appearing that no other notice need be given; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties-in-interest; and after due deliberation thereon; and, for the reasons stated in the Motion and based on the record in these cases and at the Disclosure Statement Hearing, and good, adequate and sufficient cause being shown to justify the immediate entry of this Order; and good and sufficient cause appearing therefor, it is hereby:

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED in all respects.
2. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Order.
3. The Disclosure Statement complies with section 1125 of the Bankruptcy Code and is hereby approved as containing adequate information, as defined by section 1125(a) of the Bankruptcy Code.

4. Any objections to approval of the Disclosure Statement which were not withdrawn at or prior to the Disclosure Statement Hearing are hereby overruled.

5. The Voting Record Date shall be November 12, 2010 at 2:00 p.m. (prevailing Eastern Time), for determining: (a) the creditors and interest holders (including “holders of stocks, bonds, debentures, notes and other securities”) entitled to receive the Solicitation Package pursuant to the Solicitation Procedures; (b) the creditors and interest holders entitled to vote to accept or reject the Plan; and (c) whether claims or interests have been properly transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of the claim or equity interest.

6. Exhibits to the Plan shall be filed by December 6, 2010 at 5:00 p.m. (prevailing Eastern Time). The Plan Proponents (as defined in the Plan) have reserved the right to amend, modify, supplement, restate or withdraw the exhibits after they are filed with the Bankruptcy Court.

7. The Voting Deadline shall be December 14, 2010 at 5:00 p.m. (prevailing Eastern time).

8. Any objections to the Plan (the “Plan Objections”) must be filed by the Plan Objection Deadline, December 14, 2010 at 5:00 p.m. (prevailing Eastern Time), and must: (a) be made in writing; (b) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware; (c) state the name and address of the objecting party and the amount and nature of the claim or interest of such party against or in the Debtors, their estates, or their property; (d) state with particularity the legal and factual bases and nature of any objection to the Plan, including specific reference to the text of the Plan to which the objection is made and, if

practicable, proposed modification to the Plan that would resolve such objection; and (e) be filed, together with proof of service, with the Court and served by personal service, overnight delivery, first class mail or facsimile, so that they are RECEIVED by the following Notice Parties: (i) counsel to the Debtors, Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 Market Street, P.O. Box 1709, Wilmington, DE 19899-1709 (Attn: David B. Stratton and Evelyn J. Meltzer) and Nixon Peabody, LLP, 437 Madison Avenue, New York, NY 10022 (Attn: Mark N. Berman and Dennis Drebsky); (ii) counsel to the Committee, Jager Smith PC, One Financial Center, Boston, Massachusetts 02111 (Attn: Michael Fencer) and Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19801 (Attn: Gregory A. Taylor and Karen B. Skomorucha) and (iii) the Office of the US Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Thomas Patrick Tinker).

9. The Debtors shall file their reply to any timely filed Plan Objections and the Voting Report no later than 5:00 p.m. (prevailing Eastern Time) on December 16, 2010

10. The Confirmation Hearing will take place before the Honorable Kevin Gross at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Wilmington, Delaware 19801, on December 21, 2010 at 3:30 p.m. (prevailing Eastern Time). The Confirmation Hearing may be adjourned from time to time without notice other than announcement made at the Confirmation Hearing or any adjourned hearing or in the agenda for any such hearing.

11. The Solicitation Procedures outlined in the Motion are hereby approved; *provided however*, that the Debtors have reserved, subject to Court approval, the right to further amend or supplement the Solicitation Procedures to better facilitate the solicitation process.

12. The Debtors, or the Voting Agent, shall serve the Solicitation Package on the

holders of class 1, 2, 3, 4, 5, 6 and 7 claims (as of the Voting Record Date) within three (3) business days of entry of this Order.

13. The procedures for distribution of the Solicitation Package set forth in the Motion satisfy the requirements of the Bankruptcy Code and the Bankruptcy Rules.

14. The form of the Disclosure Statement Notice, substantially in the form attached hereto as **Exhibit 1** is hereby approved.

15. The form of the Confirmation Hearing Notice, substantially in the form attached hereto as **Exhibit 2**, complies with the requirements of Bankruptcy Rules 2002(b), 2002(c)(3), and 2002(d), and is hereby approved.

16. The form of the Notice of Non-Voting Status, substantially in the forms attached hereto as **Exhibit 3**, is hereby approved.

17. The form of Ballots and voting instructions, substantially in the form attached hereto as **Exhibit 4**, is hereby approved.

