IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	
CD LIQUIDATION CO., LLC, f/k/a CYNERGY DATA, LLC, *et al.*, [1]	Chapter 11
	Case No. 09-13038 (KG)
Debtors.	Jointly Administered **Hearing Date: October 31, 2012 at 10:00 a.m. (E.T.)** **Objection Deadline: September 17, 2012 at 4:00 p.m. (E.T.)**

MOTION OF MONERIS SOLUTIONS, INC. AND BMO HARRIS BANK N.A. FOR AN ORDER (1) ENFORCING (A) THE ORDER APPROVING THAT CERTAIN SETTLEMENT REGARDING RECONCILIATION OF AMOUNTS RELATED TO THE ROLLING RESERVE FUND, (B) THE ORDER CONFIRMING THE JOINT PLAN OF LIQUIDATION OF CD LIQUIDATION CO., LLC, CD LIQUIDATION CO. PLUS, LLC, AND CYNERGY DATA HOLDINGS, INC. AND (C) COMPLIANCE WITH THE JOINT PLAN OF LIQUIDATION OF DEBTORS AND (2) ENJOINING MARCELO PALADINI

[1] The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): CD Liquidation Co., LLC f/k/a Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); CD Liquidation Co. Plus, LLC f/k/a Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

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This is a motion to enforce the Court's prior orders releasing and enjoining any claims of the Debtors in the above-captioned case against the defendants and to enjoin a lawsuit recently commenced in New York that attempts to circumvent this Court's jurisdiction.

Moneris Solutions, Inc. ("Moneris Solutions") for itself and in its capacity as agent for BMO Harris Bank N.A. ("Harris") (together with Moneris Solutions, "Moneris") seeks entry of an order (1) enforcing (A) this Court's Order Approving, Pursuant to Section 105(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019, the Settlement Between and Among the Debtors, Harris N.A., Moneris Solutions, Inc., Term B Parties and Second Lien Parties, Term A Parties, Cynergy Holdings, LLC and Cynergy Data LLC, Regarding Reconciliation of Amounts Related to the Rolling Reserve Fund and for Certain Related Relief (the "Settlement Order") [D.I. 935], (B) this Court's Order Confirming Joint Plan of Liquidation of CD Liquidation Co., LLC, CD Liquidation Co. Plus, LLC, and Cynergy Data Holdings, Inc. (the "Confirmation Order") [D.I. 1202] and (c) the Joint Plan of Liquidation of Debtors (the "Plan") [D.I. 1190] and (2) enjoining Marcelo Paladini ("Paladini"). Moneris seeks entry of an order substantially in the form of the proposed order attached as Exhibit 1. In support of this Motion, Moneris respectfully states as follows:

PRELIMINARY STATEMENT

1. Paladini, the former Chief Executive Officer and ultimate majority shareholder of the Debtors, has filed a lawsuit in the United States District Court for the Southern District of New York against Moneris claiming monetary damages arising from alleged harm to himself because, he claims, Moneris' actions led to the Debtors' bankruptcy filings.

2. Paladini purports to allege causes of action against Moneris for economic duress, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, tortious interference with business relations, general malpractice and negligence.

3. Paladini's lawsuit is a thinly-veiled derivative action based on claims that belong to the Debtors, not Paladini personally. The Debtors and, by succession, the Liquidation Trustee released Moneris from all such claims in the Settlement Order, the Plan, and the Confirmation Order and this Court enjoined all actions asserting such claims against Moneris in the Settlement Order, the Plan and Confirmation Order.

4. This is not the first time Paladini has attempted to circumvent this Court's administration of the Debtors' bankruptcy cases and recover damages for himself that would, if valid, actually belong to the Debtors' estates. In 2010, Paladini sued Cynergy Data's co-founder and former President John Martillo in the Southern District of New York claiming entitlement to a cash payment made to Martillo by Cynergy in 2007 for redemption of his shares in Cynergy Data. Because this Court concluded that those claims were derivative, it enjoined Paladini's lawsuit against Martillo in New York, observing that "Paladini's arguments are wholly without merit, bordering on, if not, bad faith." *In re CD Liquidation Co., LLC*, 462 B.R. 124, 128 (Bankr. D. Del. Nov. 2, 2011). The Liquidation Trustee, as successor to Cynergy, is currently pursuing those claims against Martillo.

5. Now, Paladini again attempts to usurp for himself rights belonging to the Debtors, the difference here being that the Debtors and, by succession, the Liquidation Trustee released Moneris from those claims and the Court enjoined them and all other parties from asserting such claims. Accordingly, Moneris respectfully requests that the Court enforce its prior orders and enjoin Paladini's lawsuit in New York against Moneris.

STATEMENT OF FACTS

A. The Parties

6. CD Liquidation Trust is successor-in-interest to the bankruptcy estates of Cynergy Data Holdings, Inc., CD Liquidation Co. Plus, LLC (f/k/a Cynergy Prosperity Plus, LLC), CD

Liquidation Co., LLC (f/k/a Cynergy Data LLC) ("Cynergy Data" and collectively, "Cynergy" or the "Debtors") created pursuant to the Plan. Cynergy provided credit and debit card payment-processing services for merchants, enabling merchants to receive payments when customers paid by credit card.

7. Paladini was, at the commencement of the Debtors' chapter 11 cases, the Chief Executive Officer and ultimate majority shareholder of the Debtors. Cynergy Data Holdings, Inc. was the parent of Cynergy Data LLC and Cynergy Prosperity Plus, LLC was the subsidiary of Cynergy Data LLC.

8. On July 2, 2012, Paladini commenced an action in the United States District Court for the Southern District of New York, *Paladini v. BMO Harris Bank, N.A., et ano.*, No. 12-cv-5178 (the "New York Action"). (*See* Complaint, Exhibit 2.)[2] Paladini's counsel of record is Stephen Aschettino, the Debtors' former in-house lawyer at the time of the events in question.

9. Cynergy was an Independent Sales Organization ("ISO") that did not have direct access to the Visa and MasterCard payment networks and therefore required a sponsor to enable it to provide credit and debit card processing services to its merchant customers. Moneris (through Harris) is such a party that has access to the Visa and MasterCard payment networks and acted as the sponsor for Cynergy Data, providing Cynergy Data with a Bank Identification Number (BIN) for Visa transaction processing and an Interbank Clearing Account (ICA) for MasterCard transaction processing. (Declaration of Gregory C. Cohen in Support of Objection by Moneris Solutions, Inc. to the Proposed Assumption and Assignment of Assumed Contracts and Proposed Cure Amounts [D.I. 207], hereinafter, "Cohen Decl." ¶ 3 annexed hereto as

[2] For ease of reference, the Complaint in the New York is referred to in citations as "Compl."

Exhibit 3.)[3] Moneris Solutions is Harris' agent for purposes of the BIN sponsorship of Cynergy Data.

B. Contractual Relationships Between Moneris And Cynergy

The BIN Sponsorship

10. On November 1, 2008, Moneris provided the BIN sponsorship for Cynergy Data pursuant to that certain BIN Sponsor Agreement between Harris N.A. and Cynergy Data (as amended, the "BIN Agreement"). The BIN Agreement set forth the rights and obligations between Cynergy Data and Moneris. Cynergy Data was also contractually obligated to Moneris pursuant to tens of thousands of merchant agreements which were assigned to Harris from Cynergy Data's prior sponsor, Bank of America (the "Merchant Agreements"). At no time was Paladini a party to the BIN Agreement or the Merchant Agreements.

11. Among other things, the BIN Agreement provides that, as the ISO, Cynergy Data was obligated to Moneris to maintain reserves of merchant funds in the Harris demand deposit account (the "Harris Reserve Account") as a security against a loss attributable to a merchant, such as when the merchant ceases business operations or otherwise does not cover chargebacks, fees, fines, fraudulent activity or other losses. Each merchant agreed to the withholding of reserves pursuant to the three-party Merchant Agreements. Specifically, Section 2.1F of the BIN Agreement provides:

> ISO acknowledges that it will not have access to Merchant funds, provided however, ISO is responsible for any fees of Bank related to the holding of Merchant funds prior to distribution to Merchants. . . . All Merchant Reserve Accounts are held by Bank.

(Cohen Decl., Ex. A.)

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[3] The Declaration of Gregory C. Cohen in Support of Objection by Moneris Solutions, Inc. to the Proposed Assumption and Assignment of Assumed Contracts and Proposed Cure Amounts has already been filed in this Court [D.I. 207]. For ease of reference it is referred to in citations as "Cohen Decl."

12. Like the BIN Agreement, each Merchant Agreement provided that the merchant reserves were to be held in a Harris account. The form of Merchant Agreements provide that merchants will maintain reserve accounts at Bank [Harris] initially or at any time in the future as requested by Processor [Cynergy Data] and Bank, with sums sufficient to satisfy merchant's current and future obligations as determined by Processor and Bank. (Cohen Decl. Ex. B § 7B(i).)

13. At the outset of its relationship with Cynergy Data, Moneris demanded on several occasions, including directly to Paladini, that Cynergy Data transfer all merchant reserve funds to the Harris Reserve Account. (Cohen Decl. ¶¶ 11-12.) Despite assurances from Cynergy Data and Paladini that all such funds were transferred to Harris, Moneris determined in the spring of 2009 that nearly $7 million of merchant reserves were missing from the Harris Reserve Account. Moneris notified Cynergy Data that the failure of Cynergy Data to transfer all merchant reserves to the Harris Reserve Account was a breach of the BIN Agreement and Merchant Agreements. Moneris demanded the Debtors turn over such funds, exercised its rights of recoupment and set off from the daily collections approximately $7 million to be held as "Rolling Reserves." (Cohen Decl. ¶ 14.) These actions were consistent with Moneris' actions throughout the term of the BIN Agreement, which were, among other things, to demand that all merchant reserves were to be maintained in the Harris Reserve Account and effect settlement in and out of Cynergy Data's accounts on a daily basis.

14. In or about July 2009, Moneris learned that an additional $21 million in unfunded Rolling Reserves were not held in the Harris Reserve Account.

The Forbearance Agreement

15. Moneris, at the request of various parties including Cynergy Data and its lenders, entered into a Forbearance Agreement, dated as of July 24, 2009, regarding Debtors' Financing

Arrangements and the Harris Documents (the "Forbearance Agreement," each capitalized term undefined in this section having the meaning ascribed in the Forbearance Agreement; Compl. Ex. F). Pursuant to the Forbearance Agreement, Moneris agreed to forbear from exercising its rights to setoff and recoup the approximately $21 million of missing merchant reserve funds subject to certain terms and conditions, including an acknowledgement by Cynergy Data that it was obligated to maintain the Rolling Reserves in the Harris Reserve Account.

16. As set forth in the Forbearance Agreement, the Debtors and Paladini, as Guarantor, acknowledged that Cynergy Data was obligated to pay the unfunded merchant Rolling Reserves into the Harris Reserve Account and that Events of Default occurred under the Harris Documents, including the BIN Agreement and Merchant Agreements. Specifically, the Forbearance Agreement provided:

> Borrower acknowledges and agrees that as of July 17, 2009, the unfunded merchant reserve in the amount of $21,341,801 was to be held in deposit at Harris pursuant to the BIN Agreement and was not so held (the "Unfunded Reserve"). The Unfunded Reserve, any Loss (as defined in the BIN Agreement) and other obligations to Harris under the Harris Documents are unconditional obligations of Borrower to Harris, without offset, defense, withholding, counterclaim or deduction of any kind, nature or description whatsoever.
>
> Borrower and each Guarantor, as applicable, acknowledges and agrees that the Events of Default described on Exhibit A (each, an "Existing Event of Default", and collectively the "Existing Events of Default") have occurred and are continuing under the Senior Loan Documents, the Subordinated Loan Documents or the Harris Documents as applicable.

(Compl. Ex. F, p. 2.) The Debtors and Paladini further acknowledged that:

> **DEFAULTS HAVE OCCURRED UNDER THE LOAN DOCUMENTS AND THE HARRIS DOCUMENTS.**

(Compl. Ex. F, p. 16) (emphasis in original).

17. The Debtors and Paladini, moreover, expressly acknowledged that they did not execute the Forbearance Agreement under any duress:

> Borrower and each Guarantor acknowledges that it has reviewed (or have had the opportunity to review) this Agreement with counsel of their choice and have executed this Agreement of their own free will and accord and without duress or coercion of any kind by any Financing Party, Harris or any other person or entity.

(Compl. Ex. F ¶ 47.)

18. Among the counsel advising Cynergy Data in the negotiation, execution and consummation of the Forbearance Agreement was its in-house counsel, Stephen Aschettino. Mr. Aschettino is now Paladini's counsel prosecuting the New York Action.

C. The Cynergy Bankruptcy

19. On September 1, 2009, each of the Debtors filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (as amended, the "Bankruptcy Code").

The Settlement Order

20. On September 13, 2010, this Court entered the Settlement Order [D.I. 935].[4] The Settlement Order approved the terms and conditions of that certain Settlement Term Sheet, as modified, supplemented and amended by the Settlement Order (the "Settlement Term Sheet"), by and among the Debtors, Harris and Moneris Solutions, those certain Term B Parties and Term A Parties, and the purchasers of the Debtors' assets (collectively, the "Settling Parties").

21. Pursuant to the Settlement Term Sheet, the Debtors and other Settling Parties released any and all claims arising before the date of the Settlement Order against Moneris except for claims specified therein relating to future distribution of escrowed funds. (Exhibit 4, Settlement Term Sheet at 9.)

[4] Due to their volume, defendants have not annexed the Settlement Order, the Plan or the Confirmation Order to this motion.

22. The Settlement Order expressly incorporates the Settlement Term Sheet by reference and provides that the Settlement Term Sheet is expressly incorporated into the Plan. (Settlement Order ¶ 21; Plan, Article XII § R.)

23. The Debtors, pursuant to the Settlement Term Sheet and Settlement Order, released any and all claims against Moneris "related in any way to the Settlement Term Sheet, Settlement Escrowed Funds, BIN Sponsor Agreement or the Debtors." Among other things, the Settlement Order provides that:

> Each of the Debtors on behalf of themselves and their estates created in the Bankruptcy Cases pursuant to section 541 of the Bankruptcy Code, the Term A Parties, the Term B Parties, and Garrison Opportunities, do thereby and under the Settlement Term Sheet waive and release any and all claims (to be interpreted in the broadest manner possible), obligations, suits, judgments damages, rights, causes of action, liabilities, defenses, counterclaims or offsets and/or allegations whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, against Moneris related in any way to the Settlement Term Sheet, Settlement Escrowed Funds, BIN Sponsor Agreement or the Debtors, except with respect to: (i) claims as set forth in this Settlement Term Sheet, (ii) claims for breach under the Settlement Term Sheet and (iii) claims for disgorgement by Moneris under the Stipulation and the Settlement Term Sheet . . . .

(Settlement Order ¶ 12.)

24. This Court enjoined actions of claims against Moneris released under the Settlement Term Sheet, Settlement Order or otherwise related to reserves as follows:

> Except as expressly permitted by the Settlement Term Sheet, all parties in interest in the Bankruptcy Cases hereby are forever barred, estopped and permanently enjoined from: (a) commencing or continuing in any manner any action or other proceeding, asserting, prosecuting or otherwise pursuing any claims, rights or causes of action, (b) enforcing, attaching collecting or recovering in any manner any judgment, award, decree of order, (c) creating perfection or enforcing any lien or encumbrance or (d) asserting a setoff, right of subrogation or recoupment of any kind, against a Settling Party; (i) released under this Order, or the Settlement

> Term Sheet or (ii) related to reserves identified in the Bankruptcy Cases as part of the Settlement Escrowed Funds . . . .

(*Id.* ¶ 11.) Moneris is defined to include Harris pursuant to paragraph 3 of the Settlement Order. Paladini preserved claims and defenses belonging to himself individually "indirectly related to the reserves, but [that] do not affect the entitlement to, calculation of, ownership, control or distribution of the reserves." (*Id.* at ¶ 11.) This preservation only applies to direct claims, if any, of Paladini against Moneris, not derivative claims.

25. The Settlement Order and the releases granted by the Debtors in favor of Moneris are binding on the Liquidation Trustee pursuant to the Settlement Order as follows:

> This Order is binding upon the Debtors, all creditors of the Debtors, and any trustees that may be appointed in these chapter 11 cases or any trustees appointed in any subsequent proceedings under chapter 7 of the Bankruptcy Code relating to the Debtors, and all other parties-in-interest.

(*Id.* ¶ 22.)

26. Finally, this Court retained "jurisdiction to the full extent permitted by law to determine any disputes concerning or relating to the Settlement." (*Id.* ¶ 24.)

The Plan And Confirmation Order

27. The Debtors filed the Plan on December 17, 2010 [D.I. 1190] and this Court confirmed it pursuant to the Confirmation Order on December 21, 2010. [D.I. 1202.]

28. The Liquidation Trustee, Charles M. Moore, was appointed pursuant to the Plan and he exercises the exclusive right to assert causes of action on the Debtors' behalf. (Plan at pp. 8, 18.) The Plan incorporates the releases set forth in the Settlement Term Sheet and Settlement Order of any claims by the Debtors against Moneris and the permanent injunction provided therein. (Plan, Article XII § R.) The Plan specifies that all injunctions or stays contained in the Settlement Order, Plan or Confirmation Order, remain in full force and effect in accordance with

their terms. (Plan, Article XII § O.) The Confirmation Order provides that prior orders entered in the Chapter 11 Cases, all documents and agreements executed by the Debtors as authorized and directed thereunder are binding upon the Liquidation Trustee. (Confirmation Order ¶ 16.)

29. The Court retained exclusive jurisdiction over all claims brought on the Debtors' behalf. (Plan, Article XI.) The Court additionally retained jurisdiction to enforce all orders, and specifically all injunctions and releases, entered in connection with the bankruptcy. (*Id.*; Confirmation Order ¶ 17.)

D. Paladini's Lawsuit Against Moneris In New York

30. In the New York Action, Paladini alleges that Moneris's actions led the Debtors' bankruptcy filings by threatening to suspend their funding unless they acceded to Moneris' demand to fund the $21 million Rolling Reserve. Paladini additionally alleges that Moneris' negligence and "malpractice" in improperly performing the daily reconciliation of transfers between Cynergy Data and Moneris and failing to maintain the Rolling Reserves in a Harris Account contributed to the Debtors' bankruptcy. (Compl. ¶¶ 212-230.) Paladini further alleges that Moneris disrupted a potential sale of the Debtors by exchanging information with the potential purchaser and by failing itself to bid. (*Id.* ¶¶ 87-94.)

31. Paladini claims that, as a result of the Debtors' bankruptcy, he suffered personal harm in several respects: first, the Debtors' bankruptcy destroyed the value of his shares; second, the bankruptcy and his role as the Debtors' guarantor caused him to be named a defendant in four creditor lawsuits; third, the sale of the Debtors for less than its indebtedness exposed Paladini to liability as the Debtors' guarantor; and fourth, an "assumption in the public" that Paladini was responsible for mishandling $21 million of the Debtors' funds caused harm to his professional reputation. (*Id.* ¶¶ 11-13.)

32. Paladini alleges causes of action against Moneris for economic duress, breach of fiduciary duty, breach of the covenant of good faith and fair dealing, tortious interference with business relations, general malpractice and negligence. (*Id.* ¶ 1.)

E. Paladini's Litigation Against Cynergy Co-Founder John Martillo

33. In April 2010, Paladini filed a lawsuit against John Martillo, Cynergy Data's co-founder and former President, in the United States District Court for the Southern District of New York, alleging that Martillo received an improper $46.5 million payment in exchange for Martillo's redemption of his Cynergy shares (the "Martillo Action"). As in the New York Action, Paladini alleged that Martillo's share redemption caused Paladini personal injury because (i) the payment destroyed the value of Paladini's shares in the Debtors, and (ii) he was exposed to lawsuits from third parties seeking to hold Paladini liable for the funds Martillo received in excess of the fair value of the shares redeemed. Paladini also argued that he was harmed because the overpayments forced the Debtors into bankruptcy, which triggered his guaranty of the Debtors' financing.

34. Contemporaneously, the Liquidation Trustee commenced an adversary proceeding against Martillo and moved to enjoin Paladini from pursuing the Martillo Action. Martillo intervened in the adversary proceeding and both Martillo and the Liquidation Trustee argued that because Paladini's claims were derivative, they belonged to the Debtors and the Liquidation Trustee had the exclusive power to prosecute such claims.

35. At the September 27, 2011, argument on the Liquidation Trustee's and Martillo's motion for a preliminary injunction, the Court concluded, "I don't think there's any question that an injunction will issue here," ([D.I. 1418] 9/27/2011 Tr. at 149:11-13), and explained "I don't want to leave anyone in doubt; but I do think that these are derivative claims." (*Id.* at 150:13-

15.) The Court also observed that the Liquidation Trustee "could have moved to enforce the injunctive relief in the plan" rather than initiating an adversary proceeding. (*Id.* at 67:7-11).[5]

36. On November 2, 2011, this Court issued a Memorandum Opinion enjoining the Martillo Action. [D.I. 1424] *In re CD Liquidation Co., LLC*, 462 B.R. 124. The Court held that the injuries Paladini allegedly suffered derived from harms initially suffered by the Debtors, such that the claims on which the injuries were based were derivative, not direct, and could only be properly asserted by the Liquidation Trustee. *Id.* at 131-34. The Court held that Paladini's claim that Martillo's redemptions caused the Debtors to become insolvent and thus devalued Paladini's shares is "a classic derivative claim" because a dilution in value of a stockholder's shares can only stem from a reduction in the value of the entire corporate entity. *Id.* at 132. Paladini's alleged harm of lawsuits brought against him by the Debtors' lenders was also derivative because it was based on a principal injury to the Debtors in that the Debtors, not Paladini, overpaid Martillo. *Id.* at 133. The Court declined to consider Paladini's third purported harm, based on his guaranty of the Debtors' debts, because Paladini's complaint did not plead a claim based on it. *Id.* Regardless, even if Paladini had asserted such a claim, the Court noted that any harm based on the guaranty was derivative in nature, because any obligation under the guaranty could only arise as a result of Martillo's purported wrongdoing, which caused the Debtors to enter into bankruptcy. *Id.*

37. The Court noted that "Paladini's arguments are wholly without merit, bordering on, if not, bad faith" and admonished Paladini that neither he nor "his lawyer should think for one moment that the egregious misstatements of the record and misleading arguments were lost on the Court." *Id.* at 128-29.

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[5] Rule 7001 of the Federal Rules of Bankruptcy Procedure provides in part that an adversary proceeding includes "a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11 chapter 12 or chapter 13 plan provides for the relief."

THE COURT'S JURISDICTION

38. The Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334. These are core proceedings pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

39. This Court has jurisdiction to hear this motion because it has jurisdiction to enforce its orders and it retained jurisdiction over claims belonging to the Debtors. *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009) ("[t]he Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders . . . and it explicitly retained jurisdiction to enforce its injunctions"); *see also In re FormTech Indus., LLC*, 439 B.R. 352, 357 (Bankr. D. Del. 2010) ("Enforcement and interpretation of orders issued in core proceedings are also considered core proceedings within the bankruptcy court's jurisdiction"); *Amphenol Corp. v. Shandler* (*In re Isilco Techs., Inc.*), 351 B.R. 313, 319-10 (Bankr. D. Del. 2006) ("Bankruptcy Courts have subject matter jurisdiction to interpret and enforce their own orders."); *In re CD Liquidation Co., LLC*, 462 B.R. at 135-36.

40. In exercise of that jurisdiction, bankruptcy courts routinely entertain motions to enforce confirmation orders and orders related to liquidation plans. *See In re SemCrude L.P.*, No. 09-11525 (BLS), 2011 WL 1981713 (Bankr. D. Del. Oct. 7, 2011) (granting motion to enforce confirmation order enjoining state court suit brought by debtor's limited partners against debtor's former CEO and debtor's auditor); *In re Continental Airlines, Inc.*, 236 B.R. 318 (Bankr. D. Del. 1999) ("[i]n the bankruptcy context, courts have specifically, and consistently, held that the bankruptcy court retains jurisdiction, *inter alia*, to enforce its confirmation order") *aff'd*, 279 F.3d 226 (3d Cir. 2002); *In re Charter Commc's*, 2010 WL 502764, at *4-*5 (Bankr. S.D.N.Y. Feb. 8, 2010) (bankruptcy court "unquestionably has the authority and discretion to

rule on the Enforcement Motion and consider whether the causes of action have been released and should be enjoined").

ARGUMENT

41. The Settlement Order, the Confirmation Order and the Plan should be enforced to enjoin the New York Action because Paladini asserts derivative claims belonging to the Debtors that they and their successor-in-interest, the Liquidation Trustee, released and this Court enjoined. The injuries that Paladini alleges are personal to him are almost identical to the injuries he allegedly suffered in the Martillo Action. In that case, this Court recognized that such injuries were suffered by the Debtors and all of its constituents and, therefore, the claims to redress those injuries belong to the Liquidation Trustee. Accordingly, the Court enjoined the Martillo Action and authorized the Liquidation Trustee to proceed with such claims, which are pending before this Court today.

42. The principal difference here is that the Debtors and by succession, the Liquidation Trustee, released Moneris from the claims Paladini attempts to assert and enjoined any lawsuit asserting such claims against Moneris. Consequently, the Court should enforce the releases and injunctive provisions in the Settlement Order, the Plan and the Confirmation Order.

I. PALADINI'S CLAIMS AGAINST MONERIS ARE DERIVATIVE

43. Because Paladini's claims allege harm to the Debtors that, in turn, allegedly harmed Paladini in his role as their majority shareholder, the claims are fundamentally derivative in nature under well-settled Delaware law. A claim is derivative when (1) the company suffered the alleged harm and (2) the company would receive the benefit of the recovery or other remedy. *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1036 (Del. 2004). In applying this test, the fundamental question is "[l]ooking at the body of the complaint and considering the nature of the wrong alleged and the relief requested, has the plaintiff demonstrated that he or she

can prevail without showing an injury to the corporation?" *Id*. Because Paladini cannot demonstrate an independent harm to himself, his claims are derivative.[6] *See, e.g.*, *Feldman v. Cutaia*, 951 A.2d 727, 733 (Del. 2008) ("In order to state a direct claim, the plaintiff must have suffered some individualized harm not suffered by all of the stockholders at large").

A. Paladini's Claims To Redress His Loss Of Equity In Cynergy Are "Classic" Derivative Claims

44. Paladini alleges that Moneris' actions caused the Debtors' sale for $40 million less than the amounts they owed to their lenders and as a result, "Paladini's equity interest – valued at over $200MM just months before – was completely destroyed." (Compl. ¶¶ 159-160.) Paladini explains that this harm is "particularized to him because . . . a portion of the equity of Cynergy belonged to Paladini, personally, as majority shareholder." (Compl. ¶ 188.) Paladini seeks to redress his loss of equity in the Debtors through each cause of action, except economic duress. (Compl. ¶¶ 188, 201, 210, 220, 228.)

45. As this Court noted when Paladini alleged the same harm in the Martillo Action, this injury – loss in share value – is a "classic derivative harm" because "[i]t flows from a harm to the corporation." *In re CD Liquidation Co., LLC*, 462 B.R. at 132; *see also Ravenswood Inv. Co., L.P. v. Winmill*, 2011 WL 2176478 (Del. Ch. May 31, 2011) ("The Complaint identifies no harm that the [share] buybacks might have caused harm to the individual shareholders . . .under *Tooley*, this is a purely derivative claim"); *Higgins v. N.Y. Stock Exch., Inc.*, 806 N.Y.S.2d 339, 349 (Sup. Ct., N.Y. Ct'y 2005) ("New York courts have consistently held that diminution in the value of shares is essentially a derivative claim….This harm is said to *derive* from the harm

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[6] Courts look to the law of a company's state of incorporation to determine whether claims should be brought directly or derivatively. *In re Sunrise Secs. Litig.*, 916 F.2d 874, 881-82 (3d Cir. 1990). The companies at issue here were all organized under the laws of Delaware.

suffered principally by the corporation and only collaterally to shareholders, and thus is derivative in nature").

46. The sale of Cynergy affected the value of Paladini's shares no more or less than the value of other stockholders' shares and the claims of Cynergy's creditors. As such, and as this Court has already held, any harm to Paladini arising out of his status as a shareholder is derivative of harm to the Debtors.

47. The economic duress claim, for which Paladini seeks monetary damages, (Compl. ¶ 183), does not state a cause of action as a matter of law because economic duress is not a cause of action, but rather a theory of recovery for rescission of a contract. *See Bank Leumi Trust Co. v. D'Evori Int'l, Inc.*, 558 N.Y.S.2d 909, 914 (1st Dep't 1990) ("[W]e do not believe that the doctrine of economic duress, which is traditionally used as a defense to an action, has any place in a cause of action seeking money damages".); *805 Third Ave. Co. v. M.W. Realty Assocs*., 58 N.Y.2d 447, 453 (1983).[7] It is also negated by the Debtors' and Paladini's acknowledgement in the Forbearance Agreement that they "reviewed (or have had the opportunity to review) this Agreement with counsel of their choice and have executed this Agreement of their own free will and accord and without duress or coercion of any kind by an Financing Party, Harris or any other person or entity." (Compl. Ex. F ¶ 47.)

B. Paladini's Claims To Redress His Exposure To Lawsuits By Cynergy's Creditors Derive From Cynergy's Defaults and Bankruptcy

48. Paladini alleges that Moneris' conduct led to the Debtors' bankruptcy and sale for less than the amount of its indebtedness leading to Paladini being named as a defendant in four lawsuits. Paladini alleges this injury in connection with each cause of action except the tortious

[7] The Forbearance Agreement, which Paladini alleges he executed under duress, is governed by New York law. (Compl. Ex. F ¶ 33.)

interference claim and the defective economic duress claim. (Compl. ¶¶ 189, 202, 221, 229.)

49. Paladini alleges that Moneris caused the Debtors, not Paladini, to file for bankruptcy protection thus subjecting Paladini to lawsuits by the Debtors' creditors. (Compl. ¶¶ 154-55, 159-63.) Applying the *Tooley* analysis, this claim is derivative because Paladini cannot prevail without showing an injury to the company, namely filing for bankruptcy protection and being sold for less than the amount of its indebtedness.

50. Paladini likewise claimed in the Martillo Action personal injury due to his exposure to creditor lawsuits. *In re CD Liquidation Co., LLC*, 462 B.R. at 132. The Court rejected Paladini's contention, concluding instead that alleged harm from lawsuits arising out of the Debtors' bankruptcy is derivative. (*Id*.)

C. Paladini's Claims To Redress Exposure Due To His Guaranty Of Cynergy's Debts Derive From Cynergy's Defaults And Bankruptcy

51. Paladini alleges that "[d]ue to Cynergy's sale for approximately $40MM less than its indebtedness, Paladini was exposed to substantial liability by virtue of his personal guaranty" of Cynergy's debts. (Compl. ¶ 165.) Paladini also alleges that Moneris' "requirement that approximately $21MM of the sale proceeds be allocated to the Rolling Reserves exposed Paladini to further liability on his guaranty." (Compl. ¶ 166.) Once again, Paladini alleges this injury in connection with each cause of action.

52. Paladini's exposure due to his guaranty of the Debtors' financing is inherently derivative of the Debtors' principal obligations and defaults. Paladini does not allege that Moneris breached any agreement with him; rather, he alleges that Moneris' conduct "disrupted the Cynergy asset sale and resulted in a sale for approximately $40 MM less than the amount owed to the Cynergy Lenders." (Compl. ¶ 187.)

53. Paladini's obligations under the guaranty were only triggered after the principal obligor, the Debtors, failed to make good on their debts. Because Paladini is not asserting an independent cause of action against Moneris, he cannot prevail without first showing an injury to the Debtors. That demonstrates the claims to redress this injury are derivative.

54. Indeed, this Court recognized in the Martillo Action that claims by Paladini based on a guaranty of the Debtors' financing are derivative:

> Paladini is asserting a claim for "harm" caused to him as a shareholder-guarantor by a third party's wrongdoing which purportedly caused the corporation to enter bankruptcy, thereby triggering his guaranty. Courts which have considered such a claim have concluded that any such harm is derivative in nature.

In re CD Liquidation Co., LLC, 462 B.R. at 133, citing, *e.g.*, *Amusement Indus., Inc. v. Stern,* 2011 WL 2976199, at *6 (S.D.N.Y. July 26, 2011) (applying Delaware law, holding that harm based on guaranty was derivative because "it was only after some harm befell First Republic, rendering it unable to meet its obligations, that the guaranty could be enforced").

D. The Alleged Harm To Paladini's Professional Reputation Derives From The Allegedly Thwarted Sale Of Cynergy

55. Paladini alleges harm to his professional reputation only in connection with his claim for tortious interference with business relations. (Compl. ¶ 210.)[8]

56. He alleges that Moneris' conduct injured his professional reputation because Moneris caused a prospective buyer to withdraw its bid to acquire the Debtors and "thwarted" the sale process, which had the effect of lowering the sale price for the company's assets in bankruptcy. (Compl. ¶ 210.)

[8] To the extent that Paladini is claiming defamatory conduct by Moneris, such a claim would be time-barred under either New York's one-year or Delaware's two-year limitations periods. N.Y. C.P.L.R. 215(3); 10 Del. C. § 8119.

57. The primary harm of the tortious interference claim, therefore, is a harm to the Debtors, not Paladini, and a claim to redress the impact of such interference plainly belongs to the Debtors.[9]

II. BECAUSE PALADINI'S LAWSUIT ASSERTS DERIVATIVE CLAIMS BELONGING TO THE DEBTORS, THEY ARE RELEASED AND ENJOINED

58. Because they are derivative, Paladini's claims belong to the Debtors. *In re CD Liquidation Co., LLC*, 462 B.R. at 130; *see also In re RNI Wind Down Corp.*, 348 B.R. 286, 292 (Bankr. D. Del. 2006).

59. The Debtors, and by succession the Liquidation Trustee, released all such claims against Moneris pursuant to the Settlement Term Sheet, the Settlement Order, the Plan and the Confirmation Order.

60. This Court enjoined the prosecution of all such released claims pursuant to the Settlement Order, the Plan and the Confirmation Order.

61. Bankruptcy courts routinely uphold the injunctions and releases in confirmation plans. *See In re SemCrude L.P.*, 2011 WL 1981713, at *8 (granting motion to enforce confirmation order enjoining state court suit brought by debtor's limited partners against debtor's former CEO and debtor's auditor); *In re Charter Commc's*, 2012 WL 502764, at *4-*5 (enforcing the releases in bankruptcy plan against plaintiffs in securities class action litigation).

62. Accordingly, this Court should enforce its prior orders releasing and enjoining the claims Paladini asserts against Moneris in the New York Action and should, therefore, enjoin Paladini from prosecuting the New York Action.

[9] To the extent that Paladini is asserting that the sale of the Debtors' assets was not for fair value, or is otherwise using the New York Action as a collateral attack on the sale order, this Court also has jurisdiction to enforce its Order dated October 9, 2009, approving the sale and the time to appeal that order has lapsed.

CONCLUSION

For the foregoing reasons, Moneris Solutions and Harris respectfully request that the Court (i) grant their motion to enforce the Settlement Term Sheet, the Settlement Order, the Plan and the Confirmation Order, (ii) enforce the existing injunctions and enjoin Marcelo Paladini from continuing the New York Action and (iii) grant such other and further relief as is just.

Dated: August 31, 2012
Wilmington, Delaware

DRINKER BIDDLE & REATH LLP

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Attorneys for Moneris Solutions, Inc., in its capacity and as agent for BMO Harris Bank N.A.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
CD LIQUIDATION CO., LLC, f/k/a CYNERGY DATA, LLC, *et al.*, [1]	:	Case No. 09-13038 (KG)
	:	(Jointly Administered)
	:	**Hearing Date: October 31, 2012 at 10:00 a.m. (E.T.)**
Debtors.	:	**Objection Deadline: September 17, 2012 at 4:00 p.m. (E.T.)**

NOTICE OF MOTION OF MONERIS SOLUTIONS, INC. AND BMO HARRIS BANK N.A. FOR ORDER (1) ENFORCING (A) THE ORDER APPROVING THAT CERTAIN SETTLEMENT REGARDING RECONCILIATION OF AMOUNTS RELATED TO THE ROLLING RESERVE FUND, (B) THE ORDER CONFIRMING THE JOINT PLAN OF LIQUIDATION OF CD LIQUIDATION CO., LLC, CD LIQUIDATION CO. PLUS, LLC, AND CYNERGY DATA HOLDINGS, INC. AND (C) COMPLIANCE WITH THE JOINT PLAN OF LIQUIDATION OF DEBTORS AND (2) ENJOINING MARCELO PALADINI

PLEASE TAKE NOTICE that on August 31, 2012, Moneris Solutions, Inc. ("Moneris Solutions") for itself and in its capacity as agent for BMO Harris Bank N.A. ("Harris") (together with Moneris Solutions, "Moneris"), filed the *Motion of Moneris Solutions, Inc. and BMO Harris BANK N.A. for Order (1) Enforcing (a) the Order Approving That Certain Settlement Regarding Reconciliation of Amounts Related to the Rolling Reserve Fund, (B) the Order Confirming the Joint Plan of Liquidation of CD Liquidation Co., LLC, CD Liquidation Co. Plus, LLC, and Cynergy Data Holdings, Inc. and (C) Compliance with the Joint Plan of Liquidation of Debtors and (2) Enjoining Marcelo Paladini* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801

[1] The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): CD Liquidation Co., LLC f/k/a Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); CD Liquidation Co. Plus, LLC f/k/a 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 "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court and served upon and received by the undersigned counsel for Moneris at or before **4:00 p.m. (Eastern Time) on September 17, 2012.**

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held before The Honorable Kevin Gross at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801 on **October 30, 2012 at 10:00 a.m. (Eastern Time)**.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: August 31, 2012
Wilmington, Delaware

DRINKER BIDDLE & REATH LLP

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Counsel for Moneris Solutions, Inc., in its capacity and as agent for Harris N.A.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: CD LIQUIDATION CO., LLC, f/ka CYNERGY DATA, LLC, *et al.*, [1] Debtors.	Chapter 11 Case No. 09-13038 (KG) Jointly Administered Related Docket No.: _

ORDER GRANTING THE MOTION OF MONERIS SOLUTIONS, INC. AND BMO HARRIS BANK N.A. AND (1) ENFORCING (A) THE ORDER APPROVING THAT CERTAIN SETTLEMENT REGARDING RECONCILIATION OF AMOUNTS RELATED TO THE ROLLING RESERVE FUND, (B) THE ORDER CONFIRMING THE JOINT PLAN OF LIQUIDATION OF CD LIQUIDATION CO., LLC, CD LIQUIDATION CO. PLUS, LLC, AND CYNERGY DATA HOLDINGS, INC. AND (C) COMPLIANCE WITH THE JOINT PLAN OF LIQUIDATION OF DEBTORS AND (2) ENJOINING MARCELO PALADINI

UPON CONSIDERATION OF *the Motion of Moneris Solutions, Inc. ("Moneris Solutions") for itself and in its capacity as agent for BMO Harris Bank N.A. ("Harris") (together with Moneris Solutions, "Moneris") for entry of an order to (1) enforce (A) this Court's Order Approving, Pursuant to Section 105(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019, the Settlement Between and Among the Debtors, Harris N.A., Moneris Solutions, Inc., Term B Parties and Second Lien Parties, Term A Parties, Cynergy Holdings, LLC and Cynergy Data LLC, Regarding Reconciliation of Amounts Related to the Rolling Reserve Fund and for Certain Related Relief (the "Settlement Order") [D.I. 935], (B) this Court's Order Confirming Joint Plan of Liquidation of CD Liquidation Co., LLC, CD Liquidation Co. Plus, LLC, and Cynergy Data Holdings, Inc. (the "Confirmation Order") [D.I.*

1 The Debtors are the following entities (with the last four digits of their federal tax identification numbers in parentheses): CD Liquidation Co., LLC f/k/a Cynergy Data, LLC (8677); Cynergy Data Holdings, Inc. (8208); CD Liquidation Co. Plus, LLC f/k/a Cynergy Prosperity Plus, LLC (4265). The mailing address for the Debtors is 30-30 47th Avenue, 9th Floor, Long Island City, New York 11101.

1202] and (c) the Joint Plan of Liquidation of Debtors (the "Plan") [D.I. 1190] and (2) enjoin Marcelo Paladini ("Paladini") (the "Motion")[2] filed in these cases; and this Court having considered the record of the proceedings in the Chapter 11 cases and the information placed before it, and it appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that these are core proceedings pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, and due and sufficient notice of the Motion having been given; and it appearing that no other notice need be given, the Court having determined that good cause exists to grant the Motion; it is hereby

FOUND, that:

A. Marcelo Paladini seeks to prosecute in his name, and pending before the United States District Court for the Southern District of New York captioned *Paladini v. BMO Harris Bank, N.A., et ano.*, No. 12-cv-5178 (the "New York Action"), causes of action that belong to the Debtors and therefore the Liquidation Trustee appointed in these cases.

B. The Debtors, and therefore the Liquidation Trustee, released Moneris Solutions and Harris from all claims and causes of action under the Settlement Order, the Confirmation Order and the Plan.

C. This Court permanently enjoined all parties in interest in the Debtors' cases from commencing or continuing in any manner any action or other proceeding (i) released under the Settlement Order, or the Settlement Term Sheet or (ii) related to reserves identified in the Bankruptcy Cases as part of the Settlement Escrowed Funds (as defined in the Settlement

2 Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

Order). The exclusions to the permanent injunction set forth in the Settlement Order and as incorporated into the Confirmation Order do not apply to the New York Action.

D. The Plan as filed in the Debtors' cases incorporated into such Plan the Settlement Term Sheet and the releases and injunctions set forth therein.

E. This Court retained jurisdiction to enforce the Settlement Order, the Confirmation Order and the Plan.

F. This Court has subject matter jurisdiction over the claims that Paladini seeks to prosecute against Moneris in the New York Action.

NOW THEREFORE, it is hereby ORDERED that:

1. The Motion is GRANTED in all respects. Any objection not made to the Motion is waived. Any objection made to the Motion is overruled with prejudice.

2. All of the claims in the New York Action are derivative of claims to the Debtors and may only be asserted by the Liquidation Trustee which has already waived and released such claims.

3. The Settlement Order, the Confirmation Order and the Plan released Moneris and enjoined parties from asserting the claims set forth in the New York Action.

4. Marcelo Paladini is permanently enjoined from prosecuting the action pending in the United States District Court for the Southern District of New York captioned *Paladini v. BMO Harris Bank, N.A., et ano.*, No. 12-cv-5178.

5. The terms and conditions of this order shall be immediately effective and enforceable upon its entry.

6. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this order.

Dated: _____, 2012
Wilmington, DE

_____
THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 2

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARCELO PALADINI Plaintiff, v. BMO HARRIS BANK, N.A. and MONERIS SOLUTIONS, INC. Defendants.	Civil Action: **AMENDED COMPLAINT**

Plaintiff Marcelo Paladini ("Paladini"), by and through his counsel, Aschettino Struhs LLP, as and for his Amended Complaint against the defendants, BMO Harris Bank, N.A. ("Harris") and Moneris Solutions, Inc. ("Moneris"), hereby alleges as follows:

NATURE OF THE CASE

1. Paladini brings this civil action against the Defendants for economic duress, breach of fiduciary duty, breach of the covenants of good faith and fair dealing, tortious interference with business relations, general malpractice and negligence.

2. Paladini was the majority shareholder and guarantor of non-party Cynergy

Data, LLC ("Cynergy Data"), for which Harris served as sponsor bank, and Moneris, its affiliate, provided certain services.

3. Paladini was also a party to that certain Forbearance Agreement described more fully herein.

4. As sponsor bank, Harris was the gatekeeper for all funds movements associated with credit card and other electronic transactions for which Cynergy provided processing services to thousands of merchants.

5. Moneris provided various services for Harris and separately contracted with Cynergy to ensure that Cynergy's accounts were reconciled on a daily basis.

6. The Defendants ignored their contractual and common law duties to Cynergy and Paladini. They failed to monitor the daily transactions in Cynergy's operating account and provided incorrect information to Cynergy. These transactions included authorized withholdings from merchants – merchant reserves – which were thus to be accounted for and maintained separately.

7. More than eight (8) months after the inception of their contracts with Cynergy, through an improper and unauthorized communication with a third party, the Defendants claim to have first become aware that their failures had resulted in substantial shortfalls in Cynergy's merchant reserves and corresponding misinformation to Cynergy with regard to its operating account.

8. Rather than acknowledge their errors and undertake corrective measures, the Defendants disingenuously feigned ignorance with respect to the shortfalls in Cynergy's operating accounts. They then made false allegations against Cynergy – including allegations that Cynergy had breached its contractual obligations to the

Defendants – in order to coerce Cynergy to replenish the alleged multi-million-dollar merchant reserve deficit the Defendants had created.

9. Ultimately, the Defendants put a gun to Cynergy's head: Harris threatened to suspend Cynergy's funding and thus put Cynergy out of business unless it acceded to Harris's unjustified demands.

10. It was in this context that Harris coerced Cynergy and Paladini to sign the Forbearance Agreement.

11. The Defendants' egregious conduct resulted in a number of injuries to Paladini personally, including, but not limited to: the loss of Paladini's entire equity interest in Cynergy, a company he co-founded; several lawsuits filed against Paladini by lending institutions and Cynergy's liquidation trustee seeking to hold Paladini liable for transactions that occurred in reliance upon Defendants' misrepresenations; and permanent damage to Paladini's professional reputation.

12. Beginning with its predecessor, CPS Group, Inc., Cynergy had been in operation since 1995. In 2008, the year preceding Cynergy's bankruptcy and sale, Cynergy had annual revenues of approximately $140,000,000 and was valued in excess of $300,000,000. Paladini's 91.6% ownership interest, net of the company's indebtedness, was thus conservatively believed to be worth in excess of $200,000,000.

13. In 2009, Cynergy was sold in a bankruptcy sale to The ComVest Group for $81,000,000 – approximately $40,000,000 less than what Cynergy owed to its creditors. Paladini's shares were worthless. And Paladini was on the hook for the shortfall due to his personal guaranty of Cynergy's indebtedness.

THE PARTIES AND OTHER ENTITIES

14. Plaintiff Paladini is a citizen of the State of Florida and also has a residence in the State of New York, within the Southern District of New York.

15. Defendant Harris is a corporation organized under the laws of Canada, with its principal place of business at 111 West Monroe Street, Chicago, Illinois 60603.

16. Defendant Moneris is a corporation organized under the laws of Illinois, with its principal place of business at 150 North Martingale Road, Suite 900, Schaumburg, Illinois, 60173. During the subject events, Moneris was an affiliate and agent of Harris.

17. Non-party CPS Group, Inc. d/b/a/ Cynergy Data ("CPS") was a corporation organized under the laws of New York, with its principal place of business during the subject events at 45 West 36th Street, New York, New York. CPS provided payment-processing services for merchants, including credit card, debit card, electronic benefit transfer and check processing services.

18. Non-party Cynergy Data Holdings, Inc. ("Cynergy Holdings") was a corporation organized under the laws of Delaware, with its principal place of business initially at 45 West 36th Street, New York, New York, and thereafter at 30-30 47th Avenue, Long Island City, New York. Cynergy Holdings was the successor-in-interest to CPS, CPS having merged with Cynergy Holdings on October 4, 2007.

19. Non-party Cynergy Data, LLC ("Cynergy Data" and together with Cynergy Holdings and CPS, "Cynergy") was a limited liability company organized under the laws of Delaware, with its principal place of business during the subject events at 45 West 36th Street, New York, New York, and thereafter at 30-30 47th Avenue, Long Island City, New York. Like CPS, Cynergy Data provided payment-processing services

for merchants, including credit card, debit card, electronic benefit transfer and check processing services. Cynergy Data was a wholly owned and controlled subsidiary of Cynergy Holdings.

20. Cynergy Holdings and Cynergy Data together filed a petition for Chapter 11 bankruptcy protection on September 1, 2009.

21. Plaintiff Paladini had held 47.75% of the shares of CPS and was the co-founder, Chief Executive Officer, Vice Chairman, and Vice President of Business Development of CPS. In 2007 Paladini purchased additional shares from the other majority shareholder, John Martillo. Paladini thus became the majority shareholder, owning 91.6% of Cynergy Holdings. Paladini also assumed the role of Chief Executive Officer of both Cynergy Holdings and Cynergy Data.

JURISDICTION AND VENUE

22. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because plaintiff Paladini and the Defendants hold diversity of citizenship, as Paladini is a citizen of Florida and Harris and Moneris are citizens of Illinois, and the claim of losses by plaintiff Paladini exceeds $75,000 in the aggregate.

23. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because it is the "judicial district in which substantial parts of the events or omissions giving rise to the claim occurred." Plaintiff Paladini was located in the Southern District of New York at all times relevant to this action, and the facts and circumstances giving rise to this Amended Complaint, including, but not limited to, the payments between Cynergy and Harris, occurred in the Southern District of New York.

GENERAL ALLEGATIONS

I. Cynergy's Business

24. Cynergy was a provider of payment processing and related merchant services for credit card and other electronic transactions that served approximately 80,000 merchants.

25. Cynergy was not a financial institution. Rather, Cynergy was an Independent Sales Organization ("ISO") and Member Service Provider ("MSP"), as those terms are described by Visa and MasterCard, respectively. This required Cynergy to register with the Visa and MasterCard networks in order to provide payment processing services to merchants.

26. Further, Cynergy was not permitted to facilitate any credit card, debit card, or similar transactions without the involvement and assistance of a sponsoring bank. The sponsor bank itself was required to be a licensed financial institution, and a member of the Visa and MasterCard networks.