18. All votes to accept or reject the Plan must be cast by using the appropriate Ballot.

19. All Ballots must be properly executed, completed and delivered by (a) first class mail, in the return envelope provided with each Ballot; (b) overnight courier; or (c) personal delivery, so that the Ballots are actually received, in any case, by the Voting Agent, no later than the Voting Deadline at the following addresses:

If by U.S. Mail:

Cynergy Ballot Processing Center
Kurtzman Carson Consultants LLC
2335 Alaska Ave
El Segundo, CA 90245

If by Hand Delivery or Overnight Courier:

Cynergy Ballot Processing Center
Kurtzman Carson Consultants LLC
2335 Alaska Ave
El Segundo, CA 90245

20. The Debtors shall be excused from giving notice or providing service of any kind upon any person or entity to whom the Debtors mailed a notice regarding the Disclosure

Statement Hearing and received any of such notice returned by the United States Postal Service marked “undeliverable as addressed”, “moved – left no forwarding address”, or “forwarding order expired”, or similar reason, unless the Debtors have been informed in writing by such person or entity of that person’s or entity’s new address; and the Debtors shall be excused from re-mailing such Solicitation Package, or other notices, as the case may be, to those entities whose addresses differ from the addresses in the claims register or the Debtors’ records as of the Voting Record Date, except to the extent that a Solicitation Package is returned with a forwarding address listed. If a creditor has changed its mailing address after entry of this Disclosure Statement Order, the burden shall be on the creditor or party-in-interest to advise the Voting Agent and the Debtors of the new address.

21. The terms of this Order shall be binding upon the Debtors, all creditors of the Debtors, and any trustees appointed in these proceedings or any trustees appointed in any subsequent proceedings under chapter 7 or chapter 11 of the Bankruptcy Code relating to the Debtors, and all other parties-in-interest.

22. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

23. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Order.

24. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

Dated: November_____, 2010
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1 TO ORDER

Disclosure Statement Notice

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

In re:

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

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

**NOTICE OF (I) FILING OF DISCLOSURE STATEMENT AND SOLICITATION
PROCEDURES MOTION AND DEADLINE AND PROCEDURES FOR FILING
OBJECTIONS THERETO AND (II) HEARING ON DISCLOSURE STATEMENT**

TO: ALL CREDITORS, EQUITY SECURITY HOLDERS, AND OTHER PARTIES-IN-INTEREST:

PLEASE TAKE NOTICE that on September 27, 2010 the above-captioned debtors as debtors-in-possession (each a “Debtor” and collectively, the “Debtors”) filed the accompanying *Disclosure Statement Regarding Debtors’ Joint Plan Of Liquidation Under Chapter 11 Of The Bankruptcy Code* (the “Disclosure Statement”) and the proposed *Debtors’ Joint Plan Of Liquidation Under Chapter 11 Of The Bankruptcy Code* attached thereto as Exhibit A (as amended, modified or supplemented from time to time, the “Plan”). On September 27, 2010, the Debtors filed a motion seeking to establish deadlines and procedures with respect to the solicitation of votes on the Plan (the “Solicitation Procedures Motion”).

PLEASE TAKE FURTHER NOTICE that the United States Bankruptcy Court for the District of Delaware (the “Court”) established deadlines and procedures with respect to the Solicitation Procedures Motion and the solicitation of votes on the Plan as follows:

1. **Disclosure Statement Hearing Date.** The Court has fixed **November 12, 2010 at 11:00 a.m. (prevailing Eastern Time)**, or as soon thereafter as counsel can be heard, as the date and time for the hearing of the Solicitation Procedures Motion and on the adequacy of the Disclosure Statement (the “Disclosure Statement Hearing”) before the Honorable Kevin Gross, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Sixth Floor, Wilmington, Delaware 19801. The Disclosure Statement Hearing may be continued from time to time without further notice other than the advisement of the adjourned date(s) at the Disclosure Statement Hearing or any continued hearing.

2. **Objections to Disclosure Statement and Solicitation Procedures Motion.** The deadline for filing and serving objections to the Disclosure Statement and the Solicitation Procedures Motion is **November 5, 2010 at 5:00 p.m. (prevailing Eastern Time)**. To be

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.

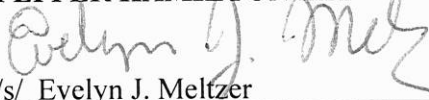
considered, objections, if any, to the Disclosure Statement or Solicitation Procedures Motion must: (a) be made in writing; (b) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware; (c) state the name and address of the objecting party and the amount and nature of the claim or interest of such party against or in the Debtors, their estates, or their property; (d) state with particularity the legal and factual bases and nature of any objection to the Disclosure Statement, including specific reference to the text of the Disclosure Statement to which the objection is made and, if practicable, proposed modification to the Disclosure Statement that would resolve such objection; and (e) be filed, together with proof of service, with the Court and served by personal service, overnight delivery, first class mail or facsimile, so that they are RECEIVED no later than **November 5, 2010 at 5:00 p.m. (prevailing Eastern Time)** by the following parties (the “Notice Parties”): (i) counsel to the Debtors, Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 Market Street, P.O. Box 1709, Wilmington, DE 19899-1709 (Attn: David B. Stratton and Evelyn J. Meltzer) and Nixon Peabody, LLP, 437 Madison Avenue, New York, NY 10022 (Attn: Mark N. Berman and Dennis Drebsky); (ii) counsel to the Committee, Jager Smith PC, One Financial Center, Boston, Massachusetts 02111 (Attn: Michael Fencer) and Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19801 (Attn: Gregory A. Taylor and Karen B. Skomorucha) and (iii) the Office of the US Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Thomas Patrick Tinker). **Objections not timely filed and served in the manner set forth above shall not be considered and shall be overruled.**

3. **Information and Documents.** Any party-in-interest wishing to obtain a copy of the Disclosure Statement, the Plan, the Solicitation Procedures Motion, the order approving the Disclosure Statement (when available), or any exhibits or appendices to such pleadings, may request such copies at the Debtors’ expense by contacting (i) the Voting Agent, Cynergy Ballot Processing Center, Kurtzman Carson Consultants LLC, 2335 Alaska Ave, El Segundo, CA 90245 or (ii) visiting the Voting Agent’s website at www.kccllc.net/cynergydata.

4. This notice is not a solicitation of votes to accept or reject the Plan. Votes may not be solicited until the Disclosure Statement is approved by an order of the Court.

Dated: September 27, 2010
Wilmington, Delaware

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)
Hercules Plaza, Suite 5100
1313 Market Street,
P.O. Box 1709
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Telephone: (302) 777-6500
Facsimile: (302) 421-8390

-and-

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New York, NY 10022
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Facsimile: (212) 940-3111

*Counsel for the Debtors
and Debtors in Possession*

EXHIBIT 2 TO ORDER

Confirmation Hearing Notice

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

In re:

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

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

**NOTICE OF (A) HEARING TO CONFIRM PLAN OF REORGANIZATION,
(B) OBJECTION AND VOTING DEADLINES, (C) SOLICITATION AND
VOTING PROCEDURES, AND (D) CERTAIN OTHER INFORMATION**

DISCLOSURE STATEMENT AND SOLICITATION PROCEDURES APPROVED.

On November 12, 2010, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered that certain *Order (A) Approving Disclosure Statement, (B) Fixing the Voting Record Date, (C) Approving Solicitation and Voting Procedures With Respect to Debtors’ Chapter 11 Plan, (D) Approving Form of Solicitation Package and Notices, and (E) Scheduling Certain Dates in Connection Therewith* (the “Disclosure Statement Order”). In the Disclosure Statement Order, among other things, the Court approved the above-captioned Debtors’ *Disclosure Statement Regarding Debtors’ Joint Plan Of Liquidation Under Chapter 11 Of The Bankruptcy Code* (the “Disclosure Statement”) for the proposed *Debtors’ Joint Plan Of Liquidation Under Chapter 11 Of The Bankruptcy Code* thereto as Exhibit A (as amended, modified or supplemented from time to time, the “Plan”), as containing adequate information, as required under section 1125(a) of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and authorized the Debtors to solicit acceptances of the Plan.

HEARING TO CONFIRM THE PLAN.

The Court has fixed **December 21, 2010 at 3:30 p.m. (prevailing Eastern Time)** (the “Confirmation Hearing Date”), or as soon thereafter as counsel may be heard, as the date and time for the hearing to consider confirmation of the Plan (the “Confirmation Hearing”). The Confirmation Hearing will be before the Honorable Kevin Gross, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Sixth Floor, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time by announcing such continuance in open court or in the agenda for such hearing, and the Plan may be further modified, if necessary, pursuant to 11 U.S.C. § 1127 prior to, during,

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.

or as a result of the Confirmation Hearing, without further notice to parties-in-interest.

PLAN OBJECTION DEADLINE.

The Court has fixed **December 14, 2010 at 5:00 pm (prevailing Eastern Time)** (the “Plan Objection Deadline”) as the deadline for filing and serving objections to confirmation of the Plan. To be considered, objections, if any, to the Plan must: (a) be made in writing; (b) comply with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware; (c) state the name and address of the objecting party and the amount and nature of the claim or interest of such party against or in the Debtors, their estates, or their property; (d) state with particularity the legal and factual bases and nature of any objection to the Plan, including specific reference to the text of the Plan to which the objection is made and, if practicable, proposed modification to the Plan that would resolve such objection; and (e) be filed, together with proof of service, with the Court and served by personal service, overnight delivery, first class mail or facsimile, so that they are **RECEIVED** no later than the Plan Objection Deadline by the following parties (the “Notice Parties”): (i) counsel to the Debtors, Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 Market Street, P.O. Box 1709, Wilmington, DE 19899-1709 (Attn: David B. Stratton and Evelyn J. Meltzer) and Nixon Peabody, LLP, 437 Madison Avenue, New York, NY 10022 (Attn: Mark N. Berman and Dennis Drebsky); (ii) counsel to the Committee, Jager Smith PC, One Financial Center, Boston, Massachusetts 02111 (Attn: Michael Fencer) and Ashby & Geddes, P.A., 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE 19801 (Attn: Gregory A. Taylor and Karen B. Skomorucha) and (iii) the Office of the US Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Thomas Patrick Tinker).