27. Until November 2008, Bank of America ("BofA") served as Cynergy's sponsor bank.

II. Harris's Relationship with Cynergy as Sponsor Bank

a. Harris Replaces BofA as Cynergy's Sponsor Bank Pursuant to the BIN Sponsorship Agreement

28. On November 1, 2008, Harris replaced BofA as Cynergy's sponsor bank pursuant to a BIN Sponsorship Agreement (the "BIN Agreement"). A true and correct copy of the BIN Agreement is annexed hereto as **Exhibit A**.

29. Under the BIN Agreement, Cynergy purports to grant certain liens on Cynergy's assets in favor of Harris. However, Harris expressly agreed to subordinate these liens in an intercreditor agreement, dated April 28, 2009, among Harris and certain

other creditors (the "Harris ICA"). A true and correct copy of the Harris ICA is annexed hereto as **Exhibit B**.

30. The Harris ICA provides, with limited exceptions, that Harris's liens would be subordinated to the existing liens of senior lenders. Specifically, in November of 2007, Ableco Finance LLC ("Ableco"), A3 Funding LP ("A3 Funding"), Dymas Funding Company, LLC ("Dymas") (collectively the "Lenders") and Cynergy entered into a Financing Agreement whereby the Lenders provided capital to Cynergy. Further, in August of 2008, Ableco, A3, Garrison Credit Investments I, LLC, and Garrison Credit Opportunities Holdings L.P., ("Garrison"), Comerica Bank ("Comerica"), as agent, and Dymas (collectively the "Term B Parties") entered into a Senior Credit Agreement with Cynergy for additional credit. (The Lenders and Term B Parties are collectively referred to herein as the "Cynergy Lenders.")

31. These senior lien holders were parties that had previously provided credit and lending facilities to Cynergy, prior to Harris assuming the role of sponsor bank.

32. Thus in assuming its role as sponsor bank, Harris expressly agreed to subordinate its liens subject to the Cynergy Lenders' liens.

b. Harris's Role as Sponsor Bank

33. In its role as sponsor bank, Harris had the exclusive ability to clear and settle credit card and debit card transactions. In addition, Harris had the final authority to approve any and all Cynergy merchants.

34. Without Harris's sponsorship and assistance, Cynergy could not have continued in business.

35. Harris alone was responsible for authorizing the transfer of funds to

merchants for goods or services. Harris was thus the gatekeeper for all funds movements associated with credit card and other electronic transactions for which Cynergy provided processing services.

36. Harris authorized and effectuated the transfer of funds to the credit card associations, merchants and Cynergy so that Cynergy could meet its obligations to merchants and third-party processors. In some instances, Harris permitted third parties to effectuate transfers of funds to and from Cynergy's operating account. *Funds could not move unless Harris moved or authorized them.*

37. To facilitate this process, as part of its daily functions, Cynergy withheld from daily batches of transactions certain funds that could be used to offset potential future losses caused by a given merchant. These withheld funds are what the parties refer to as "Rolling Reserves."

38. Harris was also required to open and maintain a record for every questionable merchant ("QM") whose funds were to be withheld as a Rolling Reserves.

39. Cynergy was then obligated to perform a calculation that determined what portion (if any) of the funds attributed to a merchant was to be allocated to that merchant's Rolling Reserves for each of Cynergy's QMs.

40. Cynergy made this calculation based on information from each retail transaction conducted by a merchant, as well as any and all deductions and payments arising from that merchant activity.

41. On a daily basis, Cynergy supplied the results of this calculation to Total System Services, Inc. (known within the trade as "TSYS"), a "back-end" information processor engaged by Cynergy and approved by Harris.

42. This data was immediately and readily visible to Harris through the TSYS online interface provided to Harris.

43. At all times, Harris had the ability to determine the amount of Rolling Reserves attributable to Cynergy's QMs, as well as any transfers made to/from Cynergy, simply by viewing the TSYS information screens.

c. The Merchant Processing Agreements

44. As Cynergy's sponsor bank, Harris required that each merchant for whom Harris and Cynergy performed payment processing services execute a Merchant Processing Agreement ("MPA"). A true and correct copy of the MPA is annexed hereto as **Exhibit C.**

45. The MPA is a Harris form agreement that governed the relationship between Cynergy and Harris, on the one hand, and each merchant utilizing Harris's and Cynergy's services on the other.

46. This form agreement is virtually identical to the one used by BofA when it functioned as Cynergy's sponsor bank. Among other things, the Harris MPA recites that Cynergy functions as Harris's agent in all matters relating to the MPA and that "[Harris] is at all times entirely responsible for, and in control of [Cynergy's] performance." *See* Exhibit C, MPA, at § 9.D.

47. The MPA entitles Harris to withhold some or all of the funds that would otherwise flow to a merchant in order to offset potential future losses caused by the merchant (i.e., the Rolling Reserves).

48. Section 4.B. of the MPA recites:

> "You are fully liable for all transactions returned for whatever reasons, otherwise known as 'chargebacks.' ... Authorization is

> granted to offset from incoming transactions and to debit the Designated Account, the Reserve Account (defined in Section 7 below) or any other account held at [Harris] or at any other financial institution the amount of all chargebacks."

49. A chargeback, sometimes referred to as a "reject," may occur for several reasons, including consumer dissatisfaction or merchant fraud.

50. As a sponsor bank, Harris is required by the credit card association rules to effect a refund to the bank that issues a consumer's credit card when a chargeback occurs.

51. Harris could set these funds aside in order to establish a merchant reserve account ("Reserve Account").

52. The relevant text of Section 4.A.i. of the MPA recites:

> "You understand and agree that [Harris] may withhold deposit and payment to you without notice until the expiration of any chargeback period if [Cynergy, acting as Harris's agent] or [Harris] determine, in their sole and reasonable discretion, that a transaction or batch of transactions poses a risk of loss. Neither [Cynergy] nor [Harris] are responsible for any losses you may incur ... due to such delayed deposit of funds." *See* Exhibit C, MPA, at § 4.A.i.

53. The MPA further specifically provides that Harris has the option of requiring a merchant to establish a Reserve Account with Harris to hold all Rolling Reserve funds:

> You [merchant] will establish and maintain a non-interest bearing deposit account ("Reserve Account") ***at [Harris]*** initially or at any time in the future ***as requested*** by [Cynergy, acting as Harris's agent] and [Harris], with sums sufficient to satisfy your current and future obligations as determined by [Cynergy, acting as Harris's agent] and [Harris]. You authorize [Harris] to debit the Designated Account or any other account you have at [Harris] or any other financial institution to establish or maintain funds in the Reserve Account. [Harris] may deposit into the Reserve Account funds it would otherwise be obligated to pay to you, for the purposes of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action reasonably necessary to protect its

interests.

Exhibit C, MPA, at § 7.B.i (emphasis added).

54. Establishment of a Reserve Account is thus not automatic under the terms of the MPA. But it may be requested by Cynergy or Harris at either's discretion. If such a request is made, the obligation is then on *Harris*, not Cynergy, to establish a Reserve Account at Harris.

55. Had Harris elected to pursue this contractual option, Harris could have maintained within its possession and control every penny of the Rolling Reserves.

d. The Merchant Reserve Acknowledgment

56. In addition to executing an MPA, merchants had to sign a form entitled "Merchant Reserve Acknowledgement" ("MRA"). A true and correct copy of the MRA is annexed hereto as **Exhibit D.**

57. Pursuant to the MRA, the merchant acknowledged that: (a) "[Cynergy] and its agents, including its processing bank [Harris], *have the authority to establish* a reserve account in accordance with Section 7.B of the [MPA];" and (b) the merchant could specify the manner in which such an account, if created, would be funded (either by a lump sum payment made by check by the merchant or by withholding an agreed percentage from the merchant's gross receipts). Exhibit D, MRA (emphasis added).

58. The MRA also explained to the merchant the uses to which any funds deposited in the account would be applied and that any funds remaining in the reserve account, if established, "will be returned to the Merchant up to 270 days after termination of the MPA or the Merchants' last transmission of sales drafts, whichever is later." Exhibit D, MRA.

59. The MRA concludes with the statement: "If there is any conflict between

the terms of this letter and the terms of the MPA, the terms of the MPA will govern." Exhibit D, MRA.

60. Unlike the MPA, the MRA does not require or mandate the establishment of a reserve account. Rather, the election to establish such an account remains within the discretion of Harris or Cynergy, acting as Harris's agent.[1]

III. Harris's Agent Moneris's Provides Accounting Services to Cynergy

61. In addition to Harris's role as Cynergy's sponsor bank, Harris's affiliate and agent, Moneris Solutions, Inc. ("Moneris"), performed all functions for and on behalf of Harris relating to the BIN Agreement and the MPA.

62. Cynergy also separately engaged Moneris to provide certain accounting services. These additional services were separate and apart from services related to Harris's role as sponsor bank.

63. Cynergy paid Harris directly for the additional services that Moneris provided.

64. Specifically, Moneris was responsible for daily reconciliation of transfers in and out of Cynergy's operating accounts to ensure the account maintained a zero balance error. Moneris was also responsible for reconciling Cynergy's operating account balance with Harris's QM's.

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[1] For the purpose of clarifying the relationship between the various agreements, the BIN Agreement requires that Cynergy maintain what is defined as a "Reserve Account" and further provides that Harris may ask a merchant to maintain what is defined as a "Merchant Reserve Account." Exhibit A, BIN Agreement, § 2.6. However, the "Reserve Account" as defined in the MPA and MRA, refers to the "Merchant Reserve Accounts" (herein referred to solely as the "Reserve Accounts") in the BIN Agreement, and not to the "Reserve Account" which the BIN Agreement requires Cynergy to maintain. At all times, Cynergy maintained its "Reserve Account" as it was required by the BIN Agreement. *See* Exhibit C, MPA, at § 4.A.i.

65. Moneris billed Cynergy on a monthly basis – for no less than 50 hours of accounting services – for daily reconciliation of Cynergy's operating account.

66. Moneris was thus responsible for any accounting or reconciliation errors in Cynergy's operating account related to Harris's QMs.

IV. Harris Fails to Require Merchants to Maintain Reserve Accounts at Harris

67. The MRA and MPA make clear that Harris could have elected to require that Rolling Reserve funds be maintained in Reserve Accounts under its control.

68. Contrary to the MRA and MPA, however, Harris did not elect to maintain the Rolling Reserves. Nor did Harris require the creation of Reserve Accounts under its control to hold the Rolling Reserves.

69. This was advantageous to Harris because it allowed Harris to avoid incurring administrative and bookkeeping costs, as well as potential liability, associated with establishing individual Reserve Accounts for each merchant that had an enhanced credit risk.

70. Further, Harris made a determination that it had minimal economic risk in failing to establish and maintain the accounts because Harris had continuing control over the revenue flows to Cynergy.

71. As set forth above, as sponsor bank, Harris had control of all cash from credit card, debits, ACH rejects, chargebacks and all other electronic transactions flowing to and from Cynergy, which it remitted to, or debited from, Cynergy on a daily basis.

72. In the event Harris was called upon to pay an obligation to which Rolling Reserves should be applied, Harris could simply demand that Cynergy supply the required funds. Should Cynergy fail to provide those funds, Harris controlled the

movement of all funds and thus had the practical ability to force the payment from Cynergy by withholding the necessary funds.

73. During the entire time it served as Cynergy's sponsor bank, Harris simply turned over substantially all daily Rolling Reserve funds to Cynergy's operating account, without limitation or restriction. By doing so, Harris knowingly transferred Rolling Reserves to Cynergy that were commingled with Cynergy's operating funds.

74. This is how Harris operated during the *entire time* it served as Cynergy's sponsor bank.

75. Harris never – from November 2008 until at least July 2009 – required merchants to establish Reserve Accounts and maintain funds with Harris, as was Harris's option under the MPA and MRA.

76. Nor did Harris ever implement any procedures to otherwise require that Cynergy segregate and preserve the Rolling Reserves – despite the fact that Moneris had been expressly engaged to review and reconcile these accounts on a daily basis.

77. Furthermore, Harris never audited Cynergy's records to ensure that the merchant reserve records were accurate and consistent with the funds available in the QM account prior to the inception of the BIN Agreement, nor did it ever perform or institute any controls going forward to balance such reserve levels with Cynergy's own proprietary system, "Vimas".

V. Cynergy's Forced Asset Sale

78. In late 2008 and continuing in 2009, as a result of economic conditions in the market place, Cynergy experienced a decline in merchant activity and began facing financial difficulties.

79. Accounting irregularities, first discovered in March 2009, further compounded the impact upon Cynergy. The Defendants exacerbated the impact of these irregularities by failing to reconcile Cynergy's operating account and to otherwise report correct information regarding the movement and withholding of funds.

80. In 2009, after hiring FTI Consulting to perform a forensic accounting analysis, Cynergy had to restate its 2008 and 2007 earnings.

81. These earnings restatements, among other things, resulted in technical defaults on the Cynergy Lenders' credit facilities.

82. As a consequence of Cynergy's defaults, the Cynergy Lenders required Cynergy to market for sale its credit card and electronic transaction processing business, i.e., substantially all of Cynergy's assets.

83. In the Spring of 2009, Cynergy retained the investment banking firms Stifel, Nicolaus and Company, Inc. and Peter J. Solomon Company to market the asset sale.

84. Numerous parties expressed interest in Cynergy's assets.

85. The list of suitors included Defendant Moneris.

86. All potential bidders, including Moneris, were required to sign non-disclosure agreements ("NDA") that required, among other things, that the bidders: (a) keep confidential all non-public information received, and (b) not communicate with each other.

a. Moneris Disrupts the Sale Process

87. In or about June 2009, as Cynergy was reasonably anticipating Moneris would make a bid, Moneris and the other potential bidders were conducting their due

diligence.

88. One of the other Cynergy bidders, EVO Merchant Services ("EVO"), had a prior history with Cynergy. Like Cynergy, EVO was located in the New York metropolitan area, and it was well versed in Cynergy's operations and proprietary technology. EVO and Cynergy almost merged operations in 2006, but the transaction was never consummated. EVO's CEO, Ray Sidhom ("Sidhom"), had a long-standing relationship with Paladini and other members of Cynergy's management team. EVO was thus viewed as a likely bidder.

89. During the due diligence process, EVO reviewed certain information that raised concerns about a potential shortfall of Cynergy's Rolling Reserves. Rather than pose any questions to Cynergy's investment bankers or through counsel as EVO was required to do pursuant to the NDA it had executed, Sidhom called and spoke with Moneris's President, Gregg Cohen ("Cohen"). The two discussed their concerns and exchanged information.

90. By discussing confidential information with another potential bidder, Moneris clearly violated the NDA it had entered into with Cynergy.

91. Based on Cohen's improper disclosure of confidential information, EVO immediately presented a lower offer to purchase Cynergy assets, and ultimately withdrew from the bidding process.

92. Moneris acted dishonestly and with malice in order to remove EVO from the bidding process and lower the price of Cynergy.

93. Moneris also subsequently failed to make a bid.

94. The withdrawal of these two key bidders reduced the competitive bidding

process and ultimately had an adverse impact upon the entire sale process and the ultimate the sale price.

b. Harris Suspends Cynergy's Funding

95. On July 16, 2009, shortly after Moneris withdrew its bid, Moneris forwarded correspondence to Cynergy accusing Cynergy of being in default under the BIN Agreement (the "Default Letter"). A true and correct copy of the Default Letter is annexed hereto as **Exhibit E.**

96. Moneris claimed that over $21,000,000 of Rolling Reserves should have been, but had not been, deposited and maintained in an account or accounts at Harris.

97. Moneris further threatened to immediately exercise the setoff rights provided to Harris in the BIN Agreement, retaining all funds that would otherwise flow to Cynergy until it recovered the full amount of the purported Rolling Reserves shortfall.

98. After knowingly transmitting the Rolling Reserve funds to Cynergy every day for over eight (8) months, Harris suddenly claimed that its own transmission of Rolling Reserves to Cynergy was somehow a violation *by Cynergy* of the BIN Agreement.

99. Harris's claim of ignorance with respect to any shortfall was unfathomable given that Harris: a) controlled the flow of funds, b) had daily access to TSYS to view the Rolling Reserves, and c) was responsible for daily reconciliation of Cynergy's operating accounts.

100. Further, Cohen had expressed concerns regarding Cynergy's operating accounts even prior to Harris entering the BIN Agreement with Cynergy. Armed with this knowledge, Harris undoubtedly should have paid even closer attention to Cynergy's

accounts rather than turn a blind eye.

101. The Defendants knew or should have known about the alleged shortfall prior to Moneris's improper communications with EVO.

102. In its Default Letter, Moneris contended that Cynergy breached obligations imposed by the association rules of Visa and MasterCard. Yet the Default Letter fails to cite any provision of the Rules that Cynergy allegedly violated.

103. This contention was presumably based, misguidedly, on Section 5.2 of the BIN Agreement, in which Cynergy "agrees to comply with all applicable Rules," defined as including all rules "regulations or requirements that are issued or promulgated by Visa, MasterCard or other Card networks from time to time applicable to activities or transactions contemplated by this Agreement or under Merchant Agreements [MPA]." ("Rules"). Harris never provided a copy of the Rules to Cynergy.

104. The Visa rules – over 900 pages in length – provide that "An Acquirer [here, Harris][2] must.... hold and control reserves that are accumulated and derived from the Merchant settlement funds or used to guarantee a Merchant's payment system obligations to the Member."

105. The Visa rules Harris referenced in the Default Letter, by their own terms, govern the conduct of *Harris*, not Cynergy.

106. The MasterCard rules – which exceed 200 pages – similarly impose a requirement upon Harris in section 7.3.11 to ensure that an MSP such as Cynergy does not have access to a "Settlement Account," as follows: "Settlement Account: An MSP [here, Cynergy] must not have access to any account for funds then or subsequently due

[2] Harris is defined as an "Acquirer" in the BIN Agreement, Section 3.1.B.

to a Merchant for Activity and/or funds withheld from a Merchant for chargebacks arising out of Activity. A Member [here, Harris] must not assign or otherwise transfer an obligation or reimburse a Merchant to an MSP if the obligation arises from Activity."

107. Again, Cynergy did not and could not violate this provision. Nor did Harris ever even allege that Cynergy had access to a "Settlement Account."

108. Lastly, the MasterCard rules state in section 7.3.1 that it is the obligation of Harris, not Cynergy, to ensure that conformance with the rules. Under the MasterCard Rules, Harris was at all times entirely responsible for and must itself manage, direct and enforce all aspects of Cynergy's merchant processing.

109. Given Harris's unambiguous responsibility for compliance with the MasterCard rules, it is again unfathomable that Harris would contend that *its own conduct* -- in transferring Rolling Reserves to Cynergy -- was some sort of "default" by Cynergy.

110. The Defendants' contentions in their Default Letter were false. Cynergy was not in default of the BIN Agreement. And there was no $21,000,000 shortfall or other amount due to Harris.

111. Nevertheless, on or about July 16, 2009, the Defendants suspended all funding to Cynergy to initiate the recovery of those funds.

112. The Defendants' actions were undertaken in bad faith and — in the context of an asset sale — jeopardized the entire sale process.

113. Further, as a result of its loss of funding, Cynergy was unable to timely pay its extensive network of agents and ISOs their monthly commissions ("Residuals") on July 20, 2009.

114. Ultimately, after being forced to enter into the onerous Forbearance

Agreement discussed *infra*, Cynergy paid the Residuals to its agents and ISO's approximately one week late,

115. This was the first time in *fourteen years* that Cynergy had failed to timely pay its agents and ISOs their Residuals.

116. By paying the Residuals late, Cynergy was faced with the risk of an imminent loss of all of Cynergy's merchants -- its most valuable asset -- and agents to other competitors.

117. The ensuing bad rumors and press that invaded the market place with respect to Cynergy's alleged mishandling of merchant funds, the claimed breach of the BIN Agreement, and the potential liquidation of substantially all of Cynergy's assets destroyed both Cynergy's and Paladini's reputations.

c. Harris Forces Cynergy and Paladini to Enter the Forbearance Agreement.

118. On July 24, 2009, one week after it had suspended Cynergy's funding, Harris forced Cynergy and Paladini to enter into a Forbearance Agreement. A true and correct copy of the Forbearance Agreement is annexed hereto as **Exhibit F**.

119. The Defendants threatened to continue suspending funding if Cynergy and Paladini did not sign the Forbearance Agreement. As detailed above, without Harris's authorization, Cynergy could had no access to its operating revenues and thus could not operate its business.

120. The Defendants acted in bath faith during the entire process of entering into the Forbearance Agreement.

121. The Defendants refused Cynergy's collection and transfer of over $6 million as a good faith down payment on the alleged $21 million shortage of Rolling

Reserves to Harris.

122. The Defendants further refused to provide Cynergy any opportunity to continue replenishing the Rolling Reserves at a reasonable rate and to pay merchants entitled to Rolling Reserves funds in due course in accordance with each individual reserve due date.

123. Rolling Reserves were not due and payable.

124. Cynergy had never failed to return any reserves due to its merchants in its fourteen-year history.

125. If given the opportunity to replenish the Rolling Reserves at a reasonable pace, Cynergy could have cured the shortfall without ever defaulting on any of its obligations to return funds to merchants as such funds became due.

126. The Defendants even disregarded the three-year business plan Cynergy had presented to the Cynergy Lenders that showed a clear path of growth and corrective actions to rebuild Cynergy's value so it could be sold for a substantially higher price in the future.

127. The Defendants denied Cynergy the opportunity to negotiate with the Cynergy Lenders to try and recapitalize.

128. The Defendants did so because Harris was aware that the Cynergy Lenders disagreed with Harris's untenable position regarding the claimed shortfall in Rolling Reserves, as well as Harris's contention that the reserves had to be funded by immediate payment to Harris.

129. The Cynergy Lenders conveyed to Cynergy their strong disagreement with Harris's position. Cynergy, in turn, encouraged them to collectively try to reach an

accommodation with Harris, to no avail.

130. Harris even required that Paladini personally sign the Forbearance Agreement based on a claim that Paladini was a guarantor of the Finance Agreement and the Senior Credit Agreement with the Cynergy Lenders.

131. Harris's motivation to force and accelerate the sale process was to replenish the Rolling Reserves as quickly as possible in order to minimize their potential liability to merchants and corresponding exposure to Visa and MasterCard stemming from Harris's violation of the Rules.

VI. Harris's Claims That Cynergy Breached the BIN Agreement Were Knowingly False.

132. Harris's position that Cynergy breached the BIN Agreement was knowingly disingenuous.

133. Other than the Defendants' vague, one-page Default Letter containing baseless claims, Defendants never provided Cynergy or Paladini with any written support for the claimed Rolling Reserves shortfall.

134. Cynergy, Paladini and the Cynergy Lenders denied that any amount was due to Harris.

135. Harris essentially claimed that it first discovered in July of 2009 the shortfall in the Reserve Accounts – accounts that by definition could only have been established and maintained at Harris pursuant to Section 7.B of the MPA.

136. Any surprise over the purported "shortfall" occurred because Harris and Moneris were asleep at the wheel, failed to view the data available on TSYS, failed to reconcile the merchant reserves balances inherited from its predecessor BofA and failed to pay even minimal attention to the funds they were controlling and accounts they were

reconciling.

137. Ironically, Harris and Moneris had been billing Cynergy for over fifty (50) hours of monthly accounting services to reconcile Cynergy's operating account with Harris's QM account on a daily basis.

138. The fact that no Reserve Accounts had been maintained at Harris was not a breach of the MPA by Cynergy but was instead a breach of the BIN Agreement by *Harris*.

139. Harris essentially put a gun to Cynergy's head: Harris threatened to put Cynergy out of business unless Cynergy acceded to Harris's unjustified demands.

140. It was in this context that Harris coerced Cynergy and Paladini to sign the Forbearance Agreement.

141. The Forbearance Agreement belatedly attempted to rewrite the BIN Agreement and the MPA to impose upon Cynergy obligations that are not found in either of those agreements. However, as the Forbearance Agreement is not a contemporaneous agreement entered among the parties, it can in no way vary or contradict the clear and unambiguous terms of the BIN Agreement and MPA.

142. In the Forbearance Agreement, Cynergy was forced to acknowledge that the Rolling Reserves were "to be held in deposit at Harris pursuant to the BIN Agreement and [were] not so held" and "are unconditional obligations of [Cynergy] to Harris." *See* Exhibit F, Forbearance Agreement, at 2.

143. Yet the BIN Agreement contains no such requirement.

144. In fact, there is nothing in the BIN Agreement that creates an obligation by

Cynergy to replenish the Rolling Reserves held at Harris.[3] Harris's practice of transmitting the Rolling Reserve funds directly to Cynergy was entirely consistent with the BIN Agreement and in no way constituted a "default" by Cynergy as Harris erroneously asserted.

145. Section 2.1 (F) of the BIN Agreement, specifically invoked by Moneris in its July 16, 2009 letter, merely provides that "[Cynergy] acknowledges that it will not have access to Merchant funds."

146. Rolling Reserves are not considered "Merchant Funds" as that term is defined in the BIN Agreement.

147. Under the BIN Agreement, "Merchant Funds" are narrowly defined to mean "the funds that are payable to a Merchant under the related [MPA]." *See* Exhibit A, BIN Agreement, Article I - Definitions, at p.3.

148. Reading the BIN Agreement and MPA together, it is clear that Rolling Reserves are not Merchant Funds.

149. Cynergy never had access to or control of Merchant Funds.

150. Under the terms of Section 7.B.iii. of the MPA, *Rolling Reserves are not due and payable to a merchant* unless all the following conditions apply: (i) the merchant has in fact established a Reserve Account with Harris, (ii) the merchant has terminated its MPA, and (iii) after the later of 270 days following the MPA termination date or the date of the merchant's last transaction conducted through Cynergy, the merchant has made a written request for the return of any funds remaining in its Reserve Account. *See* MPA, §

[3] Cynergy's obligation to replenish is solely with respect to its "Reserve Account"; this does not apply to the "Merchant Reserve Accounts." *See* BIN Agreement, p. 3; § 2.6. *See also* footnote 2.

7.B.iii.

151. Unless and until all of these conditions have been satisfied, there is no obligation on the part of Harris or Cynergy under the MPA to return the Rolling Reserves and, thus, no prohibition on Cynergy holding such funds.

152. Harris thus falsely created and imposed upon Cynergy and Paladini the obligations of the Forbearance Agreement based on Harris's own erroneous and self-serving contentions that the Rolling Reserves were to be immediately released to Harris.

153. The Forbearance Agreement was simply a means for the Defendants to hide their own breaches of the Visa and MasterCard Rules and to wrongfully impose obligations upon Cynergy and Paladini.

VII. Cynergy Files for Bankruptcy.

154. Ultimately, both the existence and the terms of the Forbearance Agreement bankrupted Cynergy.

155. Six weeks after its execution, on September 1, 2009, Cynergy filed for relief under Chapter 11 of the United States Bankruptcy Code.

156. On or about October 28, 2010, ComVest purchased Cynergy Data and Cynergy Holdings for approximately $81,000,000.

157. As a condition of the assumption of the BIN Agreement by ComVest – a necessary prerequisite for ComVest to continue servicing Cynergy's merchants, Harris required the full repayment of the Rolling Reserves deficit. Yet as stated above, Harris was not entitled to these funds.

158. Had Cynergy not been forced into bankruptcy as a result of the Forbearance Agreement, it would have been possible to sell substantially all of Cynergy's

assets at a much higher price.

VIII. Paladini Sustains Damages.

159. As a result of the Defendants' improprieties, ComVest purchased substantially all of Cynergy's assets for $81MM. The sale price was roughly $40MM less than the amounts Cynergy owed to the Cynergy Lenders.

160. Paladini's equity interest — valued at over $200MM just months before — was completely destroyed.

161. Plaintiff has also been sued personally in four (4) separate lawsuits as a result of the above.

162. The first two are state court lawsuits wherein the Cynergy Lenders' are seeking to hold Plaintiff liable loans made to Cynergy, (1) *Dymas Funding Company, LLC, A3 Funding LP; and Ableco Finance LLC v. Marcelo Paladini, John Martillo, and Gustavo Ceballos* Action" (Case Number 09-602852), and (2) *Garrison Credit Investments I LLC v. Marcelo Paladini, John Martillo, and Gustavo Ceballos* (Case Number 603 545/2009) (the "Garrison Action"), both filed in the Supreme Court for the State of New York.

163. Cynergy's bankruptcy trustee also filed an adversary proceeding against Paladini, in his personal capacity, alleging claims for breach of fiduciary duty, and other claims arising out of the series of the above transactions, captioned as *CD Liquidation Co., LLC et al. v. Paladini (In re CD Liquidation Co., LLC et al.),* (Adv. Case No. 10-53190), filed in the Bankruptcy Court for the District of Delaware (together with the Dymas and Garrison Actions, the "Lawsuits"). And one of Cynergy's lenders, Comerica Bank, filed an action in federal court in Florida Southern District Court: *Comerica Bank,*

Inc. v. Marcelo Paladini (2011 CIV 62083).

164. Paladini has incurred substantial legal fees in defense of the forgoing actions.

165. Due to Cynergy's sale for approximately $40MM less than its indebtedness, Paladini was exposed to substantial liability by virtue of his personal guaranty.

166. The Defendants' requirement that approximately $21MM of the sale proceeds be allocated to the Rolling Reserves exposed Paladini to further liability on his guaranty.

167. Additionally, Paladini's fourteen-year reputation as an award-winning entrepreneur[4] and successful CEO of a leading payments processing company was damaged beyond repair.

168. The combination of rumors initiated from conversations between the leaders of EVO and Moneris, coupled with the claimed and published shortfall of funds in an amount of $21MM dollars, caused irreversible damage to the perception of Paladini in the payments industry.

169. Further, in the aftermath of the Forbearance Agreement, the former CFO of Cynergy, Gustavo Ceballos, left the United States, fueling rumors that Cynergy's leaders had somehow siphoned funds for their personal use.

170. All of this served to support an assumption in the public that Paladini, as the former CEO of Cynergy, was responsible for mishandling $21MM of company funds.

171. Having suffered such irreparable damage to his reputation, Paladini will

[4] Paladini's accolades include winning the Ernst & Young *Entrepreneur of the Year* award in 2008.

undoubtedly never obtain a position within the electronic payments industry again.

172. Immediately following the sale, the only job offered to Paladini was by ComVest, the ultimate purchaser of Cynergy's assets.

173. ComVest's engagement of Paladini was strategic. ComVest sought to obtain Paladini's knowledge and expertise in order to guarantee the continuance of Cynergy and thus to protect ComVest's newest asset.

174. Subsequently, in February of 2012, having apparently obtained all of the knowledge ComVest felt it needed to run Cynergy, Paladini was unceremoniously discharged.

175. Now unemployed, Paladini has no alternative but to abandon the industry in which he spent most of his career and pursue opportunities in other industries.

FIRST CAUSE OF ACTION FOR ECONOMIC DURESS

176. Paladini realleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 175, inclusive hereof.

177. In the Default Letter, Harris threatened Paladini that it would suspend any and all funds to Cynergy – which would essentially put Cynergy out of business.

178. That threat was unlawfully made based on a non-existent breach of the BIN Agreement. Harris transmitted Rolling Reserves directly to Cynergy – entirely consistent with the BIN Agreement.

179. The BIN Agreement did not prohibit Cynergy from receiving the Rolling Reserves.

180. Based on this unlawful threat, Paladini agreed to execute the Forbearance Agreement in order to ensure Cynergy would continue to be funded on a daily basis.

181. Paladini had no alternative but to execute the Forbearance Agreement.

182. Cynergy's survival and any hope of a successful outcome for Paladini depended on receiving funds from Harris on a daily basis.

183. By reason of the foregoing, Paladini is entitled to judgment against Harris and Moneris for economic duress, and Paladini is entitled to recover damages in an amount to be determined at trial.

SECOND CAUSE OF ACTION FOR BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

184. Paladini realleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 183, inclusive hereof.

185. Under the BIN Agreement and other agreements between the parties, it is clear that Cynergy was relying upon the Defendants for cash flow to run and operate its business.

186. The Defendants subsequent claimed breach of the BIN Agreement in July of 2009, and the ensuing forced execution of the Forbearance Agreement, destroyed and injured Cynergy's rights to receive the fruits of the parties of Agreement.

187. The Defendants' actions disrupted the Cynergy asset sale and resulted in a sale for approximately $40MM less than the amount owed to the Cynergy Lenders.

188. Paladini's injury is particularized to him because, among other things, a portion of the equity of Cynergy belonged to Paladini, personally, as majority shareholder. And Paladini was personally liable to the Cynergy Lenders for the shortfall in the asset sale price.

189. In addition, such claims are personal to Paladini by virtue of the personal exposure and liabilities against Paladini under the Forbearance Agreement, and by virtue

of the multiple lawsuits filed against Paladini personally stemming from the Defendants' acts and omissions.

190. By reason of the foregoing, Paladini is entitled to judgment against Harris and Moneris for breach of the covenants of good faith and fair dealing, and Paladini is entitled to recover damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY

191. Paladini realleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 190, inclusive hereof.

192. The Defendants owed Paladini a fiduciary duty, as the majority shareholder of Cynergy and a guarantor of its indebtedness, in the provision of their accounting and reconciliation services to exercise care and to act in Cynergy's and Paladini's best interest.

193. Harris had a unique and special role with Cynergy and Paladini in its capacity as Cynergy's sponsor bank. Harris and Moneris had complete control over the flow of funds to Cynergy.

194. Further, as sponsor bank, Paladini placed confidence and trust in Harris in an advisory capacity for the successful operations of Cynergy.

195. Additionally, Moneris was engaged separately and apart from its servicing role to perform accounting and reconciliation services for Cynergy.

196. Harris and Moneris were aware that in his capacity as the majority shareholder and guarantor of Cynergy, Paladini was relying on their knowledge and expertise regarding the reconciliation of Cynergy's operating account.

197. Paladini reasonably placed his trust and confidence in the Defendants'

representations and advice concerning these daily reconciliations and the overall financial state of Cynergy's accounts.

198. By the conduct alleged herein, the Defendants breached their fiduciary duties to Paladini by failing to perform their material obligations with the requisite skill, expertise, and integrity.

199. The services provided by the Defendants were deficient, inadequate, and not competent. Harris and Moneris fell far below the standard of care to be exercised by financial and accounting professionals engaged to provide similar services.

200. The Defendants' failure proximately caused injury to Paladini by, among other things and as further detailed above, destroying the value of his equity in Cynergy.

201. Paladini's injury is particularized to him because, among other things, a portion of the equity of Cynergy belonged to Paladini, personally, as majority shareholder.

202. In addition, such claims are personal to Paladini by virtue of the personal exposure and liabilities against Paladini under the Forbearance Agreement, by virtue of the multiple lawsuits filed against Paladini personally stemming from Harris's and Moneris's acts and omissions and by virtue of his personal guaranty of Cynergy's indebtedness.

203. By reason of the foregoing, Paladini is entitled to judgment against Harris and Moneris for breach of fiduciary duty, and Paladini is entitled to recover damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION FOR TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

204. Paladini realleges and incorporates by reference herein the allegations set

forth in paragraphs 1 through 203, inclusive hereof.

205. During Cynergy's bid process, Cynergy and Paladini had a direct business relationship with EVO.

206. Paladini and Cynergy also had a prior relationship and course of dealing with EVO.

207. The Defendants knew that EVO was a potential bidder and intentionally interfered with that relationship.

208. The Defendants acted dishonestly and with malice in order to remove EVO from the bidding process to lower the price of Cynergy.

209. The Defendants' conduct caused damage and destroyed the relationship between Paladini and EVO: EVO first presented a lower offer and later joined Moneris in withdrawing its bid.

210. The Defendants' conduct damaged Paladini because the withdrawal of EVO's and Moneris's bids thwarted the sale process and lowered the sale price, triggering liability to Paladini by virtue of his guaranty, destroying Paladini's equity in Cynergy and irreparably damaging Paladini's professional reputation.

211. By reason of the foregoing, Paladini is entitled to judgment against Harris EVO and Moneris for tortious interference with a business relationship, and Paladini is entitled to recover damages in an amount to be determined at trial.

FIFTH CAUSE OF ACTION FOR GENERAL MALPRACTICE

212. Paladini realleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 211, inclusive hereof.

213. Harris and its agent, Moneris, performed accounting services for Cynergy,

and as such owed Cynergy and its officers, directors and shareholders, including Paladini, a duty to exercise such reasonable skill, care and diligence, as members of the accounting profession commonly possess and exercise in similar situations.

214. Throughout the provision of these accounting services, the Defendants represented that they had a high level of experience in providing accounting and reconciliation services and that they were competent to perform all the necessary services to Cynergy in compliance with the applicable professional standards and the reasonable skill, care, and diligence that members of the accounting and financial services professions commonly possess and exercise in similar situations.

215. Harris and Moneris knew that Paladini would rely on their daily reconciliations of Cynergy's operation account and Harris's QMs, based on their knowledge that Paladini was the majority shareholder and corporate guarantor of Cynergy.

216. At all times, Paladini reasonably relied upon the Defendants to perform their material obligations with the requisite skill, expertise and integrity.

217. By the conduct alleged herein, the Defendants failed to perform their material obligations with the requisite skill, expertise, and integrity.

218. The services provided by the Defendants were deficient, inadequate, and not competent. Harris and Moneris fell far below the standard of care to be exercised by accountants or other financial professionals engaged to provide similar services.

219. The Defendants' malpractice proximately caused injury to Paladini by, among other things and as further detailed above, destroying the value of his equity in Cynergy.

220. Paladini's injury is particularized to him because, among other things, a portion of the equity of Cynergy belonged to Paladini, personally, as majority shareholder. And Paladini was personally liable to the Cynergy Lenders for the shortfall in the asset sale price.

221. In addition, such claims are personal to Paladini by virtue of the personal exposure and liabilities against Paladini under the Forbearance Agreement and by virtue of the multiple lawsuits filed against Paladini personally stemming from the Defendants' acts and omissions.

222. By reason of the foregoing, Paladini is entitled to judgment against Harris and Moneris for general malpractice, and Paladini is entitled to recover damages in an amount to be determined at trial.

SIXTH CAUSE OF ACTION FOR NEGLIGENCE

223. Paladini realleges and incorporates by reference herein the allegations set forth in paragraphs 1 through 222, inclusive hereof.

224. In their capacity of performing accounting and reconciliation services for Cynergy, and serving as sponsor bank, Harris and its agent Moneris owed a duty to Paladini, Cynergy's majority shareholder and guarantor of its financial obligations, to exercise reasonable care and diligence in performing those duties.

225. The Defendants knew that Paladini would rely on their daily reconciliations of Cynergy's operating account and Harris's QMs, based on their knowledge that Paladini was the majority shareholder and guarantor of Cynergy.

226. By the conduct alleged in the General Allegations, the Defendants breached their duties to Paladini.

227. The Defendants' failure proximately caused injury to Paladini by, among other things and as further detailed above, destroying the value of his equity in Cynergy.

228. Paladini's injury is particularized to him because, among other things, a portion of the equity of Cynergy belonged to Paladini, personally, as majority shareholder. And Paladini was personally liable to the Cynergy Lenders for the shortfall in the asset sale price.

229. In addition, such claims are personal to Paladini by virtue of the personal exposure and liabilities against Paladini under the Forbearance Agreement, and by virtue of the multiple lawsuits filed against Paladini personally stemming from Harris's and Moneris's acts and omissions.

230. By reason of the foregoing, Paladini is entitled to judgment against Harris and Moneris for negligence, and Paladini is entitled to recover damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands judgment against Defendant as follows:

i. Judgment on Count I for economic duress against Harris and Moneris in an amount to be determined at trial;

ii. Judgment on Count II for breach of the covenant of good faith and fair dealing against Harris and Moneris in an amount to be determined at trial;

iii. Judgment on Count III for breach of fiduciary duty against Harris and Moneris in an amount to be determined at trial;

iv. Judgment on Count IV for tortious interference with business relations against Harris and Moneris in an amount to be determined at trial;

v. Judgment on Count V for general malpractice against Harris and Moneris in an amount to be determined at trial;

vi. Judgment on Count VI for negligence against Harris and Moneris in an amount to be determined at trial;

vii. Punitive damages in an amount to be determined at trial;

viii. Costs and attorneys' fees; and

ix. Such other and further relief as this court deems appropriate.

Dated: New York, New York
July 11, 2012

ASCHETTINO STRUHS LLP

Nicole J. Leibman

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Attorneys for Plaintiff Marcelo Paladini

EXHIBIT A

BIN Sponsor Agreement

This BIN Sponsor Agreement ("Agreement") is made as of NOVEMBER 1, 2008 ("Effective Date") by and between Harris N.A., a national banking association with offices at 150 N. Martingale Rd., Suite 700, Schaumburg, IL 60173 ("Bank") and Cynergy Data, LLC,a limited liability corporation with offices at 45 W. 36th St., 6th Floor, New York, NY 10018 ("ISO"). ISO is engaged in the business of providing payment transaction processing to merchants. Bank is a member of Visa U.S.A. ("Visa") and MasterCard International ("MasterCard") and desires to sponsor ISO into such associations. Therefore, the parties agree as follows:

I. Definitions

The following terms when used in this Agreement will have the meanings set forth in this Section:

"Affiliate" means: with regard to Bank, any company Controlled by or under common Control of the Bank; and with regard to ISO, any company of which the majority member of ISO is also a shareholder, member or owner.

"Assessments" means the amounts paid to the Associations attributable to the merchant processing activity, as the term is defined by the Rules.

"Association(s)" means Visa, MasterCard, and any successor organization.

"Association Security Programs" means those data security requirements imposed by the Rules on independent sales organizations/member service providers, merchant servicers or third party processors (if applicable), including but not limited to the Payment Card Industry (PCI) data security standards and PIN security requirements, Visa Cardholder Information Security Program (CISP), and MasterCard Site Data Protection (SDP).

"Bank Fees" means the fees set forth on the attached Exhibit A, Bank Fees.

"BIN" means the segregated Association Bank Identification Number and Interbank Card Association (ICA) assigned to ISO currently or additional BINs assigned in the future, which Bank will use exclusively for ISO's Merchants.

"BofA" shall mean Bank of America, Inc.

"BofA Assignment and Assumption Agreement" shall have the meaning given to it in Section 2.7E. of this Agreement.

"Card" means a valid payment or service account, whether or not evidenced by a plastic card, issued by a member of Visa, MasterCard or other card association, Third Party Provider or network approved by ISO.

"Chargeback" means a Sales Draft that has been presented to either the cardholder or the issuer of the Card and for which payment through the BIN has been refused or reversed in accordance with the Rules.

"Confidential Information" means information owned or licensed by each party including, but not limited to, any information pertaining to the disclosing party's business operations, know how, manner and means of doing business, pricing, computer and software systems and programming, documentation, and requirements related thereto, customer and prospect lists, status reports, contracts, marketing strategies, business plans, notes, financial projections, financial statements, sales reports, technical partners, information regarding third parties doing business with either party, requirements and related information and any communications whether in oral, written, graphic, magnetic or electronic form, that is known or reasonably should be known by the other party to be confidential or proprietary.

"Control" means, as applied to a party at the time of determination, the possession at such time directly or indirectly of the power to direct or cause the direction of, the management and policies of such parties, whether through the ownership of more than 50% of the voting securities of such party, or by contract, or otherwise.

"Conversion" shall mean the conversion of Existing Merchants in the Existing Portfolio to Bank in accordance with the terms of this Agreement, along with the transfer of the BINs for such Existing Portfolio.

"Credit Draft" means the electronic format used in refunding Sales Drafts initially charged to a Card by a Merchant.

"Credit Guidelines" means the standards set forth on Exhibit C, as may be revised from time to time.

"Designee Assignment and Assumption Agreement" shall have the meaning given to it in Section 2.3.D. of this Agreement.

"Effective Date" means the date as outlined in the first paragraph of this Agreement.

"Event of Default" means the events listed in Section 7.3.

"Existing Agent Banks" means the agent banks set forth on Exhibit E to this Agreement.

"Existing Merchants" means those Merchants in the Existing Portfolio whose contract for transaction processing services with Bank of America, N.A. has been assigned to Bank.

"Existing Portfolio" means that collective of Merchants that were (i) receiving Transaction processing services from BofA., and (ii) whose contract has been assigned to Bank pursuant to the terms of the BofA Assignment and Assumption Agreement.

"Existing Sales Groups" means the sales groups set forth on Exhibit F to this Agreement.

"Initial Term" has the meaning set forth in Section 7.1.

"Intellectual Property Rights" means any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (a) rights associated with

works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secret rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) (including logos, "rental" rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

"Interchange Fees" means the amounts paid as such, as defined by the Rules.

"ISO Agents" means independent sales organizations and agent banks which may be engaged by ISO to market the Merchant Program. ISO Agents shall include the Existing Agent Banks and the Existing Sales Groups.

"ISO Clearing Account" means the deposit account at the Bank designated by ISO and used to aggregate Merchant Funds, and for other purposes specified in this Agreement.

"ISO Operating Account" means the deposit account at Bank into which ISO Revenue will be deposited each day, and for other purposes specified in this Agreement. Any earnings on the funds deposited into this account will accrue to the benefit of ISO.

"ISO Revenue" means Merchant Fees less Interchange Fees and Assessments.

"Loss" means any loss incurred by Bank for any reason attributable to a Merchant or ISO, including but not limited to uncollected Chargebacks, Interchange Fees, and Association fines and charges.

"MasterCard" means MasterCard International Incorporated.

"Merchant" means a person, a business, or other entity that has entered into a Merchant Agreement and to which ISO provides services under this Agreement.

"Merchant Agreement" means the contract entered into among Bank, ISO (or an ISO Agent) and a Merchant pursuant to which ISO processes the Transactions of such Merchant, a form of which is attached as Exhibit D.

"Merchant Fees" means all revenues collected by Bank from Merchants and deposited to the ISO Clearing Account.

"Merchant Funds" means the funds that are payable to a Merchant under the related Merchant Agreement.

"Merchant Loss" (collectively, "Merchant Losses") means any loss incurred by Bank on a cash (i.e., pre-tax) basis for any reason attributable to a Merchant, including without limitation losses due to Association fines, Chargebacks, fraudulent practices of a Merchant, Merchant ACH rejects, returns, credits or fees and other uncollected amounts due from Merchants, and costs of collection and attorneys' fees.

"**Merchant Portfolio**" means the group of Merchants (including the Existing Merchants) participating in the Merchant Program pursuant to this Agreement.

"**Merchant Program**" means the package of services offered by ISO which enables a Merchant to make sales to persons by use of a Card and which permits the Merchant to present Card Transactions to ISO for payment and processing.

"**Merchant Reserve Account**" means one or more accounts maintained and controlled by Bank as security against a Merchant Loss that might be incurred by Bank or ISO.

"**Merchant Servicer**" means a third-party agent that: (a) is engaged by a Merchant, (b) is not a member of Visa, (c) is not directly connected to Visa's VisaNet system, (d) is party to an authorization and/or clearing message, and (e) has access to cardholder data, or processes, stores, or transmits transaction data.

"**Merchant Suspense Account**" means the deposit account designated by ISO at Bank to occasionally hold funds as a reserve against suspect Merchant activity. Any earnings on the funds deposited into this account will accrue to the benefit of ISO.

"**Minimum Annual Sales Volume**" means the minimum number of Transactions that must be generated by Merchants and processed by ISO under the Agreement during a calendar year.

"**Miscellaneous Adjustments**" means any transaction occurring through the BIN other than a Sales Draft, Credit Draft or a Chargeback.

"**Monthly Sales Volume**" means the gross dollar amount of Visa and MasterCard Card sales, before return, refund or exchange, that are generated by Merchants and processed by ISO during a calendar month.

"**Recovered Funds**" means all amounts received by the BIN directly or through Interchange Fees previously debited from the ISO Clearing Account, including but not limited to Chargeback reversals, code 26 reversals (credits issued in error), and funds attributable to Association pre-compliance and arbitration procedures.

"**Renewal Term**" has the meaning set forth in Section 7.1.

"**Reserve Account**" means the deposit account, in the name of and for the benefit of Bank, at Bank as further described in Section 2.6.

"**Retrieval**" means the production of an acceptable copy under the Rules of a Sales Draft, Credit Draft or other supporting documentation by a Merchant.

"**Rules**" means all rules, regulations or requirements that are issued or promulgated by Visa, MasterCard or other Card networks from time to time applicable to activities or transactions contemplated by this Agreement or under Merchant Agreements.

"Sales Draft" means the paper form or electronic format used in consummating Transactions charged to the Card of a Merchant's customer.

"Settled Transaction" means Sales Drafts less Credit Drafts, voided Sales Drafts, host returns, rejected items, Chargebacks and Miscellaneous Adjustments.

"Third Party Provider" means third parties utilized by ISO, and approved by Bank, to process Transactions, including but not limited to: value added re-sellers, system integrators, software providers, loyalty providers and transaction processors.

"Transaction" means the purchase by a cardholder of goods or services from a Merchant, by use of a Card.

"Visa" means Visa U.S.A., Inc.

II. ISO's Obligations and Rights

2.1 ISO Responsibilities.

A. Solicitation. ISO will develop relationships with and solicit merchants that conform to the Credit Guidelines. ISO will solicit merchants for the Merchant Program on a non-exclusive basis and will process Merchant Transactions through the BIN. ISO may enter into other agreements with third parties for Card clearing and settlement services or refer prospective merchants to other parties for such clearing and settlement services. ISO will assist prospective Merchants in completing all documentation required for application to the Merchant Program. ISO will solicit merchants that conform to the Credit Guidelines and administer its program in conformity with its established risk practices. All solicitation materials, such as ads, sales brochures and Web Site promotional content, must be approved by Bank, such approval not to be unreasonably withheld or delayed.