VOTING RECORD DATE.

November 12, 2010 at 11:00 a.m. (prevailing Eastern Time) is the record date (the “Voting Record Date”) for purposes of determining which parties are entitled to vote on the Plan.

VOTING DEADLINE.

December 14, 2010 at 5:00 p.m. (prevailing Eastern time) is the voting deadline (the “Voting Deadline”). All Ballots must be received by the Voting Agent by the Voting Deadline. Voting instructions will be sent with the ballots.

EXCULPATORY, INJUNCTIVE AND RELEASE PROVISIONS.

The following are summaries of the exculpatory, injunctive and release provisions that the Debtors will be seeking under the Plan:

Exculpation And Limitation Of Liability (Article XII.F of the Plan)

None of the Reorganization Parties shall have or incur any liability to the Debtors, their Estates, any Holder of a Claim or an Interest, or to any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, or to any of their successors or assigns, for any act or omission occurring subsequent to the Petition Date in connection with, relating to, or arising out of, the

administration of the Chapter 11 Cases, negotiation of the Disclosure Statement, negotiation of this Plan, negotiation of the Liquidation Trust Agreement, the solicitation of acceptances of this Plan, the pursuit of confirmation of this Plan, the consummation of this Plan, or the administration of this Plan or the property to be distributed under this Plan, except for their gross negligence or willful misconduct, and in all respects each of the Reorganization Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under this Plan.

Notwithstanding any other provision of this Plan, no Holder of a Claim or Interest and no other party in interest, none of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, and no successors or assigns of the foregoing, shall have any right of action against any one or more of the Reorganization Parties for any act or omission occurring subsequent to the Petition Date in connection with, relating to, or arising out of, the administration of the Chapter 11 Cases, the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence or willful misconduct.

Permanent Injunction (Article XII.G of the Plan)

Except as otherwise expressly provided in the Plan or the Confirmation Order, all entities who have held, hold or may hold Claims against, or Interests in, the Debtors are permanently enjoined, on and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim or Interest against the property or interests in property of the Debtors; (ii) commencing or continuing an action on a Claim released under Article XII.H of the Plan solely against any one or more of the Reorganization Parties, (iii) the enforcement, attachment, collection, or recovery by any manner or means of judgment, award, decree or order against the property or interests in property of the Debtors, (iv) creating, perfecting, or enforcing any encumbrance of any kind against any property or interests in property of the Debtors, and (v) asserting any right of setoff or subrogation of any kind against any obligation due to the Debtors or against the property or Interests in property of the Debtors on account of any such Claim or Interest. The foregoing injunction will extend to and be for the benefit of the Liquidation Trust and its properties and Interests in property. For the avoidance of any doubt, this Permanent Injunction shall not interfere in any way with the ability of the Liquidation Trust to pursue any property of the Debtors and realize the value of the Debtors' interest in such property in accordance with the terms of the Liquidation Trust.

Debtors' Releases (Article XII.H of the Plan)

As of the Effective Date, the Debtors together with any successors to the Debtors and each of their respective estates, directors, officers, members, managers, employees, agents, financial advisors, representatives, affiliates, attorneys and professionals (solely in their capacities as such) shall be deemed, to the maximum extent permitted by applicable law, to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities whatsoever (including without

limitation for subordination of any kind or nature) in connection with or related to the Debtors, or the administration of the Chapter 11 Cases or the Plan (other than the rights of the Debtors and any successors to enforce the Plan and the contracts, instruments, releases, indentures, and other agreements or documents assumed, passed through or delivered in connection with such Plan) and whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date against any of the Reorganization Parties as of the Effective Date, for any act or omission occurring subsequent to the Petition Date in connection with, relating to, or arising out of, the administration of the Chapter 11 Cases, the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence or willful misconduct. The releases, waivers and discharges provided for herein shall apply only to acts, omissions, transactions, events or other occurrences that took place to the Effective Date.

PLAN TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

On the Effective Date, and unless previously rejected pursuant to a Final Order, to the extent permitted by applicable law, all of the Debtors' remaining prepetition executory contracts and unexpired leases are rejected by the Debtors as of the Confirmation Date, unless such executory contract or unexpired lease:

- 1) is expressly identified in the Plan Supplement as a contract or lease that is being assumed pursuant to the Plan;
- 2) is the subject of a motion to assume filed on or before the Confirmation Date; or
- 3) is the subject of an agreement, entered into on or before the Confirmation Date, among the Debtors and the counterparty to such executory contract to extend the time to assume or reject such executory contract to a date subsequent to the Confirmation Date.