B. Administrative Responsibilities. ISO will direct, manage, conduct and administer the Merchant Program and the Merchant Agreements; provided, however, that nothing shall be construed to authorize ISO to modify the Merchant Agreements, or to waive any of Bank's rights under such agreements without Bank's prior written consent. ISO shall have the sole responsibility for ensuring that the Merchant Program, including without limitation the Merchant Agreement, Merchant application materials, promotional materials and services performed under this Agreement comply, and remain in compliance, with all applicable federal, state and local laws and the Rules. Bank's review and approval of such materials shall not alter ISO responsibilities therefor. ISO will at all times comply with the Rules, all rules and regulations of any Automated Clearing House and all municipal, state and federal laws, as applicable. ISO shall ensure that all Merchant Servicers engaged by Merchants are registered with the Associations, to the extent required under the Rules. ISO shall perform or contract for all front-line operational functions consistent with industry standards, including but not limited to Merchant underwriting, customer service, and risk/fraud monitoring. ISO will permit Bank to have remote access to ISO's risk/fraud monitoring systems.

C. Merchant Agreement. ISO will use the form of the Merchant Agreement attached as Exhibit C. ISO has the right to change the form of Merchant Agreement from time to time upon the addition of additional independent sales organization(s) to this Agreement, and shall provide any new Merchant Agreement to Bank for approval prior to implementation. Approval of changes to the Merchant Agreement shall be effective upon the providing of written approval to ISO by Bank, with such approval not to be unreasonably withheld or delayed. ISO on behalf of Bank shall approve all prospective Merchant Agreements that conform to the Credit Guidelines. Bank authorizes ISO to execute Merchant Agreements on behalf of Bank. Any exceptions to the Credit Guidelines require the prior written approval of Bank and any such Merchant Agreement entered into shall be signed by that approving officer of Bank, and may require additional conditions of Bank. ISO will provide Bank with remote access to ISO's document storage system, through which Bank will have access to copies of all executed Merchant Agreements (including all related applications).

D. Merchant Relationship. Each Merchant will have a direct business relationship with ISO and as such, Bank will utilize ISO for all communications, written or oral, with Merchants. Subject to the Rules, ISO will administer and control the Merchant Agreement and the relationship created thereby including without limitation decisions regarding the continuance, amendment, assignment or termination of such Merchant Agreement. Bank maintains the right to terminate any Merchant Agreement due to (i) requirements relating to or violation of the Rules, applicable law or Association request, (ii) an uncured breach of the Merchant Agreement, (iii) if the operations of a Merchant materially differ from the basis upon which the Merchant was approved under the Credit Guidelines (such as significant volume differences, product differences, or type of business, each that results in a major increase in risk as to such Merchant), or (iv) if Bank in good faith deems it reasonably necessary to avoid loss, damage or adverse exposure to Bank. Subject to any requirements of the Rules, Bank will notify ISO of its desire to terminate a Merchant Agreement and will work with ISO to identify approaches to mitigate risk factors (such as initiating or increasing merchant reserves or transferring the merchant to another financial institution which is a member of the Associations) prior to terminating the Merchant.

E. Merchant Assistance. ISO will train Merchants on the procedures and Rules necessary to participate in the Merchant Program. ISO will input all data necessary to set up new Merchants, maintain Merchants' account data, process Merchant Transactions, and respond to Merchant inquiries, on a timely basis. ISO will provide to Merchants point of sale devices and other equipment necessary to participate in the Merchant Program, and will provide ongoing maintenance of such equipment. ISO also will distribute all Merchant supplies, and provide authorization and back office services to Merchants. ISO will process all Merchant Transactions into interchange according to the Rules. ISO will maintain adequate staffing to fulfill its obligations under this Agreement.

F. ACH. ISO will prepare the ACH file to credit each Merchant's settlement account for Sales Drafts and debit each Merchant's settlement account for the amount of Merchant Fees, any Chargebacks, Credit Drafts, or other amounts due under the terms of the Merchant Agreement to ISO by a Merchant. ISO acknowledges that it will not have access to Merchant funds, provided however; ISO is responsible for any fees of Bank

related to the holding of Merchant funds prior to distribution to Merchants. Bank will reconcile the Merchant Suspense Account, and the ISO Clearing Account. All Merchant Reserve Accounts are held by Bank. The ACH file will be processed through Bank and the corresponding ACH offset will be made to the ISO Clearing Account. Any system connectivity fees will be paid by ISO.

G. Information. ISO will verify the input of data to processors to ensure accurate Merchant set up. ISO will provide on a monthly basis ISO's Merchant processing statistics to Bank. ISO will also provide to Bank within 5 days of receipt of Bank's written request information within ISO's possession: i) required to be filed with or reported to the Associations; or ii) reasonably requested by Bank to enable Bank to monitor Bank risk. ISO will provide ISO annual audited and quarterly unaudited financial statements to Bank. ISO will provide daily electronic merchant boarding activity reports to Bank.

H. ISO Training. All costs associated with training ISO conducted onsite at Bank will be paid by ISO.

I. ISO Agreement. ISO has entered into or will enter into an ISO Agreement with Bank to become a registered ISO/MSP of Bank, and will maintain such status in good standing.

J. Third Party Providers. ISO has entered or is entering into agreements directly with Third Party Providers to provide processing services (including, without limitation, authorization, data capture, data processing, customer service, statements, collections, new account processing, Retrieval, Chargeback, accounting, reporting and clearing and funding services) on the Third Party Providers' system. Bank will cooperate with a Third Party Provider to settle transactions through the Interchange process of the Associations. Bank shall have no responsibility or liability for any costs due to the arrangements between ISO and Third Party Providers or any claims of Merchants or others related to the processing services provided by Third Party Providers. ISO shall be responsible for and liable to Bank for any and all actions or omissions of Third Party Providers, and all costs related to any change to or from any Third Party Provider.

K. Additional Services. ISO may combine services it is authorized to provide under this Agreement with other services unrelated to the services offered by Bank to a Merchant without the express written consent of Bank, such as but not limited to Discover Card processing, marketing of American Express card acceptance, gift cards, check image capture and back office conversion processing services (the "Additional Services"). ISO shall provide Merchants with adequate disclosures that such Additional Services are being provided by ISO and not Bank, and shall defend and indemnify and hold harmless Bank against any and all claims which may be asserted against Bank with respect to such Additional Services. In the event Bank acts as the acquirer of Discover transactions for Merchants, the parties agree to amend this Agreement as necessary to comply with any requirements of the Discover Financial Services, Inc. IMAP and MAP programs.

2.2 Audits.

A. Audit. Once each fiscal year, Bank may, upon 15 days prior written notice, conduct a financial and procedural audit of ISO to confirm compliance with this Agreement. Such audit will be conducted at ISO's expense, during ISO's normal business hours and with minimal disruption to ISO's business. ISO will within 15 days of receipt of Bank's written request supply such auditors with requested information related to Transactions. Visa, MasterCard and bank regulatory agencies may also conduct financial and procedural audits of ISO to confirm compliance with this Agreement and the Rules and legal requirements. Bank may, no more than once each 12 month period, at any time and at its own expense, perform a background check on ISO, its principals, and any of ISO's agents or employees, which may include a personal credit report or criminal background verification.

B. Regulatory Audit. ISO understands and agrees that Bank is subject to examination by government agencies and ISO agrees it will cooperate with any such examination. Federal and state agencies may require access to ISO's facilities to audit the performance of ISO and ISO Affiliates and Bank under this Agreement. ISO will cooperate with all such governmental audits, at ISO's expense.

2.3 Ownership; Portability.

A. Bank and ISO agree that the relationship with, and the names, addresses and all information (other than cardholder account information) relating to Merchants, any ISO Agents, and any Agent Banks of the Merchant Program, the Merchant Agreements and any revenues, fees and benefits thereunder, and the BINs and ICAs are owned by and proprietary to ISO and all right, title and interest therein and liabilities therefrom are vested in ISO. ISO's data will not be used by Bank except as necessary to carry out its obligations under this Agreement, or with ISO's prior written consent.

B. ISO may sell or assign all or any portion of the Merchant Portfolio at any time. Prior to the time that ISO has processed through Bank the Aggregate Minimum Sales Volume specified in Exhibit A, prior to accepting an offer to sell or assign any interest in the Merchant Portfolio to an unaffiliated third party (a "Transfer"), ISO shall provide Bank the right of first refusal described in Section 2.3.C. Once ISO has processed through Bank the Aggregate Minimum Sales Volume specified in Exhibit A, ISO may sell or assign an interest in the Merchant Portfolio to a third party without offering Bank the right of first refusal. For purposes of clarification, a sale or assignment of all or any portion of the Merchant Portfolio between ISO and an affiliate would not be deemed a Transfer, as well as ISO's acquisition of all or any portion of any ISO Agent's interests in the Merchant Portfolio, but the sale by any affiliated party of all or any portion of the Merchant Portfolio would be deemed a Transfer.

C. Subject to Section 2.3.B., in the event ISO desires to effect a Transfer pursuant to a bona fide offer from a third party, ISO shall first offer to Transfer its interest in the Merchant Portfolio to Bank, upon the same terms and conditions as contained in such third party offer, by giving written notice thereof to the Bank. Within fifteen (15) days of receipt of such notice, the Bank shall notify ISO of the Bank's election to implement the Transfer on terms and conditions equal to that contained in the bona fide third party offer. In the event that the Bank fails to provide ISO with notice of its intention within such fifteen

(15) day time period, or in the event that the Bank consents to the Transfer, ISO shall have the right to consummate the Transfer at the price, terms and conditions specified in such notice of offer.

D. In connection with any sale or assignment of an interest in the Merchant Portfolio, ISO shall first pay all amounts owed to Bank under this Agreement. Additionally, Bank, ISO and the "Designee" (as defined below) shall enter into an Assignment and Assumption Agreement acceptable to Bank (the "Designee Assignment and Assumption Agreement"). Further, Bank may require ISO to maintain a balance in the Reserve Account as provided below.

Upon completion of the above, Bank agrees to execute and assign the related Merchant Agreements, Merchant Accounts, funds held in the Merchant Reserve Accounts, and agreements with any ISO Agents (and any other agreements in Bank's name related to the Merchant Program) to the entity designated by ISO to accept assignment from Bank of such agreements. Bank also agrees to assign all dedicated BINs relating to the assigned portion of the Merchant Portfolio to the financial institution and Association member designated by ISO to accept assignment thereof on behalf of ISO ("Designee"). Upon the termination of this Agreement, and the execution of the Designee Assignment and Assumption Agreement, all rights and liabilities under the Merchant Program, including the all Merchant Agreements, Merchant Accounts, funds held in the Merchant Reserve Accounts, agreements with the ISO Agents, and the BINs, shall continue to be fully vested in ISO. Bank shall execute and deliver any assignments, bills of sale and other documents necessary to assign all of Bank's right, title, interest, and liabilities in the Merchant Program, including the Merchant Agreements, Merchant Accounts, funds held in the Merchant Reserve Accounts, and agreements with the ISO Agents (and related agreements) and the BINs to the Designee. Notwithstanding the foregoing, Bank and ISO agree that Bank may require ISO to maintain a Reserve Account as provided below.

2.4 [Intentionally Left Blank.].

2.5 Insurance and Continuity Plan. ISO will maintain standard worker's compensation and general liability insurance consistent with industry standards and will provide proof of such insurance upon written request. ISO will maintain a disaster recovery and contingency plan that meets or exceeds applicable bank regulatory and Association requirements. ISO will deliver a copy of such plan to Bank upon request. If the plan does not meet such requirements or if a bank regulatory agency requires changes to such plan, ISO agrees to promptly make such changes.

2.6 Reserve Account.

A. Funding of Reserve Account. At the time provided in the BofA Assignment and Assumption Agreement (as defined below), ISO will establish a Reserve Account to fund the payment of Losses by transferring $650,000 from ISO's existing reserve account currently held at Bank of America, N.A. ("BofA").

B. The Reserve Amount will be reviewed annually and shall be maintained in an amount

equal to the greater of (i) $650,000, or (ii) the preceding calendar month's Monthly Sales Volume, multiplied by seven (7) basis points (the "Reserve Amount Minimum"), but in no event shall the reserve amount exceed $1,000,000. If the Reserve Amount falls below the Reserve Ammount Minimum, then ISO shall within five (5) business days fund the Reserve Account up to the Reserve Amount Minimum. If the review indicates that the current Reserve Amount is greater than the Reserve Account Minimum, then Bank shall permit ISO to withdraw funds from the Reserve Account in excess of the Reserve Amount Minimum. ISO agrees that, in the event that ISO fails to make a deposit into the Reserve Account as required by this subparagraph, Bank may debit the required amount from then-current or future ISO Revenue, or then-current or future funds in the ISO Operating Account, or the ISO Clearing Account and deposit it into the Reserve Account.

C. Upon the expiration or termination of this Agreement, Bank may retain in the Reserve Account a sum equal to two (2) times the aggregate Merchant Losses suffered during the six (6) month period occurring prior to the expiration or termination of this Agreement. Such amount will be funded by ISO via then-current or future ISO Revenue, or then-current or future funds in the Reserve Account, the ISO Operating Account, the ISO Clearing Account, and additional deposit of funds, or a combination of any of the foregoing.

D. The Reserve Account shall remain domiciled at Bank throughout the term of this Agreement, including any extensions and renewals hereof, and for a period of six (6) full calendar months following the expiration or earlier termination of this Agreement. If, at the end of such six-month period, any Chargebacks or other Losses remain pending, Bank may retain an amount equal to two (2) times such pending amounts. Any amounts remaining after the resolution of such items shall be returned to ISO.

2.7 Existing Portfolio.

A. Transfer of BINs. Immediately following execution of this Agreement, for purposes of facilitating the assignment of the Existing Portfolio to Bank, ISO shall initiate and be responsible for the transfer of the BINs from Bank of America, N.A. to Bank with respect to the Existing Portfolio. To that end, ISO shall be responsible for providing any and all information, documents or materials as may be necessary to transfer the BINs for the Existing Portfolio and for addressing any information requests from Visa or MasterCard. Upon completion of such transfer to Bank, including without limitation, approval by Visa and MasterCard, such BINs shall be dedicated for ISO's use.

B. ISO represents and warrants that a true and correct list of Merchants for whom ISO is providing Transaction processing and settlement services for Card transactions , has been provided to Bank on a CD-ROM. Such CD-ROM will be updated and delivered by Bank to ISO upon Bank's request.

C. ISO represents and warrants that, except as disclosed by ISO and approved by Bank, none of the Merchants in the Existing Portfolio operate in the unacceptable industries outlined in the Credit Guidelines.

D. ISO represents and warrants that, subject to the execution and delivery of the BofA Assignment and Assumption Agreement by Bank and BofA., it has the ownership, authority and right to assign and transfer the Merchant Agreements, merchant accounts and merchant reserves for the Existing Merchants in the Existing Portfolio to Bank.

E. Immediately following the Effective Date of this Agreement, ISO shall arrange for and effectuate the assignment and transfer of the Card processing agreements (merchant agreements), merchant accounts, merchant reserve funds, letter of credit, bond, insurance policy, guaranty and all other collateral with respect to the Existing Portfolio, and the agreements with the Existing Agent Banks and the Existing Sales Groups. Such transfer shall be accomplished through the execution of an assignment and assumption agreement between Bank and BofA (the "BofA Assignment and Assumption Agreement"). The BofA Assignment and Assumption Agreement shall contain terms typical of such a transaction and satisfactory to the parties.

F. Bank acknowledges that it has received forms of merchant agreements which are in use with the Merchants in the Existing Portfolio from ISO, which forms are acceptable to Bank. ISO has a signed Merchant Agreement from each of its Existing Merchants and shall provide Bank with remote access to the executed copies of such Merchant Agreements.

G. ISO represents and warrants that its merchant processing business with respect to the Existing Portfolio has in all material respects been operated in compliance with all applicable laws, orders, regulations, policies and guidelines of all governmental entities and all Association Rules, including all underwriting and monitoring procedures.

H. Bank will not be responsible in any manner with respect to any Card transaction of an Existing Merchant with a processing date before the Conversion Date. The parties

acknowledge that certain of the Existing Merchants have agreements that have been terminated or have expired prior to Conversion, and as such, are no longer processing and settling Transactions ("Inactive Merchants"). The Merchant Reserve Accounts for such Inactive Merchants shall be transferred to Bank upon Conversion and ISO shall be responsible for any and all Losses for such Inactive Merchants after the Conversion Date.

2.8 Credit Guidelines. ISO has the right to change the Credit Guidelines from time to time, and shall provide any new Credit Guidelines to Bank for approval prior to implementation. Approval of changes to the Credit Guidelines shall be effective upon the providing of written approval to ISO by Bank, with such approval not to be unreasonably withheld or delayed.

III. Bank Responsibilities

3.1 Bank Responsibilities.

A. [Intentionally Left Blank]

B. Membership. Bank will remain a member of the Associations and serve as the Acquiring Bank or Acquiring Member (as that term is defined in the Rules) for those Merchants who enter into Merchant Agreements including, without limitation, by maintaining necessary capital requirements, and obtaining and providing for the use and benefit of ISO the BINs and ICAs necessary for clearing and settlement of Merchant credit and debit card and related Transactions for the Merchant Program.

C. Sponsorship. Bank will sponsor ISO and any qualified ISO Affiliates into the Associations, as independent sales organizations, member service providers and into any other Association program for which sponsorship is required. Bank shall also sponsor ISO Agents designated by ISO and approved by Bank as independent sales organizations into Visa and member service providers into MasterCard, and shall, upon ISO's request, provide such ISO Agents with separate, dedicated BINs. Any ISO Agents must be approved in writing by Bank, which approval will not be unreasonably withheld. If approved by Bank, ISO Agents must be registered with the Associations in accordance with the Rules and enter into contractual agreements with Bank as required by Bank. ISO shall be responsible for monitoring the activities of all ISO Agents to ensure compliance with the Rules. ISO will direct, manage, conduct, administer and enforce the agreements entered into by with Bank as to ISO Agents and, as to Bank, shall be responsible and liable for the acts and omissions of all ISO Agents and merchants of the ISO Agents.

D. Merchant Agreements. Bank will approve the form of the Merchant Agreement to be used by ISO. Bank may terminate any Merchant Agreement pursuant to the terms of the Merchant Agreement or the Rules by notifying ISO, which will notify the relevant Merchant.

E. BIN and Settlement. Bank will establish and maintain a dedicated BIN and ICA for ISO. Bank will, at ISO's request, provide additional BINs at ISO's expense upon ISO's

request Bank will cooperate with ISO and Third Party Providers regarding Chargeback proceedings. Bank will provide ISO with all rebates provided by Associations in connection to the BIN. All matters regarding the BIN will be directly referred to ISO. Bank will also reasonably support ISO in Association issues regarding the BIN.

F. Reports. Bank will provide to ISO, within 2 business days after receipt by Bank, all BIN processing reports received from Associations and any additional data related to this Agreement requested by ISO. ISO will provide to Bank any data required to be submitted back to the Associations within 5 business days of receipt of Bank's written or oral notice therefor.

G. Acquisitions. Bank acknowledges that ISO may, from time to time, acquire the stock or assets of other entities that provide processing services for merchants. In addition, it is acknowledged by Bank and ISO that, if requested by ISO, Bank will provide the services contemplated under this Agreement to such acquired merchants so long as such acquisition does not materially change the business or risk profile of ISO as defined by the Merchants serviced under this Agreement. Bank's approval for such acquisitions will be completed through the signing of documentation acceptable to Bank regarding the provision of processing services for the acquired business, including, without limitation, the right of Bank to reimbursement from ISO for any trailing chargeback liability.

3.2 **Third Party Audits.** Each party will notify the other party as soon as practicable of any formal request by a governmental agency or Association to talk with such entity related to this Agreement, examine the records pertaining to duties, responsibilities and obligations under this Agreement or conduct a site visit, at ISO's expense.

3.3 **Losses.** All Losses incurred by Bank for any reason will be borne by ISO, including but not limited to 100% of any amount incurred by Bank arising out of ISO's or any ISO sales representatives' negligence or fraud. ISO will notify Bank immediately of any information concerning any Merchant or any transaction that would indicate that Bank may incur a Loss. Each month Bank shall deduct the amount of any Loss incurred the previous month from ISO Revenue. If the amount of the Loss exceeds the amount of the ISO Revenue, Bank shall have the right to deduct the amount of the Loss from the ISO Operating Account, the Reserve Account, the ISO Clearing Account. In addition, Bank shall have the right to set off any unpaid Loss from any future ISO Revenue, or future amounts in the ISO Operating Account, the Reserve Account, and the ISO Clearing Account. Reimbursement of all Losses is, in addition to any others, a precondition of any transfer of any part of the Merchant Portfolio or any related processing.

IV. Fees, Charges and Security Interest

4.1 **Bank Fees.** ISO will pay to Bank the fees set forth on Exhibit A. Bank is authorized to debit the ISO Operating Account for these amounts. Amounts debited shall equal at least the fees associated with the Minimum Annual Sales Volume set forth on Exhibit A (i.e., If the Minimum Annual Sales Volume specified in Exhibit A is not met, within ninety (90) days after the end of each year Bank will invoice ISO for the amount, if any, by which the transaction fees associated with the Minimum Annual Sales Volume exceed the actual transaction fees which were paid by ISO to Bank for such year. The other fees listed on Exhibit A are in addition to the transaction fees associated with the Minimum Annual Sales Volume

4.2 **Association Fees and Assessments.** ISO is responsible for all Association fees related to its or its sales agents registration, and the establishment and maintenance of the BINs and ICAs and Assessments.

4.3 **Conversion Costs.** ISO will pay to Bank any conversion costs incurred by Bank to convert existing merchants of ISO into the Merchant Program. Notwithstanding the foregoing, Bank shall be responsible for such conversion costs in the event (1) Bank's membership in either Association is terminated, or (2) this Agreement is terminated by ISO by virtue of an uncured breach by Bank.

4.4 **BIN Funds.** All income and expenses attributable through the BIN, including but not limited to Recovered Funds, Chargeback income, Retrieval income, interchange income, debits and credits will derive to the benefit of ISO.

4.5 **Security Interest; Set Off.**

A. Grant. As security for the obligations of ISO to Bank, or amounts owing from ISO to Bank, ISO grants Bank a first priority security interest in all of its right, title and interest, whether now owned or existing or hereafter created, acquired or arising, in, to and under the ISO Revenue, the Reserve Account, the ISO Operating Account, the Merchant Suspense Account, and the ISO Clearing Account, including, without limitation, present and future funds comprising the foregoing.

B. Perfection and Release. ISO authorizes for filings to perfect, maintain and enforce Bank's security interest. If any account is established at another depositary institution, then ISO will require such depository institution to enter into a control agreement in favor of Bank regarding the account. Upon termination of this Agreement, if ISO is not in default under this Agreement and (i) all sums then owing to Bank have been paid in full and (ii) the Reserve Account contains the amount specified in Section 2.6(c); or if in Bank's reasonable opinion, all such liability has been transferred to a subsequent acquiring bank, then Bank will promptly release its security interest in the above-named accounts.

C. Set Off. The ISO Operating Account (including, without limitation, the ISO Revenue), the ISO Clearing Account, and the Reserve Account shall be subject to Bank's right to set off any claims Bank has against ISO, whether absolute or contingent under this Agreement.

V. Association Requirements

5.1 **Potential Fines.** Bank will, within 5 business days after receipt of notice, notify ISO in writing of any notices, warnings or impending fines by any Association attributable to ISO or a Merchant. Bank will immediately notify ISO if any fines are imposed on ISO or its Merchants. ISO will reimburse Bank within 10business days of a final determination for any actual fines (other than those arising out of Bank's breach of its obligations under this Agreement or Bank's negligence or willful misconduct) imposed upon Bank.

5.2 **Rules.** ISO received understands, and agrees to comply with all applicable Rules. In the event of any inconsistency between this Agreement and any Rules, the Rules will apply. ISO will comply with all applicable Rules and Association Security Programs. ISO acknowledges that MasterCard and Visa have the right to enforce any provision of the Rules and to prohibit ISO conduct that creates a risk of injury to the Associations or that may adversely affect the integrity or reputation of the Associations' or Bank's systems, information, or both. ISO agrees to monitor its portfolio via means such as a "web crawler" service (e.g., G2, or such other mutually agreeable service), with such service being obtained through a third party or through Bank, in either case at ISO's expense.

5.3 **Operations.** On an ongoing basis, ISO will promptly provide Bank with the current address of each of its offices. ISO acknowledges that all Merchant Fees must be clearly and conspicuously disclosed to the Merchant in writing prior to any payment or application and agrees to so disclose such fees.

5.4 **Information.** ISO will provide requested Merchant information to the Associations within 5 days of the request.

5.5 **Rule Enforcement.** ISO acknowledges that the Associations have the right to enforce any provision of the Rules and to prohibit any ISO conduct that may injure or create a risk of injury to the Associations, including injury to reputation, or that may adversely affect the integrity of the Associations' and Bank's core payment systems, information, or both. ISO will not take any action that might interfere with or prevent exercise of this right.

VI. Representations, Warranties, Confidentiality, Non-Solicitation and Indemnification

6.1. **Representations and Warranties.** Each party represents and warrants to the other that:

A. Good Standing. ISO is a business entity authorized, validly existing and in good standing under the laws of the State indicated in the opening paragraph. Bank is duly chartered and validly existing as a national banking association with full power and authority to carry on its banking business as now conducted. This Agreement represents a valid obligation of that party and is fully enforceable against it according to its terms.

B. Full Authority. It has full authority and power to enter into this Agreement and to perform its obligations under this Agreement.

C. No Violation. Its performance of this Agreement will not violate, to the best of its knowledge, any applicable law or regulation or any agreement to which it may now or hereafter be bound. It will comply with the terms of this Agreement, with the Rules, and with all applicable state and federal laws and regulations.

6.2 Confidentiality.

A. Use. ISO and Bank each agree that it will retain in confidence the Confidential Information and all information and data belonging to or relating to the business of the other party including without limitation aggregate information regarding Merchants or specific information related to Merchants (which the parties acknowledge belongs to ISO), and that each party will safeguard such information and data by using the same degree of care and discretion that it uses to protect its own Confidential Information. No party will use the other party's Confidential Information for its own benefit other than for the purposes contemplated by this Agreement, nor will it allow any third party to use such information other than third parties with a need to know pursuant to this Agreement. ISO will limit access to the MasterCard and Visa systems to those ISO employees it deems necessary to perform its responsibilities under this Agreement. ISO will use MasterCard and Visa information identified or reasonably understood to be confidential or proprietary solely to perform its duties on behalf of this Agreement. ISO and Bank will implement reasonable and appropriate safeguards to prevent unauthorized access to such systems and to the other party's Confidential Information.

B. Disclosure. Prior to the disclosure of any Confidential Information to third parties, recipient of Confidential Information ("Recipient") will obtain a written agreement from any such third party (i) to hold all Confidential Information in confidence and not use it for any purpose not expressly consented to by the disclosing party; and (ii) to return all Confidential Information immediately after the third party has completed the work for which the Confidential Information was disclosed.

C. Return of Confidential Information. Upon termination of this Agreement, the Recipient shall promptly deliver to the disclosing party of Confidential Information ("Disclosing Party") all Confidential Information in its possession or under its control or, alternatively, shall destroy the Disclosing Party's Confidential Information and certify to such destruction; provided, however, that that Confidential Information required by auditors, the Rules, or regulators to be retained may be retained by the Recipient.

D. Non-Protected Information. The parties will have no obligations of confidentiality for: (i) information which at the time of disclosure is in the public domain; (ii) information which after the time of disclosure becomes part of the public domain through no fault of the disclosee, but only after and to the extent that such information is published; (iii) information which is disclosed by a third party having legitimate possession and the unrestricted right to make such disclosure; (iv) information that such party can demonstrate to have been in its legitimate possession prior to the disclosure of the Confidential Information; (v) information required to be disclosed by law, subpoena or court order, provided, however, that the receiving party shall promptly inform the disclosing party of the operation of this Section to enable the disclosing party to defend nondisclosure of its Confidential Information.

E. No License. Nothing in this Section shall be construed to convey to the Recipient any right, title or interest or copyright in any Confidential Information, or any license to use, sell, exploit, copy or further develop any such Confidential Information, except use of Confidential Information is permitted if necessary by Recipient to comply with this Agreement.

6.3 Non-Solicitation. During the term of this Agreement and for a period of 6 months thereafter, neither Bank nor ISO or any of their Affiliates shall solicit, refer or enter into a contract with employees of the other without the express prior written consent of the other. During the term of this Agreement and for a period of 18 months thereafter, Bank shall not knowingly solicit or refer Merchants or registered independent sales organizations of ISO or enter into contracts with them, without the prior written consent of ISO, and ISO shall not directly solicit or refer merchants or sales agents of Bank or enter into contracts with them, without the prior written consent of Bank. This prohibition shall not preclude general solicitations or inquiries by a party or such party's agent banks or other independent sales organizations, or referrals to such party by third parties. In the event of default by ISO or the need for Bank to sell, transfer or assign some or all of the Merchant Agreements to satisfy ISO's obligations to Bank, ISO and any Affiliate of ISO or any entity owned or operated by the principals, officers, directors or shareholders of ISO or its Affiliates agree during the period Bank is recovering amounts due Bank, not to solicit or refer Merchants or sales agents or enter into contracts or arrangements therewith, or resulting in compensation therefrom, with respect to the Merchant Agreements sold, transferred or assigned (including to Bank) to satisfy ISO's obligations or pursuant to the security interest granted to Bank under this Agreement. The economic benefits of any agreements entered into in violation of this section shall accrue to the benefit of the non-breaching party.

6.4 Indemnification.

A. ISO Indemnification. ISO will indemnify and hold Bank harmless from and against all Losses that result from or arise out of (other than those resulting out of Bank's breach of its obligations under this Agreement or Bank's negligence or willful misconduct): (i) the performance, or failure to perform, by any Merchant, Third Party Provider or ISO, any obligation under the Merchant Agreement or this Agreement; and (ii) the violation by ISO of any law or Rule in connection with its performance of, or failure to perform, its obligations under this Agreement. ISO's obligation to indemnify Bank will survive for a period of 3 years following the expiration or termination of this Agreement by either party for any reason.

B. Bank Indemnification. Bank will indemnify and hold ISO harmless from and against all Losses that result from or arise out of (other than those resulting out of ISO's breach of its obligations under this Agreement or ISO's negligence or willful misconduct): (i) Bank's performance, or failure to perform, any obligation under this Agreement; or (ii) the violation by Bank of any law or Rule in connection with its performance of, or failure to perform, its obligations under this Agreement. Bank's obligation to indemnify ISO will survive for a period of 3 years following the expiration or termination of this Agreement by either party for any reason.

C. Procedure. Each party will promptly notify the other of any claim, demand, suit or threat of suit of which that party becomes aware which may give rise to a right of indemnification under this Agreement. Both parties will cooperate in the prosecution of such suit. The indemnifying party will be entitled to participate in the settlement or defense of any such suit.

VII. Term, Termination, Default

7.1 **Term**. This Agreement will become effective on the Effective Date, and will remain in effect for a period of 3 years from the Effective Date ("Initial Term"). This Agreement will automatically renew for 2 year period ("First Renewal Term"), and then for 1 year periods ("Additional Renewal Term") unless terminated earlier in accordance with the provisions of this Agreement.

7.2 **Termination**. Notwithstanding the above, the parties will have the following rights.

A. Automatic Termination. This Agreement will automatically terminate if: (i) Visa or MasterCard prohibits ISO from providing, or prohibits Bank from allowing ISO to provide, the services set forth in this Agreement; or (ii) Visa or MasterCard cancels Bank's Association membership.

B. Termination Without Cause. After the end of the Initial Term or any Renewal Term, Bank may terminate this Agreement with or without cause upon at least 180 days prior written notice to ISO. ISO may terminate this Agreement with or without cause at the end of the Initial Term or any Renewal Term (i) upon 90 days prior written notice to Bank; or (ii) if ISO sells all Merchant Agreements to a third party in accordance with this Agreement, upon Bank's assignment of such Merchant Agreements to ISO's designee.

C. Termination For Cause. A party may terminate this Agreement upon the occurrence of an Event of Default by the other party. In the event that Bank terminates this Agreement for cause, ISO agrees to pay Bank a termination fee equal to the greater of (i) the average monthly sponsorship and underwriting fees paid to Bank at the time of termination, or (ii) the minimum annual fees at the time of termination set forth on Exhibit A. The foregoing fee is an expression of liquidated damages, and not a penalty, but shall not be construed to modify any of Bank's other rights in the event of Bank's termination of the Agreement for cause.

7.3 **Default.** Each of the following occurrences will constitute an Event of Default under this Agreement:

A. Nonpayment. Either party fails to pay the other when due any undisputed amount due under this Agreement and such failure continues for a period of 30 days after written and oral notice has been sent to the non-paying party.

B. Financial Instability. Either party: (i) files for bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or any similar proceeding, (ii) has such a proceeding instituted against it and such proceeding is not dismissed within 60 days, (iii)

makes an assignment for the benefit of its creditors or an offer of settlement, extension or composition to its creditors generally; or (iv) a trustee, conservator, receiver or similar fiduciary is appointed for that party or substantially all of that party's assets.

C. Breach. Either party fails to observe any material obligation specified in this Agreement or the Rules, and such failure is not cured within 60 days of receipt of written notice from the non-breaching party.

VIII. Names and Trademarks; Intellectual Property

8.1 Names. Neither party will use the other's name in any promotional or written or electronic marketing materials, nor will it promote the other's programs in any way, without the other's written consent. Bank agrees to allow ISO to use the name, logo and specified trademarks of Bank solely in connection with the Merchant Program as required under the Rules, such as on Merchant Agreements, provided that any such other use shall require the prior written approval of Bank, such approval not to be unreasonably withheld or delayed and consistent with any Bank usage guidelines. If such approval is granted, ISO may utilize such names, logos or marks with Bank's approval of such materials. This use terminates upon termination of this Agreement.

8.2 MasterCard and Visa Trademarks. ISO acknowledges that MasterCard and Visa are the sole owners of their trademarks. ISO will not contest the ownership of such marks, and MasterCard or Visa may at any time and immediately without advance notice prohibit ISO from using its marks for any reason.

8.3 Intellectual Property Rights. ISO shall be the sole and exclusive owner of all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Vimas System. Nothing in this Agreement shall be deemed to grant to one party, by implication, estoppel or otherwise, license rights, ownership rights or any other Intellectual Property Rights in any materials owned by the other party or any Affiliate of the other Party.

IX. General

9.1 Assignment. ISO may not assign its rights under this Agreement to any third party without Bank's prior written consent, which consent may not be unreasonably withheld, and any attempted assignment without such consent shall be void. Notwithstanding any such assignment, delegation or subcontract, ISO shall remain jointly and severally liable with the assignee for all of its obligations under this Agreement which are so assigned, delegated or subcontracted.

9.2 Notice. All communications under this Agreement will be in writing, sent via overnight delivery, and will be deemed received as evidenced by a signature from ISO or Bank. Such communication will be sent to the following:

If to ISO: CYNERGY DATA
45 W 36th Street, 6th floor
New York, NY 10018
Attn: Marcelo Paladini

Fax: 212-594-7245
E-Mail: marcelop@cynergydata.net

If to Bank: Harris, NA.
150 N. Martingale Rd., Suite 900
Schaumburg, IL 60173
Fax: 847.240.6583

The parties may, from time to time, designate different persons or addresses to which subsequent communications will be sent by sending a notice of such designations in accordance with this Section.

9.3 **Entire Understanding and Amendment.** This Agreement, including the attached Exhibits which are incorporated by reference, sets forth the entire understanding of the parties relating to its subject matter, and all other understandings, written or oral, are superseded. Except as otherwise provided in this Agreement, this Agreement may not be amended except in writing executed by both parties.

9.4 **Severability.** If any provision of this Agreement is illegal, the invalidity of such provision will not affect any of the remaining provisions, and this Agreement will be construed as if the illegal provision is not contained in the Agreement. This Agreement will be deemed modified to the extent necessary to render enforceable its provisions, and to comply with the Rules.

9.5 **No Waiver of Rights.** No failure or delay on the part of any party in exercising any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise of any right preclude any further exercise of that right.

9.6 **Successors and Assigns.** This Agreement will inure to the benefit of and will be binding upon the parties and their respective permitted successors and assigns.

9.7 **Applicable Law.** The Agreement will be deemed to be a contract made under the laws of the State of Illinois, and will be construed in accordance with the laws of Illinois without regard to principles of conflicts of law.

9.8 **Independent Contractors.** Bank and ISO will be deemed to be independent contractors and will not be considered to be agent, servant, joint venturer or partner of the other.

9.9 **Construction.** The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. All sections mentioned in the Agreement reference section numbers of this Agreement. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

9.10 **Force Majeure.** Neither party will be liable to the other for any failure or delay in its performance of this Agreement in accordance with its terms if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party.

9.11 Attorney's Fees. If any court finds that a party has breached this Agreement, then the non-defaulting party will be entitled to recover from the breaching party expenses incurred in enforcing the provisions of this Agreement, including but not limited to reasonable attorneys' fees and costs.

9.12 Limitation of Liability. In no event shall either party, their respective Affiliates or any of their respective directors, officers, employees, agents or subcontractors, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is excluded by agreement of the parties, regardless of whether the damages were foreseeable or whether any party or any entity has been advised of the possibility of the damages. This limitation of liability shall not apply to, and is no way intended to or limit or relieve ISO's obligations with respect to any liability of ISO related to misconduct, fraud, failure to pay Bank's fees or other costs described on Exhibit A, any losses under the Merchant Agreements and/or Merchant activities or as otherwise set forth in this Agreement.

9.13 Waiver of Jury Trial. BANK AND ISO HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION CONCERNING ANY RIGHTS OR DISPUTES UNDER THIS AGREEMENT. BANK AND ISO AGREE THAT, FOR PURPOSES OF ACTIONS BROUGHT BY BANK OR MONERIS SOLUTIONS, INC., JURISDICTION AND VENUE SHALL BE IN ANY STATE OR FEDERAL COURT LOCATED IN THE STATE AND COUNTY OF NEW YORK, AND, FOR PURPOSES OF ACTIONS BROUGHT BY ISO, JURISDICTION AND VENUE SHALL BE IN ANY COURT LOCATED IN COOK COUNTY, ILLINOIS.

9.14 Survival. All agreements that by their context are intended to survive the termination of this Agreement, including without limitation, 2.2, 2.3, 2.6, 3.3, 4.1, 4.2, 4.5, 4.6, 4.6, 5.1, and Articles VI and IX).

CYNERGY DATA, LLC	**HARRIS N.A.**, a national banking association
By: _____	By: _____
Name: MARCELO PALADINI	Name: GREGORY C. COHEN
Its: CEO	Its: _____
Date: 6/20th, 2008	Date: October 23, 2008

EXHIBIT B

April 28, 2009

Harris N.A.
150 N. Martingale Road
Suite 900
Schaumburg, Illinois 60173

Re: Cynergy Data, LLC

Ladies and Gentlemen:

Reference is made to (a) that certain Amended and Restated Credit Agreement ("Cynergy Credit Agreement") dated August 1, 2008, as amended, among Cynergy Data, LLC ("ISO"), the lenders party to the Cynergy Credit Agreement from time to time ("Cynergy Banks") and Comerica Bank, as Agent for the Cynergy Banks (in such capacity, the "Cynergy Agent"), that certain Security Agreement dated April 16, 2007, as amended, by ISO and its subsidiaries in favor of the Cynergy Agent for the benefit of the Cynergy Banks ("Cynergy Security Agreement"), that certain Guaranty ("Guaranty") by ISO of all liabilities and obligations of Cynergy Prosperity Plus, LLC arising under and in connection with that certain Credit Agreement ("Prosperity Credit Agreement") dated September 20, 2007, as amended, among Cynergy Prosperity Plus, LLC, the lenders party to the Prosperity Credit Agreement from time to time ("Prosperity Banks") and Comerica Bank, as Agent for the Prosperity Banks (in such capacity, the "Prosperity Agent"), that certain Security Agreement dated September 20, 2007, as amended, by ISO in favor of the Prosperity Agent for the benefit of the Prosperity Banks ("Prosperity Security Agreement"), that certain Financing Agreement dated November 15, 2007 ("Dymas Financing Agreement"), as amended, among ISO, the lenders party to the Dymas Financing Agreement from time to time ("Dymas Banks" and together with the Cynergy Banks and the Prosperity Banks, collectively the "Banks" and individually each, a "Bank") and Dymas Funding Company, LLC, as Agent for the Dymas Banks (in such capacity, the "Dymas Agent" and together with the Cynergy Agent and the Prosperity Agent, collectively the "Agents" and individually each, an "Agent"), that certain Security Agreement dated November 15, 2007, as amended, by ISO and its subsidiaries in favor of the Dymas Agent for the benefit of the Dymas Banks ("Dymas Security Agreement" and together with the Cynergy Credit Agreement, the Prosperity Credit Agreement, the Cynergy Security Agreement, the Guaranty, the Prosperity Security Agreement and the Dymas Financing Agreement, the "Bank Group Agreements") and (b) that certain BIN Sponsor Agreement dated as of November 1, 2008, (as amended or modified from time to time, the "MSA") by and between Harris N.A. ("Processor") and ISO. All capitalized terms not otherwise defined in this letter will have the meanings ascribed in the MSA.

Security Interests. Pursuant to the Bank Group Agreements, ISO has granted a security interest in all of its assets in favor of Agents for the benefit of the Banks (the "Lender Collateral") to secure its obligations under the Cynergy Credit Agreement, the Guaranty, the Dymas Financing Agreement and all other present and future obligations of ISO to Agents and the Banks. The Lender Collateral includes, without limitation, all of ISO's rights, title and interest in and to (a) all Merchant Agreements, (b) funds held in the Reserve Account, the

Merchant Suspense Account, the ISO Operating Account and the ISO Clearing Account and all ISO Revenue and (c) all ISO Revenue (ISO's rights, title and interest in and to the Merchant Agreements, the Reserve Account, the Merchant Suspense Account, the ISO Operating Account, the ISO Clearing Account and the ISO Revenue are collectively referred to as the "Merchant Services Collateral"), Processor understands that the Agents shall have a first priority security interest in favor of the Agents in the Lender Collateral ("Lender First Priority Lien"), subject to Processor's interest in the Merchant Services Collateral as set forth in this Agreement.

Agents understand that, pursuant to the MSA, ISO intends to grant a perfected first priority security interest in favor of Processor (the "Processor Lien") in the Merchant Services Collateral.

Processor acknowledges and consents to the existence of the Lender First Priority Lien. Each Agent acknowledges and consents to the existence of the Processor Lien. Each Agent acknowledges that any lien such Agent may have in the Merchant Services Collateral (other than the Lender First Priority Lien on the ISO's rights in the Merchant Agreements) shall be subordinate and junior to the Processor Lien in the Merchant Services Collateral as provided in this Agreement to the extent of the First Priority Obligations. "First Priority Obligations" shall mean all obligations of ISO owing to Processor under the provisions of paragraphs 3.3, 4.1 and 4.2 of the MSA; provided however in no event shall the First Priority Obligations include any Losses which are not Merchant Losses.

Proceeds. Any proceeds received by the Agents, or either of them, from the enforcement of their respective security interests in the Merchant Services Collateral shall be applied first to the First Priority Obligations until paid in full , then to the obligations of ISO owing to the Agents and the Banks until paid in full and then to any remaining obligations owing by ISO to Processor. Any proceeds received by Processor from the enforcement of its security interest in the Merchant Services Collateral or the exercise of any rights of setoff shall be applied first to the First Priority Obligations until paid in full, then to the obligations of ISO owing to the Agents and the Banks until paid in full and then to any remaining obligations owing by ISO to Processor.

Agents and Processor agree that this subordination shall be applicable irrespective of the time or order of attachment, perfection or validity of security interests; the time or order of filing or recording financing statements; or the time of making any advances or the amount of any advances made. The Agents agree that they shall not contest the validity or senior priority of Processor's liens and security interest in the Merchant Services Collateral and Processor agrees that it shall not contest the validity or senior priority of the Agents' liens and security interests in any assets of ISO, except to the extent it asserts its senior interest in the Merchant Services Collateral.

Lender Action. Each Agent further agrees that such Agent (a) will not sue for, liquidate, sell, foreclose, setoff, collect, accept a surrender, receive any proceeds, petition, commence or otherwise initiate any action to realize or seek to realize upon all or any part of the Merchant Services Collateral (an "Enforcement Action") at any time prior to (i) the occurrence of an "event of default" and expiration of any applicable cure period under the applicable Credit

Agreement (a "Credit Agreement Event of Default") and (ii) the date that is 5 days after the receipt by Processor of a written notice from an Agent describing the Credit Agreement Event of Default that forms the basis for the proposed Enforcement Action, specifying in reasonable detail the nature of such Credit Agreement Event of Default during which 30 day period Processor has the option, but not the obligation, of curing such Event of Default (which 5 day period may be shortened by a written agreement of both Processor and the Agents) and (b) will hold any proceeds of the Merchant Services Collateral received by such Agent in connection with an Enforcement Action in trust for Processor and will forward any such proceeds to Processor promptly upon its receipt of such proceeds until the payment in full in cash the First Priority Obligations outstanding at such time. Processor agrees that nothing contained herein shall prevent either Agent or any Bank from exercising any right of setoff with respect to funds on deposit in ISO's accounts with such Agent or any Bank, to receive any proceeds paid by Processor to ISO, or to receive and retain the proceeds of any collateral which does not constitute a portion of the Merchant Services Collateral.

Processor Action. Processor agrees that Processor (a) will not commence an Enforcement Action at any time prior to (i) the occurrence of a default and expiration of any applicable cure period under the MSA (the "MSA Event of Default") and (ii) the date that is 5 days after the receipt by the Agents of a written notice from Processor describing the MSA Event of Default that forms the basis for the proposed Enforcement Action, specifying in reasonable detail the nature of such MSA Event of Default during which 30 day period each Agent and the respective Banks have the option, but not the obligation, of curing such Event of Default (which 30 day period may be shortened by a written agreement of both Processor and the Agents) and (b) will remit to the Agents any proceeds received by Processor in connection with an Enforcement Action in excess of the proceeds necessary to pay in full in cash the amount of First Priority Obligations outstanding at such time. Each Agent agrees that nothing contained herein shall prevent Processor from exercising any rights of setoff with respect to and up to the amounts specified in the First Priority Obligations; provided, however, that nothing contained herein shall as between ISO and Processor impair Processor's right of setoff with respect to any such excess amounts following payment in full of all obligations of ISO to the Agents and the Banks under the Credit Agreements.

Cooperation. Subject to the limitations on the Agents' and Processor's rights set forth herein, (a) each Agent and Processor further agree that each party will have the right to exercise and enforce all rights and privileges with respect to the Merchant Services Collateral and Lender Collateral according to the exercise of its business judgment, including, without limitation, the right to foreclose on, sell, liquidate or otherwise dispose of the Merchant Services Collateral or Lender Collateral, (b) each Agent agrees to use its reasonable efforts to cooperate with Processor in the exercise of Processor's rights with respect to the Merchant Services Collateral and to take all actions reasonably requested by Processor to enable Processor to enforce its rights with respect to the Merchant Services Collateral, including the release of such Agent's lien on the Merchant Services Collateral in the event that such collateral is sold or otherwise transferred to a third party, (c) Processor agrees to use its reasonable efforts to cooperate with each Agent in the exercise of such Agent's rights with respect to the Lender Collateral and to take all actions reasonably requested by an Agent to enable such Agent to enforce its rights with respect to the Lender Collateral, including the release of Processor's lien on the Lender Collateral in the event

that such collateral is sold or otherwise transferred to a third party, (d) each party agrees that no rights of Processor or the Agents to enforce the subordinations provided herein shall at any time in any way be prejudiced or impaired by any act, or failure to act, by Processor or either Agent (or any Bank), or by any noncompliance by ISO with the terms and provisions in the Bank Group Agreements or the MSA. Each party agrees not to take any action to avoid or to seek to avoid the observance and performance of the terms and conditions hereof, and shall at all times in good faith carry out all such terms and conditions and take all such actions as may be necessary or appropriate to protect the other party against impairment.

Miscellaneous. By signing below the Agents, Processor and ISO each acknowledge and consent to this arrangement, the terms set forth here and the instructions contained in this letter agreement.

ISO agrees that this letter agreement and the contents hereof shall not be disclosed by ISO to any person not a party hereto without the prior written consent of Processor and the Agents, other than to ISO's attorneys and accountants, to the extent necessary in ISO's reasonable judgment.

THE PARTIES ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THE PARTIES' MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT.

[Remainder of Page Intentionally Left Blank]

This letter agreement shall be governed by the laws of the State of Michigan, without giving effect to any conflicts of laws principles. This letter agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

Sincerely yours,

COMERICA BANK, as Cynergy Agent and Prosperity Agent

By: _____
Name: DAN RIESNER
Title: VICE PRESIDENT

DYMAS FUNDING COMPANY, LLC, as Dymas Agent

By: _____
Name: _____
Title: _____

Acknowledged and Agreed:

CYNERGY DATA, LLC

By: _____
Name: _____
Title: _____

HARRIS N.A.

By: _____
Name: _____
Title: _____

This letter agreement shall be governed by the laws of the State of Michigan, without giving effect to any conflicts of laws principles. This letter agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

Sincerely yours,

COMERICA BANK, as Cynergy Agent and Prosperity Agent

By: _____
Name: _____
Title: _____

DYMAS FUNDING COMPANY, LLC, as Dymas Agent

By: _____
Name: KENNETH B. LEONARD
Title: MANAGING DIRECTOR

Acknowledged and Agreed:

CYNERGY DATA, LLC

By: _____
Name: _____
Title: _____

HARRIS N.A.

By: _____
Name: _____
Title: _____

This letter agreement shall be governed by the laws of the State of Michigan, without giving effect to any conflicts of laws principles. This letter agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

Sincerely yours,

COMERICA BANK, as Cynergy Agent and Prosperity Agent

By: _____
Name: _____
Title: _____

DYMAS FUNDING COMPANY, LLC, as Dymas Agent

By: _____
Name: _____
Title: _____

Acknowledged and Agreed:

CYNERGY DATA, LLC

By: _____
Name: MARCELO PALADINI
Title: CHIEF EXECUTIVE OFFICER

HARRIS N.A.

By: _____
Name: _____
Title: _____

This letter agreement shall be governed by the laws of the State of Michigan, without giving effect to any conflicts of laws principles. This letter agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

Sincerely yours,

COMERICA BANK, as Cynergy Agent and Prosperity Agent

By: _____
Name: _____
Title: _____

DYMAS FUNDING COMPANY, LLC, as Dymas Agent

By: _____
Name: _____
Title: _____

Acknowledged and Agreed:

CYNERGY DATA, LLC

By: _____
Name: _____
Title: _____

HARRIS N.A.

By: _____
Name: Greg Cotton
Title: President

EXHIBIT C

MERCHANT APPLICATION

Merchant # _____

☐ New Location ☐ Additional Location

30-30 47th Avenue • 9th Floor • Long Island City, NY 11101

Business Information

Legal Name:	Name of Account (Doing Business As):
Legal Address:	Physical Street Address (No P.O. Box):
City: State: Zip:	City: State: Zip:
Phone #: ( ) Contact:	DBA Phone #: ( ) Fax #: ( )
Must Choose One Mailing Address: ☐ DBA Address ☐ Legal Address / E-Mail Address:	Website Address: www.
Federal Tax # # of Locations Years in Business	Years Owned Business
Place of Legal Formation:	Country of Primary Business Operations:
Bank Reference:	Contact: Phone #: ( )

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

Name: Title: Date of Birth: Applicant's SS #: % Equity Ownership:
1.

Residence Address: City: State: Zip: # Years:

US Government Issued ID#: Type of ID: Expiration Date: Country of Citizenship (if not US): Home Phone: ( )

Name: Title: Date of Birth: Applicant's SS #: % Equity Ownership:
2.

Residence Address: City: State: Zip: # Years:

US Government Issued ID#: Type of ID: Expiration Date: Country of Citizenship (if not US): Home Phone: ( )

Business Profile

Type of Ownership: ☐ Sole Proprietor ☐ Assoc/Estates/Trusts ☐ Joint Venture ☐ Government ☐ Corporation (Privately Traded) ☐ Corporation (Publicly Traded) ☐ Medical or Legal Corp ☐ Partnership ☐ Tax Exempt Org ☐ Single Member LLC ☐ Multi Member LLC ☐ Civic Assoc ☐ Limited Partnership ☐ Political Org ☐ Other: _____

Type of Goods or Services Sold: SIC Code:

Do you currently accept Discover ® Network/Visa/Mastercard? ☐ Yes ☐ No (If yes, you should submit 3 current months' statements.) Name of Current Processor:

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

Sales Profile

Merchant Type:
☐ Retail
☐ Restaurant
☐ Lodging
☐ Service
☐ Internet
☐ Home Based
☐ Other

Discover Network/Visa/MasterCard Sales Profile (Be Accurate):	
Card Swipe	%
Manual Key Entry with Imprint, Card Present	%
Mail Order/Telephone	%
Internet	%
Total =	100%

Business Trade Suppliers • List Two

Name: Address: Contact: Phone #: ( )

Name: Address: Contact: Phone #: ( )

Merchant Site Survey Report • To Be Completed by Sales Representative

Merchant Location: ☐ Retail Location with Store Front ☐ Office Building ☐ Internet ☐ Residence ☐ Other _____

Area Zoned: ☐ Commercial ☐ Industrial ☐ Residential Square Footage: ☐ 0-250 ☐ 251-500 ☐ 501-2,000 ☐ 2,001+

Does the amount of Inventory and merchandise on shelves and floor appear consistent with this type of business? ☐ Yes ☐ No

If No, explain:

The Merchant: ☐ Owns ☐ Leases the Business Premises Landlord Name & Phone #:

Further Comments by Inspector (Must Complete)

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

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

X X

Discover Network / Visa / Mastercard Standard Retail / High Risk Retail Rates

Merchant Chooses to accept the following:

VS/MC (Other Cards) Discount Rate:	____ %
VS/MC Discount Rate for Debit Cards	____ %
Discover Network Card Discount Rate:	____ %
AMEX Discount Rate:	____ %

Fees

VS/MC Transaction Fee:	____	Per Item
Non-Bankcard Transaction Fee:	____	Per Item
Statement Fee:	____	Monthly
VIMAS Online Service:	____	Monthly
Monthly Minimum:	____	Monthly
Annual Fee:	____	Per Year
Debit Transaction Fee Plus Network Fees:	____	Per Item
EBT Transaction Fee:	____	Per Item
EBT Statement Fee:	____	Monthly
Batch Fee:	$0.25	Per Batch
Manual Imprinter: QTY:____	____	One Time
Chargeback Fee:	$25.00	Per Item
ACH Reject Fee:	$25.00	Per Item
Retrieval Fee:	$5.00	Per Item
Voice Authorization Fee:	$0.95	Per Call
Gateway Access Fee:	____	Monthly
AVS Surcharge	$0.05	Per Item
Early Termination Fee:	$495.00	One Time
Others (please specify):	____	

Mail / Phone / Internet / Touchtone Rates

Merchant Chooses to accept the following:

VS/MC (Other Cards) Discount Rate:	____ %
VS/MC Debit Card Discount Rate:	____ %
Discover Network Card Discount Rate:	____ %
AMEX Rate:	$5.95 Monthly

Fees

VS/MC Transaction Fee:	____	Per Item
Non-Bankcard Transaction Fee:	____	Per Item
Statement Fee:	____	Monthly
VIMAS Online Service:	____	Monthly
Monthly Minimum:	____	Monthly
Annual Fee:	____	Per Year
MOTO/Internet Surcharge:	$0.05	Per Item
AVS Surcharge:	$0.05	Per Item
Batch Fee:	$0.30	Per Batch
Manual Imprinter: QTY:____	____	One Time
Chargeback Fee:	$25.00	Per Item
ACH Reject Fee:	$25.00	Per Item
Retrieval Fee:	$5.00	Per Item
Voice Authorization Fee:	$0.95	Per Call
Gateway Access Fee:	____	Monthly
Early Termination Fee:	$495.00	One Time
Others (please specify):	____	

1) I/We understand and agree to the following: that my/our discount rate as stated above will be charged on all electronically authorized payment card transactions that are in batches closed daily (qualified rate); 2) and that all payment card transactions that do not meet the requirements stated in number 1 above may be charged up to 2.19% + $0.10 higher than my/our discount rate. Discover Network/Visa/Mastercard business transactions may be charged up to 2.19% + $0.10 above qualified rate.

Do you use a third party to process or transmit Cardholder data? ☐ Yes ☐ No. Give name/address:(examples include, but not limited to hosting companies,shopping carts, Loyalty Programs, Electronic Data Capture) Please identify any Software used for storing transmitting or processing Card Transactions or Authorization requests ____

Merchant Benefits Club

☐ Yes, I want to participate in the optional Merchant Benefits Club which includes equipment support and replacement for an additional $14.99 per terminal/peripheral per month. Initials: X

American Express

By signing below, I represent that I have read and am authorized to sign and submit this application on behalf of the entity above and all information I have provided herein is true, complete, and accurate. I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies. I authorize and direct American Express to inform me directly, or through the entity above, of reports about me that American Express has requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I understand that upon American Express' approval of the entity indicated above to accept the American Express Card, the terms and conditions for American Express® Card Acceptance ("Terms and Conditions") will be sent to such entity along with a Welcome Letter. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, the entity agrees to be bound by the Terms and Conditions.

CHECK ONE: ☐ Retail - $0.10 Trans Fee + 0.30% CNP Downgrade ☐ Services, Wholesale & All Other - $0.15 Trans Fee

Signature: X ____ Date: ____

Debit/Credit Authorization • Include a voided check or bank letter verifying bank account information.

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

DDA: **ABA Routing:**

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

AVERAGE TICKET SIZE: [ ] **AVERAGE MONTHLY VOLUME:** [ ]

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

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

Individual Guaranty • No Titles

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

AGREED AND ACCEPTED

X ____ Date ____
#1 From Application - Signature

X ____ Date ____
#2 From Application - Signature

For All Businesses • Business Resolution

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

Print Legal Name of Merchant Business

X ____ Date ____
#1 From Application - Signature

X ____ Date ____
#2 From Application - Signature

X ____ Date ____
Accepted by Processor

X ____ Date ____
Accepted by Harris, N.A., Chicago, IL.

Cynergy Data, LLC is a registered ISO/MSP of Harris, N.A., Chicago, IL

Merchant Processing Agreement

This Merchant Processing Agreement ("Agreement") is entered into on the Effective Date (defined in Section 13.A) by and between the merchant identified on the Merchant Application ("Merchant" or "you"), Cynergy Data, LLC ("CD" or "Processor"), and Harris, N.A. ("Bank").

Recitals

Merchant desires to accept Debit Cards and/or Other Cards, as indicated on the Merchant Application, validly issued by members of Discover® Network, Visa U.S.A., Inc. ("Visa") and MasterCard International, Incorporated ("MasterCard"). "Debit Card" means all Discover Network Visa or MasterCard cards issued by a non-U.S. bank, a Discover Network, Visa or MasterCard card that accesses a consumer's asset account within 14 days after purchase, including but not limited to Discover Network, Visa or MasterCard issued stored value, prepaid, payroll, EBT, gift, and consumer check cards, and debit cards validly issued by the debit card networks indicated in Section 4.G below ("Debit Networks"), such as on-line (PIN-based) cards. "Other Cards" means all cards issued by a non-U.S. bank and all Discover Network, Visa or MasterCard cards other than Debit Cards, including but not limited to business and consumer credit cards and business debit cards. The category of card acceptance you have indicated on the Merchant Application will collectively be referred to as "Cards". Bank and Processor desire to provide Card processing services to Merchant. Therefore, Merchant, Processor and Bank agree as follows:

Terms and Conditions

1. Honoring Cards.

A. Without Discrimination. You will honor, without discrimination, any Debit Card and/or Other Card, as indicated by you on the Merchant Application, properly tendered by a Cardholder. "Cardholder" means a person presenting a Card and purporting to be the person in whose name the Card is issued. If you elect to accept only one of the card acceptance categories but later submit a transaction from a card in a different category, you agree that Processor and Bank may process the transaction and assess the appropriate fee, and that all terms of this Agreement will apply to that transaction. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card. Cardholders will be entitled to the same services and return privileges you extend to cash customers, and you will not impose any special conditions (unless permitted by the Card Associations) in connection with the acceptance of a Card. "Card Association" means Visa, MasterCard, Discover Network, American Express, Japanese Credit Bureau, and/or a Debit Network, as applicable.

B. Cardholder Identification. You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired; (ii) the signature on the sales draft does not correspond with the signature on the Card; (iii) the account number embossed on the Card does not match the account number on the Card's magnetic strip (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file. You may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address; or a drivers license number as a condition for honoring a Card unless permitted under the Laws and Rules (defined in Section 14, below). You may not require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed.

C. Card Recovery. You will use your reasonable, best efforts to recover any Card: (i) on Visa Cards if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Processor or Bank (or a designee) the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, indent printed account number and or encoded account number do not agree or the Card does not have a MasterCard hologram on the lower right corner of the Card face.

D. Surcharge. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules. This paragraph does not prohibit you from offering a discount from the standard price to induce a person to pay by cash, check or similar means rather than by using a Card.

E. Return Policy. You will properly disclose to the Cardholder at the time of the Card transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.

F. No Claim Against Cardholder. You will not have any claim against or right to receive payment from a Cardholder unless Processor and Bank refuses to accept the Sales Draft (as defined in Section 3) or revokes a prior acceptance of the Sales Draft after receipt or a chargeback or otherwise. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive any such payments you promptly will remit them to Processor and Bank.

G. Disputes With Cardholder. All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither Processor or Bank bear any responsibility for such transactions.

2. Authorization.

A. Required on all Transactions. You will obtain a prior authorization for the total amount of a transaction via electronic terminal or device before completing any transaction, and you will not process any transaction that has not been authorized. You will follow any instructions received during the authorization process. Upon receipt of authorization you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder.

B. Effect. Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card.

C. Unreadable Magnetic Stripes. When you present Card transactions for authorization electronically, and if your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Processor and Bank for processing. Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions.

3. Presentment of Sales Drafts.

A. Forms. You will use a Sales Draft ("Sales Draft") or other form approved by Processor and Bank to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually, and truncated, if applicable); (iii) the date of the transaction; (iv) a brief description of the goods or services involved; (v) the transaction authorization number; (vi) the total amount of the sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable.

B. Signatures. Sales Drafts must be signed by the Cardholder unless the Card transaction is a valid mail/telephone order Card transaction, or PIN-based Debit Card transaction, which fully complies with the requirements set forth in this Agreement. You may not require the Cardholder to sign the Sales Draft before you enter the final transaction amount in the Sales Draft.

C. Reproduction of Information. If the following information embossed on the Card and the Merchant's name is not legibly imprinted on the Sales Draft, you will legibly reproduce on the Sales Draft before submitting it to Processor and Bank: (i) the Cardholder's name; (ii) account number (truncated, if applicable); (iii) expiration date and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions you will legibly reproduce the name of the Bank issuing the Card as it appears on the face of the Card.

D. Delivery and Retention of Sales Drafts. You will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules require).

E. Electronic Transmission. In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions. If you provide your own electronic terminal or similar device, such terminals must meet Processor's and Bank's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to Processor and Bank or their agent in the form Processor and Bank from time to time specifies or as required under the Rules. If Processor or Bank requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 24 hours following the request.

4. Deposit of Sales Drafts and Funds Due Merchant.

A. Deposit of Funds.

i. Deposits. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C § 365 as amended from time to time. Subject to this Section, Bank will deposit to the Designated Account (defined in Section 6 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargebacks, or fees). You understand and agree that Bank may withhold deposit and payment to you without notice until the expiration of any chargeback period for: a) mail order, telephone order, or Internet transactions on Cards issued by non-U.S. financial institutions, and b) if Processor or Bank determine, in their sole and reasonable discretion, that a transaction or batch of transactions poses a risk of loss. Neither Processor nor Bank are responsible for any losses you may incur, including but not limited to NSF fees, due to such delayed deposit of funds. You acknowledge that your obligation to Processor and Bank for all amounts owed under this Agreement arise out of the same transaction as Processor and Bank's obligation to deposit funds to the Designated Account.

ii. Provisional Credit. Not withstanding the previous sentences, under no circumstance will Processor or Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Processor and Bank. All Sales Drafts and deposits are subject to audit and final checking by Processor and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks and adjustments: (i) in accordance with the Rules; (ii) for any of your obligations to Processor and Bank; and (iii) in any other situation constituting suspected fraud or a breach of this Agreement, whether or not a transaction is charged back by the Card issuer. Processor and Bank may elect to grant conditional credit for individual or groups of any funds evidenced by Sales Drafts. Final credit for these conditional funds will be granted within Processor and Bank's sole discretion.

iii. Processing Limits. Processor and Bank may impose a cap on the volume and ticket amount of Sales Drafts that they will process for you, as indicated to you by Processor and Bank. This limit may be changed by Processor and Bank upon written notice to you.

B. Chargebacks. You are fully liable for all transactions returned for whatever reason, otherwise known as "chargebacks". You will pay on demand the value of all chargebacks. Authorization is granted to offset from incoming transactions and to debit the Designated Account, the Reserve Account (defined in Section 7, below) or any other account held at Bank or at any other financial institution the amount of all chargebacks. You will fully cooperate in complying with the Rules regarding chargebacks.

C. Excessive Activity. Your presentation to Processor and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period: (i) the dollar amount of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 25 % of the dollar volume indicated on the Application; or (iii) the dollar amount of returns equals 20% of the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, Processor and Bank to take any action they deem necessary including but not limited to, suspension or termination of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement..

D. Credit.

i. Credit Memoranda. You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to Bank. You will not submit a credit relating to any Sales Draft not originally submitted to Bank, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods of forgiveness of debt for services which were the subject of a Card transaction.

ii. Revocation of Credit. Processor or Bank may refuse to accept any Sales Draft, and Processor and Bank may revoke prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws or the Rules; (b) the Cardholder disputes his liability to Processor and Bank for any reason, including but not limited to a contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered or pursuant to those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Processor and Bank any amount previously credited to you for a Sales Draft not accepted by Processor and Bank or where accepted, is revoked by Processor and Bank.

E. Reprocessing. Not withstanding any authorization or request from a Cardholder, you will not re-enter or reprocess any transaction which has been charged back.

F. Miscellaneous. You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement.

G. Debit Card Processing.

i. "Debit Networks" means those debit card networks accepted by Processor, including but not limited to the following organizations and their successors: Star, NYCE, Pulse, Interlink, AFFN, Alaska, Jeanie, Accel, and Money Station.

ii. Credit Refunds. You will attempt to settle in good faith any dispute between you and a Cardholder involving a transaction. You will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card sales. You will promptly initiate a refund to the customer (which may be made in cash, by an adjustment draft or with a check or cashier's check, as permitted by the Rules) whenever you determine that a Debit Card transaction should be canceled or reversed.

iii. Adjustments. Except as the Debit Networks may permit, you will not make any cash refunds or payments for returns or adjustments on Debit Card transactions but will instead complete an adjustment form provided or approved by Processor. The Debit Card Sales Draft for which no refund or return will be accepted by you must be clearly and conspicuously marked (including on the Cardholder's copy) as "final sale" or "no return" and must comply with the Rules.

iv. Error Resolution. You will refer Debit Card Cardholders with questions or problems to the institution that issued the Debit Card. You will cooperate with Processor and with each applicable Debit Network and its other members to resolve any alleged errors relating to transactions. You will permit and will pay all expenses of periodic examination and audit of functions related to each Debit Network, at such frequency as the applicable Debit Network deems appropriate. Audits will meet Debit Network standards, and the results will be made available to the Debit Network.

5. Other Types of Transactions.

A. Mail/Telephone Order. Processor and Bank caution against mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") due to the high incidence of customer disputes. You will perform AVS and obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/ telephone order transactions, you will type or print legibly on the signature line the following as applicable: telephone order or "TO" or mail order or "MO" You must promptly notify Processor and Bank if your retail/mail order/telephone order mix changes from the percentages represented to Processor and Bank in the Merchant Application. Processor and Bank may cease accepting mail/telephone order transactions, or limit its acceptance of such transactions, or increase their fees, or terminate this Agreement, or impose a Reserve Account (defined in Section 7.A), if this mix changes. You may not deposit a mail/telephone order Sales Draft before the product is shipped.

B. Recurring Transactions. For recurring transactions, you must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder (ii) notice from Processor or Bank, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction".

C. Multiple Sales Drafts. You will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or transaction record, unless (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules.

D. Partial Completion.

i. Prior Consent. You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of Processor or Bank. Such consent will be subject to Bank's final approval. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination; in addition to any other remedies available under the Laws or Rules.

ii. Acceptance. If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.

E. Future Delivery. You will not present any Sales Draft or other memorandum to Bank for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Processor or Bank's prior written authorization. Such consent will be subject to Bank's final approval. If Processor or Bank have given such consent, you represent and warrant to Processor and Bank that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.

F. Electronic Commerce. You may process electronic commerce ("EC") transactions only if you have so indicated on the Application, and only if you have obtained CD's consent. If you submit EC transactions without such consent, Processor may immediately terminate this Agreement. If you have indicated on the Application that you will be submitting EC transactions, you acknowledge that you have received a copy of the Visa Cardholder Information Security Program ("CISP") manual. If you present EC transactions, such transactions must comply with the CISP requirements and all other applicable Rules and Law. You understand that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) you have obtained consent to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. You must offer Cardholders a secure transaction method, such as Secure Sockets Layer (SSL) or 3-D Secure. All communication costs related to EC transactions are your responsibility. You understand that Processor will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Bank into a depository institution of the United States in U.S. currency.

i. Requirements. For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not to obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your web site must contain all of the following information: a) complete description of the goods or services offered, b) returned merchandise and refund policy, c) customer service contact, including electronic mail address and/or telephone number, d) transaction currency (such as U.S. or Canadian dollars), e) export or legal restrictions, if known, f) delivery policy, consumer data privacy policy, g) your security method for transmission of payment data, and h) the Visa flag symbol in full color. If you store cardholder account numbers, expiration dates, and other personal cardholder data in a database, you must follow Discover Network, Visa and MasterCard guidelines on securing such data. You shall immediately notify Processor of any suspected or confirmed loss or theft of any transaction information. In addition, you must provide reasonable access to Discover Network, Visa, MasterCard, a Debit Network or independent third party to verify your ability to prevent future security breaches in a manner consistent with the requirements of any Rule.

ii. Cardholder Information Security. You agree that you are, and will remain, fully compliant with the Payment Card Industry Data Security Standard required by Discover Network and the Card Associations, including but not limited to undertaking the required annual or quarterly self-assessments and Web infrastructure scans, as appropriate. If you accept EC transactions, you must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data and data sent over open networks; use and update antivirus software; restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data; not use vendor-supplied defaults for system passwords and other security parameters; track access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to cardholder information. When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data. Further, you must reference the protection of cardholder information and compliance with the Visa CISP Rules in contracts with other service providers. You agree to indemnify and reimburse Processor and Bank immediately for any loss, liability, assessment or fine incurred due to your breach of this Section.

G. American Express, and Diners Club Transaction. Upon your request, Processor and Bank will provide authorization and/or data capture service, for Diners Club and American Express transactions. By signing this Merchant Agreement, Merchant agrees to abide by the terms and conditions of Diners Club and American Express. I understand that the Diners Club Agreement will be sent to the business entity indicated on this application. By accepting the Diners Club card for goods and/or services Merchant agrees to be bound by the terms and conditions of the Agreement. Processor and Bank are not responsible for funding such transactions. Initial setup fees may apply.

H. Cash Advances. You will not deposit any transaction for purpose of obtaining or providing a cash advance. You agree that any such deposit shall be grounds for immediate termination.

I. Prohibited Transactions. You will not accept or deposit any fraudulent transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, engage in any transaction prohibited by the Rules or deposit telemarketing transactions unless you obtain Bank or Processor's prior written consent. Such consent will be subject to Bank's final approval. If you process any such transactions, you may be immediately terminated and Bank may hold funds and/or require you to establish a Reserve Account. Further, you may be subject to Discover Network or the Card Association reporting requirements. You will not: accept cash, checks or other negotiable items from any Cardholder and forward a credit through Discover Network or any Card Association or Debit Network (i.e., as a purported payment or deposit to an account maintained by the Cardholder); forward any transaction or initiate any reversal of a transaction that did not originate between you and the Cardholder; complete any transaction that you know or should have known to be fraudulent or not authorized by the Cardholder; accept any Debit Card in payment for any legal services or for expenses related to the defense of any crime (other than a traffic violation), or any domestic relations matter where services or expenses are furnished a person whose name is not embossed on the Debit Card or any bankruptcy, insolvency, or other proceeding affecting the creditors of any Cardholder; present for processing a transaction that does not represent a sale of goods or service directly between Cardholder and you. You will fully cooperate with Processor, Discover Network and with each Card Association in the event that Processor, Discover Network or any Card Association determines that there is a substantial risk of fraud arising from your access to Discover Network and the Card Association. You will take whatever actions Processor, Discover Network or Card Associations reasonably deem necessary in order to protect Discover Network, such Card Association, its members, and its Cardholders. Neither Discover Network, the Card Associations, Processor, nor any of their respective personnel will have any liability to you for any action taken in good faith.

J. Debit Card Transactions.

i. For each PIN-based Debit Card sale, the Cardholder must enter his Personal Identification Number ("PIN") through a PIN pad located at the point of sale.

ii. Each PIN pad will be situated to permit Cardholders to input their PINs without revealing them to other persons, including your personnel.

iii. You will instruct personnel that they may not ask any Cardholder to disclose the PIN and that in the event that any of your personnel nevertheless becomes aware of any Cardholder's PIN, such personnel will not use such PIN or create or maintain any record of such PIN, and will not disclose such PIN to any other person.

iv. The PIN message must be encrypted from the PIN pad to the point of sale device connected to a Debit Network used to initiate transactions ("Terminal") and from the Terminal to the Debit Network and back so that the PIN message will not be in the clear at any point in the transaction.

v. You will comply with any other requirements relating to PIN security as required by Bank or by any Debit Network.

vi. A transaction receipt in conformity with Regulation E and the Rules will be made available to the Cardholder.

vii. You may not establish a minimum or maximum transaction amount as a condition for use of a Debit Card.

viii. You may not charge any Cardholder for the use of any Debit Card unless the Rules so permit.

ix. You may not collect tax as a separate cash transaction.

K. Debit Card Terminals. Debit Card terminals, including hardware and software, must be certified for use by Bank and by all of the Debit Networks. Terminals must include encrypted PIN pads which allow entry of up to sixteen character PINs, printers and a keyboard lock function. You are responsible for compliance with all Rules regarding the use of Terminals, regardless of whether such Terminals are obtained through CD or through a third party

6. Designated Account.

A. Establishment and Authority. Merchant will establish and maintain an account at an ACH receiving depository institution approved by Bank ("Designated Account"). Merchant will maintain sufficient funds in the designated Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Bank to debit the Designated Account for chargebacks, fees and any other penalties or amounts owed under this Agreement. This authority will remain in effect for at least 2 years after termination of this Agreement whether or not you have notified Processor and Bank of a change to the Designated Account. Merchant must obtain prior written consent from Bank or Processor to change the Designated Account. If Merchant does not get that consent, Processor and Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion.

B. Deposit. Bank will initiate a deposit in an amount represented on Sales Drafts to the Designated Account subject to Section 4 of this Agreement upon receipt of funds from Visa, MasterCard, or a Debit Network. Typically, the deposit will be initiated 3 business days following Processor's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce transactions, which will be initiated 5 business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Merchant authorizes Bank and Processor to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry. Bank, in its sole discretion, may grant you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all chargebacks.

C. Asserted Errors. You must promptly examine all statements relating to the Designated Account, and immediately notify Processor and Bank in writing of any errors. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error, (iii) a description

Merchant Initials: X ________ CD Initials: X ________

of the asserted error, and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by Processor and Bank within 30 calendar days after you received the periodic statement [illegible]. You may [illegible] expense relating to any asserted error for 60 calendar days immediately following Processor's receipt of your written notice. During that 60 day period, Processor and Bank will be entitled to investigate the asserted error.
D. Indemnity. You will indemnify and hold Processor and Bank harmless for any action they take against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.
E. ACH Authorization. You authorize Processor and Bank to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by you at any institution, all in accordance with this Agreement. This authorization will remain in effect beyond termination of this Agreement. In the event you change the Designated Account, this authorization will apply to the new account.

7. Security Interests, Reserve Account, Recoupment and Set-Off.
A. Security Interests.
i. Security Agreement. This Agreement is a security agreement under the Uniform Commercial Code. You grant to Processor and Bank a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Draft; and (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other collateral or security to Processor and Bank to secure your obligations under this Agreement upon Processor or Bank's request. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between you and Processor and Bank. This security interest may be exercised by Processor and Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets.
ii. Perfection. Upon request of Processor or Bank, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Processor and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Processor and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Processor and Bank are not required to file a motion for relief from a bankruptcy action automatic stay for Processor or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless you agree not to contest or object to any motion for relief from the automatic stay filed by Processor or Bank. You authorize Processor or Bank and appoint Processor or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.
B. Reserve Account.
i. Establishment. You will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank initially or at any time in the future as requested by Processor and Bank, with sums sufficient to satisfy your current and future obligations as determined by Processor and Bank. You authorize Bank to debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests.
ii. Authorizations. Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Processor or Bank. Also, Processor and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to Processor or Bank including, without limitation, rights of set-off and recoupment.
iii. Funds. Funds in the Reserve Account will remain in the Reserve Account until 270 calendar days following the later of termination of this Agreement or your last transmission of sales drafts to Processor or Bank, provided, however, that you will remain liable to Processor and Bank, for all liabilities occurring beyond such 270 day period. After the expiration of such 270 day period you must provide Processor with written notification indicating you desire a release of any funds remaining in the Reserve Account in order to receive such funds. You agree that you will not use these funds in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines or other amounts you owe Processor and Bank under this Agreement. Bank (and not Merchant) shall have sole control of the Reserve Account.
iv. Assurance. In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must establish or maintain a Reserve Account in an amount satisfactory to Processor and Bank.
C. Recoupment and Set Off. Processor and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank or Processor may owe you under this Agreement or any other agreement; and (iii) any funds in the Designated Account or Reserve Account. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to Processor and Bank, you must create or maintain the Reserve Account as required by Processor and Bank, and Processor and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.
D. Remedies Cumulative. The rights and remedies conferred upon Processor and Bank in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of Processor and Bank under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

8. Fees and Other Amounts Owed Bank.
A. Fees and Taxes. You will pay Processor and Bank fees for services, forms and equipment in accordance with the rates set forth on the Application. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day's or month's activity, or will be netted out from the funds due you attributable to Sales Drafts presented to Processor and Bank. Processor and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 16.I, below, provided that Bank must approve, in advance, any fee to or obligation of Merchant arising from or related to performance of this Agreement. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. Bank may not assign or otherwise transfer an obligation to pay or reimburse Merchant arising from, or related to, performance of this Agreement to Processor.
B. Other Amounts Owed. You will immediately pay Processor and Bank any amount incurred by Processor and Bank attributable to this Agreement including but not limited to chargebacks, fines imposed by Visa or MasterCard, non-sufficient fund fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. You authorize Bank to debit via ACH the Designated Account, Merchant Account, or any other account you have at Bank or at any other financial institution for any amount you owe Processor or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and Processor or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event Processor or Bank demand same due or such ACH does not fully reimburse Processor and Bank for the amount owed, you will immediately pay Processor and Bank such amount.
C. Merchant Maintenance Supply/Replacement Program ("MMP"). You are responsible for purchasing all supplies required to properly process Card transactions (sales slips, printer rolls, etc.). If you elect to participate in the MMP, you understand that supply quantities provided by CD will be based on your monthly transaction count. Enrollment in MMP also entitles merchant to free refurbished replacement equipment after at least one statement cycle on/with CD. Equipment is under warranty for the life of merchant's enrollment in MMP. Terminal/Peripheral replacement will only apply to those terminals/peripherals that have submitted or settled batch/transactions. A monthly fee is required for each terminal/peripheral you have. If your terminal/peripheral type is unavailable, CD will substitute the terminal/peripheral at its discretion. CD may choose to cancel the merchant's MMP at any time without notice. This program does not cover (i) terminals/peripherals that have been subject to: water damage; and (ii) Products that have been damaged due to alteration or modification (iii) Non-Payment Card Industry Data Security Standards ("PCI DSS") compliant terminals/peripherals. In these instances, the merchant will be charged the full purchase price of the refurbished replacement equipment. This program is non-transferable without written consent.

9. Application, Indemnification, Limitation of Liability.
A. Application. You represent and warrant to Processor and Bank that all information in the Application is correct and complete. You must notify Processor in writing of any changes to the information in the Application, including but not limited to: any additional location or new business, (the identity of principals and/or owners, the form of business organization (i.e., sole, proprietorship partnership, etc.), type of goods and services provided and how sales are completed (i.e. by telephone, mail, or in person at your place of business). The notice must be received by Processor within 10 business days of the change. You will provide updated information to Processor within a reasonable time upon request. You are liable to Processor for all losses and expenses incurred by Processor arising out of your failure to report changes to it. Bank and Processor may immediately terminate this Agreement upon notification by you of a change to the information in the Application.
B. Indemnification. You will hold harmless and indemnify the Card Associations, Processor and Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by Processor or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach by you of this Agreement and those related to any bankruptcy proceeding.
C. Limitation of Liability. Any liability of Processor or Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, shall not exceed in the aggregate the difference between (i) the amount of fees paid by you to Processor and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of Processor's and Bank's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one month involved. Neither Processor Bank nor their agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages.
D. Performance. Processor and Bank will perform all services in accordance with this Agreement. Processor and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. Processor and Bank disclaim all implied warranties, including those of merchantability and fitness for a particular purpose. No party will be liable to the others for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the, fault or negligence of such party. Neither Processor nor Bank shall be liable for the acts or omissions of any third party. For purposes of this Agreement, Processor is the exclusive agent of Bank and Bank is at all times entirely responsible for, and in control of Processor's performance.

10. Representations and Warranties. You represent and warrant to Processor and Bank at the time of execution and during the term of this Agreement the following:
A. Information. You are a corporation, limited liability company, partnership or sole proprietorship validly existing and organized in the United States. All information contained on the Application or any other document submitted to Processor or Bank is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of Processor and Bank.
B. Entity Power. Merchant and the person signing this Agreement have the authority to execute and perform this Agreement. This Agreement will not violate any law, or conflict with any other agreement to which you are subject.
C. No Litigation or Termination. There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never entered into an agreement with a third party to perform credit or debit card processing which has been terminated by that third party.
D. Transactions. All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with Processor and Bank.
E. Rule compliance. You will comply with the Laws and Rules.

11. Audit and financial information.
A. Audit. You authorize Processor or Bank to audit your records, systems, processes or procedures to confirm compliance with this Agreement, as amended from time to time. You will obtain, and will submit a copy of, an audit of your business when requested by Processor or Bank.
B. Financial Information.
i. Authorizations. You authorize Processor or Bank to make any business or personal credit inquiries they consider necessary to review the acceptance and continuation of this Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Processor and Bank.
ii. Documents. You will provide Processor or Bank personal and business financial statements and other financial information as requested from time to time. If requested, you will furnish within 120 calendar days after the end of each fiscal year to Processor and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

12. Third Parties.
A. Services. You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. Processor and Bank have no responsibility for any transaction until that point in time Processor or Bank receive data about the transaction.
B. Use of Terminals Provided by Others. You will notify Processor and Bank immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than Processor and Bank or its authorize designee ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to Processor and Bank; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Processor nor Bank will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a Third Party Terminal.
C. Debit Network Requirements. In order to inform Cardholders that Debit Cards may be accepted at your locations, you will prominently display the trademark of each Debit Network at each location and will display signage of each Debit Network at the entrance, near all Terminals and on the window of such location. All uses by you of any Debit Network trademark will comply with the Rules. You acknowledge and agree that in displaying any such trademark, you will be subject to approval by the applicable Debit Network. You will under no circumstances be deemed to be a licensee or sublicensee of any trademark of any Debit Network, nor will you otherwise be deemed to have or to acquire any right, title or interest in such trademarks.

13. Term and Termination
A. Term. The Agreement will become effective on the date Bank executes this Agreement ("Effective Date"), provided, however that if you submit a transaction prior to the Effective Date, you will be bound by all terms of this Agreement. The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.
B. Termination. The Agreement may be terminated by Bank or Merchant to be effective at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the current term. Further, this Agreement may be terminated at any time with or without notice and with or without cause by Processor and Bank. Processing under a particular Debit Network may be suspended or terminated (without terminating this entire Agreement) if: (i) the Debit Network determines to suspend or terminate processing; or (ii) automatically, upon termination or expiration of Processor's or your access to such Debit Network whether caused by termination or expiration of Processor's agreement with such Debit Network or otherwise. In addition, in the event that Processor's participation in such Debit Network is suspended for any reason, processing through such Debit Network by you will be suspended for the period of time of such suspension and Bank or Processor will immediately notify you of that event. Neither Processor, Bank, nor any Debit Network will have any liability to you as a result of any such suspension or termination.
C. Action upon Termination:
i. Terminated Merchant File. You acknowledge that Bank is required to report your business name and the name of Merchant's principals to Discover Network, Visa and MasterCard when Merchant is terminated due to the reasons listed in the Rules.
ii. Designated Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement. You authorize Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, you will pay Processor and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.
iii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by Processor and immediately pay Processor and Bank any amounts you owe them for equipment costs.
iv. Early Termination. If you terminate this Agreement before the end of the Initial Term, you will immediately pay Bank, as deconversion costs, an early termination fee equal to $495. You agree that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by your early termination. Other remedies Bank or Processor may have under this Agreement still apply.

14. Compliance With Laws And Rules. You agree to comply with all rules and operating regulations issued from time to time by a Debit Network, Diners' Club, Discover Network, MasterCard, and Visa and any policies and procedures provided by Processor or Bank, including those set forth in the Merchant Operating Manual ("Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist Processor and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to Processor and Bank all instruments it may from time to time reasonably deem necessary.

15. Use of Trademarks and Confidentiality.
A. Use of Trademarks. Your use of Discover Network, Visa and MasterCard trademarks must fully comply with the Rules. Your use of Discover Network, Visa, MasterCard or other cards' promotional materials will not indicate directly or indirectly that Discover Network, Visa or MasterCard endorse any goods or services other than their own and you may not refer to Discover Network, Visa or MasterCard in stating eligibility for your products or services. If you have requested signage for the purpose of indicating acceptance of Debit Cards, you must display such signage for a minimum of 3 months. All point of sale displays or websites must include either appropriate Discover Network or Visa-owned marks to indicate acceptance of Debit and Other Cards or Visa approved signage to indicate acceptance of the limited acceptance category you have selected.
B. Confidentiality.
i. Cardholder Information. You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, a Card Association, or as required by law. You must keep all systems and media containing account, Cardholder, or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and TIDs) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy all material containing Cardholders' account numbers, Card Imprints, Sales Drafts, Credit Vouchers (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not retain or store magnetic stripe, Discover Network CID or CVV2 data after authorization.
ii. Prohibitions. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Processor and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. If you have requested BIN information, you must only use this BIN information for product identification purposes at the point of sale, and not disclose this proprietary and confidential Visa BIN information to any third party without prior written permission from Visa.
iii. Disclosure. You authorize Processor and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.
C. Return to Bank. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of Processor and Bank and will be immediately returned to Processor upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by Processor and Bank arising out of the failure to return or destroy such materials following termination.

16. General Provisions.
A. Entire Agreement. This Agreement as amended from time to time, including the Rules, the Merchant Operating Manual, and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.
B. Governing Law. This Agreement will be governed by the laws of the State of New York. Proper venue for any dispute arising from this agreement shall be in any state or federal court of competent jurisdiction in New York County, New York. Merchant and Guarantor(s) agree to submit to the personal jurisdiction of courts located in New York County, New York.
C. Exclusivity. During the Initial and any Renewal Term of this Agreement, you will not enter into an agreement with any other entity that provides Card processing services similar to those provided by Processor and Bank as contemplated by this Agreement without Processor and Bank's written consent.
D. Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.
E. Assignability. This Agreement may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor. If Merchant nevertheless assigns this Agreement without the consent of Processor, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.
F. Notices. Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.
G. Bankruptcy. If your business fails, including bankruptcy, insolvency, or other suspension of business operations, you must not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Visa transaction information to third parties. You must either return this information to Processor or provide acceptable proof of destruction of this information. You will immediately notify Processor and Bank of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Processor and Bank on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to Processor and Bank under applicable Rules or Laws.
H. Attorneys' Fees. Merchant will be liable for and will indemnify and reimburse Processor and Bank for all attorneys' fees and other costs and expenses paid or incurred by Processor and Bank or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.
I. Amendments. Bank and Processor may amend this Agreement at any time upon notice to you. With regard to increases in existing fees, or imposition of new fees, except for any fee increases imposed by Discover Network, Visa, MasterCard, or a Debit Network, you may cancel the Agreement if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.
J. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Processor or Bank to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.
K. Independent Contractors. Processor, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other.
L. Employee Actions. You are responsible for your employees' actions while in your employment.
M. Survival. Sections 4.A, 4.B, 6, 7, 8, 9, 13.C, 15, 16.B, and 16.H will survive termination of this Agreement.
N. Bank Contact. You may contact Bank at the following address and telephone number:

Harris, N.A.
150 N. Martingale, Suite 900
Schaumburg, Illinois 60173

Merchant Initials: X __________ CD Initials: X __________

DISCLOSURE PAGE

Member Bank (Acquirer) Information

Acquirer Name: Harris, N.A.

Acquirer Address: 150 N. Martingale Road, Suite 900, Schaumburg, IL 60173

Acquirer Phone: 847-240-6600

Important Member Bank (Acquirer) Responsibilities

1. A Visa / MasterCard Member is the **only entity** approved to extend acceptance of Visa / MasterCard products directly to a Merchant.
2. A Visa / MasterCard Member must be a principal (signer) to the Merchant Agreement.
3. The Visa / MasterCard Member is responsible for educating Merchant on pertinent Visa / MasterCard Operating Regulations with which Merchant must comply.
4. The Visa / MasterCard Member is responsible for and must provide settlement funds to the Merchant.
5. The Visa / MasterCard Member is responsible for all funds held in reserve that are derived from settlement.

Merchant Information

Merchant Name: _____

Merchant Address: _____

Merchant Phone: _____

Important Merchant Responsibilities

1. Ensure compliance with cardholder data security and storage requirements.
2. Maintain fraud and chargebacks below thresholds.
3. Review and understand the terms of the Merchant Agreement.
4. Comply with Visa / MasterCard Operating Regulations.

The responsibilities listed above do not supercede terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Visa / MasterCard Member (Acquirer) is the ultimate authority should the Merchant have any problems.

_____ _____

Merchant Signature Date

_____

Merchant's Printed Name and Title

EXHIBIT D

cynergydata®

Processing Center

Merchant Reserve Acknowledgment

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

1. The reserve account will be established by:

_____ Initials **A.** A certified check made payable to Cynergy Data in the amount of $_____.

_____ Initials **B.** Withholding _____% from each gross deposit.

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

3. The balance of the reserve account, if any, will be returned to Merchant up to 270 days after termination of the MPA or Merchant's last transmission of sales drafts, whichever is later.

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

_____

Business Legal Name or D.B.A.

_____

Signature

_____

Printed Name

Its: President / Owner (Circle One)

_____

Date

EXHIBIT E

Moneris SOLUTIONS

VIA ELECTRONIC AND COURIER DELIVERY

July 16, 2009

Mr. Charles Moore
Mr. Marcelo Paladini
Mr. Dean Leavitt
Cynergy Data, LLC
30-30 47th Ave.
Long Island City, NY 11101

Re: BIN Sponsor Agreement, as amended, dated November 1, 2008 between Cynergy Data, LLC, and Harris N.A. (the "Agreement")

Gentlemen:

The purpose of this letter is to notify you that Cynergy Data, LLC is in default under the Agreement. Specifically, Cynergy has been holding merchant reserves rather than turning over these reserves to Harris/Moneris. This is in violation of Section 2.1 F of the Agreement. Further, holding merchant reserves is a violation of association rules. Failure to observe the rules as required under Section 5.2 of the Agreement constitutes an additional event of default.

We hereby demand that Cynergy immediately pay over to us all merchant reserves. Also, please be advised that Harris/Moneris is immediately exercising its right of set off under Section 4.5 C of the Agreement to fund the merchant reserves and to recover monies owed to it, and will continue to do so as necessary in the future.

Very truly yours,

Gregory Cohen

Woodfield Corporate Center
150 N. Martingale Road, Suite 900
Schaumburg, IL 60173
Phone: 800-471-9511 Fax: 847-240-6583

EXHIBIT F

EXECUTED

July 24, 2009

Cynergy Data, LLC
30-30 47th Avenue
9th Floor
Long Island City, NY 11101

RE: (1) FINANCING ARRANGEMENTS AMONG COMERICA BANK AS CO-LEAD ARRANGER AND AGENT ("AGENT") FOR ITSELF, THE REVOLVING CREDIT BANKS, THE TERM LOAN A BANKS AND THE TERM LOAN B BANKS (EACH AS DEFINED IN THE SENIOR LOAN DOCUMENTS AND COLLECTIVELY, THE "BANKS"), DYMAS FUNDING COMPANY, LLC ("TERM LOAN B AGENT"), CYNERGY DATA, LLC ("BORROWER") AND CYNERGY PROPERTY PLUS, LLC ("PROSPERITY"), CYNERGY DATA HOLDINGS, INC. ("HOLDINGS") AND MARCELO PALADINI (COLLECTIVELY WITH PROSPERITY AND HOLDINGS, "GUARANTORS"), (2) AGREEMENTS AMONG HARRIS, N.A. AND MONERIS SOLUTIONS, INC. (COLLECTIVELY, "HARRIS") AND BORROWER.

Dear Mr. Paladini:

Please refer to the Amended and Restated Credit Agreement dated as of August 1, 2008, as amended from time to time (as so amended from time to time, the "Senior Credit Agreement"), and any and all documents, instruments and agreements executed in connection with the financing arrangements from Agent and Banks to Borrower and Guarantors (collectively, the "Senior Loan Documents" or the "Financing Documents" and, each of Agent, the Banks, the Term Loan B Agent, the "Financing Parties"). All amounts incurred by Borrower or any Guarantor to any Financing Party, in each case, whether now or in the future, contingent, fixed, primary and/or secondary, including, but not limited to, principal, interest, inside and outside counsel fees, audit fees, costs, expenses and any and all other charges or other Indebtedness provided for in any of the Financing Documents shall be known, in the aggregate, as the "Liabilities."

Please also refer to the BIN Sponsor Agreement dated as of November 1, 2008, as amended from time to time (as so amended from time to time, the "BIN Agreement"), and any and all documents, instruments and agreements executed in connection with the arrangements between Harris and Borrower (collectively, the "Harris Documents") All capitalized terms not defined in this letter agreement ("Agreement") shall have the meanings described in the Senior Loan Documents or Harris Documents, as applicable.

Borrower and the Guarantors each acknowledge and agree that, as of July 24, 2009, the Liabilities include, but are not limited to, the following:

Loans (note amount and date)	Principal	Interest
Revolving Credit Note (Comerica) ($10,704,245.28; 12/15/08)	$9,971,072.24	$128,680.67
Revolving Credit Note (Wells Fargo) ($8,195,754.72; 12/15/08)	$7,634,397.39	$98,524.95
Term Loan A Note (Comerica) ($11,695,754.71; 8/1/08)	$9,048,820.75	$106,952.03
Term Loan A Note (Wells Fargo) ($16,804.245.29; 8/1/08)	$13,001,179.25	$153,666.72
Term Loan B Note (Garrison)	$12,500,000.00	$189,496.53
Term Loan B Note (Dymas)	$14,000,000.00	$212,236.11
Swing Line Note ($2,000,000; 8/1/08)	$0	$0

The amounts referenced above are exclusive of interest accruing after July 24, 2009, the Letter of Credit Obligations, liabilities arising under Bank Hedging Agreements, Prosperity's obligations under that certain Credit Agreement dated September 20, 2007 between Prosperity and Comerica Bank, as Agent and as a Bank ("Prosperity Loan Facility"), Borrower's obligations as guarantor of the Prosperity Loan Facility, and costs and expenses (including, but not limited to, inside and outside counsel fees). All such Liabilities owing by Borrower and by each applicable Guarantor are unconditionally owing by Borrower and each such Guarantor to Financing Parties, without offset, defense, withholding, counterclaim or deduction of any kind, nature or description whatsoever.

Borrower acknowledges and agrees that as of July 17, 2009, the unfunded merchant reserve in the amount of $21,341,801 was to be held in deposit at Harris pursuant to the BIN Agreement and was not so held (the "Unfunded Reserve"). The Unfunded Reserve, any Loss (as defined in the BIN Agreement) and other obligations to Harris under the Harris Documents are unconditional obligations of Borrower to Harris, without offset, defense, withholding, counterclaim or deduction of any kind, nature or description whatsoever.

Borrower and each Guarantor, as applicable, acknowledges and agrees that the Events of Default described on Exhibit A (each, an "Existing Event of Default", and collectively the "Existing Events of Default") have occurred and are continuing under the Senior Loan Documents, the Subordinated Loan Documents or the Harris Documents, as applicable.

In consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, each of the undersigned agrees as follows:

1. Each Financing Party shall (subject to the other provisions of this Agreement) forbear from exercising any rights or remedies under Section 9.2 of the Senior Credit Agreement, with respect to the Existing Events of Default, in each case, until the date (the "Forbearance Termination Date") that is the earliest to occur of: (a) the occurrence of a breach or default under this Agreement; (b) at the election of Agent and Majority First Out Banks on the occurrence of a Default or Event of Default under the Loan Documents that does not constitute an Existing Event of Default; (c) October 16, 2009, (d) if any representation made by Borrower under this Agreement shall be materially false as of the date when made; (e) Borrower shall terminate or otherwise for any reason cease its efforts to sell its business and the business of its subsidiaries or all or substantially all of its assets ("Sale"); (f) Borrower shall fail to satisfy any of the Sales Milestones (defined below); (g) the date on which any material portion of the assets of Borrower, the Guarantors (other than Marcelo Paladini), or their Subsidiaries are impounded, garnished, or frozen (other than any such event that results from the imposition of the automatic stay in any bankruptcy proceeding); (h) at the election of Harris on the occurrence of a Default or Event of Default under the Harris Documents that does not constitute an Existing Event of Default; (i) the unfunded merchant reserve under the BIN Agreement not on deposit at Harris increases above $21,341,801; (j) Borrower shall apply for, consent to or suffer the appointment of, or the taking of possession by, a receiver, custodian, trustee, examiner, liquidator or similar fiduciary of itself or of all or a substantial part of its property, (k) Borrower shall make a general assignment for the benefit of creditors; (l) the failure of Comerica Bank and Wells Fargo Foothill, LLC to provide financing in accordance with the Budget; (m) filing of a motion to reject the BIN Agreement or any other Harris Document; (n) recommendation by Borrower or CRO, or acceptance of, a purchaser, stalking horse bidder, qualified bidder or winning bidder for a Sale which does not contemplate the assumption of the BIN Agreement and cure of all defaults thereunder; (o) in the event of a chapter 11 case commenced by Borrower, failure to provide Harris with adequate protection (1) in the form of replacement liens to adequately protect the interests of Harris in the collateral subject to its prepetition liens, with such replacement liens attaching to assets acquired by Borrower after the petition date (if the Financing Parties agree to use of cash collateral and/or debtor-in-possession financing, then Financing Parties and Borrower agree to propose such replacement liens as adequate protection in the proposed order), or (2) as otherwise ordered by the bankruptcy court, provided, however, any such replacement lien granted to Harris on the postpetition collateral of Borrower will be subject to the terms of the intercreditor agreement by and between Agent and Harris dated as of April 28, 2009, as amended from time to time (the "Intercreditor Agreement"), except as modified by paragraph 3 of this Agreement; and (p) the filing of a Chapter 11 bankruptcy by Borrower (or the filing of a Chapter 7 or 11 involuntary petition against Borrower). Notwithstanding anything to the contrary in this Agreement, if (i) the Forbearance Termination Date has occurred solely on account of the filing of a Chapter 11 bankruptcy by Borrower or the filing of a Chapter 7 or 11 involuntary petition against Borrower and Borrower converts the case to a voluntary Chapter 11 within 5 Business Days after the filing thereof and no other Forbearance Termination Date event occurs, and (ii) Agent and Comerica Bank and Wells Fargo Foothill, LLC agree to, and the Bankruptcy Court approves of, Borrower's use of cash collateral and/or debtor-in-possession financing sufficient to continue the Sale

process to a conclusion, then Harris shall forbear from taking any action to setoff or recoup or otherwise collect the Unfunded Reserve through the Sale process.