If the rejection of any of the Debtors' prepetition executory contracts or unexpired leases gives rise to a Claim, a proof of Claim must be served upon the Debtors, Debtors' counsel and the Claims Agent within thirty (30) days after the earlier of (a) service of notice of entry of the Confirmation Order; or (b) service of such other notice that the executory contract or unexpired lease has been rejected, or (c) such other order of the Bankruptcy Court establishing an earlier date for the filing of such proof of claim. Any claim not served within such time period will be forever barred.

EXHIBIT 3 TO ORDER

Notice of Non-Voting Status

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

In re:

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

Debtors.

Chapter 11

Case No. 09-13038 (KG)

Jointly Administered

**NOTICE OF NON-VOTING STATUS WITH RESPECT
TO IMPAIRED CLASS DEEMED TO REJECT THE PLAN**

PLEASE TAKE NOTICE that on November 12, 2010, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered that certain *Order (A) Approving Disclosure Statement, (B) Fixing the Voting Record Date, (C) Approving Solicitation and Voting Procedures With Respect to Debtors’ Chapter 11 Plan, (D) Approving Form of Solicitation Package and Notices, and (E) Scheduling Certain Dates in Connection Therewith* (the “Disclosure Statement Order”). In the Disclosure Statement Order, among other things, the Court approved the above-captioned Debtors’ *Disclosure Statement Regarding Debtors’ Joint Plan Of Liquidation Under Chapter 11 Of The Bankruptcy Code* (the “Disclosure Statement”) for the proposed Debtors’ *Joint Plan Of Liquidation Under Chapter 11 Of The Bankruptcy Code* thereto as Exhibit A (as amended, modified or supplemented from time to time, the “Plan”), as containing adequate information, as required under section 1125(a) of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and authorized the Debtors to solicit acceptances of the Plan.

THE PLAN, DISCLOSURE STATEMENT, DISCLOSURE STATEMENT ORDER, AND ALL OTHER MATERIALS IN THE DEBTORS’ SOLICITATION PACKAGE (OTHER THAN BALLOTS) MAY BE OBTAINED BY CONTACTING THE DEBTORS’ VOTING AGENT IN WRITING AT CYNERGY BALLOT PROCESSING CENTER, KURTZMAN CARSON CONSULTANTS LLC, 2335 ALASKA AVE, EL SEGUNDO, CA 90245 OR MAY BE VIEWED WITHOUT CHARGE AT www.kccllc.net/cynergydata.

YOU ARE RECEIVING THIS NOTICE BECAUSE UNDER THE TERMS OF THE PLAN, YOU ARE NOT ENTITLED TO RECEIVE OR RETAIN ANY PROPERTY ON ACCOUNT OF YOUR CLAIM(S) AGAINST, OR INTEREST(S) IN, THE DEBTORS AND, THEREFORE, IN ACCORDANCE WITH SECTION 1126(g) OF THE UNITED STATES BANKRUPTCY CODE, YOU ARE (I) DEEMED TO HAVE REJECTED THE PLAN AND (II) NOT ENTITLED TO VOTE ON THE PLAN. ACCORDINGLY, THIS NOTICE AND

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.

THE “NOTICE OF (A) HEARING TO CONFIRM THE PLAN OF REORGANIZATION, (B) OBJECTION AND VOTING DEADLINES, (C) SOLICITATION AND VOTING PROCEDURES, AND (D) CERTAIN OTHER INFORMATION” ARE BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY.

ALTHOUGH YOU ARE NOT ENTITLED TO VOTE ON THE PLAN WITH RESPECT TO YOUR CLAIM(S) OR INTEREST(S), YOU MAY BE A PARTY-IN-INTEREST IN THE DEBTORS’ CHAPTER 11 CASES.

IF YOU HAVE ANY QUESTIONS ABOUT THE STATUS OF YOUR CLAIM(S) OR INTEREST(S), YOU SHOULD CONTACT THE DEBTORS’ VOTING AGENT AT THE ADDRESS SET FORTH ABOVE OR BY CALLING TOLL-FREE (866) 967-0497.

Dated: [], 2010
 Wilmington, Delaware

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)
Hercules Plaza, Suite 5100
1313 Market Street
P.O. Box 1709
Wilmington, DE 19899-1709
Telephone: (302) 777-6500
Facsimile: (302) 421-8390

-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*

EXHIBIT 4 TO ORDER

Form of Ballot

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE, OR TO MAKE ANY REPRESENTATION, OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE COURT.