2. Harris shall forbear from exercising any of its rights and remedies under Sections 4.5(c) and 7.2(c) of the BIN Agreement, including without limitation, any rights of setoff or recoupment with respect to the Existing Events of Default, until the Forbearance Termination Date (except as otherwise provided in paragraph 1); for avoidance of doubt, (a) Harris is not agreeing to forbear in respect of Losses and its advances for Interchange and Network Reimbursement Fees which will be advanced by Harris and settled by recoupment monthly in accordance with past practice and (b) Harris agrees to forbear from taking any action to setoff or recoup or otherwise collect the Unfunded Reserve until the Forbearance Termination Date (except as otherwise provided in paragraph 1). For purposes of this Agreement, the term "Interchange and Network Reimbursement Fees" means the Interchange Reimbursement (as defined by the Visa Operating Regulations), brand usage, cross border fees, BASE I and BASE II fees, network fees, authorization and settlement fees, and the corollary fees that represent payments passed from the acquirer to the issuer or the network under other Card networks.

3. (a) Until the Forbearance Termination Date, Borrower's obligation to fund all Interchange and Network Reimbursement Fees for Borrower's merchants (as defined in the BIN Agreement) will be advanced by Harris and settled by recoupment from ISO Revenue or any of Borrower's accounts at Harris on a monthly basis, in accordance with past practice as set forth in the BIN Agreement; provided that Harris is not required to advance on behalf of Borrower in respect of Interchange and Network Reimbursement Fees more than $6 million per month. Anything in paragraph 2 to the contrary notwithstanding, Harris does not agree to forbear from exercising its rights of setoff or recoupment or to otherwise collect from ISO Revenue or any of Borrower's accounts at Harris the amount of payments advanced by Harris in respect of Interchange and Network Reimbursement Fees. (b) In the event of the commencement of a voluntary chapter 11 case by Borrower and so long as Borrower remains the debtor-in-possession, Borrower shall seek, and the Financing Parties shall affirmatively consent to, court approval for Harris to continue to advance, as a debtor-in-possession loan, the Interchange and Network Reimbursement Fees payable by the Borrower and settle by setoff, recoupment or otherwise collecting from the Borrower's ISO Revenue or any of Borrower's accounts at Harris. As a condition to the postpetition funding of Interchange and Network Reimbursement Fees, any such motion for court approval and approval order shall be in form and substance acceptable to Harris in its sole discretion and shall request, among other things: (i) the protections afforded under Section 364 of the Bankruptcy Code, including, without limitation, the safe harbor provisions of Section 364(e); (ii) first priority liens on all Borrower's ISO Revenue or any of Borrower's accounts at Harris; (iii) an acknowledgment that Harris has a continuing security interest in any amounts paid prepetition and postpetition on account of Interchange and Network Reimbursement Fees or received by Borrower or Harris from Borrower's merchants (or Borrower) in payment of Interchange and Network Reimbursement Fees; (iv) an order of the bankruptcy court providing that Harris may continue to recoup Interchange and Network Reimbursement Fees (whether advanced prepetition or postpetition) from ISO

Revenue or any of Borrower's accounts at Harris, on a monthly basis, in accordance with past practice as set forth in the BIN Agreement or under applicable law, notwithstanding the commencement of the case and leave from the automatic stay (to the extent necessary to permit such actions), (v) a stipulation and agreement by each Financing Party that in the event that (a) there is a successful action requiring Harris to disgorge any amounts received or recouped by Harris on account of Interchange and Network Reimbursement Fees and (b) any Financing Party receives any of such disgorged amounts, then such Financing Party will turnover the disgorged amount it received to Harris. Financing Parties and Borrower hereby agree to assign and will transfer to Harris any recovery any of them may receive on account of any disgorgement described in Section 3(v) above. The parties to this Agreement agree if any Financing Party is required to turnover any amount to Harris pursuant to Section 3(v) above, then, as to the amount that such Financing Party turns over to Harris, the liability of the Borrower and the Guarantors with respect to such Financing Party as to such amount automatically shall be revived, reinstated, and restored and shall exist as though such payment had never been made to such Financing Party. Subject to the terms of this Agreement and approval of the court order described above and so entered, Harris shall continue to advance postpetition to fund Borrower's obligation to fund Interchange and Network Reimbursement Fees for Borrower's merchants. From and after the date of this Agreement, Harris is, and Harris shall be, entitled to advance Interchange and Network Reimbursement Fees on behalf of the Borrower and to setoff, recoup, or otherwise collect from ISO Revenue or any of Borrower's accounts at Harris, the amount of the payments advanced by Harris in respect of Interchange and Network Reimbursement Fees and Borrower and Financing Parties agree not to object to the foregoing arrangement.

4. Borrower and each Guarantor acknowledges and agrees that from and after the Forbearance Termination Date (except as otherwise provided in paragraph 1), each Financing Party and Harris shall be entitled to immediately exercise all of their respective rights and remedies with respect to Existing Events of Default under the Financing Documents or Harris Documents, as applicable, and under applicable law or at equity. Borrower and each Guarantor further acknowledges and agrees that from and after the Forbearance Termination Date (except as otherwise provided in paragraph 1), neither Harris nor any Financing Party shall be under any obligation of any kind whatsoever to forbear from exercising any remedies on account of the Existing Events of Default or any other Event of Default (whether similar or dissimilar to the Existing Events of Default).

5. Notwithstanding anything herein or in the Financing Documents to the contrary, the Agent shall, within two Business Days of receipt of instructions from the Term Loan B Agent or any Term Loan B Bank given at any time following the Forbearance Termination Date, to the extent that a bankruptcy proceeding has not been commenced with respect to Borrower, (i) accelerate all Liabilities under the Senior Loan Documents and (ii) commence and diligently pursue in good faith on behalf of all of the Banks the exercise of its enforcement rights and remedies against Borrower and the Guarantors and its enforcement rights and remedies against, and take action to enforce its Liens on, the Collateral.

6. The undersigned agree that nothing in this Agreement nor the acceptance by any Financing Party or Harris of any of the payments provided for in the Financing Documents or Harris Documents, nor any payment prior to or after the date hereof shall, however, (a) excuse any party from any of its obligations under the Financing Documents or the Harris Documents, or (b) toll the running of any time periods applicable to any such rights and remedies, including, without limitation, any grace periods with respect to Defaults under the Financing Documents, Harris Documents or otherwise. Borrower and each Guarantor agrees that it will not assert laches, waiver or any other defense to the enforcement of any of the Financing Documents or Harris Documents based upon the foregoing agreement of the Financing Parties and Harris to forbear or the acceptance by any Financing Party or Harris of any of the payments provided for in the Financing Documents, Harris Documents or any payment prior to or after the date hereof.

7. Borrower and Guarantors acknowledge the Liabilities as set out in the Financing Documents, the amount of the Liabilities as stated above and the existence of the Existing Events of Default.

8. Future administration of the Liabilities and the financing arrangements among the Financing Parties, Borrower and Guarantors shall continue to be governed by the covenants, terms and conditions of the Financing Documents, which are ratified and confirmed in all respects (for clarity, this includes, without limitation, a ratification and confirmation of all guaranties of the Liabilities by each applicable Guarantor), except to the extent that the Financing Documents have been modified by this Agreement or are contrary to the express terms of this Agreement, in which case this Agreement shall govern.

9. Future administration of the obligations between Harris and Borrower shall continue to be governed by the covenants, terms and conditions of the Harris Documents, which are ratified and confirmed in all respects, except to the extent that the Harris Documents have been modified by this Agreement or are inconsistent with the express terms of this Agreement, in which case this Agreement shall govern.

10. Borrower and Guarantors acknowledge Agent and Banks are under no obligation to make Revolving Credit Advances, issue Letters of Credit or make other extensions of credit, whether under the Senior Loan Documents, or otherwise. If and to the extent that the Agent and the Revolving Credit Banks continue to make Revolving Credit Advances, issue Letters of Credit or make other extensions of credit, notwithstanding the occurrence of any Default or Event of Default, whether specified herein or otherwise, (a) such Revolving Credit Advances, Letters of Credit, and other extensions of credit shall be made, issued, caused to be issued, or executed, as applicable, in the Agent's and Revolving Credit Banks' sole and absolute discretion, (b) the fact that any Agent or any Revolving Credit Bank has in the past or may in the future make such Revolving Credit Advances, issue any Letters of Credit, or make any other extensions of credit to Borrower in the exercise of its sole discretion, and that such Agent's or such Bank's determination whether to make such extensions of credit may have been, and may continue to be, guided by the criteria set forth in the Senior Credit Agreement concerning the Revolving

Credit Aggregate Commitment or the Borrowing Base, or in other sections of the Senior Credit Agreement relating to such extensions of credit (including, without limitation, Sections 2 and 3 of the Senior Credit Agreement) shall not be construed as a waiver of any Default or Event of Default (including, without limitation, the Existing Events of Default), or of Agent's and each Bank's rights and remedies with respect to such Existing Events of Default, as an agreement by Agent or any Revolving Credit Bank to make Revolving Credit Advances, issue Letters of Credit or otherwise extend credit to the Borrower now or in the future or to establish a course of conduct so as to justify an expectation by Borrower that Agent or any Revolving Credit Bank will make any Revolving Credit Advances, issue any Letters of Credit, or make any other future extensions of credit, and (c) no such action shall be construed as (i) a waiver or forbearance of any of the Agent's and Banks' rights, remedies, and powers against Borrower, any Guarantor or the Collateral (including, without limitation, the right to terminate without notice, the making of Revolving Credit Advances, Letters of Credit, and other extensions of credit), or (ii) a waiver of any such Default or Event of Default. Agent and the Banks reserve expressly all of their rights, remedies, and powers under the Senior Credit Agreement and the other Senior Loan Documents, at law, in equity, or otherwise, including, without limitation, the right to declare all Liabilities immediately due and payable pursuant to the Senior Credit Agreement.

11. Notwithstanding the fact that the sum of all Letter of Credit Obligations, Revolving Credit Advances and Swing Line Advances may from time to time after the date hereof exceed the lesser of the Borrowing Base and the Revolving Credit Aggregate Commitment, Borrower and each Bank (a) consents to the making, by Agent and the Revolving Credit Banks, of Revolving Credit Advances, Letters of Credit and other extensions of credit on a discretionary basis as set forth below; (b) consents to the execution by Borrower of the New Revolving Notes (defined below); (c) agrees that the Advances under the New Revolving Notes shall be First Out Obligations; (d) agrees that the proceeds of Collateral shall be applied to Advances under the New Revolving Notes after application to the amounts provided for in 10.2(a) of the Credit Agreement but before application to the amounts provided for in 10.2(b) of the Credit Agreement; and (e) agrees that neither Term Loan B Agent nor any Term Loan B Bank shall issue any notice under Section 2.17 of the Credit Agreement until the Forbearance Termination Date; *provided* that, without the prior written consent of the Term Loan B Agent and each Term Loan B Bank, at no time shall the aggregate outstanding Advances under the New Revolving Notes and all other credit extensions made on or after the date hereof and prior to the commencement of a bankruptcy proceeding with respect to Borrower exceed the lesser of (i) $9,000,000, and (ii) the total amount advanced in accordance with the Budget (as adjusted by the variance permitted in paragraph 13 below). The foregoing is neither a consent by the Term Loan B Agent and Term Loan B Banks to a debtor-in-possession loan nor an admission by the Agent, Comerica Bank and Wells Fargo Foothill, LLC that such a consent would be required and the parties hereby reserve all of their respective rights under the Senior Credit Agreement, the Senior Loan Documents, any other agreement executed in connection therewith, and applicable law in a bankruptcy proceeding with respect to any such debtor-in-possession financing.

12. Concurrently with the execution of this Agreement, Borrower shall execute and deliver to Agent a $4,316,807.50 revolving credit note in favor of Comerica Bank in the form attached as Exhibit B and a $4,683,192.50 revolving credit note in favor of Wells Fargo Foothill, LLC in the form attached as Exhibit C (collectively, the "New Revolving Notes"). Interest on the New Revolving Notes will be payable monthly on the first day of the month. Without limiting paragraph 51 below, Marcelo Paladini is not guaranteeing any obligations arising under the New Revolving Notes.

13. Concurrently with the execution of this Agreement, Borrower shall deliver to Agent, Term Loan B Agent, each Bank, and Harris a budget ("Budget") (attached as Exhibit D) in form and content acceptable to Agent and each Bank, of Borrower's proposed operational expenses though October 16, 2009. Commencing on July 28, 2009, and continuing each Tuesday thereafter, Borrower shall deliver to Agent, Term Loan B Agent, each Bank, and Harris a report regarding actual collections and disbursements for the previous week, including a comparison to the projections for such week provided in the Budget. 100% of Borrower's cash inflows (net of (i) certain fees and processing charges due to First Data and amounts due to Harris as provided in the Harris Documents, subject to and as modified by this Agreement, and (ii) unless and until Agent notifies Borrower to the contrary, up to a maximum of $1,500,000 cash) will be applied to the New Revolving Notes. Any Advances under the New Revolving Notes that are made from time to time by the Revolving Credit Banks, may be used by Borrower solely and exclusively as provided for in the Budget as and when budgeted, measured weekly for total budgeted disbursements only (with an adverse variance on budgeted disbursements measured on a cumulative basis of up to 10% but in no event shall the cumulative variance on all budgeted disbursements exceed $1 million). The "working capital" line item which covers reserves, chargebacks, rejects and merchant finance is not subject to the budget variance test, unless there is a permanent, material adverse change in the working capital line item. Without limitation, the use of Advances for any other purposes or in amounts in excess of the Budget shall constitute an immediate Event of Default. The failure to comply with any covenant set forth in this paragraph 13 shall constitute an immediate Event of Default.

14. Borrower advised Agent that it sold a twenty percent (20%) minority ownership interest (retaining a seventeen percent (17%) ownership interest) in Transworks LLC and received net sales proceeds equal to approximately $637,000. Agent and Banks agree that Borrower may use such sale proceeds for operational expenses consistent with the Budget.

15. On or before execution of this Agreement, Borrower shall retain a chief restructuring officer ("CRO") reasonably acceptable to Agent and each Bank with a scope of engagement acceptable to Agent and each Bank under an engagement agreement which is in form and substance reasonably satisfactory to Agent and each Bank (the "Engagement Agreement"). Each of the undersigned acknowledges and agrees that CM&D Management Services, LLC or Conway MacKenzie, Inc. is a CRO reasonably acceptable to Agent and the Banks. An immediate Event of Default shall be deemed to occur if Borrower (a) terminates the employment of the CRO, or (b) modifies the scope of

employment of the CRO from that set forth in the Engagement Agreement. Borrower acknowledges that Agent and Banks shall not consider any requests for Advances during any period in which a CRO acceptable to Agent and each Bank with a scope of engagement acceptable to Agent and the each Bank is not engaged.

16. Comerica Bank, in its capacity as Agent and Bank under the Prosperity Loan Facility, agrees to forbear from further action with respect to Prosperity's obligations to Comerica Bank under the Prosperity Loan Facility, until the Forbearance Termination Date.

17. Holdings and Borrower acknowledge and agree that each of the following shall constitute a "Sales Milestone", and that the Forbearance Termination Date shall be deemed to occur upon any failure to satisfy a Sales Milestone: (a) no later than July 24, 2009, Borrower shall have received one or more letters of intent with a prospective buyer, (b) no later than August 17, 2009 (which deadline may be extended with the consent of each of the Banks to a date no later than August 31, 2009), Borrower shall have executed a definitive asset purchase agreement with a prospective buyer on terms and conditions satisfactory to Agent, the Majority First Out Banks and Harris and, to the extent that a bankruptcy proceeding has not been commenced with respect to Borrower, Term Loan B Agent and each Term Loan B Bank (the fact that an advance consent by the Term Loan B Agent and Term Loan B Banks is not required by this Agreement after a bankruptcy shall not be deemed a waiver (or an enlargement) of their right, if any, to object to a sale, and all such parties' rights under the Senior Credit Agreement, the Senior Loan Documents, any other agreement executed in connection therewith, and applicable law are hereby reserved) (the "Purchase Agreement"), (c) if the Purchase Agreement does not require the assets of the Borrower to be acquired via a sale under Section 363 of the Bankruptcy Code, the Sale shall have been consummated in accordance with the Purchase Agreement by no later than September 16, 2009 (which deadline may be extended with the consent of each of the Banks to a date no later than September 30, 2009), and (d) if the Purchase Agreement requires the assets of the Borrower to be acquired via a sale under Section 363 of the Bankruptcy Code, Borrower shall have filed a voluntary petition under Chapter 11 of the Bankruptcy Code promptly after the execution of the Purchase Agreement and the Sale shall be consummated by no later than September 30, 2009 (which deadline may be extended with the consent of each of the Banks to a date no later than October 16, 2009).

18. Borrower covenants and agrees in favor of Agent and the Banks and Harris as follows: (a) Borrower shall deliver to Agent, Banks and Harris as and when received, all letters of intent with respect to the Sale, (b) on or before August 31, 2009, Borrower shall deliver to Agent, Banks and Harris an executed purchase agreement with respect to the Sale, with a closing date of not later than the deadline in paragraph 17(c) or 17(d), as applicable, and (c) Borrower shall consummate a Sale by the deadline in paragraph 17(c) or 17(d) as applicable. Borrower shall also deliver to Agent, Banks and Harris, all of the following information regarding the Sale on the dates set forth or as soon as Borrower is able in the absence of a specified date: (v) commencing July 24, 2009, and on the last Business Day of each week thereafter, a written update concerning the Sale in form and content acceptable to Agent, Revolving Credit Banks, each Term Loan B Bank and Harris; (w) a true and correct copy of each document produced by any investment bank retained for the

Sale promptly upon receipt by Borrower of such document; (x) the CRO's and/or investment banker's analysis or written recommendations for the sales process; (y) prompt written communication on all inquires made by third parties and any material decisions made by Borrower or its agents with respect to the Sale; (z) true and correct copies of all written indications of interest or other documentation submitted by third parties with respect to the Sale and any responses by Borrower regarding same. Borrower agrees that it shall also provide Agent, Term Loan B Bank Agent, each Bank, and Harris written notice of the content of any of the foregoing that are communicated orally to Borrower or its agents. The failure to comply with any of the foregoing covenants on or before the date set forth above shall constitute an immediate Event of Default.

19. Agent, each Bank and Harris shall have consultation rights with respect to any sale bidding procedures implemented with respect to the Sale (whether out of court or under the United States Bankruptcy Code), including without limitation, the right to consult on: (a) determinations of qualified bidders, stalking horse bidders and winning bidders; (b) rejection of bids and acceptance of non-conforming bids; (c) withdrawal of assets, in whole or in part, from the bid process or auction; and (d) modifications of the bidding procedures and auction rules. In the event that Agent and/or Banks shall be granted any additional rights with respect to any such sale bidding procedures, Harris shall be granted the same additional rights as Agent and/or Banks.

20. The Revolving Credit Banks agree to defer all interest payments due under the Revolving Credit (but not under the New Revolving Notes) until the Forbearance Termination Date, when all such amounts shall be due and payable; provided, that, such deferred interest payments shall instead be capitalized, compounded and added to the unpaid principal amount of the Revolving Credit, as of each such interest payment date. The Term Loan A Banks agree to defer all principal and interest payments due under Term Loan A until the Forbearance Termination Date, when all such amounts shall be due and payable; provided, that, such deferred interest payments shall instead be capitalized, compounded and added to the unpaid principal amount of Term Loan A, as of each such interest payment date. Borrower, Term Loan B Agent, and the Term Loan B Banks. agree to defer all interest payments due under the Term Loan B, as applicable, until the Forbearance Termination Date, when all such amounts shall be due and payable; provided, that, in lieu of cash interest payments on Term Loan B, such interest payments shall instead be capitalized, compounded and added to the unpaid principal amount of Term Loan B, as of each such interest payment date. Borrower shall pay interest as and when due on the New Revolving Notes.

21. Interest on the Liabilities shall continue to accrue at the default rates as provided in the applicable Financing Documents. Upon the occurrence of an event of default under this Agreement (other than the Existing Events of Default), then the Liabilities shall accrue interest at the rate otherwise provided in this paragraph plus three percent (3%).

22. Borrower and Guarantors acknowledge and agree that the Financing Documents presently provide for, and Borrower and Guarantors shall reimburse each Financing Party

for, any and all of costs and expenses incurred by such Financing Party, including, but not limited to, all reasonable inside and outside counsel fees whether in relation to drafting, negotiating or enforcement or defense of the Financing Documents or this Agreement, including any preference or disgorgement actions as defined in this Agreement and all of Agent's audit fees, incurred by Agent in connection with the Liabilities, Agent's, or Term Loan B Agent's administration of the Liabilities and/or any efforts of Agent, Term Loan B Agent, or Banks to collect or satisfy all or any part of the Liabilities. Borrower and Guarantors shall reimburse Agent for all its costs and expenses promptly upon demand. Certain of the fees of the other Financing Parties will be paid as provided in paragraph 32 below; the balance of their fees will be due and payable upon the earlier to occur of (a) the Forbearance Termination Date and (b) consummation of the Sale. The deferral of payment of those fees and/or the failure to pay such fees when due shall not constitute an event of default under this Agreement.

23. Loan payments, interest on the Liabilities, loan administration expenses, including, but not limited to, all inside and outside counsel fees of Agent, Term Loan B Agent, Banks, and the Banks and Agent's audit fees, may be charged directly to any of Borrower's accounts maintained with Agent.

24. Borrower acknowledges and agrees that the Harris Documents presently provide for, and Borrower and shall reimburse Harris for, any and all of costs and expenses incurred by Harris in enforcing the BIN Agreement, including, but not limited to, all reasonable inside and outside counsel fees. Borrower shall reimburse Harris for all such costs and expenses as provided in paragraph 32 below and otherwise promptly upon demand.

25. Except for accounts maintained at Harris as required under the BIN Agreement, Borrower will maintain all deposit accounts with Agent.

26. In addition to all reporting currently required by the Financing Documents, except as indicated on Exhibit A, which Borrower shall also provide to Harris, Borrower shall provide Agent, Term Loan B Agent, Banks, and Harris:

(a) a summary of Borrower's accounts payable as of the last day of each month showing which accounts payable and accounts receivable are up to 30, 31 to 60, 61 to 90, and 91 days or more past the invoice date and listing the names and addresses of creditors and account debtors, as applicable. These summaries are due by the 10th of the following month;

(b) a summary of Borrower's accounts receivable as of the last day of each month and listing the names and addresses of account debtors, as applicable. These summaries are due by the 20th of the following month;

(c) daily reconciliations regarding the unfunded rolling merchant reserve, in form and content acceptable to Agent, Term Loan B Agent and Harris, reported by Borrower in the form attached as Exhibit E, confirming that the amount of the unfunded rolling merchant reserve not on deposit at Harris does not exceed $21,341,801; and

(d) any other reasonable reporting requested by Agent or Harris. The failure to comply with any of the foregoing covenants on or before the date set forth above shall constitute an immediate event of default under this Agreement.

27. Borrower, Agent and Banks acknowledge and agree that if the unfunded rolling merchant reserve not on deposit at Harris exceeds $21,341,801, any amounts in excess shall be held in accounts at Harris for the benefit of Harris.

28. Borrower and Guarantors acknowledge and agree the Loan Documents presently provide for the conduct of, and Borrower and Guarantors agree that they shall permit Agent to conduct, such appraisals, inspections, surveys and/or testing, whether for environmental contamination or otherwise, that Agent deems necessary, on any and all real and personal property upon which Agent may possess a mortgage or security interest securing the Liabilities, and the cost of such appraisals, inspections, surveys and testing are part of the costs and expenses for which the Borrower and Guarantors must reimburse Agent.

29. Borrower acknowledges and agrees that it shall permit representatives of Harris to have reasonable access onto the premises and in the systems of Borrower during normal business hours for review of accounts and agreements and employees and representatives of Borrower shall comply with all reasonable requests made by such representatives of Harris.

30. Borrower and Guarantors agree to execute any and all additional or supplemental documentation, and provide such further assistance and assurances as any Financing Party or Harris may reasonably require, in their sole and absolute discretion, to give full effect of the terms, conditions and intentions of this Agreement.

31. To the extent any payment received by any Financing Party or Harris is deemed a preference, fraudulent transfer or otherwise by a court of competent jurisdiction which requires such Financing Party or Harris to disgorge such payment then, such payment will be deemed to have never occurred and the Liabilities or obligations owing, as applicable, will be adjusted accordingly. This paragraph does not contradict the obligation of the Financing Parties under paragraph 3, if they are the recipient of a disgorgement from Harris.

32. This Agreement shall become effective as of the date when, and only when, the following conditions have been satisfied as determined by the Agent and each Bank and Harris, as applicable, each in its sole and absolute discretion:

(a) The Financing Parties and Harris each shall have received counterparts of this Agreement duly executed and delivered by Borrower, Guarantors, Harris and the Financing Parties;

(b) Borrower shall have remitted to each Financing Party and Harris, in immediately available funds, certain unpaid legal fees, costs and expenses which are payable to such Financing Party and Harris in connection with this Agreement and any other Financing Document or Harris Document as set forth on Exhibit F;

(c) The Financing Parties and Harris shall have received the Budget from Borrower, which shall be in form and substance satisfactory to Harris, Agent and each Bank;

(d) Agent shall have received an acknowledgement and consent from Dymas Funding Company, LLC, as agent for the Dymas Lenders, that (i) the indebtedness evidenced by the New Revolving Notes is a Senior Debt Obligation (as defined in the Dymas Funding Subordination Agreement and (ii) to the interest rate increase;

(e) The Financing Parties and Harris shall have received the Engagement Agreement with respect to the engagement of a CRO that is reasonably satisfactory to Agent and each Bank, and which has been duly executed and delivered by Borrower and CRO;

(f) Comerica Bank and Wells Fargo Foothill, LLC shall make an initial advance as required by the Budget;

(g) Harris shall have received a report in the form attached as Exhibit E from Borrower showing that the Unfunded Reserve to be held in deposit at Harris is not greater than $21,341,801; and

(h) Harris shall have returned to Borrower funds offset by Harris with respect to the unfunded rolling merchant reserve in the amount of $2,331,194.30.

33. Without changing the choice of law specified in each of the Financing Documents and Harris Documents, the parties agree that this Agreement shall be governed and controlled in all respects by the laws of the State of New York, without reference to its conflict of law provisions, including interpretation, enforceability, validity and construction.

34. The Financing Parties and Harris expressly reserve the right to exercise any or all rights and remedies provided under the Financing Documents or Harris Documents and applicable law except as modified herein. Failure by any Financing Party or Harris to exercise immediately such rights and remedies shall not be construed as a waiver or modifcation of those rights or an offer of forbearance.

35. This Agreement will inure to the benefit of the Financing Parties and Harris and all their past, present and future parents, subsidiaries, affiliates, predecessors and successor corporations and all of their subsidiaries and affiliates.

36. The Financing Parties anticipate that discussions addressing the Liabilities may take place in the future. During the course of such discussions, the Financing Parties, Borrower and Guarantors may touch upon and possibly reach a preliminary understanding on one or more issues prior to concluding negotiations. Notwithstanding this fact and absent an express written waiver by each Financing Party, no Financing Party will be bound by an agreement on any individual issues unless and until an agreement is reached on all issues and such agreement is reduced to writing and signed by Borrower, Guarantors and each Financing Party (to the extent required under the Loan Documents).

37. Other than the provisions of this Agreement explicitly set forth herein, any discussions between the parties to this Agreement in reference to its drafting (the "Negotiations") shall not be utilized or admissible in any subsequent litigation between the parties. All such Negotiations shall be considered "compromise negotiations" pursuant to Fed. R. Evid. 408 and any comparable provision of any other state or federal law which may now or in the future be deemed applicable to the Negotiations, and none of such Negotiations shall be considered "otherwise discoverable" or be permitted to be discoverable or admissible for any other purpose or to prove "bias, prejudice, interest of a witness or a party, negativing a contention of undue delay, or an effort to obstruct a criminal investigation or prosecution" as provided by Fed. R. Evid. 408 and any comparable provision of any other state or federal law which may now or in the future be deemed applicable to the Negotiations.

38. As of the date of this Agreement, there are no other offers outstanding from any Financing Party to Borrower and Guarantors. Any prior offer by any Financing Party, whether oral or written is rescinded in full. There are no oral agreements between any Financing Party and Borrower and Guarantors; any agreements concerning the Liabilities are expressed only in the existing Loan Documents. The duties and obligations of Borrower, Guarantors and each Financing Party shall be only as set forth in the Financing Documents and this Agreement, when executed by all parties.

39. As of the date of this Agreement, there are no other offers outstanding from Harris to Borrower. Any prior offer by Harris, whether oral or written is rescinded in full. There are no oral agreements between Harris and Borrower. The duties and obligations of Borrower and Harris shall be only as set forth in the Harris Documents and this Agreement, when executed by all parties.

40. Borrower and each Guarantor acknowledges, confirms and agrees that (a) Agent, for itself and the benefit of the Banks, has and shall continue to have valid, enforceable and perfected priority liens upon and security interests in substantially all of the assets of Borrower, Prosperity and Holdings, granted to Agent, for itself and the benefit of the Banks, pursuant to the Senior Loan Documents or otherwise granted to or held by Agent, for itself and the benefit of the Banks.

41. Borrower acknowledges, confirms and agrees that Harris has and shall continue to have valid, enforceable and perfected priority liens upon and security interests in the ISO Revenue, accounts and assets of Borrower granted to Harris pursuant to the Harris Documents or otherwise granted to or held by Harris for itself, subject to the terms of the Intercreditor Agreement.

42. Borrower and each Guarantor acknowledges, confirms and agrees that: (a) each of the Loan Documents to which it is a party has been duly executed and delivered to the Agent and the Banks by such party, and each is in full force and effect as of the date hereof, (b) the agreements and obligations of Borrower and each Guarantor contained in such documents and in this Agreement constitute the legal, valid and binding obligations of Borrower and such Guarantor, enforceable against Borrower and such Guarantor in

accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity, and as of the date hereof neither Borrower nor any Guarantor has any valid defense to the enforcement of the Liabilities, and (c) Agent and each Bank are and shall be entitled to the rights, remedies and benefits provided for in the Senior Loan Documents and under applicable law or at equity.

43. Borrower acknowledges, confirms and agrees that: (a) each of the Harris Documents to which it is a party has been duly executed and delivered to the Harris by Borrower and each is in full force and effect as of the date hereof, (b) the agreements and obligations of Borrower contained in such documents and in this Agreement constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity, and as of the date hereof Borrower does not have any valid defense to the enforcement of the obligations owing to Harris hereunder or thereunder, and (c) Harris is and shall be entitled to the rights, remedies and benefits provided for in the Harris Documents and under applicable law or at equity.

44. Borrower and each Guarantor acknowledges that the parties to this Agreement have not entered into a mutual disregard of the terms and provisions of the Senior Credit Agreement, the Subordinated Credit Agreement or the other Financing Documents, or engaged in any course of dealing in variance with the terms and provisions of the Senior Credit Agreement, the Subordinated Credit Agreement or the other Financing Documents, within the meaning of any applicable law of the State of Michigan, or otherwise.

45. Borrower and each Guarantor acknowledges that the Senior Loan Documents and the Liabilities thereunder constitute the valid and binding obligations of Borrower or such Guarantor, enforceable against Borrower or such Guarantor in accordance with their respective terms, and Borrower and each Guarantor reaffirms its obligations under the Loan Documents. Borrower and each Guarantor (other than Paladini) acknowledges that the Subordinated Loan Documents and the Liabilities thereunder constitute the valid and binding obligations of Borrower or such Guarantor, enforceable against Borrower or such Guarantor in accordance with their respective terms, and Borrower and each such Guarantor reaffirms its obligations under the Subordinated Loan Documents. Each Financing Party's entry into this Agreement or any of the documents referenced herein, their negotiations with any party with respect to Borrower or any Guarantor, their conduct of any analysis or investigation of any Collateral for the Liabilities or any Financing Document, their acceptance of any payment from Borrower or any Guarantor or any other party of any payments made prior to the date hereof, or any other action or failure to act on the part of any Financing Party shall not constitute (a) a modification of any Financing Document or (b) a waiver of any Default or Event of Default under the Senior Credit Agreement or the Subordinated Credit Agreement, including, without limitation, the Existing Events of Default, or a waiver of any term or provision of any Financing Document.

46. Borrower acknowledges that the Harris Documents constitute the valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, and Borrower reaffirms its obligations under the Harris Documents. Harris's entry into this Agreement or any of the documents referenced herein, their negotiations with any party with respect to Borrower, their conduct of any analysis or investigation of any collateral or any Harris Document, their acceptance of any payment from Borrower or any other party of any payments made prior to the date hereof, or any other action or failure to act on the part of Harris shall not constitute (a) a modification of any Harris Document or (b) a waiver of any Default or Event of Default under the BIN Agreement, including, without limitation, the Existing Events of Default, or a waiver of any term or provision of any Harris Document.

47. Borrower and each Guarantor acknowledges that it has reviewed (or have had the opportunity to review) this Agreement with counsel of their choice and have executed this Agreement of their own free will and accord and without duress or coercion of any kind by any Financing Party, Harris or any other person or entity.

48. **BORROWER, GUARANTORS, EACH FINANCING PARTY AND HARRIS ACKNOWLEDGE AND AGREE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT, THE LOAN DOCUMENTS OR THE LIABILITIES.**

49. **DEFAULTS HAVE OCCURRED UNDER THE LOAN DOCUMENTS AND THE HARRIS DOCUMENTS. BORROWER AND GUARANTORS, TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, WAIVE ALL NOTICES THAT AGENT OR ANY OTHER FINANCING PARTY OR HARRIS MIGHT BE REQUIRED TO GIVE BUT FOR THIS WAIVER, INCLUDING ANY NOTICES OTHERWISE REQUIRED UNDER SECTION 6 OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE AS ENACTED IN THE STATE OF MICHIGAN OR THE RELEVANT STATE CONCERNING THE APPLICABLE COLLATERAL (AND UNDER ANY SIMILAR RIGHTS TO NOTICE GRANTED IN ANY ENACTMENT OF REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE). FURTHERMORE, BORROWER AND GUARANTORS WAIVE (A) THE RIGHT TO NOTIFICATION OF DISPOSITION OF THE COLLATERAL UNDER § 9-611 OF THE UNIFORM COMMERCIAL CODE, (B) THE RIGHT TO REQUIRE DISPOSITION OF THE COLLATERAL UNDER § 9-620(E) OF THE UNIFORM COMMERCIAL CODE, AND (C) ALL RIGHTS TO REDEEM ANY OF THE COLLATERAL UNDER § 9-623 OF THE UNIFORM COMMERCIAL CODE. "COLLATERAL" SHALL HAVE THE MEANING ASCRIBED UNDER THE LOAN DOCUMENTS AND SHALL ALSO**

INCLUDE ALL ASSETS GRANTED AS SECURITY INTERESTS UNDER THE HARRIS DOCUMENTS.

50. **BORROWER AND GUARANTORS (EXCEPT MARCELO PALADINI INDIVIDUALLY IN ANY CAPACITY), IN EVERY CAPACITY, INCLUDING, BUT NOT LIMITED TO, AS SHAREHOLDERS, PARTNERS, OFFICERS, DIRECTORS, INVESTORS AND/OR CREDITORS OF BORROWER AND/OR GUARANTORS, OR ANY ONE OR MORE OF THEM, WAIVE, DISCHARGE AND FOREVER RELEASE AGENT, BANKS, EACH OTHER FINANCING PARTY, HARRIS, AND AGENT'S AND BANKS', EACH OTHER FINANCING PARTY'S AND HARRIS' RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, ATTORNEYS, STOCKHOLDERS, AFFILIATES AND SUCCESSORS AND ASSIGNS, FROM AND OF ANY AND ALL CLAIMS, CAUSES OF ACTION, DEFENSES, COUNTERCLAIMS OR OFFSETS AND/OR ALLEGATIONS BORROWER AND/OR GUARANTORS (EXCEPT MARCELO PALADINI INDIVIDUALLY IN ANY CAPACITY) MAY HAVE OR MAY HAVE MADE OR WHICH ARE BASED ON FACTS OR CIRCUMSTANCES ARISING AT ANY TIME UP THROUGH AND INCLUDING THE DATE OF THIS AGREEMENT, WHETHER KNOWN OR UNKNOWN, AGAINST ANY OR ALL OF AGENT, BANKS, EACH OTHER FINANCING PARTY, HARRIS, OR ANY OF THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, ATTORNEYS, STOCKHOLDERS, AFFILIATES AND SUCCESSORS AND ASSIGNS.**

51. Notwithstanding anything is this Agreement to the contrary, nothing in this Agreement creates any new obligations or otherwise increases any amounts due, or that may become due, or owed by Marcelo Paladini to any of the Financing Parties or otherwise creates any new guarantee by Marcelo Paladini.

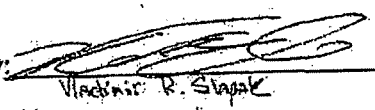
52. This Agreement may be executed in counterparts and delivered by facsimile and the counterparts and/or facsimiles, when properly executed and delivered by the signing deadline, will constitute a fully executed complete agreement.

Borrower and Guarantors shall properly execute this Agreement and deliver same by facsimile so that it is received by the undersigned by no later than 2 p.m. on July 24, 2009 with the original to follow so that it is received by the undersigned by no later than July 27, 2009.

[SIGNATURES ON THE FOLLOWING PAGES]

Very truly yours,

COMERICA BANK, Agent

By:  Date: 07/24/09

Vladimir R. Stapak

Its: Vice President

HARRIS, N.A.

By: _____ Date: _____

Its: _____

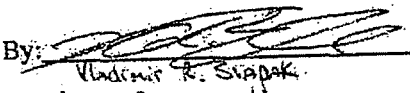
MONERIS SOLUTIONS, INC.

By: _____ Date: _____

Its: _____

Banks approve the foregoing agreement:

COMERICA BANK

By:  Date: 07/24/09

Vladimir R. Stapak

Its: Vice President

WELLS FARGO FOOTHILL, LLC

By: _____ Date: _____

Its: _____

Very truly yours,

COMERICA BANK, Agent

By:_____ Date:_____

Its:_____

HARRIS, N.A.

By: [signature] Date: 7/24/09

Its: Authorized Signatory

MONERIS SOLUTIONS, INC.

By: [signature] Date: 7/24/09

Its: President

Banks approve the foregoing agreement:

COMERICA BANK

By:_____ Date:_____

Its:_____

WELLS FARGO FOOTHILL, LLC

By:_____ Date:_____

Its:_____

Very truly yours,

COMERICA BANK, Agent

By:_____ Date:_____

Its:_____

HARRIS, N.A.

By:_____ Date:_____

Its:_____

MONERIS SOLUTIONS, INC.

By:_____ Date:_____

Its:_____

Banks approve the foregoing agreement:

COMERICA BANK

By:_____ Date:_____

Its:_____

WELLS FARGO FOOTHILL, LLC

By: [signature] Date: 7-24-09

Its: V.P.

DYMAS FUNDING COMPANY LLC,
individually and as agent for the Term Loan B Banks

By: _____ Date: 7/24/09

Its: Managing Director

ABLECO FINANCE LLC

By: _____ Date: 7/24/09

Its: Senior Vice President

A3 FUNDING LP

By: A3 Fund Management LLC
Its: General Partner

By: _____ Date: 7/24/09

Its: Vice President

GARRISON CREDIT INVESTMENTS I LLC

By: _____ Date: _____

Its: _____

DYMAS FUNDING COMPANY LLC,
individually and as agent for the Term Loan B Banks

By:_____ Date:_____

Its:_____

ABLECO FINANCE LLC

By:_____ Date:_____

Its:_____

A3 FUNDING LP

By: A3 Fund Management LLC
Its: General Partner

By:_____ Date:_____

Its:_____

GARRISON CREDIT
INVESTMENTS I LLC

By: Greg A. Chiota Date: 7/24/09

Its: Managing Director

ACKNOWLEDGED AND AGREED:

"BORROWER"

CYNERGY DATA, LLC

By: _____ Date: 7/24/09

Its: CEO

"GUARANTORS"

_____ Date: 7/24/09

Marcelo Paladini

CYNERGY PROSPERITY PLUS, LLC

By: _____ Date: 7/24/09

Its: CEO

CYNERGY DATA HOLDINGS, INC.

By: _____ Date: 7/24/09

Its: CEO

EXHIBIT A

Exhibit A

I. Existing Events of Default – Senior Loan Documents

1. Any and all Events of Default under that certain Amended and Restated Credit Agreement, dated as of August 1, 2008, among Cynergy Data, LLC and Comerica Bank, as agent, and such financial institutions that are signatories thereto(the "Senior Credit Agreement"), relating directly to:

a) an Event of Default under Section 9.1(a) and (b) for failure to make interest payments when due prior to the date hereof;

b) an Event of Default under Section 9.1(c) for a breach of

Section 7.1 for failure to provide annual, quarterly and monthly financial statements as provided therein prior to the date hereof ,

Sections 7.2(a) through (f) for failure to provide the compliance certificate for each applicable quarter and borrowing base certificate for each applicable month, flash reports for each applicable month and information relative to compensation paid to ISOs in each case prior to the date hereof

Secttion 7.2(h) and (k) for failure to provide quarterly management reports and any financial reports provided by auditors to Company

Section 7.7(a) for failure to provide notices of the defaults described in this Exhibit

Section 8(A) for failure to satisfy the minimum EBITDA, leverage ratio, fixed charge coverage ratio, net worth and leverage ratio (first out) financial covenants set forth therein for each relevant period prior to the date hereof

c) an Event of Default under Section 9.1(d) and/or 9.1(f) for a breach of the relevant Sections 7.1 and 7.2 and other Sections of the Credit Agreement and other Loan Documents in respect of which Agent has provided written notice to the Company prior to the date hereof;

d) an Event of Default under Section 9.1(e) for (A) a breach of a representation or warranty in Sections 6.6 (for failure to provide notice of default under indebtedness in an amount in excess of $250,000), 6.20 (for failure to provide financial statements indicated therein as accurately presenting the financial condition of the Company) and 6.23 (for the Company failing to have been solvent as described such section) and (B) a breach of the representations in certain other certificates, instruments and other documents delivered pursuant to Sections 7.1 and 7.2 relating to the financial statements and financial condition of the Company and lack of defaults under the Finance Document;

e) an Event of Default under Section 9.1(g) as a result of being in default under the Subordinated Loan Agreement;

f) an Event of Default under Section 9.1(k) as a result of being in default under the Subordinated Loan Agreement;

g) an Event of Default under Section 9.1(u) as result of being in default under the Prosperity Credit Agreement.

2. Any and all claims that could have been brought relating directly or indirectly to (i) that certain Financing Agreement, dated as of November 15, 2007, including all alleged defaults listed in a certain forbearance letter and exhibit, dated June 12, 2009, among Cynergy Holdings Inc., Cynergy Data LLC, Dymas Funding Company, LLC, as Agent and the Lending Group as defined in that letter (the "Subordinated Loan Agreement"); and (ii) all events of default under the Subordinated Loan Agreement that correspond with the events of default under the Senior Credit Agreement listed above in paragraph 1 of this Exhibit A.

II. Existing Events of Default – Harris Documents

1. Any and all Events of Default directly related to the unfunded rolling merchant reserve in the amount of $21,341,801 which was to be held in deposit at Harris pursuant to a certain BIN Sponsorship Agreement, dated November 1, 2008, as amended, and breach of Section 2.1(G) of such agreement with respect to annual audited financial statements for the years 2007 and 2008 and unaudited financial statements for the quarters of 2009 up to the date of this Agreement.

* * *

Notwithstanding anything to the contrary set forth in paragraph 26 of the Forbearance Agreement, the Company shall not be required to provide Agent, Term Loan B Agent, Banks or Harris the financial statements, certificates, reports, notices and other information required pursuant to Sections 7.1(a), 7.1(a-1), 7.2(a), 7.2(c), 7.2(d), 7.2(e), 7.2(g), 7.2(h) and 7.2(m-1) of the Senior Credit Agreement; (ii) any certifications of a Responsible Officer required pursuant to Section 7.1(b) and 7.1(c) of the Senior Credit Agreement; and (iii) any financial statements, certificates, reports, notices and other information required pursuant to the provisions of the other Financing Documents that correspond to the provisions of the Senior Credit Agreement set forth in preceding clause (i) and (ii).

EXHIBIT B

Master Revolving Note
LIBOR-based Rate/Prime Referenced Rate
Demand-Optional Advances (Business and Commercial Loans Only)

AMOUNT	NOTE DATE	MATURITY DATE
$4,316,807.50	July 24, 2009	ON DEMAND

ON DEMAND (or as otherwise provided in this Note), FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of COMERICA BANK (herein called "Bank"), care of Comerica Bank, as Agent, at 500 Woodward Avenue, Detroit, Michigan 48226, the principal sum of FOUR MILLION THREE HUNDRED SIXTEEN THOUSAND EIGHTY HUNDRED SEVEN AND 50/100 DOLLARS ($4,316,807.50), or so much of said sum as has been advanced and is then outstanding under this Note, together with interest thereon as hereinafter set forth.

This Note is a note under which Advances, repayments and re-Advances may be made from time to time, subject to the terms and conditions of this Note. **AT NO TIME SHALL THE BANK BE UNDER ANY OBLIGATION TO MAKE ANY ADVANCES TO THE UNDERSIGNED PURSUANT TO THIS NOTE (NOTWITHSTANDING ANYTHING EXPRESSED OR IMPLIED IN THIS NOTE OR ELSEWHERE TO THE CONTRARY, INCLUDING, WITHOUT LIMIT, IF THE BANK SUPPLIES THE UNDERSIGNED WITH A BORROWING FORMULA) AND THE BANK, AT ANY TIME AND FROM TIME TO TIME, WITHOUT NOTICE, AND IN ITS SOLE DISCRETION, MAY REFUSE TO MAKE ADVANCES TO THE UNDERSIGNED WITHOUT INCURRING ANY LIABILITY DUE TO THIS REFUSAL AND WITHOUT AFFECTING THE UNDERSIGNED'S LIABILITY UNDER THIS NOTE FOR ANY AND ALL AMOUNTS ADVANCED.**

Subject to the terms and conditions of this Note, each of the Advances made hereunder shall bear interest at the LIBOR-based Rate plus the Applicable Margin or the Prime Referenced Rate plus the Applicable Margin, as elected by the undersigned or as otherwise determined under this Note; provided, however, the Prime Reference Rate plus the Applicable Margin may only be selected if the LIBOR-based Rate is not available under the terms of this Note

Unless sooner demanded, accrued and unpaid interest on the unpaid balance of each outstanding Advance hereunder shall be payable monthly, in arrears, on the first Business Day of each month. Interest accruing on the basis of the Prime Referenced Rate shall be computed on the basis of a year of 360 days, and shall be assessed for the actual number of days elapsed, and in such computation, effect shall be given to any change in the Applicable Interest Rate as a result of any change in the Prime Referenced Rate on the date of each such change. Interest accruing on the basis of the LIBOR-based Rate shall be computed on the basis of a 360 day year and shall be assessed for the actual number of days elapsed from the first day of the Interest Period applicable thereto but not including the last day thereof.

Upon demand and from and after the occurrence of any Default hereunder, and so long as any such Default remains unremedied or uncured thereafter, the Indebtedness outstanding under this Note shall bear interest at a per annum rate of three percent (3%) above the otherwise Applicable Interest Rate(s), which interest shall be payable upon demand. In addition to the foregoing, a late payment charge equal to five percent (5%) of each late payment hereunder may be charged on any payment not received by Bank within ten (10) calendar days after the payment due date therefor, but acceptance of payment of any such charge shall not constitute a waiver of any Default hereunder.

In no event shall the interest payable under this Note at any time exceed the maximum rate permitted by law.

The amount and date of each Advance, its Applicable Interest Rate, its Interest Period, if applicable, and the amount and date of any repayment shall be noted on Bank's records, which records shall be conclusive evidence thereof, absent manifest error; provided, however, any failure by Bank to make any such notation, or any error in any such notation, shall not relieve the undersigned of its/their obligations to repay Bank all amounts payable by the undersigned to Bank under or pursuant to this Note, when due in accordance with the terms hereof.

The undersigned may request an Advance hereunder, including the refunding of an outstanding Advance as the same type of Advance or the conversion of an outstanding Advance to another type of Advance, upon the delivery to Bank of a Request for Advance executed by the undersigned, subject to the following: (a) Bank shall not have made demand hereunder and no Default, or any condition or event which, with the giving of notice or the running of time, or both, would constitute a Default, shall have occurred and be continuing or exist under this Note; (b) each such Request for Advance shall set forth the information required on the Request for Advance form annexed hereto as Exhibit "A"; (c) each such Request for Advance shall be delivered to Bank by 11:00 a.m. (Detroit, Michigan time) on the proposed date of the

requested Advance; (d) the principal amount of each LIBOR-based Advance shall be at least Two Hundred Fifty Thousand Dollars ($250,000.00) (or such lesser amount as is acceptable to Bank in its sole discretion); (e) the proposed date of any refunding of any outstanding LIBOR-based Advance as another LIBOR-based Advance or the conversion of any outstanding LIBOR-based Advance to another type of Advance shall only be on the last day of the Interest Period applicable to such outstanding LIBOR-based Advance; (f) after giving effect to such Advance, the aggregate unpaid principal amount of Advances outstanding under this Note shall not exceed the face amount of this Note; and (g) a Request for Advance, once delivered to Bank, shall not be revocable by the undersigned; provided, however, as aforesaid, Bank shall not be obligated to make any Advance under this Note.

Advances hereunder may be requested in the undersigned's discretion by telephonic notice to Bank. Any Advance requested by telephonic notice shall be confirmed by the undersigned that same day by submission to Bank, either by first class mail, facsimile or other means of delivery acceptable to Bank, of the written Request for Advance aforementioned. The undersigned acknowledge(s) that if Bank makes an Advance based on a telephonic request, it shall be for the undersigned's convenience and all risks involved in the use of such procedure shall be borne by the undersigned, and the undersigned expressly agree(s) to indemnify and hold Bank harmless therefor. Bank shall have no duty to confirm the authority of anyone requesting an Advance by telephone.

If, as to any outstanding LIBOR-based Advance, Bank shall not receive a timely Request for Advance, or telephonic notice, in accordance with the foregoing requesting the refunding or continuation of such Advance as another LIBOR-based Advance for a specified Interest Period or the conversion of such Advance to a Prime-based Advance, effective as of the last day of the Interest Period applicable to such outstanding LIBOR-based Advance, and as of the last day of each succeeding Interest Period, the principal amount of such Advance which is not then repaid shall be automatically refunded or continued as a LIBOR-based Advance having an Interest Period equal to the same period of time as the Interest Period then ending for such outstanding LIBOR-based Advance, unless the undersigned is/are not entitled to request LIBOR-based Advances hereunder or otherwise elect the LIBOR-based Rate as the basis for the Applicable Interest Rate for the principal Indebtedness outstanding hereunder in accordance with the terms of this Note, or the LIBOR-based Rate is not otherwise available to the undersigned as the basis for the Applicable Interest Rate hereunder for the principal Indebtedness outstanding hereunder in accordance with the terms of this Note, in which case, the Prime Referenced Rate plus the Applicable Margin shall be the Applicable Interest Rate hereunder in respect of such Indebtedness for such period, subject in all respects to the terms and conditions of this Note. The foregoing shall not in any way whatsoever limit or otherwise affect Bank's right to make demand for payment of all or any part of the Indebtedness hereunder at any time in Bank's sole and absolute discretion or any of Bank's rights or remedies under this Note upon the occurrence of any Default hereunder, or any condition or event which, with the giving of notice or the running of time, or both, would constitute a Default.

Subject to the definition of an "Interest Period" hereunder, in the event that any payment under this Note becomes due and payable on any day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day, and, to the extent applicable, interest shall continue to accrue and be payable thereon during such extension at the rates set forth in this Note.

All payments to be made by the undersigned to Bank under or pursuant to this Note shall be in immediately available United States funds, without setoff or counterclaim, and in the event that any payments submitted hereunder are in funds not available until collected, said payments shall continue to bear interest until collected.

If the undersigned make(s) any payment of principal with respect to any LIBOR-based Advance on any day other than the last day of the Interest Period applicable thereto (whether voluntarily, upon demand (whether or not any Default shall have occurred and be continuing or exist under this Note), required payment or otherwise), or if the undersigned fail(s) to borrow any LIBOR-based Advance after notice has been given by the undersigned (or any of them) to Bank in accordance with the terms of this Note requesting such Advance, or if the undersigned fail(s) to make any payment of principal or interest in respect of a LIBOR-based Advance when due, the undersigned shall reimburse Bank, on demand, for any resulting loss, cost or expense incurred by Bank as a result thereof, including, without limitation, any such loss, cost or expense incurred in obtaining, liquidating, employing or redeploying deposits from third parties, whether or not Bank shall have funded or committed to fund such Advance. Such amount payable by the undersigned to Bank may include, without limitation, an amount equal to the excess, if any, of (a) the amount of interest which would have accrued on the amount so prepaid, or not so borrowed, refunded or converted, for the period from the date of such prepayment or of such failure to borrow, refund or convert, through the last day of the relevant Interest Period, at the applicable rate of interest for said Advance(s) provided under this Note, over (b) the amount of interest (as reasonably determined by Bank) which would have accrued to Bank on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. Calculation of any amounts payable to Bank under this paragraph shall

be made as though Bank shall have actually funded or committed to fund the relevant LIBOR-based Advance through the purchase of an underlying deposit in an amount equal to the amount of such Advance and having a maturity comparable to the relevant Interest Period; provided, however, that Bank may fund any LIBOR-based Advance in any manner it deems fit and the foregoing assumptions shall be utilized only for the purpose of the calculation of amounts payable under this paragraph. Upon the written request of the undersigned, Bank shall deliver to the undersigned a certificate setting forth the basis for determining such losses, costs and expenses, which certificate shall be conclusively presumed correct, absent manifest error. The undersigned may prepay all or part of the outstanding balance of any Prime-based Advance under this Note or any Indebtedness hereunder which is bearing interest based upon the Prime Referenced Rate at any such time without premium or penalty. Any prepayment hereunder shall also be accompanied by the payment of all accrued and unpaid interest on the amount so prepaid. The undersigned hereby acknowledge(s) and agree(s) that the foregoing shall not, in any way whatsoever, limit, restrict or otherwise affect Bank's right to make demand for payment of all or any part of the Indebtedness under this Note at any time in Bank's sole and absolute discretion, whether such Indebtedness is bearing interest based upon the LIBOR-based Rate or the Prime Referenced Rate at such time.

For any LIBOR-based Advance, if Bank shall designate a LIBOR Lending Office which maintains books separate from those of the rest of Bank, Bank shall have the option of maintaining and carrying such Advance on the books of such LIBOR Lending Office.

If, at any time, Bank determines that, (a) Bank is unable to determine or ascertain the LIBOR-based Rate, or (b) by reason of circumstances affecting the foreign exchange and interbank markets generally, deposits in eurodollars in the applicable amounts or for the relative maturities are not being offered to Bank for any applicable Advance or Interest Period, or (c) the LIBOR-based Rate plus the Applicable Margin will not accurately or fairly cover or reflect the cost to Bank of maintaining any of the Indebtedness under this Note based upon the LIBOR-based Rate, then Bank shall forthwith give notice thereof to the undersigned. Thereafter, until Bank notifies the undersigned that such conditions or circumstances no longer exist, the right of the undersigned to request a LIBOR-based Advance and to convert an Advance to or refund an Advance as a LIBOR-based Advance shall be suspended, and the Prime Referenced Rate plus the Applicable Margin shall be the Applicable Interest Rate for all Indebtedness hereunder during such period of time.

If, after the date hereof, the introduction of, or any change in, any applicable law, rule or regulation or in the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof, or compliance by Bank (or its LIBOR Lending Office) with any request or directive (whether or not having the force of law) of any such authority, shall make it unlawful or impossible for the Bank (or its LIBOR Lending Office) to make or maintain any Advance with interest based upon the LIBOR-based Rate, Bank shall forthwith give notice thereof to the undersigned. Thereafter, (a) until Bank notifies the undersigned that such conditions or circumstances no longer exist, the right of the undersigned to request a LIBOR-based Advance and to convert an Advance to or refund an Advance as a LIBOR-based Advance shall be suspended, and thereafter, the undersigned may select only the Prime Referenced Rate plus the Applicable Margin as the Applicable Interest Rate for the Indebtedness hereunder, and (b) if Bank may not lawfully continue to maintain an outstanding LIBOR-based Advance to the end of the then current Interest Period applicable thereto, the Prime Referenced Rate plus the Applicable Margin shall be the Applicable Interest Rate for the remainder of such Interest Period with respect to such outstanding Advance.

If the adoption after the date hereof, or any change after the date hereof in, any applicable law, rule or regulation (whether domestic or foreign) of any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Bank (or its LIBOR Lending Office) with any request or directive (whether or not having the force of law) made by any such authority, central bank or comparable agency after the date hereof: (a) shall subject Bank (or its LIBOR Lending Office) to any tax, duty or other charge with respect to this Note or any Indebtedness hereunder, or shall change the basis of taxation of payments to Bank (or its LIBOR Lending Office) of the principal of or interest under this Note or any other amounts due under this Note in respect thereof (except for changes in the rate of tax on the overall net income of Bank or its LIBOR Lending Office imposed by the jurisdiction in which Bank's principal executive office or LIBOR Lending Office is located); or (b) shall impose, modify or deem applicable any reserve (including, without limitation, any imposed by the Board of Governors of the Federal Reserve System), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by Bank (or its LIBOR Lending Office), or shall impose on Bank (or its LIBOR Lending Office) or the foreign exchange and interbank markets any other condition affecting this Note or the Indebtedness hereunder; and the result of any of the foregoing is to increase the cost to Bank of maintaining any part of the Indebtedness hereunder or to reduce the amount of any sum received or receivable by Bank under this Note by an amount deemed by the Bank to be material, then the undersigned shall pay to Bank, within fifteen (15) days of the undersigned's receipt of written notice from Bank demanding such compensation, such additional amount or amounts as will compensate Bank for such increased cost or reduction. A certificate of Bank, prepared in good faith and in reasonable detail by Bank and submitted by Bank to the undersigned, setting forth the basis

for determining such additional amount or amounts necessary to compensate Bank shall be conclusive and binding for all purposes, absent manifest error.

In the event that any applicable law, treaty, rule or regulation (whether domestic or foreign) now or hereafter in effect and whether or not presently applicable to Bank, or any interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof, or compliance by Bank with any guideline, request or directive of any such authority (whether or not having the force of law), including any risk-based capital guidelines, affects or would affect the amount of capital required or expected to be maintained by Bank (or any corporation controlling Bank), and Bank determines that the amount of such capital is increased by or based upon the existence of any obligations of Bank hereunder or the maintaining of any Indebtedness hereunder, and such increase has the effect of reducing the rate of return on Bank's (or such controlling corporation's) capital as a consequence of such obligations or the maintaining of such Indebtedness hereunder to a level below that which Bank (or such controlling corporation) could have achieved but for such circumstances (taking into consideration its policies with respect to capital adequacy), then the undersigned shall pay to Bank, within fifteen (15) days of the undersigned's receipt of written notice from Bank demanding such compensation, additional amounts as are sufficient to compensate Bank (or such controlling corporation) for any increase in the amount of capital and reduced rate of return which Bank reasonably determines to be allocable to the existence of any obligations of the Bank hereunder or to maintaining any Indebtedness hereunder. A certificate of Bank as to the amount of such compensation, prepared in good faith and in reasonable detail by the Bank and submitted by Bank to the undersigned, shall be conclusive and binding for all purposes absent manifest error.

This Note and any other indebtedness and liabilities of any kind of the undersigned (or any of them) to the Bank, and any and all modifications, renewals or extensions of it, whether joint or several, contingent or absolute, now existing or later arising, and however evidenced and whether incurred voluntarily or involuntarily, known or unknown, or originally payable to the Bank or to a third party and subsequently acquired by Bank including, without limitation, any late charges; loan fees or charges; overdraft indebtedness; costs incurred by Bank in establishing, determining, continuing or defending the validity or priority of any security interest, pledge or other lien or in pursuing any of its rights or remedies under any loan document (or otherwise) or in connection with any proceeding involving the Bank as a result of any financial accommodation to the undersigned (or any of them); and reasonable costs and expenses of attorneys and paralegals, whether inside or outside counsel is used, and whether any suit or other action is instituted, and to court costs if suit or action is instituted, and whether any such fees, costs or expenses are incurred at the trial court level or on appeal, in bankruptcy, in administrative proceedings, in probate proceedings or otherwise (collectively "Indebtedness") are secured by and the Bank is granted a security interest in and lien upon all items deposited in any account of any of the undersigned with the Bank and by all proceeds of these items (cash or otherwise), all account balances of any of the undersigned from time to time with the Bank, by all property of any of the undersigned from time to time in the possession of the Bank and by any other collateral, rights and properties described in each and every deed of trust, mortgage, security agreement, pledge, assignment and other security or collateral agreement which has been, or will at any time(s) later be, executed by any (or all) of the undersigned to or for the benefit of the Bank (collectively "Collateral"). Notwithstanding the above, (i) to the extent that any portion of the Indebtedness is a consumer loan, that portion shall not be secured by any deed of trust or mortgage on or other security interest in any of the undersigned's principal dwelling or in any of the undersigned's real property which is not a purchase money security interest as to that portion, unless expressly provided to the contrary in another place, or (ii) if the undersigned (or any of them) has (have) given or give(s) Bank a deed of trust or mortgage covering California real property, that deed of trust or mortgage shall not secure this Note or any other indebtedness of the undersigned (or any of them), unless expressly provided to the contrary in another place, or (iii) if the undersigned (or any of them) has (have) given or give(s) the Bank a deed of trust or mortgage covering real property which, under Texas law, constitutes the homestead of such person, that deed of trust or mortgage shall not secure this Note or any other Indebtedness of the undersigned (or any of them) unless expressly provided to the contrary in another place.

If (a) the undersigned (or any of them) or any guarantor under a guaranty of all or part of the Indebtedness ("guarantor") (i) fail(s) to pay this Note or any of the Indebtedness when due, by maturity, acceleration or otherwise, or fail(s) to pay any Indebtedness owing on a demand basis upon demand; or (ii) fail(s) to comply with any of the terms or provisions of any agreement between the undersigned (or any of them) or any guarantor and the Bank, and any such failure continues beyond any applicable grace or cure period, if any, expressly provided with respect thereto; or (iii) become(s) insolvent or the subject of a voluntary or involuntary proceeding in bankruptcy, or a reorganization, arrangement or creditor composition proceeding, (if a business entity) cease(s) doing business as a going concern, (if a natural person) die(s) or become(s) incompetent, (if a partnership) dissolve(s) or any general partner of it dies, becomes incompetent or becomes the subject of a bankruptcy proceeding, or (if a corporation or a limited liability company) is the subject of a dissolution, merger or consolidation; or (b) any warranty or representation made by any of the undersigned or any guarantor in connection with this Note or any of the Indebtedness shall be discovered to be untrue or incomplete; or (c) there is any

termination, notice of termination, or breach of any guaranty, pledge, collateral assignment or subordination agreement relating to all or any part of the Indebtedness; or (d) there is any failure by any of the undersigned or any guarantor to pay when due any of its Indebtedness (other than to the Bank) or in the observance or performance of any term, covenant or condition in any document evidencing, securing or relating to such Indebtedness; or (e) the Bank deems itself insecure, believing that the prospect of payment or performance of this Note or any of the Indebtedness is impaired or shall fear deterioration, removal or waste of any of the Collateral; or (f) there is filed or issued a levy or writ of attachment or garnishment or other like judicial process upon the undersigned (or any of them) or any guarantor or any of the Collateral, including, without limit, any accounts of the undersigned (or any of them) or any guarantor with the Bank; then the Bank, upon the occurrence and at any time during the continuance or existence of any of these events (each a "Default"), may, at its option and without prior notice to the undersigned (or any of them), declare any or all of the Indebtedness to be immediately due and payable (notwithstanding any provisions contained in the evidence of it to the contrary), sell or liquidate all or any portion of the Collateral, set off against the Indebtedness any amounts owing by the Bank to the undersigned (or any of them), charge interest at the default rate provided in the document evidencing the relevant Indebtedness and exercise any one or more of the rights and remedies granted to the Bank by any agreement with the undersigned (or any of them) or given to it under applicable law.

The undersigned hereby expressly acknowledge(s) and agree(s) that this Note is a demand note and matures upon issuance, and that the Indebtedness hereunder shall be payable upon demand (unless earlier payment is required in accordance with the terms and conditions of this Note), and that Bank may, at any time in its sole and absolute discretion, without notice and without reason and whether or not any Default shall have occurred and/or exist under this Note, without notice, demand that this Note and the Indebtedness hereunder be immediately paid in full. The Bank may from time to time make demand for partial payments under this Note and these demands shall not preclude the Bank from demanding at any time that this Note be immediately paid in full. The demand nature of this Note shall not be deemed to be modified, limited or otherwise affected by the fact that all or any part of the Indebtedness outstanding hereunder may be bearing interest at an Applicable Interest Rate based upon the LIBOR-based Rate or by the fact that LIBOR-based Rates shall have Interest Periods applicable thereto, and Bank may make demand for payment of all or any part of such Indebtedness at any time prior to the last day of any such Interest Period, in each case, in Bank's sole and absolute discretion. Further, the demand nature of this Note shall not be deemed to be modified, limited or otherwise affected by any reference to any Default in this Note, and to the extent that there are any references to any Default(s) hereunder, such references are for the purpose of permitting Bank to accelerate any Indebtedness not on a demand basis and to receive interest at the applicable default rate provided in the document evidencing the relevant Indebtedness.

The undersigned authorize(s) the Bank to charge any account(s) of the undersigned (or any of them) with the Bank for any and all sums due hereunder when due; provided, however, that such authorization shall not affect any of the undersigned's obligation to pay to the Bank all amounts when due, whether or not any such account balances that are maintained by the undersigned with the Bank are insufficient to pay to the Bank any amounts when due, and to the extent that are insufficient to pay to the Bank all such amounts, the undersigned shall remain liable for any deficiencies until paid in full.

If this Note is signed by two or more parties (whether by all as makers or by one or more as an accommodation party or otherwise), the obligations and undertakings under this Note shall be that of all and any two or more jointly and also of each severally. This Note shall bind the undersigned, and the undersigned's respective heirs, personal representatives, successors and assigns.

The undersigned waive(s) presentment, demand, protest, notice of dishonor, notice of demand or intent to demand, notice of acceleration or intent to accelerate, and all other notices, and agree(s) that no extension or indulgence to the undersigned (or any of them) or release, substitution or nonenforcement of any security, or release or substitution of any of the undersigned, any guarantor or any other party, whether with or without notice, shall affect the obligations of any of the undersigned. The undersigned waive(s) all defenses or right to discharge available under Section 3-605 of the Michigan Uniform Commercial Code and waive(s) all other suretyship defenses or right to discharge. The undersigned agree(s) that the Bank has the right to sell, assign, or grant participations or any interest in, any or all of the Indebtedness, and that, in connection with this right, but without limiting its ability to make other disclosures to the full extent allowable, the Bank may disclose all documents and information which the Bank now or later has relating to the undersigned or the Indebtedness. The undersigned agree(s) that the Bank may provide information relating to this Note or relating to the undersigned to the Bank's parent, affiliates, subsidiaries and service providers.

The undersigned agree(s) to reimburse Bank, or any other holder or owner of this Note, for any and all costs and expenses (including, without limit, court costs, legal expenses and reasonable attorneys' fees, whether inside or outside

counsel is used, whether or not suit is instituted, and, if suit is instituted, whether at the trial court level, appellate level, in a bankruptcy, probate or administrative proceeding or otherwise) incurred in collecting or attempting to collect this Note or the Indebtedness or incurred in any other matter or proceeding relating to this Note or the Indebtedness.

The undersigned acknowledge(s) and agree(s) that there are no contrary agreements, oral or written, establishing a term of this Note and agree(s) that the terms and conditions of this Note may not be amended, waived or modified except in a writing signed by an officer of the Bank expressly stating that the writing constitutes an amendment, waiver or modification of the terms of this Note. As used in this Note, the word "undersigned" means, individually and collectively, each maker, accommodation party, endorser and other party signing this Note in a similar capacity. If any provision of this Note is unenforceable in whole or part for any reason, the remaining provisions shall continue to be effective. **THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF MICHIGAN, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.**

For the purposes of this Note, the following terms have the following meanings:

"Advance" means a borrowing requested by the undersigned and made by Bank under this Note, including any refunding of an outstanding Advance as the same type of Advance or the conversion of any such outstanding Advance to another type of Advance, and shall include a LIBOR-based Advance and a Prime-based Advance.

"Applicable Interest Rate" means the LIBOR-based Rate plus the Applicable Margin or the Prime Referenced Rate plus the Applicable Margin, as selected by the undersigned from time to time or as otherwise determined in accordance with the terms and conditions of this Note.

"Applicable Margin" means:

(a) in respect of the LIBOR–based Rate, ten percent (10%) per annum; and

(b) in respect of the Prime Referenced Rate, ten percent (10%) per annum.

"Business Day" means any day, other than a Saturday, Sunday or any other day designated as a holiday under Federal or applicable State statute or regulation, on which Bank is open for all or substantially all of its domestic and international business (including dealings in foreign exchange) in Detroit, Michigan, and, in respect of notices and determinations relating to LIBOR-based Advances, the LIBOR-based Rate and the Daily Adjusting LIBOR Rate, also a day on which dealings in dollar deposits are also carried on in the London interbank market and on which banks are open for business in London, England.

"Daily Adjusting LIBOR Rate" means, for any day, a per annum interest rate which is equal to the quotient of the following:

(a) for any day, the per annum rate of interest determined on the basis of the rate for deposits in United States Dollars for a period equal to one (1) month appearing on Page BBAM of the Bloomberg Financial Markets Information Service as of 11:00 a.m. (Detroit, Michigan time) (or as soon thereafter as practical) on such day, or if such day is not a Business Day, on the immediately preceding Business Day. In the event that such rate does not appear on Page BBAM of the Bloomberg Financial Markets Information Service (or otherwise on such Service) on any day, the "Daily Adjusting LIBOR Rate" for such day shall be determined by reference to such other publicly available service for displaying eurodollar rates as may be reasonably selected by Bank, or, in the absence of such other service, the "Daily Adjusting LIBOR Rate" for such day shall, instead, be determined based upon the average of the rates at which Bank is offered dollar deposits at or about 11:00 a.m. (Detroit, Michigan time) (or as soon thereafter as practical), on such day, or if such day is not a Business Day, on the immediately preceding Business Day, in the interbank eurodollar market in an amount comparable to the applicable principal amount of Indebtedness hereunder and for a period equal to one (1) month;

divided by

(b) 1.00 minus the maximum rate (expressed as a decimal) on such day at which Bank is required to maintain reserves on "Euro-currency Liabilities" as defined in and pursuant to Regulation D of the Board of Governors of the Federal Reserve System or, if such regulation or definition is modified, and as long as Bank is required to maintain reserves against a category of liabilities which includes eurodollar deposits or includes a category of assets which includes eurodollar loans, the rate at which such reserves are required to be maintained on such category.

"Interest Period" means, with respect to a LIBOR-based Advance, a period of one (1) month, or as otherwise determined pursuant to and in accordance with the terms of this Note, commencing on the day a LIBOR-based Advance is made or the day an Advance is converted to a LIBOR-based Advance or the day an outstanding LIBOR-based Advance is refunded or continued as another LIBOR-based Advance for an applicable Interest Period, provided that any Interest Period which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day, except that if the next succeeding Business Day falls in another calendar month, the Interest Period shall end on the next preceding Business Day, and when an Interest Period begins on a day which has no numerically corresponding day in the calendar month during which such Interest Period is to end, it shall end on the last Business Day of such calendar month. In the event that any LIBOR-based Advance is at any time refunded or continued as another LIBOR-based Advance for an additional Interest Period, such Interest Period shall commence on the last day of the preceding Interest Period then ending.

"LIBOR-based Advance" means an Advance which bears interest at the LIBOR-based Rate plus the Applicable Margin.

"LIBOR-based Rate" means a per annum interest rate which is equal to the quotient of the following:

(a) the LIBOR Rate;

divided by

(b) 1.00 minus the maximum rate (expressed as a decimal) during such Interest Period at which Bank is required to maintain reserves on "Euro-currency Liabilities" as defined in and pursuant to Regulation D of the Board of Governors of the Federal Reserve System or, if such regulation or definition is modified, and as long as Bank is required to maintain reserves against a category of liabilities which includes eurodollar deposits or includes a category of assets which includes eurodollar loans, the rate at which such reserves are required to be maintained on such category;

provided, however, in no event and at no time shall the LIBOR-based Rate be less than two and one-half percent (2.50%) per annum.

"LIBOR Lending Office" means Bank's office located in the Cayman Islands, British West Indies, or such other branch of Bank, domestic or foreign, as it may hereafter designate as its LIBOR Lending Office by notice to the undersigned.

"LIBOR Rate" means, with respect to any Indebtedness outstanding under this Note bearing interest on the basis of the LIBOR-based Rate, the per annum rate of interest determined on the basis of the rate for deposits in United States Dollars for a period equal to the relevant Interest Period for such Indebtedness, commencing on the first day of such Interest Period, appearing on Page BBAM of the Bloomberg Financial Markets Information Service as of 11:00 a.m. (Detroit, Michigan time) (or as soon thereafter as practical), two (2) Business Days prior to the first day of such Interest Period. In the event that such rate does not appear on Page BBAM of the Bloomberg Financial Markets Information Service (or otherwise on such Service), the "LIBOR Rate" shall be determined by reference to such other publicly available service for displaying eurodollar rates as may be reasonably selected by Bank, or, in the absence of such other service, the "LIBOR Rate" shall, instead, be determined based upon the average of the rates at which Bank is offered dollar deposits at or about 11:00 a.m. (Detroit, Michigan time) (or as soon thereafter as practical), two (2) Business Days prior to the first day of such Interest Period in the interbank eurodollar market in an amount comparable to the principal amount of the respective LIBOR-based Advance which is to bear interest on the basis of such LIBOR-based Rate and for a period equal to the relevant Interest Period.

"Prime Rate" means the per annum interest rate established by Bank as its prime rate for its borrowers, as such rate may vary from time to time, which rate is not necessarily the lowest rate on loans made by Bank at any such time.

"Prime-based Advance" means an Advance which bears interest at the Prime Referenced Rate plus the Applicable Margin.

"Prime Referenced Rate" means, for any day, a per annum interest rate which is equal to the Prime Rate in effect on such day, but in no event and at no time shall the Prime Referenced Rate be less than the sum of the Daily Adjusting LIBOR Rate for such day plus two and one-half percent (2.50%) per annum. If, at any time, Bank determines that it is unable to determine or ascertain the Daily Adjusting LIBOR Rate for any day, the Prime Referenced Rate for each such day shall be the Prime Rate in effect at such time, but not less than two and one-half percent (2.50%) per annum.

"Request for Advance" means a Request for Advance issued by the undersigned under this Note in the form annexed to this Note as Exhibit "A".

No delay or failure of Bank in exercising any right, power or privilege hereunder shall affect such right, power or privilege, nor shall any single or partial exercise thereof preclude any further exercise thereof, or the exercise of any other power, right or privilege. The rights of Bank under this Note are cumulative and not exclusive of any right or remedies which Bank would otherwise have, whether by other instruments or by law.

THE MAXIMUM INTEREST RATE SHALL NOT EXCEED 25% PER ANNUM OR THE HIGHEST APPLICABLE USURY CEILING, WHICHEVER IS LESS.

THE UNDERSIGNED AND BANK, BY ACCEPTANCE OF THIS NOTE, ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS NOTE OR THE INDEBTEDNESS.

This Note is issued under (a) that certain Amended and Restated Credit Agreement (as amended, restated, supplemented, or otherwise modified from time to time, including all schedules thereto, "Credit Agreement") dated as of August 1, 2008, among Comerica Bank, as Agent, the financial institutions party to the Credit Agreement and the undersigned and (b) the Forbearance Agreement (as amended, restated, supplemented, or otherwise modified from time to time, including all schedules thereto, "Forbearance Agreement") dated July 24, 2009 among Comerica Bank, as Agent, Harris, N.A., Moneris Solutions, Inc., Wells Fargo Foothill, LLC, Dymas Funding Company LLC, Ableco Finance LLC, A3 Funding LP, Garrison Credit Investments I LLC, Marcelo Paladini, Cynergy Prosperity Plus, LLC, Cynergy Data Holdings, Inc. and undersigned. The undersigned agrees that (i) this Note constitutes a Loan Document (as defined in the Credit Agreement), (ii) all obligations and liabilities under this Note constitute Indebtedness (as defined in the Credit Agreement) and (iii) this Note constitutes a New Revolving Note (as defined in the Forbearance Agreement).

[SIGNATURE TO FOLLOW ON SUCCEEDING PAGE]

CYNERGY DATA, LLC

By:_____
SIGNATURE OF

Its:_____
TITLE

45 W. 36TH Street, 6th Floor,	New York	NY	10018
STREET ADDRESS	CITY	STATE	ZIP

For Bank Use Only				
LOAN OFFICER INITIALS	LOAN GROUP NAME	OBLIGOR NAME Cynergy Data, LLC		
LOAN OFFICER ID. NO.	LOAN GROUP NO.	OBLIGOR NO.	NOTE NO.	AMOUNT $4,316,807.50

EXHIBIT "A"

REQUEST FOR ADVANCE

The undersigned hereby request(s) COMERICA BANK ("Bank") to make a _____* Advance to the undersigned on _____, _____, in the amount of _____ _____ Dollars ($_____) under the Master Revolving Note dated as of July 24, 2009, issued by the undersigned to said Bank in the face amount of Four Million Three Hundred Sixteen Thousand Eight Hundred Seven and 50/100 Dollars ($4,316,807.50) (the "Note"). The Interest Period for the requested Advance, if applicable, shall be one (1) month. In the event that any part of the Advance requested hereby constitutes the refunding or conversion of an outstanding Advance, the amount to be refunded or converted is _____ _____ Dollars ($_____), and the last day of the Interest Period for the amounts being converted or refunded hereunder, if applicable, is _____, _____.

The undersigned represent(s), warrant(s) and certify(ies) that no Default, or any condition or event which, with the giving of notice or the running of time, or both, would constitute a Default, has occurred and is continuing under the Note, and none will exist upon the making of the Advance requested hereunder. The undersigned further certify(ies) that upon advancing the sum requested hereunder, the aggregate principal amount outstanding under the Note will not exceed the face amount thereof. If the amount advanced to the undersigned under the Note shall at any time exceed the face amount thereof, the undersigned will immediately pay such excess amount, without any necessity of notice or demand.

The undersigned hereby authorize(s) Bank to disburse the proceeds of the Advance being requested by this Request for Advance by crediting the account of the undersigned with Bank separately designated by the undersigned or as the undersigned may otherwise direct, unless this Request for Advance is being submitted for a conversion or refunding of all or any part of any outstanding Advance(s), in which case, such proceeds shall be deemed to be utilized, to the extent necessary, to refund or convert that portion stated above of the existing outstandings under such Advance(s).

Capitalized terms used but not otherwise defined herein shall have the respective meanings given to them in the Note.

Dated this _____ day of _____, _____.

CYNERGY DATA, LLC

By:_____

Its:_____

* Insert, as applicable, "LIBOR-based" or "Prime Referenced Rate".

EXHIBIT C

Master Revolving Note
LIBOR-based Rate/Prime Referenced Rate
Demand-Optional Advances (Business and Commercial Loans Only)

AMOUNT	NOTE DATE	MATURITY DATE
$4,683,192.50	July 24, 2009	ON DEMAND

ON DEMAND (or as otherwise provided in this Note), FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of WELLS FARGO FOOTHILL, LLC (herein called "Bank"), care of Comerica Bank, as Agent, at 500 Woodward Avenue, Detroit, Michigan 48226, the principal sum of FOUR MILLION SIX HUNDRED EIGHTY THREE THOUSAND ONE HUNDRED NINETY TWO and 50/100 DOLLARS ($4,683,192.50), or so much of said sum as has been advanced and is then outstanding under this Note, together with interest thereon as hereinafter set forth.

This Note is a note under which Advances, repayments and re-Advances may be made from time to time, subject to the terms and conditions of this Note. **AT NO TIME SHALL THE BANK BE UNDER ANY OBLIGATION TO MAKE ANY ADVANCES TO THE UNDERSIGNED PURSUANT TO THIS NOTE (NOTWITHSTANDING ANYTHING EXPRESSED OR IMPLIED IN THIS NOTE OR ELSEWHERE TO THE CONTRARY, INCLUDING, WITHOUT LIMIT, IF THE BANK SUPPLIES THE UNDERSIGNED WITH A BORROWING FORMULA) AND THE BANK, AT ANY TIME AND FROM TIME TO TIME, WITHOUT NOTICE, AND IN ITS SOLE DISCRETION, MAY REFUSE TO MAKE ADVANCES TO THE UNDERSIGNED WITHOUT INCURRING ANY LIABILITY DUE TO THIS REFUSAL AND WITHOUT AFFECTING THE UNDERSIGNED'S LIABILITY UNDER THIS NOTE FOR ANY AND ALL AMOUNTS ADVANCED.**

Subject to the terms and conditions of this Note, each of the Advances made hereunder shall bear interest at the LIBOR-based Rate plus the Applicable Margin or the Prime Referenced Rate plus the Applicable Margin, as elected by the undersigned or as otherwise determined under this Note; provided, however, the Prime Reference Rate plus the Applicable Margin may only be selected if the LIBOR-based Rate is not available under the terms of this Note

Unless sooner demanded, accrued and unpaid interest on the unpaid balance of each outstanding Advance hereunder shall be payable monthly, in arrears, on the first Business Day of each month. Interest accruing on the basis of the Prime Referenced Rate shall be computed on the basis of a year of 360 days, and shall be assessed for the actual number of days elapsed, and in such computation, effect shall be given to any change in the Applicable Interest Rate as a result of any change in the Prime Referenced Rate on the date of each such change. Interest accruing on the basis of the LIBOR-based Rate shall be computed on the basis of a 360 day year and shall be assessed for the actual number of days elapsed from the first day of the Interest Period applicable thereto but not including the last day thereof.

Upon demand and from and after the occurrence of any Default hereunder, and so long as any such Default remains unremedied or uncured thereafter, the Indebtedness outstanding under this Note shall bear interest at a per annum rate of three percent (3%) above the otherwise Applicable Interest Rate(s), which interest shall be payable upon demand. In addition to the foregoing, a late payment charge equal to five percent (5%) of each late payment hereunder may be charged on any payment not received by Bank within ten (10) calendar days after the payment due date therefor, but acceptance of payment of any such charge shall not constitute a waiver of any Default hereunder.

In no event shall the interest payable under this Note at any time exceed the maximum rate permitted by law.

The amount and date of each Advance, its Applicable Interest Rate, its Interest Period, if applicable, and the amount and date of any repayment shall be noted on Bank's records, which records shall be conclusive evidence thereof, absent manifest error; provided, however, any failure by Bank to make any such notation, or any error in any such notation, shall not relieve the undersigned of its/their obligations to repay Bank all amounts payable by the undersigned to Bank under or pursuant to this Note, when due in accordance with the terms hereof.

The undersigned may request an Advance hereunder, including the refunding of an outstanding Advance as the same type of Advance or the conversion of an outstanding Advance to another type of Advance, upon the delivery to Bank of a Request for Advance executed by the undersigned, subject to the following: (a) Bank shall not have made demand hereunder and no Default, or any condition or event which, with the giving of notice or the running of time, or both, would constitute a Default, shall have occurred and be continuing or exist under this Note; (b) each such Request for Advance shall set forth the information required on the Request for Advance form annexed hereto as Exhibit "A"; (c) each such Request for Advance shall be delivered to Bank by 11:00 a.m. (Detroit, Michigan time) on the proposed date of the

requested Advance; (d) the principal amount of each LIBOR-based Advance shall be at least Two Hundred Fifty Thousand Dollars ($250,000.00) (or such lesser amount as is acceptable to Bank in its sole discretion); (e) the proposed date of any refunding of any outstanding LIBOR-based Advance as another LIBOR-based Advance or the conversion of any outstanding LIBOR-based Advance to another type of Advance shall only be on the last day of the Interest Period applicable to such outstanding LIBOR-based Advance; (f) after giving effect to such Advance, the aggregate unpaid principal amount of Advances outstanding under this Note shall not exceed the face amount of this Note; and (g) a Request for Advance, once delivered to Bank, shall not be revocable by the undersigned; provided, however, as aforesaid, Bank shall not be obligated to make any Advance under this Note.

Advances hereunder may be requested in the undersigned's discretion by telephonic notice to Bank. Any Advance requested by telephonic notice shall be confirmed by the undersigned that same day by submission to Bank, either by first class mail, facsimile or other means of delivery acceptable to Bank, of the written Request for Advance aforementioned. The undersigned acknowledge(s) that if Bank makes an Advance based on a telephonic request, it shall be for the undersigned's convenience and all risks involved in the use of such procedure shall be borne by the undersigned, and the undersigned expressly agree(s) to indemnify and hold Bank harmless therefor. Bank shall have no duty to confirm the authority of anyone requesting an Advance by telephone.

If, as to any outstanding LIBOR-based Advance, Bank shall not receive a timely Request for Advance, or telephonic notice, in accordance with the foregoing requesting the refunding or continuation of such Advance as another LIBOR-based Advance for a specified Interest Period or the conversion of such Advance to a Prime-based Advance, effective as of the last day of the Interest Period applicable to such outstanding LIBOR-based Advance, and as of the last day of each succeeding Interest Period, the principal amount of such Advance which is not then repaid shall be automatically refunded or continued as a LIBOR-based Advance having an Interest Period equal to the same period of time as the Interest Period then ending for such outstanding LIBOR-based Advance, unless the undersigned is/are not entitled to request LIBOR-based Advances hereunder or otherwise elect the LIBOR-based Rate as the basis for the Applicable Interest Rate for the principal Indebtedness outstanding hereunder in accordance with the terms of this Note, or the LIBOR-based Rate is not otherwise available to the undersigned as the basis for the Applicable Interest Rate hereunder for the principal Indebtedness outstanding hereunder in accordance with the terms of this Note, in which case, the Prime Referenced Rate plus the Applicable Margin shall be the Applicable Interest Rate hereunder in respect of such Indebtedness for such period, subject in all respects to the terms and conditions of this Note. The foregoing shall not in any way whatsoever limit or otherwise affect Bank's right to make demand for payment of all or any part of the Indebtedness hereunder at any time in Bank's sole and absolute discretion or any of Bank's rights or remedies under this Note upon the occurrence of any Default hereunder, or any condition or event which, with the giving of notice or the running of time, or both, would constitute a Default.

Subject to the definition of an "Interest Period" hereunder, in the event that any payment under this Note becomes due and payable on any day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day, and, to the extent applicable, interest shall continue to accrue and be payable thereon during such extension at the rates set forth in this Note.

All payments to be made by the undersigned to Bank under or pursuant to this Note shall be in immediately available United States funds, without setoff or counterclaim, and in the event that any payments submitted hereunder are in funds not available until collected, said payments shall continue to bear interest until collected.

If the undersigned make(s) any payment of principal with respect to any LIBOR-based Advance on any day other than the last day of the Interest Period applicable thereto (whether voluntarily, upon demand (whether or not any Default shall have occurred and be continuing or exist under this Note), required payment or otherwise), or if the undersigned fail(s) to borrow any LIBOR-based Advance after notice has been given by the undersigned (or any of them) to Bank in accordance with the terms of this Note requesting such Advance, or if the undersigned fail(s) to make any payment of principal or interest in respect of a LIBOR-based Advance when due, the undersigned shall reimburse Bank, on demand, for any resulting loss, cost or expense incurred by Bank as a result thereof, including, without limitation, any such loss, cost or expense incurred in obtaining, liquidating, employing or redeploying deposits from third parties, whether or not Bank shall have funded or committed to fund such Advance. Such amount payable by the undersigned to Bank may include, without limitation, an amount equal to the excess, if any, of (a) the amount of interest which would have accrued on the amount so prepaid, or not so borrowed, refunded or converted, for the period from the date of such prepayment or of such failure to borrow, refund or convert, through the last day of the relevant Interest Period, at the applicable rate of interest for said Advance(s) provided under this Note, over (b) the amount of interest (as reasonably determined by Bank) which would have accrued to Bank on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. Calculation of any amounts payable to Bank under this paragraph shall

be made as though Bank shall have actually funded or committed to fund the relevant LIBOR-based Advance through the purchase of an underlying deposit in an amount equal to the amount of such Advance and having a maturity comparable to the relevant Interest Period; provided, however, that Bank may fund any LIBOR-based Advance in any manner it deems fit and the foregoing assumptions shall be utilized only for the purpose of the calculation of amounts payable under this paragraph. Upon the written request of the undersigned, Bank shall deliver to the undersigned a certificate setting forth the basis for determining such losses, costs and expenses, which certificate shall be conclusively presumed correct, absent manifest error. The undersigned may prepay all or part of the outstanding balance of any Prime-based Advance under this Note or any Indebtedness hereunder which is bearing interest based upon the Prime Referenced Rate at any such time without premium or penalty. Any prepayment hereunder shall also be accompanied by the payment of all accrued and unpaid interest on the amount so prepaid. The undersigned hereby acknowledge(s) and agree(s) that the foregoing shall not, in any way whatsoever, limit, restrict or otherwise affect Bank's right to make demand for payment of all or any part of the Indebtedness under this Note at any time in Bank's sole and absolute discretion, whether such Indebtedness is bearing interest based upon the LIBOR-based Rate or the Prime Referenced Rate at such time.

For any LIBOR-based Advance, if Bank shall designate a LIBOR Lending Office which maintains books separate from those of the rest of Bank, Bank shall have the option of maintaining and carrying such Advance on the books of such LIBOR Lending Office.

If, at any time, Bank determines that, (a) Bank is unable to determine or ascertain the LIBOR-based Rate, or (b) by reason of circumstances affecting the foreign exchange and interbank markets generally, deposits in eurodollars in the applicable amounts or for the relative maturities are not being offered to Bank for any applicable Advance or Interest Period, or (c) the LIBOR-based Rate plus the Applicable Margin will not accurately or fairly cover or reflect the cost to Bank of maintaining any of the Indebtedness under this Note based upon the LIBOR-based Rate, then Bank shall forthwith give notice thereof to the undersigned. Thereafter, until Bank notifies the undersigned that such conditions or circumstances no longer exist, the right of the undersigned to request a LIBOR-based Advance and to convert an Advance to or refund an Advance as a LIBOR-based Advance shall be suspended, and the Prime Referenced Rate plus the Applicable Margin shall be the Applicable Interest Rate for all Indebtedness hereunder during such period of time.

If, after the date hereof, the introduction of, or any change in, any applicable law, rule or regulation or in the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof, or compliance by Bank (or its LIBOR Lending Office) with any request or directive (whether or not having the force of law) of any such authority, shall make it unlawful or impossible for the Bank (or its LIBOR Lending Office) to make or maintain any Advance with interest based upon the LIBOR-based Rate, Bank shall forthwith give notice thereof to the undersigned. Thereafter, (a) until Bank notifies the undersigned that such conditions or circumstances no longer exist, the right of the undersigned to request a LIBOR-based Advance and to convert an Advance to or refund an Advance as a LIBOR-based Advance shall be suspended, and thereafter, the undersigned may select only the Prime Referenced Rate plus the Applicable Margin as the Applicable Interest Rate for the Indebtedness hereunder, and (b) if Bank may not lawfully continue to maintain an outstanding LIBOR-based Advance to the end of the then current Interest Period applicable thereto, the Prime Referenced Rate plus the Applicable Margin shall be the Applicable Interest Rate for the remainder of such Interest Period with respect to such outstanding Advance.

If the adoption after the date hereof, or any change after the date hereof in, any applicable law, rule or regulation (whether domestic or foreign) of any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Bank (or its LIBOR Lending Office) with any request or directive (whether or not having the force of law) made by any such authority, central bank or comparable agency after the date hereof: (a) shall subject Bank (or its LIBOR Lending Office) to any tax, duty or other charge with respect to this Note or any Indebtedness hereunder, or shall change the basis of taxation of payments to Bank (or its LIBOR Lending Office) of the principal of or interest under this Note or any other amounts due under this Note in respect thereof (except for changes in the rate of tax on the overall net income of Bank or its LIBOR Lending Office imposed by the jurisdiction in which Bank's principal executive office or LIBOR Lending Office is located); or (b) shall impose, modify or deem applicable any reserve (including, without limitation, any imposed by the Board of Governors of the Federal Reserve System), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by Bank (or its LIBOR Lending Office), or shall impose on Bank (or its LIBOR Lending Office) or the foreign exchange and interbank markets any other condition affecting this Note or the Indebtedness hereunder; and the result of any of the foregoing is to increase the cost to Bank of maintaining any part of the Indebtedness hereunder or to reduce the amount of any sum received or receivable by Bank under this Note by an amount deemed by the Bank to be material, then the undersigned shall pay to Bank, within fifteen (15) days of the undersigned's receipt of written notice from Bank demanding such compensation, such additional amount or amounts as will compensate Bank for such increased cost or reduction. A certificate of Bank, prepared in good faith and in reasonable detail by Bank and submitted by Bank to the undersigned, setting forth the basis

for determining such additional amount or amounts necessary to compensate Bank shall be conclusive and binding for all purposes, absent manifest error.

In the event that any applicable law, treaty, rule or regulation (whether domestic or foreign) now or hereafter in effect and whether or not presently applicable to Bank, or any interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof, or compliance by Bank with any guideline, request or directive of any such authority (whether or not having the force of law), including any risk-based capital guidelines, affects or would affect the amount of capital required or expected to be maintained by Bank (or any corporation controlling Bank), and Bank determines that the amount of such capital is increased by or based upon the existence of any obligations of Bank hereunder or the maintaining of any Indebtedness hereunder, and such increase has the effect of reducing the rate of return on Bank's (or such controlling corporation's) capital as a consequence of such obligations or the maintaining of such Indebtedness hereunder to a level below that which Bank (or such controlling corporation) could have achieved but for such circumstances (taking into consideration its policies with respect to capital adequacy), then the undersigned shall pay to Bank, within fifteen (15) days of the undersigned's receipt of written notice from Bank demanding such compensation, additional amounts as are sufficient to compensate Bank (or such controlling corporation) for any increase in the amount of capital and reduced rate of return which Bank reasonably determines to be allocable to the existence of any obligations of the Bank hereunder or to maintaining any Indebtedness hereunder. A certificate of Bank as to the amount of such compensation, prepared in good faith and in reasonable detail by the Bank and submitted by Bank to the undersigned, shall be conclusive and binding for all purposes absent manifest error.

This Note and any other Indebtedness and liabilities of any kind of the undersigned (or any of them) to the Bank, and any and all modifications, renewals or extensions of it, whether joint or several, contingent or absolute, now existing or later arising, and however evidenced and whether incurred voluntarily or involuntarily, known or unknown, or originally payable to the Bank or to a third party and subsequently acquired by Bank including, without limitation, any late charges; loan fees or charges; overdraft Indebtedness; costs incurred by Bank in establishing, determining, continuing or defending the validity or priority of any security interest, pledge or other lien or in pursuing any of its rights or remedies under any loan document (or otherwise) or in connection with any proceeding involving the Bank as a result of any financial accommodation to the undersigned (or any of them); and reasonable costs and expenses of attorneys and paralegals, whether inside or outside counsel is used, and whether any suit or other action is instituted, and to court costs if suit or action is instituted, and whether any such fees, costs or expenses are incurred at the trial court level or on appeal, in bankruptcy, in administrative proceedings, in probate proceedings or otherwise (collectively "Indebtedness") are secured by and the Bank is granted a security interest in and lien upon all items deposited in any account of any of the undersigned with the Bank and by all proceeds of these items (cash or otherwise), all account balances of any of the undersigned from time to time with the Bank, by all property of any of the undersigned from time to time in the possession of the Bank and by any other collateral, rights and properties described in each and every deed of trust, mortgage, security agreement, pledge, assignment and other security or collateral agreement which has been, or will at any time(s) later be, executed by any (or all) of the undersigned to or for the benefit of the Bank (collectively "Collateral"). Notwithstanding the above, (i) to the extent that any portion of the Indebtedness is a consumer loan, that portion shall not be secured by any deed of trust or mortgage on or other security interest in any of the undersigned's principal dwelling or in any of the undersigned's real property which is not a purchase money security interest as to that portion, unless expressly provided to the contrary in another place, or (ii) if the undersigned (or any of them) has (have) given or give(s) Bank a deed of trust or mortgage covering California real property, that deed of trust or mortgage shall not secure this Note or any other indebtedness of the undersigned (or any of them), unless expressly provided to the contrary in another place, or (iii) if the undersigned (or any of them) has (have) given or give(s) the Bank a deed of trust or mortgage covering real property which, under Texas law, constitutes the homestead of such person, that deed of trust or mortgage shall not secure this Note or any other indebtedness of the undersigned (or any of them) unless expressly provided to the contrary in another place.