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

In re:	Chapter 11
CD LIQUIDATION CO., LLC, f/ka CYNERGY DATA, LLC, <i>et al.</i> , ¹	Case No. 09-13038 (KG)
Debtors.	Jointly Administered

**BALLOT FOR ACCEPTING OR REJECTING THE
DEBTORS' JOINT PLAN OF LIQUIDATION**

CLASS [] – [] CLAIMS

RECORD DATE FOR VOTING: November 12, 2010 at 11:00 a.m. (EST)

**PLEASE READ AND FOLLOW THE ENCLOSED VOTING INSTRUCTIONS
CAREFULLY BEFORE COMPLETING THIS BALLOT.**

**PLEASE CHECK THE APPROPRIATE BOX BELOW TO INDICATE YOUR
ACCEPTANCE OR REJECTION OF THE PLAN.**

THIS BALLOT IS ACCOMPANIED BY A POSTAGE PRE-PAID RETURN ENVELOPE THAT IS ADDRESSED TO THE DEBTORS' VOTING AGENT, KURTZMAN CARSON CONSULTANTS, LLC (THE "VOTING AGENT"). THIS BALLOT MUST BE RECEIVED BY THE VOTING AGENT BY 5:00 P.M. (PREVAILING EASTERN TIME), ON OR BEFORE DECEMBER 14, 2010 (THE "VOTING DEADLINE"). IF YOUR BALLOT IS NOT RECEIVED BY THE VOTING DEADLINE, THE DEBTORS WILL REJECT SUCH BALLOT AS INVALID. IF THE PLAN IS CONFIRMED BY THE COURT, IT WILL BE BINDING ON YOU WHETHER OR NOT YOU VOTE.

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.

CD Liquidation Co., LLC f/k/a Cynergy Data, LLC, Cynergy Data Holdings, Inc. and CD Liquidation Co. Plus, LLC f/k/a Cynergy Prosperity Plus, LLC, as debtors and debtors-in-possession herein (each a “Debtor” and collectively, the “Debtors”), have filed the *Debtors’ Joint Plan Of Liquidation Under Chapter 11 Of The Bankruptcy Code* (the “Plan”). The United States Bankruptcy Court for the District of Delaware (the “Court”) has approved the *Disclosure Statement Regarding Debtors’ Joint Plan Of Liquidation Under Chapter 11 Of The Bankruptcy Code* (the “Disclosure Statement”), which provides information to assist you in whether to accept or reject the Plan.

All capitalized terms used in the Ballot or in these instructions but not otherwise defined herein shall have the meaning ascribed to such terms in the *Order (A) Approving Disclosure Statement; (B) Fixing a Voting Record Date; (C) Approving Solicitation and Voting Procedures with Respect to Debtors’ Plan of Reorganization; (D) Approving Form of Solicitation Package and Notices; and (E) Scheduling Certain Dates in Connection Therewith* (the “Disclosure Statement Order”), the Disclosure Statement, or the Plan, as the case may be.

This Ballot is being sent to you because our records indicate that you are a Holder of an Allowed Class [__][_____] Claim as of November 12, 2010 at 11:00 a.m. (prevailing Eastern Time) (the “Voting Record Date”), and, accordingly, you have a right to vote to accept or reject the Debtors’ Plan.

The Court has approved the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code. Court approval of the Disclosure Statement does not indicate approval of the Plan by the Court. If you believe you have received this Ballot in error, please contact the Voting Agent in writing at Cynergy Ballot Processing Center, Kurtzman Carson Consultants LLC, 2335 Alaska Ave, El Segundo, CA 90245 or by calling toll-free (866) 967-0497.

You should carefully and thoroughly review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice from your own counsel concerning the Plan and classification and treatment of your Claim under the Plan. Your Claim has been placed in Class [__][_____] Claims under the Plan. All Persons receiving Ballots with respect to Class [__][_____] Claims should return completed Ballots in accordance with the instructions set forth therein.

PART I. WHO SHOULD USE THIS BALLOT; HOW TO USE THIS BALLOT

This Ballot is to be used by the Holders of Class [__][_____] Claims. This Ballot may not be used for any purpose other than casting votes to accept or reject the Plan. This Ballot does not constitute, and shall not be deemed to be, a proof of claim or an assertion or admission of a claim.

PLEASE READ AND FOLLOW THE INSTRUCTIONS ON THE BALLOT CAREFULLY. THIS BALLOT IS ACCOMPANIED BY A PRE-ADDRESSED, POSTAGE-PRE-PAID RETURN ENVELOPE. YOUR VOTE MUST BE RECEIVED BY THE VOTING AGENT BY 5:00 P.M. (PREVAILING EASTERN TIME), ON OR BEFORE THE VOTING DEADLINE, DECEMBER 14, 2010.

PART II. ITEMS ON THE BALLOT

Item 1. Amount of Class _____ Claim under the Plan.

The undersigned certifies that as of the Voting Record Date, November 12, 2010, the undersigned was the holder of a Class [__][_____] Claim in the amount of \$_____.

Item 2. Claim Vote.

THE DEBTORS RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.

The undersigned, the holder of the Class [__][_____] Claim set forth in Item 1, votes to (please check one):

ACCEPT (votes FOR) the Plan.

REJECT (votes AGAINST) the Plan.

Item 3. Disclosures and Certifications.