If (a) the undersigned (or any of them) or any guarantor under a guaranty of all or part of the Indebtedness ("guarantor") (i) fail(s) to pay this Note or any of the Indebtedness when due, by maturity, acceleration or otherwise, or fail(s) to pay any Indebtedness owing on a demand basis upon demand; or (ii) fail(s) to comply with any of the terms or provisions of any agreement between the undersigned (or any of them) or any guarantor and the Bank, and any such failure continues beyond any applicable grace or cure period, if any, expressly provided with respect thereto; or (iii) become(s) insolvent or the subject of a voluntary or involuntary proceeding in bankruptcy, or a reorganization, arrangement or creditor composition proceeding, (if a business entity) cease(s) doing business as a going concern, (if a natural person) die(s) or become(s) incompetent, (if a partnership) dissolve(s) or any general partner of it dies, becomes incompetent or becomes the subject of a bankruptcy proceeding, or (if a corporation or a limited liability company) is the subject of a dissolution, merger or consolidation; or (b) any warranty or representation made by any of the undersigned or any guarantor in connection with this Note or any of the Indebtedness shall be discovered to be untrue or incomplete; or (c) there is any

termination, notice of termination, or breach of any guaranty, pledge, collateral assignment or subordination agreement relating to all or any part of the Indebtedness; or (d) there is any failure by any of the undersigned or any guarantor to pay when due any of its Indebtedness (other than to the Bank) or in the observance or performance of any term, covenant or condition in any document evidencing, securing or relating to such Indebtedness; or (e) the Bank deems itself insecure, believing that the prospect of payment or performance of this Note or any of the Indebtedness is impaired or shall fear deterioration, removal or waste of any of the Collateral; or (f) there is filed or issued a levy or writ of attachment or garnishment or other like judicial process upon the undersigned (or any of them) or any guarantor or any of the Collateral, including, without limit, any accounts of the undersigned (or any of them) or any guarantor with the Bank; then the Bank, upon the occurrence and at any time during the continuance or existence of any of these events (each a "Default"), may, at its option and without prior notice to the undersigned (or any of them), declare any or all of the Indebtedness to be immediately due and payable (notwithstanding any provisions contained in the evidence of it to the contrary), sell or liquidate all or any portion of the Collateral, set off against the Indebtedness any amounts owing by the Bank to the undersigned (or any of them), charge interest at the default rate provided in the document evidencing the relevant Indebtedness and exercise any one or more of the rights and remedies granted to the Bank by any agreement with the undersigned (or any of them) or given to it under applicable law.

The undersigned hereby expressly acknowledge(s) and agree(s) that this Note is a demand note and matures upon issuance, and that the Indebtedness hereunder shall be payable upon demand (unless earlier payment is required in accordance with the terms and conditions of this Note), and that Bank may, at any time in its sole and absolute discretion, without notice and without reason and whether or not any Default shall have occurred and/or exist under this Note, without notice, demand that this Note and the Indebtedness hereunder be immediately paid in full. The Bank may from time to time make demand for partial payments under this Note and these demands shall not preclude the Bank from demanding at any time that this Note be immediately paid in full. The demand nature of this Note shall not be deemed to be modified, limited or otherwise affected by the fact that all or any part of the Indebtedness outstanding hereunder may be bearing interest at an Applicable Interest Rate based upon the LIBOR-based Rate or by the fact that LIBOR-based Rates shall have Interest Periods applicable thereto, and Bank may make demand for payment of all or any part of such Indebtedness at any time prior to the last day of any such Interest Period, in each case, in Bank's sole and absolute discretion. Further, the demand nature of this Note shall not be deemed to be modified, limited or otherwise affected by any reference to any Default in this Note, and to the extent that there are any references to any Default(s) hereunder, such references are for the purpose of permitting Bank to accelerate any Indebtedness not on a demand basis and to receive interest at the applicable default rate provided in the document evidencing the relevant Indebtedness.

The undersigned authorize(s) the Bank to charge any account(s) of the undersigned (or any of them) with the Bank for any and all sums due hereunder when due; provided, however, that such authorization shall not affect any of the undersigned's obligation to pay to the Bank all amounts when due, whether or not any such account balances that are maintained by the undersigned with the Bank are insufficient to pay to the Bank any amounts when due, and to the extent that are insufficient to pay to the Bank all such amounts, the undersigned shall remain liable for any deficiencies until paid in full.

If this Note is signed by two or more parties (whether by all as makers or by one or more as an accommodation party or otherwise), the obligations and undertakings under this Note shall be that of all and any two or more jointly and also of each severally. This Note shall bind the undersigned, and the undersigned's respective heirs, personal representatives, successors and assigns.

The undersigned waive(s) presentment, demand, protest, notice of dishonor, notice of demand or intent to demand, notice of acceleration or intent to accelerate, and all other notices, and agree(s) that no extension or indulgence to the undersigned (or any of them) or release, substitution or nonenforcement of any security, or release or substitution of any of the undersigned, any guarantor or any other party, whether with or without notice, shall affect the obligations of any of the undersigned. The undersigned waive(s) all defenses or right to discharge available under Section 3-605 of the Michigan Uniform Commercial Code and waive(s) all other suretyship defenses or right to discharge. The undersigned agree(s) that the Bank has the right to sell, assign, or grant participations or any interest in, any or all of the Indebtedness, and that, in connection with this right, but without limiting its ability to make other disclosures to the full extent allowable, the Bank may disclose all documents and information which the Bank now or later has relating to the undersigned or the Indebtedness. The undersigned agree(s) that the Bank may provide information relating to this Note or relating to the undersigned to the Bank's parent, affiliates, subsidiaries and service providers.

The undersigned agree(s) to reimburse Bank, or any other holder or owner of this Note, for any and all costs and expenses (including, without limit, court costs, legal expenses and reasonable attorneys' fees, whether inside or outside

counsel is used, whether or not suit is instituted, and, if suit is instituted, whether at the trial court level, appellate level, in a bankruptcy, probate or administrative proceeding or otherwise) incurred in collecting or attempting to collect this Note or the Indebtedness or incurred in any other matter or proceeding relating to this Note or the Indebtedness.

The undersigned acknowledge(s) and agree(s) that there are no contrary agreements, oral or written, establishing a term of this Note and agree(s) that the terms and conditions of this Note may not be amended, waived or modified except in a writing signed by an officer of the Bank expressly stating that the writing constitutes an amendment, waiver or modification of the terms of this Note. As used in this Note, the word "undersigned" means, individually and collectively, each maker, accommodation party, endorser and other party signing this Note in a similar capacity. If any provision of this Note is unenforceable in whole or part for any reason, the remaining provisions shall continue to be effective. **THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF MICHIGAN, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.**

For the purposes of this Note, the following terms have the following meanings:

"Advance" means a borrowing requested by the undersigned and made by Bank under this Note, including any refunding of an outstanding Advance as the same type of Advance or the conversion of any such outstanding Advance to another type of Advance, and shall include a LIBOR-based Advance and a Prime-based Advance.

"Applicable Interest Rate" means the LIBOR-based Rate plus the Applicable Margin or the Prime Referenced Rate plus the Applicable Margin, as selected by the undersigned from time to time or as otherwise determined in accordance with the terms and conditions of this Note.

"Applicable Margin" means:

(a) in respect of the LIBOR–based Rate, ten percent (10%) per annum; and

(b) in respect of the Prime Referenced Rate, ten percent (10%) per annum.

"Business Day" means any day, other than a Saturday, Sunday or any other day designated as a holiday under Federal or applicable State statute or regulation, on which Bank is open for all or substantially all of its domestic and international business (including dealings in foreign exchange) in Detroit, Michigan, and, in respect of notices and determinations relating to LIBOR-based Advances, the LIBOR-based Rate and the Daily Adjusting LIBOR Rate, also a day on which dealings in dollar deposits are also carried on in the London interbank market and on which banks are open for business in London, England.

"Daily Adjusting LIBOR Rate" means, for any day, a per annum interest rate which is equal to the quotient of the following:

(a) for any day, the per annum rate of interest determined on the basis of the rate for deposits in United States Dollars for a period equal to one (1) month appearing on Page BBAM of the Bloomberg Financial Markets Information Service as of 11:00 a.m. (Detroit, Michigan time) (or as soon thereafter as practical) on such day, or if such day is not a Business Day, on the immediately preceding Business Day. In the event that such rate does not appear on Page BBAM of the Bloomberg Financial Markets Information Service (or otherwise on such Service) on any day, the "Daily Adjusting LIBOR Rate" for such day shall be determined by reference to such other publicly available service for displaying eurodollar rates as may be reasonably selected by Bank, or, in the absence of such other service, the "Daily Adjusting LIBOR Rate" for such day shall, instead, be determined based upon the average of the rates at which Bank is offered dollar deposits at or about 11:00 a.m. (Detroit, Michigan time) (or as soon thereafter as practical), on such day, or if such day is not a Business Day, on the immediately preceding Business Day, in the interbank eurodollar market in an amount comparable to the applicable principal amount of Indebtedness hereunder and for a period equal to one (1) month;

divided by

(b) 1.00 minus the maximum rate (expressed as a decimal) on such day at which Bank is required to maintain reserves on "Euro-currency Liabilities" as defined in and pursuant to Regulation D of the Board of Governors of the Federal Reserve System or, if such regulation or definition is modified, and as long as Bank is required to maintain reserves against a category of liabilities which includes eurodollar deposits or includes a category of assets which includes eurodollar loans, the rate at which such reserves are required to be maintained on such category.

"Interest Period" means, with respect to a LIBOR-based Advance, a period of one (1) month, or as otherwise determined pursuant to and in accordance with the terms of this Note, commencing on the day a LIBOR-based Advance is made or the day an Advance is converted to a LIBOR-based Advance or the day an outstanding LIBOR-based Advance is refunded or continued as another LIBOR-based Advance for an applicable Interest Period, provided that any Interest Period which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day, except that if the next succeeding Business Day falls in another calendar month, the Interest Period shall end on the next preceding Business Day, and when an Interest Period begins on a day which has no numerically corresponding day in the calendar month during which such Interest Period is to end, it shall end on the last Business Day of such calendar month. In the event that any LIBOR-based Advance is at any time refunded or continued as another LIBOR-based Advance for an additional Interest Period, such Interest Period shall commence on the last day of the preceding Interest Period then ending.

"LIBOR-based Advance" means an Advance which bears interest at the LIBOR-based Rate plus the Applicable Margin.

"LIBOR-based Rate" means a per annum interest rate which is equal to the quotient of the following:

(a) the LIBOR Rate;

divided by

(b) 1.00 minus the maximum rate (expressed as a decimal) during such Interest Period at which Bank is required to maintain reserves on "Euro-currency Liabilities" as defined in and pursuant to Regulation D of the Board of Governors of the Federal Reserve System or, if such regulation or definition is modified, and as long as Bank is required to maintain reserves against a category of liabilities which includes eurodollar deposits or includes a category of assets which includes eurodollar loans, the rate at which such reserves are required to be maintained on such category;

provided, however, in no event and at no time shall the LIBOR-based Rate be less than two and one-half percent (2.50%) per annum.

"LIBOR Lending Office" means Bank's office located in the Cayman Islands, British West Indies, or such other branch of Bank, domestic or foreign, as it may hereafter designate as its LIBOR Lending Office by notice to the undersigned.

"LIBOR Rate" means, with respect to any Indebtedness outstanding under this Note bearing interest on the basis of the LIBOR-based Rate, the per annum rate of interest determined on the basis of the rate for deposits in United States Dollars for a period equal to the relevant Interest Period for such Indebtedness, commencing on the first day of such Interest Period, appearing on Page BBAM of the Bloomberg Financial Markets Information Service as of 11:00 a.m. (Detroit, Michigan time) (or as soon thereafter as practical), two (2) Business Days prior to the first day of such Interest Period. In the event that such rate does not appear on Page BBAM of the Bloomberg Financial Markets Information Service (or otherwise on such Service), the "LIBOR Rate" shall be determined by reference to such other publicly available service for displaying eurodollar rates as may be reasonably selected by Bank, or, in the absence of such other service, the "LIBOR Rate" shall, instead, be determined based upon the average of the rates at which Bank is offered dollar deposits at or about 11:00 a.m. (Detroit, Michigan time) (or as soon thereafter as practical), two (2) Business Days prior to the first day of such Interest Period in the interbank eurodollar market in an amount comparable to the principal amount of the respective LIBOR-based Advance which is to bear interest on the basis of such LIBOR-based Rate and for a period equal to the relevant Interest Period.

"Prime Rate" means the per annum interest rate established by Bank as its prime rate for its borrowers, as such rate may vary from time to time, which rate is not necessarily the lowest rate on loans made by Bank at any such time.

"Prime-based Advance" means an Advance which bears interest at the Prime Referenced Rate plus the Applicable Margin.

"Prime Referenced Rate" means, for any day, a per annum interest rate which is equal to the Prime Rate in effect on such day, but in no event and at no time shall the Prime Referenced Rate be less than the sum of the Daily Adjusting LIBOR Rate for such day plus two and one-half percent (2.50%) per annum. If, at any time, Bank determines that it is unable to determine or ascertain the Daily Adjusting LIBOR Rate for any day, the Prime Referenced Rate for each such day shall be the Prime Rate in effect at such time, but not less than two and one-half percent (2.50%) per annum.

"Request for Advance" means a Request for Advance issued by the undersigned under this Note in the form annexed to this Note as Exhibit "A".

No delay or failure of Bank in exercising any right, power or privilege hereunder shall affect such right, power or privilege, nor shall any single or partial exercise thereof preclude any further exercise thereof, or the exercise of any other power, right or privilege. The rights of Bank under this Note are cumulative and not exclusive of any right or remedies which Bank would otherwise have, whether by other instruments or by law.

THE MAXIMUM INTEREST RATE SHALL NOT EXCEED 25% PER ANNUM OR THE HIGHEST APPLICABLE USURY CEILING, WHICHEVER IS LESS.

THE UNDERSIGNED AND BANK, BY ACCEPTANCE OF THIS NOTE, ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS NOTE OR THE INDEBTEDNESS.

This Note is issued under (a) that certain Amended and Restated Credit Agreement (as amended, restated, supplemented, or otherwise modified from time to time, including all schedules thereto, "Credit Agreement") dated as of August 1, 2008, among Comerica Bank, as Agent, the financial institutions party to the Credit Agreement and the undersigned and (b) the Forbearance Agreement (as amended, restated, supplemented, or otherwise modified from time to time, including all schedules thereto, "Forbearance Agreement") dated July 24, 2009 among Comerica Bank, as Agent, Harris, N.A., Moneris Solutions, Inc., Wells Fargo Foothill, LLC, Dymas Funding Company LLC, Ableco Finance LLC, A3 Funding LP, Garrison Credit Investments I LLC, Marcelo Paladini, Cynergy Prosperity Plus, LLC, Cynergy Data Holdings, Inc. and undersigned. The undersigned agrees that (i) this Note constitutes a Loan Document (as defined in the Credit Agreement), (ii) all obligations and liabilities under this Note constitute Indebtedness (as defined in the Credit Agreement) and (iii) this Note constitutes a New Revolving Note (as defined in the Forbearance Agreement).

[SIGNATURE TO FOLLOW ON SUCCEEDING PAGE]

CYNERGY DATA, LLC

By:_____
SIGNATURE OF

Its:_____
TITLE

45 W. 36TH Street, 6th Floor.	New York	NY	10018
STREET ADDRESS	CITY	STATE	ZIP

For Bank Use Only				
LOAN OFFICER INITIALS	LOAN GROUP NAME	OBLIGOR NAME Cynergy Data, LLC		
LOAN OFFICER ID. NO.	LOAN GROUP NO.	OBLIGOR NO.	NOTE NO.	AMOUNT $4,683,192.60

EXHIBIT "A"

REQUEST FOR ADVANCE

The undersigned hereby request(s) WELLS FARGO FOOTHILL, LLC ("Bank") to make a _____* Advance to the undersigned on _____, _____, in the amount of _____ _____ Dollars ($_____) under the Master Revolving Note dated as of July 24, 2009, issued by the undersigned to said Bank in the face amount of FOUR MILLION SIX HUNDRED EIGHTY THREE THOUSAND ONE HUNDRED NINETY TWO AND 50/100 DOLLARS ($4,683,192.50) (the "Note"). The Interest Period for the requested Advance, if applicable, shall be one (1) month. In the event that any part of the Advance requested hereby constitutes the refunding or conversion of an outstanding Advance, the amount to be refunded or converted is ____ _____ Dollars ($_____ _____), and the last day of the Interest Period for the amounts being converted or refunded hereunder, if applicable, is _ _____, _____.

The undersigned represent(s), warrant(s) and certify(ies) that no Default, or any condition or event which, with the giving of notice or the running of time, or both, would constitute a Default, has occurred and is continuing under the Note, and none will exist upon the making of the Advance requested hereunder. The undersigned further certify(ies) that upon advancing the sum requested hereunder, the aggregate principal amount outstanding under the Note will not exceed the face amount thereof. If the amount advanced to the undersigned under the Note shall at any time exceed the face amount thereof, the undersigned will immediately pay such excess amount, without any necessity of notice or demand.

The undersigned hereby authorize(s) Bank to disburse the proceeds of the Advance being requested by this Request for Advance by crediting the account of the undersigned with Bank separately designated by the undersigned or as the undersigned may otherwise direct, unless this Request for Advance is being submitted for a conversion or refunding of all or any part of any outstanding Advance(s), in which case, such proceeds shall be deemed to be utilized, to the extent necessary, to refund or convert that portion stated above of the existing outstandings under such Advance(s).

Capitalized terms used but not otherwise defined herein shall have the respective meanings given to them in the Note.

Dated this _____ day of _____, _____.

CYNERGY DATA, LLC

By:_____

Its:_____

* Insert, as applicable, "LIBOR-based" or "Prime Referenced Rate".

EXHIBIT D

Cynergy Data
Budget

In $000's	1 7/24/09	1 7/31/09	2 8/7/09	3 8/14/09	4 8/21/09	5 8/28/09	6 9/4/09	7 9/11/09	8 9/18/09	9 9/25/09	10 10/2/09	11 10/9/09	12 10/16/09	Total
Beginning Cash	830	412	-	631	-	-	-	-	-	-	-	-	151	830
Receipts														
Discount Revenue Net of Interchange Fees	-	-	13,858	-	443	-	-	14,431	658	-	-	13,123	689	43,202
Other Revenue	27	717	(491)	(339)	420	641	(511)	(339)	420	641	77	(560)	(462)	243
Total Receipts	27	717	13,367	(339)	863	641	(511)	14,091	1,078	641	77	12,563	228	43,445
														-
Operating Expenses														
Processing Fees	-	(545)	(2,084)	-	-	-	-	(2,474)	-	(586)	-	(1,867)	-	(7,556)
Assessments	-	-	(1,906)	-	-	-	-	(1,666)	-	-	-	(1,339)	-	(4,911)
Commissions	-	(6,866)	(60)	(1,049)	(7,007)	-	-	(1,152)	-	(7,296)	-	-	(994)	(24,424)
Payroll	(384)	(100)	(353)	-	(368)	-	(408)	-	(358)	-	(408)	-	(358)	(2,736)
Operating Expenses	(8)	(325)	(85)	(283)	(172)	(39)	-	(135)	(156)	(36)	(21)	(34)	(43)	(1,337)
Professional Fees	(50)	(1,051)	(420)	(335)	(345)	(270)	-	(330)	(749)	(215)	(210)	(115)	(855)	(4,945)
Operating Expenses Total	(442)	(8,887)	(4,908)	(1,667)	(7,892)	(309)	(408)	(5,757)	(1,263)	(8,133)	(638)	(3,354)	(2,250)	(45,910)
Operating Cash Flow	(416)	(8,170)	8,459	(2,006)	(7,029)	331	(918)	8,334	(185)	(7,492)	(561)	9,209	(2,022)	(2,465)
Non Operating Cash Items														
CAPEX	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Debt & Interest	-	-	(70)	-	-	-	-	(84)	-	-	-	(79)	-	(232)
Working Capital	(3)	-	-	-	-	-	-	-	-	-	-	-	-	(3)
Total Non Operating Cash Items	(3)	-	(70)	-	-	-	-	(84)	-	-	-	(79)	-	(235)
Cash Gain/(Loss)	(418)	(8,170)	8,389	(2,006)	(7,029)	331	(918)	8,250	(185)	(7,492)	(561)	9,130	(2,022)	(2,700)
Cash Balance Before Revolver	412	(7,758)	8,389	(1,375)	(7,029)	331	(918)	8,250	(185)	(7,492)	(561)	9,130	(1,870)	(1,870)
Revolver Draw	-	7,758	-	1,375	7,029	-	918	-	185	7,492	561	-	1,870	27,189
Revolver Paydown	-	-	(7,758)	-	-	(331)	-	(8,250)	-	-	-	(8,979)	-	(25,318)
Available Cash	412	-	631	-	-	-	-	-	-	-	-	151	-	()
Revolver Balance	-	7,758	-	1,375	8,404	8,073	8,991	741	926	8,418	8,979	-	1,870	1,870

DRAFT
For Discussion Purposes Only
Privileged and Confidential

EXHIBIT E

Exhibit E

This is given by Cynergy Data, LLC; a New York Corporation ("Company"), pursuant to subsection ____ of the Forbearance Agreement dated ____.

Definition of Rolling Reserve ("RR")

Rolling reserves are implemented on accounts that pose a high risk. A RR is implemented on an account at time of approval by Application Processing or by Risk Management after negative processing history and a risk review. When an account has been placed on a rolling reserve, a percentage of the merchant's daily processing is diverted and becomes part of the merchant adjustment.

After processing history has been established for at a minimum of a year, the account may be reviewed to remove the reserve. To remove the RR from the processing account it would be reviewed by a Risk Manager or Supervisor in which a written request is needed from the authorized signor of the processing account. Releasing funds from RR can take place after 180-270 from the date that the merchant account was closed or the date of the last transaction processed on the merchant account.

At no time will the balance of a merchant or the rolling reserve held by Harris be negative.

The daily reporting of the prior days rolling reserve activity will be as follows:

Exhibit E Daily Rolling Reserve Roll-forward form:

- Beginning Balance by Merchant
- Add: Additions to Reserve
- Less: Reductions in Reserve
- Ending Balance by Merchant
- Less: Unfunded Rolling Reserve Threshold
- Equals Funding Requirement
- Less: Previous Funding
- New Funding Requirement

1. Additions to rolling reserves are a subset of the OLMDE (TSYS report) total merchant adjustment from the Harris daily recap.
2. Reductions to the rolling reserve can be processed via numerous processes captured by the VIMAS system. Primarily via outgoing checks released to merchants, offsets of debt due to Chargebacks and/or fees owed by merchant, automatic ACH releases (reflected in Merchant adjustment section of Daily recap), and/or manual ACH release to merchants via alternate Cynergy Data Operations DDA.
3. Unfunded Rolling Reserve Threshold is $21,341,801.
4. Funding requirements in excess of the Unfunded Rolling Reserve Threshold will be settled by Cynergy and Harris via the daily settlement invoice process. If funding requirement is negative there is no funding requirement.

5. Previous Funding balances released by Harris/Moneris can never exceed the cumulative rolling reserve balance held by Harris/Moneris on that day.

					EXHIBIT E
Daily Rolling Reserve Roll forward	Date	22-Jul-09			
Beginning Balance by Merchant		$ 21,341,801.04			
Add: Additions to Reserve		114,553.30			
Less: Reductions to Reserve		(25,316.65)			
Ending Balance by Merchant		$ 21,431,037.69			
Less : Unfunded Rolling Reserve Threshold		21,341,801.04			
Equals Funding Requirement		$ 89,236.64			
Less: Previous Funding		-			
New Funding Requirement		$ 89,236.64			

EXHIBIT F

Exhibit F

Dymas (Milbank)	$160,000
Harris (Torys)	$61,000
Garrison (Proskauer)	$50,000
Wells (Paul Hastings)	$189,500
Comerica as Agent (Bodman)	$122,000
TOTAL	$582,500

EXHIBIT 3

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
CYNGERY DATA, LLC, *et al.*,	:	Case No. 09-13038 (KG)
	:	
Debtors.	:	Jointly Administered

DECLARATION OF GREGORY C. COHEN IN SUPPORT OF THE OBJECTION BY MONERIS SOLUTIONS, INC. TO THE PROPOSED ASSUMPTION AND ASSIGNMENT OF ASSUMED CONTRACTS AND PROPOSED CURE AMOUNTS

I, Gregory C. Cohen, hereby declare:

1. I am the President of Moneris Solutions, Inc., a wholly owned subsidiary of Moneris Solutions Corporation, a Canadian corporation. I have held that position for the past three years. In this capacity, I lead the development and execution of the company's strategic initiatives and operations in the United States. Specifically, I focus on business development strategies, marketing and distribution channel enhancement, and the technology, product, and service components that support these initiatives both in the U.S. and at the corporate headquarters in Toronto. I have personal knowledge of the facts stated in this Declaration, except for those facts stated on information and belief and, as to those facts, I am informed and believe them to be true. I submit this Declaration on behalf Moneris Solutions, Inc., in its capacity and as agent for Harris N.A. ("Moneris") in opposition to the Notice of Debtors' Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Forth the Cure Amounts (the "Cure Notice").

2. Moneris Solutions Corporation is a joint investment between Royal Bank of Canada (RBC) and Bank of Montreal (BMO) (including Harris Bank) that was launched in

December 2000. Moneris and its parent process more than 2.5 billion credit and debit card transactions a year, for over 350,000 merchant locations across North America.

3. Both Visa and MasterCard require that only member financial institutions access their payment networks. Moneris acts as the Bank Identification Number ("BIN") sponsor for Cynergy Data, LLC, one of the debtors-in-possession in the above captioned case (the "Debtor", and collectively with the other debtors-in-possession in this case, the "Debtors"). As the BIN sponsor, Moneris enables the Debtor to sell credit and debit card processing services to merchants and to submit those transactions into the payment networks (Visa/MasterCard) for authorization, clearing and settlement. On November 1, 2008, Moneris assumed the Visa BIN and the MasterCard interbank clearing account number ("ICA") associated with the Debtor's merchants' transactions and the merchant agreements from the Debtor's prior BIN sponsor, Bank of America, and began providing services to the Debtor under the BIN Sponsor Agreement dated as of November 1, 2008 between Moneris and the Debtor, as amended (the "BIN Agreement").

4. The Debtors are obligated to Moneris under: the BIN Agreement; approximately 80,000 merchant agreements entered into among Harris, the Debtor (or agents of Debtor) and merchants for the processing of credit and debit card transactions (the "Merchant Agreements"); a certain Forbearance Agreement, dated as of July 24, 2009 regarding Financing Arrangements among Comerica Bank as Co-Lead Arranger and Agent for Itself, the Revolving Credit Banks, the Term Loan A Banks and the Term Loan B Banks, Wells Fargo Foothill LLC, Dymas Funding Company LLC, individually and as agent for the Term Loan B Banks, Abelco Finance LLC, A3 Funding LP, Garrison Credit Investments I LLC, Marcelo Paladini, the Debtors, Moneris, and Harris N.A. (the "Forbearance Agreement", each capitalized term undefined in this clause having the meaning ascribed in the Forbearance Agreement); an Intercreditor Agreement

dated as of April 28, 2009 among the Debtors, Comerica Bank, Dymas Funding Company, LLC and Harris N.A. (the "Intercreditor Agreement"); and various other documents executed between the Debtors and Harris. A true and correct copy of the BIN Agreement is attached hereto as Exhibit A [1] and of the Form of Merchant Agreement as Exhibit B.

5. Under the Intercreditor Agreement, Comerica Bank, as agent for certain prepetition lenders and Dymas Funding Company LLC, as agent for the Term B and subordinated lenders (collectively, the "Agents") acknowledged and consented to the existence of the lien of Moneris in the Merchant Services Collateral. The Merchant Services Collateral is defined in the Intercreditor Agreement to include all of Cynergy Data LLC's rights, title and interest in and to the Merchant Agreements, the Reserve Account, the Merchant Suspense Account, the ISO Operating Account, the ISO Clearing Account and the ISO Revenue (each capitalized term as further defined in the Intercreditor Agreement). The Agents' liens in the Merchant Services Collateral are subordinate and junior to Moneris' liens in the Merchant Services Collateral (other than liens on the Debtor's rights in the Merchant Agreement) for specified obligations of the Debtor owing to Moneris under the BIN Agreement, including losses incurred by Moneris for any reason attributable to a merchant.

QM Reserves

6. As a merchant signs up for credit and debit card processing services, it is underwritten by the Debtor for credit risk purposes and may be required under the applicable Merchant Agreement and the BIN Agreement to establish a reserve account at Moneris to protect against chargebacks, fines and other losses that can occur as a result of the merchant's transaction activity. The BIN Agreement provides that the Debtor is obligated to Moneris to

[1] Amendment to the BIN Agreement and Exhibits have not been included due to confidentiality concerns and/or lack of relevance.

maintain all reserves of merchant funds at Moneris, as security against a loss attributable to a merchant. The requirement to maintain all merchant reserves at Moneris is a Visa and MasterCard requirement to ensure that merchant funds are held by an acquiring member of each payment network, in this case, Harris N.A.

7. The Debtors utilize Total System Services, Inc. ("TSYS") which provides back-end processing services to Moneris and by agreement, to the Debtors. Upon information and belief, the Debtors also utilized TSYS during their relationship with Bank of America. The Debtors have direct contact with TSYS and TSYS' systems. As the Debtor signs up a new merchant, the Debtor inputs the merchant's banking information (including bank account numbers) into TSYS's systems to facilitate the merchant receiving the settlement proceeds of the debit and credit card transactions it processes. From the onset of its relationship with Moneris, the Debtors indicated they were building their own back-end system, "Transworks," but to date they have been unable to finalize the system and continue to use TSYS. Moneris does not review the staging and set up or demographic information/reports including bank account information for each individual merchant that the Debtor or other similar BIN customers input into the TSYS system. Upon information and belief, Moneris' processes with respect to TSYS and the Debtor was consistent with those of Bank of America and the Debtor.

8. The process of creating reserves from merchant settlement proceeds is initiated by the Debtors. The Debtors determine the amount of reserve necessary per merchant based on its underwriting criteria and fund the reserve from merchant settlement proceeds via the TSYS system by changing the demand deposit account ("DDA") from the merchant's DDA to the Harris' DDA specifically created for merchant reserves ("Harris Reserve Account") pursuant to the BIN Agreement. As a result, settlement proceeds for a merchant will be redirected to the

Harris Reserve Account to be held by Harris on behalf of the merchant to fund losses that may be incurred by that merchant. The Debtors have called these reserves Questionable Merchant Reserves or "QM Reserves".

Merchant Trust Funds

9. Pursuant to the Merchant Agreements, upon termination of such an agreement, the merchant can request the balance of the reserve account after 270 days have elapsed from termination or the last transmission of sales drafts in order for any chargebacks, fines and other losses to be assessed with respect to that merchant's transaction activity. If a merchant does not request the balance of the reserve account, Moneris must turn over the funds to the applicable state government unclaimed funds accounts in accordance with escheatment laws. At no time does Moneris return unclaimed merchant reserve funds to an ISO as the funds are held in trust for merchants.

Transfer of All Known Reserves.

10. At the time of the execution of the BIN Agreement, the Debtor acknowledged that it would be responsible for providing all information necessary to transfer the BINs for the Existing Portfolio. BIN Agreement at Section 2.7A. The Debtor agreed that it would arrange for and effectuate the assignment and transfer of the merchant agreements, merchant accounts and merchant reserve funds to Harris from its prior BIN sponsor, Bank of America. BIN Agreement at Section 2.7E. The Debtor represented and warranted that its merchant processing business with respect to the Existing Portfolio has in all material respects been operated in compliance with all Visa and MasterCard Rules. BIN Agreement at 2.7G. The Visa and MasterCard rules require merchant reserves to be held by the acquirer, the member bank. See redacted versions of Visa USA Inc. Operating Regulations - General Rule 2.5.B.4 and MasterCard Rule 7.3.11,

attached hereto as Exhibit C. In addition, representatives of Moneris communicated to the Debtors that all merchant reserves must be held in accounts at Moneris.

11. Prior to and at the time of closing of the BIN Agreement, Moneris repeatedly demanded that Bank of America and the Debtors transfer all merchant reserve funds to Moneris. Certain merchant reserve accounts were identified by the Debtors and Bank of America as the QM Reserves. On November 3, 2008, Debtor forwarded documentation detailing the merchant reserve accounts at Bank of America as of October 29, 2008 at $4,456,899.63. On the same date, Bank of America stated merchant reserves of $3,904,182.74. On November 5, 2008, Bank of America wired to Harris N.A. $3,904,182.74 for the merchant reserve accounts. Additional transfers followed from the Debtor through our settlement process bringing the merchant reserves to $5,838,522.03 at the end of November and $7,088,754.73 at the end of December. At no time during this process did Bank of America or the Debtors notify Moneris of the existence of any other merchant funds held on reserve or other merchant reserve accounts.

Reconciling the Primary Account

12. The QM Reserve accounts which were transferred contained some merchant-level detail regarding which merchants had reserves held in those accounts, except one account, the "Primary Account," had no detail identifying which merchants' reserves it contained. To no avail, Moneris repeatedly asked the Debtors for details regarding the merchants whose funds were held in the Primary Account. As transactions were processed, the Debtors would instruct Moneris to "map" certain losses against the Primary Account, even though Moneris could not determine whether the merchants responsible for the losses had reserves held in the Primary Account. If those merchants' reserves were not in the Primary Account, other Debtor merchants' reserves were essentially funding those losses. Therefore, in approximately April 2009, after

failing to receive data from the Debtors. Moneris requested historical TSYS reports to attempt to reconstruct which merchants had reserves in the Primary Account. This reconstruction took Moneris approximately three months to complete.

13. Following the reconstruction, Moneris determined that the Harris Reserve Account was underfunded by $6,968,675.10 -- meaning that almost $7 million of merchant funds that were to be held by Harris for the benefit of merchants and to cover potential losses were missing. Moneris approached the Debtors about the issue in June 2009, and the Debtors agreed with the calculations.

14. Accordingly, from June's month-end reconciliation Moneris recouped and set off the $7 million of missing merchant reserves from the Debtors' revenue. On the July 6, 2009 invoice for the month of June reconciliation, Moneris detailed which merchant reserves were to be credited with the missing $7 million, recouped that amount and placed it in the Harris Reserve Account. Based upon Moneris' efforts, the Primary Account increased from approximately $200,000 at the time it was transferred to Moneris from Bank of America to over $7 million. At no time during this process did Moneris uncover the existence of additional unfunded reserves nor did the Debtors divulge such information.

15. Because the number and amount of the merchants' chargebacks, losses and fines assessed by Visa against the Debtor's merchants had been increasing and became material, on May 12-13, 2009, Visa conducted an audit of the Debtors. Upon information and belief, no unfunded reserves being held by the Debtors were uncovered during that audit and certainly none were reported to Moneris.

Discovering the Existence of Unfunded Rolling Reserves

16. On June 19, 2009, I was informed by Steven Davis of Comerica (Debtors' prepetition senior lender, agent to the lenders, and currently, one of the debtor-in-possession lenders) that the Debtors were in default of their loan covenants and they had appointed Charles Moore as chief restructuring officer . He further explained to me the gravity of the Debtors' financial situation and advised me that the Debtors would not survive in their current state. On June 22, 2009, I rearranged my previously scheduled travel to New York to visit with the Debtors and Charles Moore and was told to meet at the offices of a competitor to the Debtors, EVO Merchant Services. At that time I learned of the Debtors' financial situation, strategic options and that the Debtors' businesses were for sale.

17. On July 2, 2009, I was emailed certain channel production data from Robert F. Kolb of Conway MacKenzie so Moneris could begin our due diligence to evaluate the potential acquisition of the Debtor. On July 6, 2009, I visited the Debtor's offices in Long Island City with Jeff Guthrie, Moneris' Chief Operating Officer, and Samir Zabaneh, Moneris' Chief Financial Officer, to conduct an on-site visit of the Debtor's business to further understand the Debtor's business practices. On July 7, 2009, Moneris gained access to the Debtors virtual data room to conduct deeper-level due diligence. On the morning of July 15, 2009, I received a call from a representative of EVO Merchant Services inquiring as to the process Moneris uses to manage rolling reserves and whether Moneris was aware of the $21 million of unfunded rolling reserve merchant funds. On the afternoon of July 15, 2009, I was informed by Brian Prentice, Senior Vice President of North American Credit and Risk Management for Moneris, that the internal balance sheet the Debtor's had posted in the data room showed total merchant reserves of over $30 million, far in excess of the $14 million in the Harris Reserve Account. The

spreadsheet, "Rolling Reserves Detail," posted in the data room on July 15, 2009, revealed the existence of $21.2 million in rolling reserves that should have been held in the Harris Reserve Account but for which Moneris had not been made aware existed. Prior to that and during the initial due diligence and subsequent audits, Rolling Reserves were never referenced in any balance sheets provided to Moneris.

18. The Debtors input merchant account information into TSYS for approximately 80,000 merchants, which staging and set-up or demographic information/reports Moneris does not review. Moneris posits that during the term of the agreements with Bank of America and Moneris, the Debtors may have entered multiple bank account numbers for certain merchants, one being the Debtor's demand deposit account at Comerica to direct a portion of merchants' settlement proceeds to itself. Upon information and belief, the Debtors routed merchant reserve funds to their own accounts and utilized these merchant trust funds for their own working capital. This is a flagrant violation of the Visa and MasterCard Rules, and an outright breach of each of the applicable Merchant Agreements and of the BIN Agreement.

Immediate Exercise of Rights - Default Letter and Forbearance Agreement

19. On July 16, 2009, following internal discussions on the shocking discovery of the unfunded Rolling Reserves, Moneris sent a default letter to the Debtors, a true and correct copy of which is attached as Exhibit D hereto. Immediately thereafter, the Debtors and their prepetition secured lenders, including the Term B Lenders, threatened to put the Debtors into chapter 7 liquidation unless Moneris entered into a forbearance arrangement to stay, subject to certain conditions, its rights of recoupment and setoff with respect to the $21 million which rightfully belonged in the Harris Reserve Account for the benefit of merchants and to cover potential losses resulting from merchants' transaction activity. After a week of intense

negotiations, the parties entered into the Forbearance Agreement on July 24, 2009. During the negotiation period, Moneris exercised its rights of recoupment and setoff and collected $2,331,194.30 with respect to unfunded merchant Rolling Reserves from the Debtors. As part of the forbearance arrangement, the Debtors and the prepetition secured lenders, insisted that Moneris return these funds to the Debtors, which it did as part of the global resolution. In the Forbearance Agreement, the Debtors acknowledged and agreed that they are obligated to Moneris for the unfunded merchant rolling reserve in the amount of $21,341,801 which was to be held in deposit in the Harris Reserve Account pursuant to the BIN Agreement and was not so held. See Forbearance Agreement, p.2. The Debtors also provided a general release to Moneris and the other prepetition lenders, including the Term B Lenders, from all liabilities based upon facts and circumstances arising prior to and through the date of the Forbearance Agreement.

20. The Forbearance Agreement also provides an agreement and acknowledgement by the Borrower, Agent and Banks , as such terms are defined in the Forbearance Agreement and which includes the Term B Lenders, "that if the unfunded rolling merchant reserve not on deposit at Harris exceeds $21,341,801, any amounts in excess shall be held in accounts at Harris for the benefit of Harris." Forbearance Agreement, p12, ¶27. The premise for Moneris to enter into the Forbearance Agreement was the understanding by the Debtors and each of the lenders, including the Term B Lenders, that the Rolling Reserve was supposed to be at Moneris, Moneris has the right to recoup the amount of the missing funds to hold them in the Harris Reserve Account, Moneris would forbear from exercising its rights (subject to the terms of the Forbearance Agreement), any shortfalls in excess of the amount as of July 17, 2009 - the date the parties started to negotiate the Forbearance Agreement - would be transferred to Moneris, and the Rolling Reserves would be paid to Moneris to hold in the Harris Reserve Account from the

proceeds of a sale of the Debtors . That was always the structure which acted as consideration for Moneris to forbear from recouping the merchant reserve funds. For the Term B Lenders to now argue that the Rolling Reserve does not belong at Moneris for the benefit of the merchants, after it negotiated to that effect and agreed that any amounts in excess of the Rolling Reserve belong at Harris, is a classic "bait and switch" by a party who is "out of the money".

21. In order for the BIN Agreement and the Merchant Agreements to be assumed by the Debtors and assigned to a purchaser of the Debtors' assets, all defaults must be cured. The unfunded merchant rolling reserves which were to be held on deposit in the Harris Reserve Account pursuant to the BIN Agreement but which the Debtors siphoned into their own accounts and used for their own purposes, created a material breach in the BIN Agreement and the applicable Merchant Agreements. These defaults must be cured by transferring the merchants' reserve funds to Moneris to be held in the Harris Reserve Account for the merchants before any such agreements are assumed and assigned.

22. In addition, Moneris has incurred attorneys' fees and costs related to the enforcement of its rights under the BIN Agreement. Section 9.11 of the BIN Agreement provides that the Debtor, as the defaulting party is liable for paying Moneris' expenses incurred in enforcing the provisions of the BIN Agreement, including but not limited to reasonable attorneys' fees and costs. Section 2.3D of the BIN Agreement also provides that the Debtor shall *first* pay all amounts owed to Moneris under the BIN Agreement in connection with any sale or assignment of an interest in the Merchant Portfolio (emphasis added). Moneris has been invoiced $77,977.84 by Torys LLP which amount remains unpaid and I am told that another $121,947.14 of unbilled services and expenses has been incurred through September 30, 2009. Moneris also has legal costs for local counsel in Delaware, in-house counsel and outside legal

related vendors. Due to the discovery requests by the Term B Lenders, Moneris legal costs continue to rise.

23. Moneris always insisted that, consistent with our internal policies, Visa and MasterCard Rules, the BIN Agreement, and the Merchant Agreements, all merchant reserve accounts are to be held in the Harris Reserve Account. After exercising set off/recoupment in early July, 2009, and until the discovery of the unfunded merchant Rolling Reserves in mid-July 2009, Moneris in good faith believed that it maintained all merchant reserve funds. To hold that the Debtors could take merchant funds and defraud the merchants and the BIN Sponsor with no liability would wreak havoc in this case and invite fraud into the credit card processing industry.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of October 2009, at Schaumburg, Illinois.

/s/ Gregory C. Cohen

Gregory C. Cohen

Exhibit A

BIN Sponsor Agreement

This BIN Sponsor Agreement ("Agreement") is made as of NOVEMBER 1, 2008 ("Effective Date") by and between Harris N.A., a national banking association with offices at 150 N. Martingale Rd., Suite 700, Schaumburg, IL 60173 ("Bank") and Cynergy Data, LLC,a limited liability corporation with offices at 45 W. 36th St., 6th Floor, New York, NY 10018 ("ISO"). ISO is engaged in the business of providing payment transaction processing to merchants. Bank is a member of Visa U.S.A. ("Visa") and MasterCard International ("MasterCard") and desires to sponsor ISO into such associations. Therefore, the parties agree as follows:

I. Definitions

The following terms when used in this Agreement will have the meanings set forth in this Section:

"**Affiliate**" means: with regard to Bank, any company Controlled by or under common Control of the Bank; and with regard to ISO, any company of which the majority member of ISO is also a shareholder, member or owner.

"**Assessments**" means the amounts paid to the Associations attributable to the merchant processing activity, as the term is defined by the Rules.

"**Association(s)**" means Visa, MasterCard, and any successor organization.

"**Association Security Programs**" means those data security requirements imposed by the Rules on independent sales organizations/member service providers, merchant servicers or third party processors (if applicable), including but not limited to the Payment Card Industry (PCI) data security standards and PIN security requirements, Visa Cardholder Information Security Program (CISP), and MasterCard Site Data Protection (SDP).

"**Bank Fees**" means the fees set forth on the attached Exhibit A, Bank Fees.

"**BIN**" means the segregated Association Bank Identification Number and Interbank Card Association (ICA) assigned to ISO currently or additional BINs assigned in the future, which Bank will use exclusively for ISO's Merchants.

"**BofA**" shall mean Bank of America, Inc.

"**BofA Assignment and Assumption Agreement**" shall have the meaning given to it in Section 2.7E. of this Agreement.

"**Card**" means a valid payment or service account, whether or not evidenced by a plastic card, issued by a member of Visa, MasterCard or other card association, Third Party Provider or network approved by ISO.

"**Chargeback**" means a Sales Draft that has been presented to either the cardholder or the issuer of the Card and for which payment through the BIN has been refused or reversed in accordance with the Rules.

"Confidential Information" means information owned or licensed by each party including, but not limited to, any information pertaining to the disclosing party's business operations, know how, manner and means of doing business, pricing, computer and software systems and programming, documentation, and requirements related thereto, customer and prospect lists, status reports, contracts, marketing strategies, business plans, notes, financial projections, financial statements, sales reports, technical partners, information regarding third parties doing business with either party, requirements and related information and any communications whether in oral, written, graphic, magnetic or electronic form, that is known or reasonably should be known by the other party to be confidential or proprietary.

"Control" means, as applied to a party at the time of determination, the possession at such time directly or indirectly of the power to direct or cause the direction of, the management and policies of such parties, whether through the ownership of more than 50% of the voting securities of such party, or by contract, or otherwise.

"Conversion" shall mean the conversion of Existing Merchants in the Existing Portfolio to Bank in accordance with the terms of this Agreement, along with the transfer of the BINs for such Existing Portfolio.

"Credit Draft" means the electronic format used in refunding Sales Drafts initially charged to a Card by a Merchant.

"Credit Guidelines" means the standards set forth on Exhibit C, as may be revised from time to time.

"Designee Assignment and Assumption Agreement" shall have the meaning given to it in Section 2.3.D. of this Agreement.

"Effective Date" means the date as outlined in the first paragraph of this Agreement.

"Event of Default" means the events listed in Section 7.3.

"Existing Agent Banks" means the agent banks set forth on Exhibit E to this Agreement.

"Existing Merchants" means those Merchants in the Existing Portfolio whose contract for transaction processing services with Bank of America, N.A. has been assigned to Bank.

"Existing Portfolio" means that collective of Merchants that were (i) receiving Transaction processing services from BofA., and (ii) whose contract has been assigned to Bank pursuant to the terms of the BofA Assignment and Assumption Agreement.

"Existing Sales Groups" means the sales groups set forth on Exhibit F to this Agreement.

"Initial Term" has the meaning set forth in Section 7.1.

"Intellectual Property Rights" means any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing (a) rights associated with

works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secret rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) (including logos, "rental" rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

"Interchange Fees" means the amounts paid as such, as defined by the Rules.

"ISO Agents" means independent sales organizations and agent banks which may be engaged by ISO to market the Merchant Program. ISO Agents shall include the Existing Agent Banks and the Existing Sales Groups.

"ISO Clearing Account" means the deposit account at the Bank designated by ISO and used to aggregate Merchant Funds, and for other purposes specified in this Agreement.

"ISO Operating Account" means the deposit account at Bank into which ISO Revenue will be deposited each day, and for other purposes specified in this Agreement. Any earnings on the funds deposited into this account will accrue to the benefit of ISO.

"ISO Revenue" means Merchant Fees less Interchange Fees and Assessments.

"Loss" means any loss incurred by Bank for any reason attributable to a Merchant or ISO, including but not limited to uncollected Chargebacks, Interchange Fees, and Association fines and charges.

"MasterCard" means MasterCard International Incorporated.

"Merchant" means a person, a business, or other entity that has entered into a Merchant Agreement and to which ISO provides services under this Agreement.

"Merchant Agreement" means the contract entered into among Bank, ISO (or an ISO Agent) and a Merchant pursuant to which ISO processes the Transactions of such Merchant, a form of which is attached as Exhibit D.

"Merchant Fees" means all revenues collected by Bank from Merchants and deposited to the ISO Clearing Account.

"Merchant Funds" means the funds that are payable to a Merchant under the related Merchant Agreement.

"Merchant Loss" (collectively, "Merchant Losses") means any loss incurred by Bank on a cash (i.e., pre-tax) basis for any reason attributable to a Merchant, including without limitation losses due to Association fines, Chargebacks, fraudulent practices of a Merchant, Merchant ACH rejects, returns, credits or fees and other uncollected amounts due from Merchants, and costs of collection and attorneys' fees.

"Merchant Portfolio" means the group of Merchants (including the Existing Merchants) participating in the Merchant Program pursuant to this Agreement.

"Merchant Program" means the package of services offered by ISO which enables a Merchant to make sales to persons by use of a Card and which permits the Merchant to present Card Transactions to ISO for payment and processing.

"Merchant Reserve Account" means one or more accounts maintained and controlled by Bank as security against a Merchant Loss that might be incurred by Bank or ISO.

"Merchant Servicer" means a third-party agent that: (a) is engaged by a Merchant, (b) is not a member of Visa, (c) is not directly connected to Visa's VisaNet system, (d) is party to an authorization and/or clearing message, and (e) has access to cardholder data, or processes, stores, or transmits transaction data.

"Merchant Suspense Account" means the deposit account designated by ISO at Bank to occasionally hold funds as a reserve against suspect Merchant activity. Any earnings on the funds deposited into this account will accrue to the benefit of ISO.

"Minimum Annual Sales Volume" means the minimum number of Transactions that must be generated by Merchants and processed by ISO under the Agreement during a calendar year.

"Miscellaneous Adjustments" means any transaction occurring through the BIN other than a Sales Draft, Credit Draft or a Chargeback.

"Monthly Sales Volume" means the gross dollar amount of Visa and MasterCard Card sales, before return, refund or exchange, that are generated by Merchants and processed by ISO during a calendar month.

"Recovered Funds" means all amounts received by the BIN directly or through Interchange Fees previously debited from the ISO Clearing Account, including but not limited to Chargeback reversals, code 26 reversals (credits issued in error), and funds attributable to Association pre-compliance and arbitration procedures.

"Renewal Term" has the meaning set forth in Section 7.1.

"Reserve Account" means the deposit account, in the name of and for the benefit of Bank, at Bank as further described in Section 2.6.

"Retrieval" means the production of an acceptable copy under the Rules of a Sales Draft, Credit Draft or other supporting documentation by a Merchant.

"Rules" means all rules, regulations or requirements that are issued or promulgated by Visa, MasterCard or other Card networks from time to time applicable to activities or transactions contemplated by this Agreement or under Merchant Agreements.

"Sales Draft" means the paper form or electronic format used in consummating Transactions charged to the Card of a Merchant's customer.