DISCLOSURES

(i) A Holder of Class [__][_____] Claim is required to cast the same vote on every Ballot completed by such person or entity with respect to such Class [__][_____] Claim;

(ii) Notwithstanding Bankruptcy Rule 3018(a), whenever two or more Ballots are cast voting the same claim prior to the Voting Deadline, the Ballot dated latest, but received prior to the Voting Deadline, will be deemed to reflect the voter’s intent, and thus, to supersede any prior Ballots, without prejudice to the Debtors’ right to object to the validity of the latest Ballot, if otherwise in compliance with the provisions set forth herein, on any basis permitted by law, including under Bankruptcy Rule 3018(a) and, if the objection is sustained, to count the first Ballot for all purposes;

(iii) (a) The Debtors have made available to all creditors entitled to vote on the Plan or their authorized agents all of the Solicitation Package materials, and (b) the Solicitation Package materials are the only materials that creditors are entitled to rely on with respect to the Plan; and

(iv) All authority conferred or agreed to be conferred pursuant to this Ballot, and every obligation of the undersigned hereunder shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, and legal representatives of the undersigned and shall not be affected by, and shall survive, the death or incapacity of the undersigned.

CERTIFICATIONS

Upon execution of this Ballot, the Holder of the Class [__][_____] Claim identified in Item 1 above certifies that:

(i) As of the Voting Record Date, November 12, 2010, either (a) such person or entity is the Holder of the Class [] [] Claim in the aggregate amount indicated in Item 1 or (b) such person or entity is an authorized signatory for the person or entity which is the Holder of the Class [] [] Claim in the aggregate amount indicated in Item 1;

(ii) Such person or entity (or in the case of an authorized signatory, the Holder) is eligible to be treated as the Holder of such Class [] [] Claim in Item 1 for the purposes of voting on the Plan; and

(iii) Such person or entity (or in the case of an authorized signatory, the Holder) has reviewed and understands the disclosures in the section titled "Disclosures" immediately above.

Name of Creditor: _____
(Print or Type)

Signature: _____

By (If Other Than Creditor): _____

Title (If Appropriate): _____

Social Security or Federal Tax I.D. No. (Optional): _____

Date Completed: _____

Telephone Number: _____

Street Address: _____

City, State and Zip Code: _____

Please check here if the above address is a change of address that you would like reflected in the master mailing list for the Chapter 11 Cases.

**PLEASE COMPLETE, SIGN, AND DATE THE BALLOT AND RETURN IT
PROMPTLY, BUT NO LATER THAN THE VOTING DEADLINE.**

THIS BALLOT MUST BE RECEIVED BY:

If by U.S. Mail:

**Cynergy Ballot Processing Center
Kurtzman Carson Consultants LLC
2335 Alaska Ave
El Segundo, CA 90245**

If by Hand Delivery or Overnight Courier:

**Cynergy Ballot Processing Center
Kurtzman Carson Consultants LLC
2335 Alaska Ave
El Segundo, CA 90245**

**5:00 P.M. (PREVAILING EASTERN TIME) ON OR BEFORE DECEMBER 14, 2010,
OR YOUR VOTE MAY *NOT* BE COUNTED.**

**PLEASE MAKE SURE YOU HAVE PROVIDED
ALL INFORMATION REQUESTED BY THIS BALLOT.**

VOTING INSTRUCTIONS

1. The Debtors are soliciting the votes of holders of Class [___][_____] Claims described in the Disclosure Statement and Plan. **The Disclosure Statement, Plan, Disclosure Statement Order, and certain other materials contained in the Debtors' Solicitation Package are included in the packet you are receiving with this Ballot. These materials, and all other Solicitation Package materials, are also available by contacting the Debtors' Voting Agent in writing at Cynergy Ballot Processing Center, Kurtzman Carson Consultants LLC, 2335 Alaska Ave, El Segundo, CA 90245 or may be viewed without charge at www.kccllc.net/cynergydata.**
2. All capitalized terms used in this Ballot or in these instructions but not otherwise defined herein shall have the meaning ascribed to them in the Disclosure Statement, the Plan or the Disclosure Statement Order, as the case may be.
3. The Plan can be confirmed by the Court, and therefore made binding on all holders, if it is accepted by the holders of two-thirds (2/3) in amount and more than one-half (1/2) in number of claims in each impaired class voting on the Plan.
4. To ensure that your vote is counted, you must complete and return this Ballot as follows: (a) indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Ballot, and (b) review the Disclosures and Certifications in Item 3 and sign and return the Ballot in the enclosed pre-addressed, postage pre-paid envelope so that it is **ACTUALLY RECEIVED** by the Voting Agent by the Voting Deadline, December 14, 2010 at 5:00 p.m. (prevailing Eastern Time).
5. If a Ballot is received after the Voting Deadline, it may not be counted. The method of delivery of a Ballot to the Voting Agent is at the election and risk of each entity. Except as otherwise provided herein, such delivery will be deemed made only when the original executed Ballot is **ACTUALLY RECEIVED** by the Voting Agent. Sufficient time should be allowed to assure timely delivery. Delivery of a Ballot by facsimile transmission, e-mail or any other electronic means will not be valid. **This Ballot should not be sent to the Debtors, any of their agents (other than the Voting Agent) or the Debtors' financial or legal advisors.**
6. You must vote all of your Claims within a particular Plan class either to accept or reject the Plan and may not split your vote. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted.
7. Notwithstanding Bankruptcy Rule 3018(a), whenever two or more Ballots are cast voting the same claim prior to the Voting Deadline, the Ballot dated latest, but received prior to the Voting Deadline, will be deemed to reflect the voter's intent, and thus, to supersede any prior Ballots, without prejudice to the Debtors' right to object to the validity of the latest Ballot, if otherwise in compliance with the provisions set forth herein, on any basis permitted by law, including under Bankruptcy Rule 3018(a) and, if the objection is sustained, to count the first Ballot for all purposes.

8. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan.
9. This Ballot does not constitute, and shall not be deemed to be, a proof of claim or equity interest or an assertion or admission of a claim or equity interest.
10. Unless such defect is waived by the Debtors, the following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the creditor; (ii) any Ballot cast by a person or entity that does not hold a claim in a class that is entitled to vote on the Plan; (iii) any Ballot cast for a claim scheduled as unliquidated, contingent or disputed for which no proof of claim was timely filed; (iv) any Ballot sent to the Voting Agent by facsimile or other electronic means; and (v) any unsigned Ballot.
11. Any proof of claim for which the Debtors have not filed an objection prior to the Voting Record Date shall be deemed temporarily allowed for voting purposes in the amount stated on the face of the proof of claim. Any proof of claim that includes both a liquidated amount and an unliquidated or contingent amount shall be temporarily allowed for voting purposes in only the liquidated, non-contingent amount, and the unliquidated or contingent amount shall be deemed temporarily disallowed for voting purposes.
12. Any timely filed proof of claim (i) marked as contingent or unliquidated on the face of the proof of claim and/or (ii) not otherwise specifying a fixed or liquidated amount on the face of the proof of claim, shall be temporarily allowed for voting purposes in the amount of \$1.00.
13. If a holder of a claim identifies on the Ballot a claim amount that is less than the scheduled or filed amount of its claim, then the claim will be temporarily allowed for voting purposes in the lesser amount identified on the Ballot.
14. If a claim has been estimated by an order of the Court, then such claim shall be temporarily allowed for voting purposes only in the estimated amount.
15. Unless temporarily allowed for voting purposes by the Court, a claim listed in the Debtors' schedules as contingent, unliquidated, or disputed, and for which a proof of claim was not (i) filed by the bar date for filing proofs of claim as established by the Court or (ii) deemed timely filed by an order of the Court prior to the Voting Deadline, shall be temporarily disallowed for voting purposes.
16. Notwithstanding anything else provided herein, if (i) the Debtors or another party-in-interest has objected to a claim by serving an objection, motion, adversary proceeding or otherwise to a claim or a portion of a claim on or before the Voting Record Date and (ii) such claim or portion of a claim has not been temporarily allowed by an order of the Court for voting purposes, then the claim shall be deemed disallowed for voting purposes or shall be allowed only in the undisputed amount set forth in the objection.

17. Unless temporarily allowed for voting purposes by the Court, if a proof of claim asserts a claim that is not in U.S. dollars, such claim shall be treated as unliquidated and allowed for voting purposes only in the amount of \$1.00.
18. Please be sure to sign and date your Ballot. If you are signing the Ballot as a trustee, executor, administrator, guardian, attorney-in-fact, officer of a corporation, or acting in a fiduciary or representative capacity, you must indicate such capacity when signing and, if required or requested by the Voting Agent, the Debtors, or the Court, must submit proper evidence satisfactory to the requesting party to so act on behalf of the Holder of the Claim. In addition, please provide your name and mailing address if different from that set forth on the attached mailing label or if no such mailing label is attached, to the Ballot.
19. Unless otherwise directed by the Court, delivery of a defective or irregular Ballot will not be deemed to have been made until such defect or irregularity has been cured or waived by the Debtors. Any waiver by the Debtors of defects or irregularities in any Ballot will be detailed in the Voting Report filed with the Court by the Voting Agent. Neither the Debtors, nor any other person or entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots, nor will any of them incur any liability for failure to provide such notification.
20. If you have any questions regarding the Ballot, please contact the Voting Agent immediately.
21. No fees or commissions or other remuneration will be payable to any broker, dealer or other person for soliciting Ballots accepting or rejecting the Plan.

**PLEASE DELIVER YOUR BALLOT PROMPTLY, BUT NO LATER THAN THE
VOTING DEADLINE.**

**IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THESE VOTING
INSTRUCTIONS, PLEASE CONTACT THE VOTING AGENT TOLL FREE AT**

(866) 967-0497