"Settled Transaction" means Sales Drafts less Credit Drafts, voided Sales Drafts, host returns, rejected items, Chargebacks and Miscellaneous Adjustments.

"Third Party Provider" means third parties utilized by ISO, and approved by Bank, to process Transactions, including but not limited to: value added re-sellers, system integrators, software providers, loyalty providers and transaction processors.

"Transaction" means the purchase by a cardholder of goods or services from a Merchant, by use of a Card.

"Visa" means Visa U.S.A., Inc.

II. ISO's Obligations and Rights

2.1 ISO Responsibilities.

A. Solicitation. ISO will develop relationships with and solicit merchants that conform to the Credit Guidelines. ISO will solicit merchants for the Merchant Program on a non-exclusive basis and will process Merchant Transactions through the BIN. ISO may enter into other agreements with third parties for Card clearing and settlement services or refer prospective merchants to other parties for such clearing and settlement services. ISO will assist prospective Merchants in completing all documentation required for application to the Merchant Program. ISO will solicit merchants that conform to the Credit Guidelines and administer its program in conformity with its established risk practices. All solicitation materials, such as ads, sales brochures and Web Site promotional content, must be approved by Bank, such approval not to be unreasonably withheld or delayed.

B. Administrative Responsibilities. ISO will direct, manage, conduct and administer the Merchant Program and the Merchant Agreements; provided, however, that nothing shall be construed to authorize ISO to modify the Merchant Agreements, or to waive any of Bank's rights under such agreements without Bank's prior written consent. ISO shall have the sole responsibility for ensuring that the Merchant Program, including without limitation the Merchant Agreement, Merchant application materials, promotional materials and services performed under this Agreement comply, and remain in compliance, with all applicable federal, state and local laws and the Rules. Bank's review and approval of such materials shall not alter ISO responsibilities therefor. ISO will at all times comply with the Rules, all rules and regulations of any Automated Clearing House and all municipal, state and federal laws, as applicable. ISO shall ensure that all Merchant Servicers engaged by Merchants are registered with the Associations, to the extent required under the Rules. ISO shall perform or contract for all front-line operational functions consistent with industry standards, including but not limited to Merchant underwriting, customer service, and risk/fraud monitoring. ISO will permit Bank to have remote access to ISO's risk/fraud monitoring systems.

C. Merchant Agreement. ISO will use the form of the Merchant Agreement attached as Exhibit C. ISO has the right to change the form of Merchant Agreement from time to time upon the addition of additional independent sales organization(s) to this Agreement, and shall provide any new Merchant Agreement to Bank for approval prior to implementation. Approval of changes to the Merchant Agreement shall be effective upon the providing of written approval to ISO by Bank, with such approval not to be unreasonably withheld or delayed. ISO on behalf of Bank shall approve all prospective Merchant Agreements that conform to the Credit Guidelines. Bank authorizes ISO to execute Merchant Agreements on behalf of Bank. Any exceptions to the Credit Guidelines require the prior written approval of Bank and any such Merchant Agreement entered into shall be signed by that approving officer of Bank, and may require additional conditions of Bank. ISO will provide Bank with remote access to ISO's document storage system, through which Bank will have access to copies of all executed Merchant Agreements (including all related applications).

D. Merchant Relationship. Each Merchant will have a direct business relationship with ISO and as such, Bank will utilize ISO for all communications, written or oral, with Merchants. Subject to the Rules, ISO will administer and control the Merchant Agreement and the relationship created thereby including without limitation decisions regarding the continuance, amendment, assignment or termination of such Merchant Agreement. Bank maintains the right to terminate any Merchant Agreement due to (i) requirements relating to or violation of the Rules, applicable law or Association request, (ii) an uncured breach of the Merchant Agreement, (iii) if the operations of a Merchant materially differ from the basis upon which the Merchant was approved under the Credit Guidelines (such as significant volume differences, product differences, or type of business, each that results in a major increase in risk as to such Merchant), or (iv) if Bank in good faith deems it reasonably necessary to avoid loss, damage or adverse exposure to Bank. Subject to any requirements of the Rules, Bank will notify ISO of its desire to terminate a Merchant Agreement and will work with ISO to identify approaches to mitigate risk factors (such as initiating or increasing merchant reserves or transferring the merchant to another financial institution which is a member of the Associations) prior to terminating the Merchant.

E. Merchant Assistance. ISO will train Merchants on the procedures and Rules necessary to participate in the Merchant Program. ISO will input all data necessary to set up new Merchants, maintain Merchants' account data, process Merchant Transactions, and respond to Merchant inquiries, on a timely basis. ISO will provide to Merchants point of sale devices and other equipment necessary to participate in the Merchant Program, and will provide ongoing maintenance of such equipment. ISO also will distribute all Merchant supplies, and provide authorization and back office services to Merchants. ISO will process all Merchant Transactions into interchange according to the Rules. ISO will maintain adequate staffing to fulfill its obligations under this Agreement.

F. ACH. ISO will prepare the ACH file to credit each Merchant's settlement account for Sales Drafts and debit each Merchant's settlement account for the amount of Merchant Fees, any Chargebacks, Credit Drafts, or other amounts due under the terms of the Merchant Agreement to ISO by a Merchant. ISO acknowledges that it will not have access to Merchant funds, provided however; ISO is responsible for any fees of Bank

related to the holding of Merchant funds prior to distribution to Merchants. Bank will reconcile the Merchant Suspense Account, and the ISO Clearing Account. All Merchant Reserve Accounts are held by Bank. The ACH file will be processed through Bank and the corresponding ACH offset will be made to the ISO Clearing Account. Any system connectivity fees will be paid by ISO.

G. Information. ISO will verify the input of data to processors to ensure accurate Merchant set up. ISO will provide on a monthly basis ISO's Merchant processing statistics to Bank. ISO will also provide to Bank within 5 days of receipt of Bank's written request information within ISO's possession: i) required to be filed with or reported to the Associations; or ii) reasonably requested by Bank to enable Bank to monitor Bank risk. ISO will provide ISO annual audited and quarterly unaudited financial statements to Bank. ISO will provide daily electronic merchant boarding activity reports to Bank.

H. ISO Training. All costs associated with training ISO conducted onsite at Bank will be paid by ISO.

I. ISO Agreement. ISO has entered into or will enter into an ISO Agreement with Bank to become a registered ISO/MSP of Bank, and will maintain such status in good standing.

J. Third Party Providers. ISO has entered or is entering into agreements directly with Third Party Providers to provide processing services (including, without limitation, authorization, data capture, data processing, customer service, statements, collections, new account processing, Retrieval, Chargeback, accounting, reporting and clearing and funding services) on the Third Party Providers' system. Bank will cooperate with a Third Party Provider to settle transactions through the Interchange process of the Associations. Bank shall have no responsibility or liability for any costs due to the arrangements between ISO and Third Party Providers or any claims of Merchants or others related to the processing services provided by Third Party Providers. ISO shall be responsible for and liable to Bank for any and all actions or omissions of Third Party Providers, and all costs related to any change to or from any Third Party Provider.

K. Additional Services. ISO may combine services it is authorized to provide under this Agreement with other services unrelated to the services offered by Bank to a Merchant without the express written consent of Bank, such as but not limited to Discover Card processing, marketing of American Express card acceptance, gift cards, check image capture and back office conversion processing services (the "Additional Services"). ISO shall provide Merchants with adequate disclosures that such Additional Services are being provided by ISO and not Bank, and shall defend and indemnify and hold harmless Bank against any and all claims which may be asserted against Bank with respect to such Additional Services. In the event Bank acts as the acquirer of Discover transactions for Merchants, the parties agree to amend this Agreement as necessary to comply with any requirements of the Discover Financial Services, Inc. IMAP and MAP programs.

2.2 Audits.

A. Audit. Once each fiscal year, Bank may, upon 15 days prior written notice, conduct a financial and procedural audit of ISO to confirm compliance with this Agreement. Such audit will be conducted at ISO's expense, during ISO's normal business hours and with minimal disruption to ISO's business. ISO will within 15 days of receipt of Bank's written request supply such auditors with requested information related to Transactions. Visa, MasterCard and bank regulatory agencies may also conduct financial and procedural audits of ISO to confirm compliance with this Agreement and the Rules and legal requirements. Bank may, no more than once each 12 month period, at any time and at its own expense, perform a background check on ISO, its principals, and any of ISO's agents or employees, which may include a personal credit report or criminal background verification.

B. Regulatory Audit. ISO understands and agrees that Bank is subject to examination by government agencies and ISO agrees it will cooperate with any such examination. Federal and state agencies may require access to ISO's facilities to audit the performance of ISO and ISO Affiliates and Bank under this Agreement. ISO will cooperate with all such governmental audits, at ISO's expense.

2.3 Ownership; Portability.

A. Bank and ISO agree that the relationship with, and the names, addresses and all information (other than cardholder account information) relating to Merchants, any ISO Agents, and any Agent Banks of the Merchant Program, the Merchant Agreements and any revenues, fees and benefits thereunder, and the BINs and ICAs are owned by and proprietary to ISO and all right, title and interest therein and liabilities therefrom are vested in ISO. ISO's data will not be used by Bank except as necessary to carry out its obligations under this Agreement, or with ISO's prior written consent.

B. ISO may sell or assign all or any portion of the Merchant Portfolio at any time. Prior to the time that ISO has processed through Bank the Aggregate Minimum Sales Volume specified in Exhibit A, prior to accepting an offer to sell or assign any interest in the Merchant Portfolio to an unaffiliated third party (a "Transfer"), ISO shall provide Bank the right of first refusal described in Section 2.3.C. Once ISO has processed through Bank the Aggregate Minimum Sales Volume specified in Exhibit A, ISO may sell or assign an interest in the Merchant Portfolio to a third party without offering Bank the right of first refusal. For purposes of clarification, a sale or assignment of all or any portion of the Merchant Portfolio between ISO and an affiliate would not be deemed a Transfer, as well as ISO's acquisition of all or any portion of any ISO Agent's interests in the Merchant Portfolio, but the sale by any affiliated party of all or any portion of the Merchant Portfolio would be deemed a Transfer.

C. Subject to Section 2.3.B., in the event ISO desires to effect a Transfer pursuant to a bona fide offer from a third party, ISO shall first offer to Transfer its interest in the Merchant Portfolio to Bank, upon the same terms and conditions as contained in such third party offer, by giving written notice thereof to the Bank. Within fifteen (15) days of receipt of such notice, the Bank shall notify ISO of the Bank's election to implement the Transfer on terms and conditions equal to that contained in the bona fide third party offer. In the event that the Bank fails to provide ISO with notice of its intention within such fifteen

(15) day time period, or in the event that the Bank consents to the Transfer, ISO shall have the right to consummate the Transfer at the price, terms and conditions specified in such notice of offer.

D. In connection with any sale or assignment of an interest in the Merchant Portfolio, ISO shall first pay all amounts owed to Bank under this Agreement. Additionally, Bank, ISO and the "Designee" (as defined below) shall enter into an Assignment and Assumption Agreement acceptable to Bank (the "Designee Assignment and Assumption Agreement"). Further, Bank may require ISO to maintain a balance in the Reserve Account as provided below.

Upon completion of the above, Bank agrees to execute and assign the related Merchant Agreements, Merchant Accounts, funds held in the Merchant Reserve Accounts, and agreements with any ISO Agents (and any other agreements in Bank's name related to the Merchant Program) to the entity designated by ISO to accept assignment from Bank of such agreements. Bank also agrees to assign all dedicated BINs relating to the assigned portion of the Merchant Portfolio to the financial institution and Association member designated by ISO to accept assignment thereof on behalf of ISO ("Designee"). Upon the termination of this Agreement, and the execution of the Designee Assignment and Assumption Agreement, all rights and liabilities under the Merchant Program, including the all Merchant Agreements, Merchant Accounts, funds held in the Merchant Reserve Accounts, agreements with the ISO Agents, and the BINs, shall continue to be fully vested in ISO. Bank shall execute and deliver any assignments, bills of sale and other documents necessary to assign all of Bank's right, title, interest, and liabilities in the Merchant Program, including the Merchant Agreements, Merchant Accounts, funds held in the Merchant Reserve Accounts, and agreements with the ISO Agents (and related agreements) and the BINs to the Designee. Notwithstanding the foregoing, Bank and ISO agree that Bank may require ISO to maintain a Reserve Account as provided below.

2.4 [Intentionally Left Blank.].

2.5 Insurance and Continuity Plan. ISO will maintain standard worker's compensation and general liability insurance consistent with industry standards and will provide proof of such insurance upon written request. ISO will maintain a disaster recovery and contingency plan that meets or exceeds applicable bank regulatory and Association requirements. ISO will deliver a copy of such plan to Bank upon request. If the plan does not meet such requirements or if a bank regulatory agency requires changes to such plan, ISO agrees to promptly make such changes.

2.6 Reserve Account.

A. Funding of Reserve Account. At the time provided in the BofA Assignment and Assumption Agreement (as defined below), ISO will establish a Reserve Account to fund the payment of Losses by transferring $650,000 from ISO's existing reserve account currently held at Bank of America, N.A. ("BofA").

B. The Reserve Amount will be reviewed annually and shall be maintained in an amount

equal to the greater of (i) $650,000, or (ii) the preceding calendar month's Monthly Sales Volume, multiplied by seven (7) basis points (the "Reserve Amount Minimum"), but in no event shall the reserve amount exceed $1,000,000. If the Reserve Amount falls below the Reserve Ammount Minimum, then ISO shall within five (5) business days fund the Reserve Account up to the Reserve Amount Minimum. If the review indicates that the current Reserve Amount is greater than the Reserve Account Minimum, then Bank shall permit ISO to withdraw funds from the Reserve Account in excess of the Reserve Amount Minimum. ISO agrees that, in the event that ISO fails to make a deposit into the Reserve Account as required by this subparagraph, Bank may debit the required amount from then-current or future ISO Revenue, or then-current or future funds in the ISO Operating Account, or the ISO Clearing Account and deposit it into the Reserve Account.

C. Upon the expiration or termination of this Agreement, Bank may retain in the Reserve Account a sum equal to two (2) times the aggregate Merchant Losses suffered during the six (6) month period occurring prior to the expiration or termination of this Agreement. Such amount will be funded by ISO via then-current or future ISO Revenue, or then-current or future funds in the Reserve Account, the ISO Operating Account, the ISO Clearing Account, and additional deposit of funds, or a combination of any of the foregoing.

D. The Reserve Account shall remain domiciled at Bank throughout the term of this Agreement, including any extensions and renewals hereof, and for a period of six (6) full calendar months following the expiration or earlier termination of this Agreement. If, at the end of such six-month period, any Chargebacks or other Losses remain pending, Bank may retain an amount equal to two (2) times such pending amounts. Any amounts remaining after the resolution of such items shall be returned to ISO.

2.7 Existing Portfolio.

A. Transfer of BINs. Immediately following execution of this Agreement, for purposes of facilitating the assignment of the Existing Portfolio to Bank, ISO shall initiate and be responsible for the transfer of the BINs from Bank of America, N.A. to Bank with respect to the Existing Portfolio. To that end, ISO shall be responsible for providing any and all information, documents or materials as may be necessary to transfer the BINs for the Existing Portfolio and for addressing any information requests from Visa or MasterCard. Upon completion of such transfer to Bank, including without limitation, approval by Visa and MasterCard, such BINs shall be dedicated for ISO's use.

B. ISO represents and warrants that a true and correct list of Merchants for whom ISO is providing Transaction processing and settlement services for Card transactions , has been provided to Bank on a CD-ROM. Such CD-ROM will be updated and delivered by Bank to ISO upon Bank's request.

C. ISO represents and warrants that, except as disclosed by ISO and approved by Bank, none of the Merchants in the Existing Portfolio operate in the unacceptable industries outlined in the Credit Guidelines.

D. ISO represents and warrants that, subject to the execution and delivery of the BofA Assignment and Assumption Agreement by Bank and BofA., it has the ownership, authority and right to assign and transfer the Merchant Agreements, merchant accounts and merchant reserves for the Existing Merchants in the Existing Portfolio to Bank.

E. Immediately following the Effective Date of this Agreement, ISO shall arrange for and effectuate the assignment and transfer of the Card processing agreements (merchant agreements), merchant accounts, merchant reserve funds, letter of credit, bond, insurance policy, guaranty and all other collateral with respect to the Existing Portfolio, and the agreements with the Existing Agent Banks and the Existing Sales Groups. Such transfer shall be accomplished through the execution of an assignment and assumption agreement between Bank and BofA (the "BofA Assignment and Assumption Agreement"). The BofA Assignment and Assumption Agreement shall contain terms typical of such a transaction and satisfactory to the parties.

F. Bank acknowledges that it has received forms of merchant agreements which are in use with the Merchants in the Existing Portfolio from ISO, which forms are acceptable to Bank. ISO has a signed Merchant Agreement from each of its Existing Merchants and shall provide Bank with remote access to the executed copies of such Merchant Agreements.

G. ISO represents and warrants that its merchant processing business with respect to the Existing Portfolio has in all material respects been operated in compliance with all applicable laws, orders, regulations, policies and guidelines of all governmental entities and all Association Rules, including all underwriting and monitoring procedures.

H. Bank will not be responsible in any manner with respect to any Card transaction of an Existing Merchant with a processing date before the Conversion Date. The parties

acknowledge that certain of the Existing Merchants have agreements that have been terminated or have expired prior to Conversion, and as such, are no longer processing and settling Transactions ("Inactive Merchants"). The Merchant Reserve Accounts for such Inactive Merchants shall be transferred to Bank upon Conversion and ISO shall be responsible for any and all Losses for such Inactive Merchants after the Conversion Date.

2.8 **Credit Guidelines.** ISO has the right to change the Credit Guidelines from time to time, and shall provide any new Credit Guidelines to Bank for approval prior to implementation. Approval of changes to the Credit Guidelines shall be effective upon the providing of written approval to ISO by Bank, with such approval not to be unreasonably withheld or delayed.

III. Bank Responsibilities

3.1 **Bank Responsibilities.**

A. [Intentionally Left Blank]

B. Membership. Bank will remain a member of the Associations and serve as the Acquiring Bank or Acquiring Member (as that term is defined in the Rules) for those Merchants who enter into Merchant Agreements including, without limitation, by maintaining necessary capital requirements, and obtaining and providing for the use and benefit of ISO the BINs and ICAs necessary for clearing and settlement of Merchant credit and debit card and related Transactions for the Merchant Program.

C. Sponsorship. Bank will sponsor ISO and any qualified ISO Affiliates into the Associations, as independent sales organizations, member service providers and into any other Association program for which sponsorship is required. Bank shall also sponsor ISO Agents designated by ISO and approved by Bank as independent sales organizations into Visa and member service providers into MasterCard, and shall, upon ISO's request, provide such ISO Agents with separate, dedicated BINs. Any ISO Agents must be approved in writing by Bank, which approval will not be unreasonably withheld. If approved by Bank, ISO Agents must be registered with the Associations in accordance with the Rules and enter into contractual agreements with Bank as required by Bank. ISO shall be responsible for monitoring the activities of all ISO Agents to ensure compliance with the Rules. ISO will direct, manage, conduct, administer and enforce the agreements entered into by with Bank as to ISO Agents and, as to Bank, shall be responsible and liable for the acts and omissions of all ISO Agents and merchants of the ISO Agents.

D. Merchant Agreements. Bank will approve the form of the Merchant Agreement to be used by ISO. Bank may terminate any Merchant Agreement pursuant to the terms of the Merchant Agreement or the Rules by notifying ISO, which will notify the relevant Merchant.

E. BIN and Settlement. Bank will establish and maintain a dedicated BIN and ICA for ISO. Bank will, at ISO's request, provide additional BINs at ISO's expense upon ISO's

request Bank will cooperate with ISO and Third Party Providers regarding Chargeback proceedings. Bank will provide ISO with all rebates provided by Associations in connection to the BIN. All matters regarding the BIN will be directly referred to ISO. Bank will also reasonably support ISO in Association issues regarding the BIN.

F. Reports. Bank will provide to ISO, within 2 business days after receipt by Bank, all BIN processing reports received from Associations and any additional data related to this Agreement requested by ISO. ISO will provide to Bank any data required to be submitted back to the Associations within 5 business days of receipt of Bank's written or oral notice therefor.

G. Acquisitions. Bank acknowledges that ISO may, from time to time, acquire the stock or assets of other entities that provide processing services for merchants. In addition, it is acknowledged by Bank and ISO that, if requested by ISO, Bank will provide the services contemplated under this Agreement to such acquired merchants so long as such acquisition does not materially change the business or risk profile of ISO as defined by the Merchants serviced under this Agreement. Bank's approval for such acquisitions will be completed through the signing of documentation acceptable to Bank regarding the provision of processing services for the acquired business, including, without limitation, the right of Bank to reimbursement from ISO for any trailing chargeback liability.

3.2 **Third Party Audits.** Each party will notify the other party as soon as practicable of any formal request by a governmental agency or Association to talk with such entity related to this Agreement, examine the records pertaining to duties, responsibilities and obligations under this Agreement or conduct a site visit, at ISO's expense.

3.3 **Losses.** All Losses incurred by Bank for any reason will be borne by ISO, including but not limited to 100% of any amount incurred by Bank arising out of ISO's or any ISO sales representatives' negligence or fraud. ISO will notify Bank immediately of any information concerning any Merchant or any transaction that would indicate that Bank may incur a Loss. Each month Bank shall deduct the amount of any Loss incurred the previous month from ISO Revenue. If the amount of the Loss exceeds the amount of the ISO Revenue, Bank shall have the right to deduct the amount of the Loss from the ISO Operating Account, the Reserve Account, the ISO Clearing Account. In addition, Bank shall have the right to set off any unpaid Loss from any future ISO Revenue, or future amounts in the ISO Operating Account, the Reserve Account, and the ISO Clearing Account. Reimbursement of all Losses is, in addition to any others, a precondition of any transfer of any part of the Merchant Portfolio or any related processing.

IV. Fees, Charges and Security Interest

4.1 **Bank Fees.** ISO will pay to Bank the fees set forth on Exhibit A. Bank is authorized to debit the ISO Operating Account for these amounts. Amounts debited shall equal at least the fees associated with the Minimum Annual Sales Volume set forth on Exhibit A (i.e.. If the Minimum Annual Sales Volume specified in Exhibit A is not met, within ninety (90) days after the end of each year Bank will invoice ISO for the amount, if any, by which the transaction fees associated with the Minimum Annual Sales Volume exceed the actual transaction fees which were paid by ISO to Bank for such year. The other fees listed on Exhibit A are in addition to the transaction fees associated with the Minimum Annual Sales Volume

4.2 **Association Fees and Assessments.** ISO is responsible for all Association fees related to its or its sales agents registration, and the establishment and maintenance of the BINs and ICAs and Assessments.

4.3 **Conversion Costs.** ISO will pay to Bank any conversion costs incurred by Bank to convert existing merchants of ISO into the Merchant Program. Notwithstanding the foregoing, Bank shall be responsible for such conversion costs in the event (1) Bank's membership in either Association is terminated, or (2) this Agreement is terminated by ISO by virtue of an uncured breach by Bank.

4.4 **BIN Funds.** All income and expenses attributable through the BIN, including but not limited to Recovered Funds, Chargeback income, Retrieval income, interchange income, debits and credits will derive to the benefit of ISO.

4.5 **Security Interest; Set Off.**

A. Grant. As security for the obligations of ISO to Bank, or amounts owing from ISO to Bank, ISO grants Bank a first priority security interest in all of its right, title and interest, whether now owned or existing or hereafter created, acquired or arising, in, to and under the ISO Revenue, the Reserve Account, the ISO Operating Account, the Merchant Suspense Account, and the ISO Clearing Account, including, without limitation, present and future funds comprising the foregoing.

B. Perfection and Release. ISO authorizes for filings to perfect, maintain and enforce Bank's security interest. If any account is established at another depositary institution, then ISO will require such depository institution to enter into a control agreement in favor of Bank regarding the account. Upon termination of this Agreement, if ISO is not in default under this Agreement and (i) all sums then owing to Bank have been paid in full and (ii) the Reserve Account contains the amount specified in Section 2.6(c); or if in Bank's reasonable opinion, all such liability has been transferred to a subsequent acquiring bank, then Bank will promptly release its security interest in the above-named accounts.

C. Set Off. The ISO Operating Account (including, without limitation, the ISO Revenue), the ISO Clearing Account, and the Reserve Account shall be subject to Bank's right to set off any claims Bank has against ISO, whether absolute or contingent under this Agreement.

V. Association Requirements

5.1 **Potential Fines.** Bank will, within 5 business days after receipt of notice, notify ISO in writing of any notices, warnings or impending fines by any Association attributable to ISO or a Merchant. Bank will immediately notify ISO if any fines are imposed on ISO or its Merchants. ISO will reimburse Bank within 10business days of a final determination for any actual fines (other than those arising out of Bank's breach of its obligations under this Agreement or Bank's negligence or willful misconduct) imposed upon Bank.

5.2 **Rules.** ISO received understands, and agrees to comply with all applicable Rules. In the event of any inconsistency between this Agreement and any Rules, the Rules will apply. ISO will comply with all applicable Rules and Association Security Programs. ISO acknowledges that MasterCard and Visa have the right to enforce any provision of the Rules and to prohibit ISO conduct that creates a risk of injury to the Associations or that may adversely affect the integrity or reputation of the Associations' or Bank's systems, information, or both. ISO agrees to monitor its portfolio via means such as a "web crawler" service (e.g., G2, or such other mutually agreeable service), with such service being obtained through a third party or through Bank, in either case at ISO's expense.

5.3 **Operations.** On an ongoing basis, ISO will promptly provide Bank with the current address of each of its offices. ISO acknowledges that all Merchant Fees must be clearly and conspicuously disclosed to the Merchant in writing prior to any payment or application and agrees to so disclose such fees.

5.4 **Information.** ISO will provide requested Merchant information to the Associations within 5 days of the request.

5.5 **Rule Enforcement.** ISO acknowledges that the Associations have the right to enforce any provision of the Rules and to prohibit any ISO conduct that may injure or create a risk of injury to the Associations, including injury to reputation, or that may adversely affect the integrity of the Associations' and Bank's core payment systems, information, or both. ISO will not take any action that might interfere with or prevent exercise of this right.

VI. Representations, Warranties, Confidentiality, Non-Solicitation and Indemnification

6.1. **Representations and Warranties.** Each party represents and warrants to the other that:

A. Good Standing. ISO is a business entity authorized, validly existing and in good standing under the laws of the State indicated in the opening paragraph. Bank is duly chartered and validly existing as a national banking association with full power and authority to carry on its banking business as now conducted. This Agreement represents a valid obligation of that party and is fully enforceable against it according to its terms.

B. Full Authority. It has full authority and power to enter into this Agreement and to perform its obligations under this Agreement.

C. No Violation. Its performance of this Agreement will not violate, to the best of its knowledge, any applicable law or regulation or any agreement to which it may now or hereafter be bound. It will comply with the terms of this Agreement, with the Rules, and with all applicable state and federal laws and regulations.

6.2 Confidentiality.

A. Use. ISO and Bank each agree that it will retain in confidence the Confidential Information and all information and data belonging to or relating to the business of the other party including without limitation aggregate information regarding Merchants or specific information related to Merchants (which the parties acknowledge belongs to ISO), and that each party will safeguard such information and data by using the same degree of care and discretion that it uses to protect its own Confidential Information. No party will use the other party's Confidential Information for its own benefit other than for the purposes contemplated by this Agreement, nor will it allow any third party to use such information other than third parties with a need to know pursuant to this Agreement. ISO will limit access to the MasterCard and Visa systems to those ISO employees it deems necessary to perform its responsibilities under this Agreement. ISO will use MasterCard and Visa information identified or reasonably understood to be confidential or proprietary solely to perform its duties on behalf of this Agreement. ISO and Bank will implement reasonable and appropriate safeguards to prevent unauthorized access to such systems and to the other party's Confidential Information.

B. Disclosure. Prior to the disclosure of any Confidential Information to third parties, recipient of Confidential Information ("Recipient") will obtain a written agreement from any such third party (i) to hold all Confidential Information in confidence and not use it for any purpose not expressly consented to by the disclosing party; and (ii) to return all Confidential Information immediately after the third party has completed the work for which the Confidential Information was disclosed.

C. Return of Confidential Information. Upon termination of this Agreement, the Recipient shall promptly deliver to the disclosing party of Confidential Information ("Disclosing Party") all Confidential Information in its possession or under its control or, alternatively, shall destroy the Disclosing Party's Confidential Information and certify to such destruction; provided, however, that that Confidential Information required by auditors, the Rules, or regulators to be retained may be retained by the Recipient.

D. Non-Protected Information. The parties will have no obligations of confidentiality for: (i) information which at the time of disclosure is in the public domain; (ii) information which after the time of disclosure becomes part of the public domain through no fault of the disclosee, but only after and to the extent that such information is published; (iii) information which is disclosed by a third party having legitimate possession and the unrestricted right to make such disclosure; (iv) information that such party can demonstrate to have been in its legitimate possession prior to the disclosure of the Confidential Information; (v) information required to be disclosed by law, subpoena or court order, provided, however, that the receiving party shall promptly inform the disclosing party of the operation of this Section to enable the disclosing party to defend nondisclosure of its Confidential Information.

E. No License. Nothing in this Section shall be construed to convey to the Recipient any right, title or interest or copyright in any Confidential Information, or any license to use, sell, exploit, copy or further develop any such Confidential Information, except use of Confidential Information is permitted if necessary by Recipient to comply with this Agreement.

6.3 Non-Solicitation. During the term of this Agreement and for a period of 6 months thereafter, neither Bank nor ISO or any of their Affiliates shall solicit, refer or enter into a contract with employees of the other without the express prior written consent of the other. During the term of this Agreement and for a period of 18 months thereafter, Bank shall not knowingly solicit or refer Merchants or registered independent sales organizations of ISO or enter into contracts with them, without the prior written consent of ISO, and ISO shall not directly solicit or refer merchants or sales agents of Bank or enter into contracts with them, without the prior written consent of Bank. This prohibition shall not preclude general solicitations or inquiries by a party or such party's agent banks or other independent sales organizations, or referrals to such party by third parties. In the event of default by ISO or the need for Bank to sell, transfer or assign some or all of the Merchant Agreements to satisfy ISO's obligations to Bank, ISO and any Affiliate of ISO or any entity owned or operated by the principals, officers, directors or shareholders of ISO or its Affiliates agree during the period Bank is recovering amounts due Bank, not to solicit or refer Merchants or sales agents or enter into contracts or arrangements therewith, or resulting in compensation therefrom, with respect to the Merchant Agreements sold, transferred or assigned (including to Bank) to satisfy ISO's obligations or pursuant to the security interest granted to Bank under this Agreement. The economic benefits of any agreements entered into in violation of this section shall accrue to the benefit of the non-breaching party.

6.4 Indemnification.

A. ISO Indemnification. ISO will indemnify and hold Bank harmless from and against all Losses that result from or arise out of (other than those resulting out of Bank's breach of its obligations under this Agreement or Bank's negligence or willful misconduct): (i) the performance, or failure to perform, by any Merchant, Third Party Provider or ISO, any obligation under the Merchant Agreement or this Agreement; and (ii) the violation by ISO of any law or Rule in connection with its performance of, or failure to perform, its obligations under this Agreement. ISO's obligation to indemnify Bank will survive for a period of 3 years following the expiration or termination of this Agreement by either party for any reason.

B. Bank Indemnification. Bank will indemnify and hold ISO harmless from and against all Losses that result from or arise out of (other than those resulting out of ISO's breach of its obligations under this Agreement or ISO's negligence or willful misconduct): (i) Bank's performance, or failure to perform, any obligation under this Agreement; or (ii) the violation by Bank of any law or Rule in connection with its performance of, or failure to perform, its obligations under this Agreement. Bank's obligation to indemnify ISO will survive for a period of 3 years following the expiration or termination of this Agreement by either party for any reason.

C. Procedure. Each party will promptly notify the other of any claim, demand, suit or threat of suit of which that party becomes aware which may give rise to a right of indemnification under this Agreement. Both parties will cooperate in the prosecution of such suit. The indemnifying party will be entitled to participate in the settlement or defense of any such suit.

VII. Term, Termination, Default

7.1 **Term.** This Agreement will become effective on the Effective Date, and will remain in effect for a period of 3 years from the Effective Date ("Initial Term"). This Agreement will automatically renew for 2 year period ("First Renewal Term"), and then for 1 year periods ("Additional Renewal Term") unless terminated earlier in accordance with the provisions of this Agreement.

7.2 **Termination.** Notwithstanding the above, the parties will have the following rights.

A. Automatic Termination. This Agreement will automatically terminate if: (i) Visa or MasterCard prohibits ISO from providing, or prohibits Bank from allowing ISO to provide, the services set forth in this Agreement; or (ii) Visa or MasterCard cancels Bank's Association membership.

B. Termination Without Cause. After the end of the Initial Term or any Renewal Term, Bank may terminate this Agreement with or without cause upon at least 180 days prior written notice to ISO. ISO may terminate this Agreement with or without cause at the end of the Initial Term or any Renewal Term (i) upon 90 days prior written notice to Bank; or (ii) if ISO sells all Merchant Agreements to a third party in accordance with this Agreement, upon Bank's assignment of such Merchant Agreements to ISO's designee.

C. Termination For Cause. A party may terminate this Agreement upon the occurrence of an Event of Default by the other party. In the event that Bank terminates this Agreement for cause, ISO agrees to pay Bank a termination fee equal to the greater of (i) the average monthly sponsorship and underwriting fees paid to Bank at the time of termination, or (ii) the minimum annual fees at the time of termination set forth on Exhibit A. The foregoing fee is an expression of liquidated damages, and not a penalty, but shall not be construed to modify any of Bank's other rights in the event of Bank's termination of the Agreement for cause.

7.3 **Default.** Each of the following occurrences will constitute an Event of Default under this Agreement:

A. Nonpayment. Either party fails to pay the other when due any undisputed amount due under this Agreement and such failure continues for a period of 30 days after written and oral notice has been sent to the non-paying party.

B. Financial Instability. Either party: (i) files for bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or any similar proceeding, (ii) has such a proceeding instituted against it and such proceeding is not dismissed within 60 days, (iii)

makes an assignment for the benefit of its creditors or an offer of settlement, extension or composition to its creditors generally; or (iv) a trustee, conservator, receiver or similar fiduciary is appointed for that party or substantially all of that party's assets.

C. Breach. Either party fails to observe any material obligation specified in this Agreement or the Rules, and such failure is not cured within 60 days of receipt of written notice from the non-breaching party.

VIII. Names and Trademarks; Intellectual Property

8.1 **Names.** Neither party will use the other's name in any promotional or written or electronic marketing materials, nor will it promote the other's programs in any way, without the other's written consent. Bank agrees to allow ISO to use the name, logo and specified trademarks of Bank solely in connection with the Merchant Program as required under the Rules, such as on Merchant Agreements, provided that any such other use shall require the prior written approval of Bank, such approval not to be unreasonably withheld or delayed and consistent with any Bank usage guidelines. If such approval is granted, ISO may utilize such names, logos or marks with Bank's approval of such materials. This use terminates upon termination of this Agreement.

8.2 **MasterCard and Visa Trademarks**. ISO acknowledges that MasterCard and Visa are the sole owners of their trademarks. ISO will not contest the ownership of such marks, and MasterCard or Visa may at any time and immediately without advance notice prohibit ISO from using its marks for any reason.

8.3 **Intellectual Property Rights**. ISO shall be the sole and exclusive owner of all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Vimas System. Nothing in this Agreement shall be deemed to grant to one party, by implication, estoppel or otherwise, license rights, ownership rights or any other Intellectual Property Rights in any materials owned by the other party or any Affiliate of the other Party.

IX. General

9.1 **Assignment.** ISO may not assign its rights under this Agreement to any third party without Bank's prior written consent, which consent may not be unreasonably withheld, and any attempted assignment without such consent shall be void. Notwithstanding any such assignment, delegation or subcontract, ISO shall remain jointly and severally liable with the assignee for all of its obligations under this Agreement which are so assigned, delegated or subcontracted.

9.2 **Notice.** All communications under this Agreement will be in writing, sent via overnight delivery, and will be deemed received as evidenced by a signature from ISO or Bank. Such communication will be sent to the following:

If to ISO: CYNERGY DATA
45 W 36th Street, 6th floor
New York, NY 10018
Attn: Marcelo Paladini

Fax: 212-594-7245
E-Mail: marcelop@cynergydata.net

If to Bank: Harris, NA.
150 N. Martingale Rd., Suite 900
Schaumburg, IL 60173
Fax: 847.240.6583

The parties may, from time to time, designate different persons or addresses to which subsequent communications will be sent by sending a notice of such designations in accordance with this Section.

9.3 **Entire Understanding and Amendment.** This Agreement, including the attached Exhibits which are incorporated by reference, sets forth the entire understanding of the parties relating to its subject matter, and all other understandings, written or oral, are superseded. Except as otherwise provided in this Agreement, this Agreement may not be amended except in writing executed by both parties.

9.4 **Severability.** If any provision of this Agreement is illegal, the invalidity of such provision will not affect any of the remaining provisions, and this Agreement will be construed as if the illegal provision is not contained in the Agreement. This Agreement will be deemed modified to the extent necessary to render enforceable its provisions, and to comply with the Rules.

9.5 **No Waiver of Rights.** No failure or delay on the part of any party in exercising any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise of any right preclude any further exercise of that right.

9.6 **Successors and Assigns.** This Agreement will inure to the benefit of and will be binding upon the parties and their respective permitted successors and assigns.

9.7 **Applicable Law.** The Agreement will be deemed to be a contract made under the laws of the State of Illinois, and will be construed in accordance with the laws of Illinois without regard to principles of conflicts of law.

9.8 **Independent Contractors.** Bank and ISO will be deemed to be independent contractors and will not be considered to be agent, servant, joint venturer or partner of the other.

9.9 **Construction.** The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. All sections mentioned in the Agreement reference section numbers of this Agreement. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

9.10 **Force Majeure.** Neither party will be liable to the other for any failure or delay in its performance of this Agreement in accordance with its terms if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party.

9.11 Attorney's Fees. If any court finds that a party has breached this Agreement, then the non-defaulting party will be entitled to recover from the breaching party expenses incurred in enforcing the provisions of this Agreement, including but not limited to reasonable attorneys' fees and costs.

9.12 Limitation of Liability. In no event shall either party, their respective Affiliates or any of their respective directors, officers, employees, agents or subcontractors, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is excluded by agreement of the parties, regardless of whether the damages were foreseeable or whether any party or any entity has been advised of the possibility of the damages. This limitation of liability shall not apply to, and is no way intended to or limit or relieve ISO's obligations with respect to any liability of ISO related to misconduct, fraud, failure to pay Bank's fees or other costs described on Exhibit A, any losses under the Merchant Agreements and/or Merchant activities or as otherwise set forth in this Agreement.

9.13 Waiver of Jury Trial. BANK AND ISO HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION CONCERNING ANY RIGHTS OR DISPUTES UNDER THIS AGREEMENT. BANK AND ISO AGREE THAT, FOR PURPOSES OF ACTIONS BROUGHT BY BANK OR MONERIS SOLUTIONS, INC., JURISDICTION AND VENUE SHALL BE IN ANY STATE OR FEDERAL COURT LOCATED IN THE STATE AND COUNTY OF NEW YORK, AND, FOR PURPOSES OF ACTIONS BROUGHT BY ISO, JURISDICTION AND VENUE SHALL BE IN ANY COURT LOCATED IN COOK COUNTY, ILLINOIS.

9.14 Survival. All agreements that by their context are intended to survive the termination of this Agreement, including without limitation, 2.2, 2.3, 2.6, 3.3, 4.1, 4.2, 4.5, 4.6, 4.6, 5.1, and Articles VI and IX).

CYNERGY DATA, LLC	**HARRIS N.A.**, a national banking association
By: _____	By: _____
Name: MARCELO PALADINI	Name: _____
Its: CEO	Its: _____
Date: 6/20th, 2008	Date: _____, 200_

Exhibit B

MERCHANT APPLICATION

Merchant # _____

☐ New Location ☐ Additional Location

30-30 47th Avenue, 9th Floor • Long Island City, NY 11101 • 1.800.933.0064

www.cynergydata.com

Business Information

Legal Name:	Name of Account (Doing Business As):
Legal Address:	Physical Street Address (No P.O. Box):
City: State: Zip:	City: State: Zip:
Phone #: ( ) Contact:	DBA Phone #: ( ) Fax #: ( )
Must Choose One Mailing Address: ☐ DBA Address ☐ Legal Address; E-Mail Address:	Website Address: www.
Federal Tax # # of Locations Years in Business	Years Owned Business
Place of Legal Formation:	Country of Primary Business Operations:
Bank Reference:	Contact: Phone #: ( )

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

Name: Title: Date of Birth: Applicant's SS #: % Equity Ownership:
1.

Residence Address: City: State: Zip: # Years:

US Government Issued ID#: Type of ID: Expiration Date: Country of Citizenship (if not US): Home Phone: ( )

Name: Title: Date of Birth: Applicant's SS #: % Equity Ownership:
2.

Residence Address: City: State: Zip: # Years:

US Government Issued ID#: Type of ID: Expiration Date: Country of Citizenship (if not US): Home Phone: ( )

Business Profile

Type of Ownership: ☐ Sole Proprietor ☐ Assoc/Estates/Trusts ☐ Joint Venture ☐ Government ☐ Corporation (Privately Traded) ☐ Corporation (Publicly Traded) ☐ Medical or Legal Corp ☐ Partnership ☐ Tax Exempt Org ☐ Single Member LLC ☐ Multi Member LLC ☐ Civic Assoc ☐ Limited Partnership ☐ Political Org ☐ Other: _____

Type of Goods or Services Sold: SIC Code:

Do you currently accept Discover ® Network/Visa/Mastercard? ☐ Yes ☐ No (If yes, you should submit 3 current months' statements.) Name of Current Processor:

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

Sales Profile

Merchant Type:
- ☐ Retail
- ☐ Restaurant
- ☐ Lodging
- ☐ Service
- ☐ Internet
- ☐ Home Based
- ☐ Other

Discover Network/Visa/MasterCard Sales Profile (Be Accurate):

Card Swipe	%
Manual Key Entry with Imprint, Card Present	%
Mail Order/Telephone	%
Internet	%
Total =	100%

Business Trade Suppliers • List Two

Name: Address: Contact: Phone #: ( )

Name: Address: Contact: Phone #: ( )

Merchant Site Survey Report • To Be Completed by Sales Representative

Merchant Location: ☐ Retail Location with Store Front ☐ Office Building ☐ Internet ☐ Residence ☐ Other _____

Area Zoned: ☐ Commercial ☐ Industrial ☐ Residential Square Footage: ☐ 0-250 ☐ 251-500 ☐ 501-2,000 ☐ 2,001+

Does the amount of inventory and merchandise on shelves and floor appear consistent with this type of business? ☐ Yes ☐ No

If No, explain:

The Merchant: ☐ Owns ☐ Leases the Business Premises Landlord Name & Phone #:

Further Comments by Inspector (Must Complete)

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

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

X X

Discover Network / Visa / Mastercard Standard Retail / High Risk Retail Rates

Merchant Chooses to accept the following:

VS/MC Discount (Other Cards) Discount Rate:	____ %
VS/MC Discount Rate for Debit Cards:	____ %
Discover Network Card Discount Rate:	____ %
AMEX Discount Rate:	____ %

Fees

VS/MC Transaction Fee:		Per Item
Non-Bankcard Transaction Fee:		Per Item
Statement Fee:		Monthly
VIMAS Online Service:		Monthly
Monthly Minimum:		Monthly
Annual Fee:		Per Year
Debit Transaction Fee Plus Network Fees:		Per Item
EBT Transaction Fee:		Per Item
EBT Statement Fee:		Monthly
Batch Fee:	$0.25	Per Batch
Manual Imprinter:	QTY:____	One Time
Chargeback Fee:	$25.00	Per Item
ACH Reject Fee:	$25.00	Per Item
Retrieval Fee:	$5.00	Per Item
Voice Authorization Fee:	$0.95	Per Call
Gateway Access Fee:		Monthly
AVS Surcharge	$0.05	Per Item
Early Termination Fee:	$495.00	One Time
Others (please specify):		

Mail / Phone / Internet / Touchtone Rates

Merchant Chooses to accept the following:

VS/MC (Other Cards) Discount Rate:	____ %
VS/MC Debit Card Discount Rate:	____ %
Discover Network Card Discount Rate:	____ %
AMEX Rate	$5.95 Monthly

Fees

VS/MC Transaction Fee:		Per Item
Non-Bankcard Transaction Fee:		Per Item
Statement Fee:		Monthly
VIMAS Online Service:		Monthly
Monthly Minimum:		Monthly
Annual Fee:		Per Year
MOTO/Internet Surcharge:	$0.05	Per Item
AVS Surcharge:	$0.05	Per Item
Batch Fee:	$0.30	Per Batch
Manual Imprinter:	QTY:____	One Time
Chargeback Fee:	$25.00	Per Item
ACH Reject Fee:	$25.00	Per Item
Retrieval Fee:	$5.00	Per Item
Voice Authorization Fee:	$0.95	Per Call
Gateway Access Fee:		Monthly
Early Termination Fee:	$495.00	One Time
Others (please specify):		

1) I/We understand and agree to the following: that my/our discount rate as stated above will be charged on all electronically authorized payment card transactions that are in batches closed daily (qualified rate); 2) and that all payment card transactions that do not meet the requirements stated in number 1 above may be charged up to 2.19% + .10¢ higher than my/our discount rate. Discover Network/Visa/Mastercard business transactions may be charged up to 2.19% + .10¢ above qualified rate

Do you use a third party to process or transmit Cardholder data? ❑ Yes ❑ No. Give name/address:(examples include, but not limited to hosting companies,shopping carts, Loyalty Programs, Electronic Data Capture) Please identify any Software used for storing transmitting or processing Card Transactions or Authorization requests _____

Merchant Benefits Club

❑ Yes, I want to participate in the optional Merchant Benefits Club which includes equipment support and replacement for an additional $14.99 per terminal/peripheral per month. Initials: X

American Express

By signing below, I represent that I have read and am authorized to sign and submit this application on behalf of the entity above and all information I have provided herein is true, complete, and accurate. I authorize American Express Travel Related Services Company, Inc. ("American Express") to verify the information in this application and receive and exchange information about me personally, including by requesting reports from consumer reporting agencies. I authorize and direct American Express to inform me directly, or through the entity above, of reports about me that American Express has requested from consumer reporting agencies. Such information will include the name and address of the agency furnishing the report. I understand that upon American Express' approval of the entity indicated above to accept the American Express Card, the terms and conditions for American Express® Card Acceptance ("Terms and Conditions") will be sent to such entity along with a Welcome Letter. By accepting the American Express Card for the purchase of goods and/or services, or otherwise indicating its intention to be bound, the entity agrees to be bound by the Terms and Conditions.

CHECK ONE: ❑ Retail - $0.10 Trans Fee + 0.30% CNP Downgrade ❑ Services, Wholesale & All Other - $0.15 Trans Fee

Signature: X _____ Date: _____

Debit/Credit Authorization • Include a voided check or bank letter verifying bank account information.

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

DDA: **ABA Routing:**

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

AVERAGE TICKET SIZE: _____ **AVERAGE MONTHLY VOLUME:** _____

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

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

Individual Guaranty • No Titles

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

AGREED AND ACCEPTED

X _____
#1 From Application - Signature Date

X _____
#2 From Application - Signature Date

For All Businesses • Business Resolution

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

Print Legal Name of Merchant Business

X _____
#1 From Application - Signature Date

X _____
#2 From Application - Signature Date

X _____
Accepted by Processor Date

X _____
Accepted by Harris, N.A., Chicago, IL. Date

Merchant Processing Agreement

This Merchant Processing Agreement ("Agreement") is entered into on the Effective Date defined in Section 13.A. below, between the Business indicated on the Merchant Application ("Merchant", or "you"), Synergy Data, LLC ("SDL" or "Processor"), and Harris, N.A. ("Bank").

Recitals

Merchant desires to accept Debit Cards and/or Other Cards, as indicated on the Merchant Application, validly issued by members of Discovery Network, Visa U.S.A., Inc. ("Visa") and MasterCard International, Incorporated ("MasterCard"). "Debit Card" means all Discover Network Visa or MasterCard cards issued by a non-U.S. bank, a Discover Network, Visa or MasterCard card that accesses a consumer's asset account within 14 days after purchase, including but not limited to Discover Network, Visa or MasterCard issued stored value prepaid, payroll, EBT, gift, and consumer check cards, and debit cards validly issued by the debit card networks indicated in Section 4.G below ("Debit Networks"), such as on-line (PIN-based) cards. "Other Cards" means all cards issued by a non-U.S. bank and all Discover Network, Visa or MasterCard cards other than Debit Cards, including but not limited to business and consumer credit cards and business debit cards. The category of card acceptance you have indicated on the Merchant Application will collectively be referred to as "Cards". Bank and Processor desire to provide Card processing services to Merchant. Therefore, Merchant, Processor and Bank agree as follows:

Terms and Conditions

1. Honoring Cards.

A. Without Discrimination. You will honor, without discrimination, any Debit Card and/or Other Card, as indicated by you on the Merchant Application, properly tendered by a Cardholder. "Cardholder" means a person presenting a Card and purporting to be the person in whose name the Card is issued. If you elect to accept only one of the card acceptance categories but later submit a transaction from a card in a different category, you agree that Processor and Bank may process the transaction and assess the appropriate fee, and that all terms of this Agreement will apply to that transaction. You will not establish a minimum or maximum transaction amount as a condition for honoring a Card. Cardholders will be entitled to the same services and card return privileges you extend to cash customers, and you will not impose any special conditions (unless permitted by the Card Associations) in connection with the acceptance of a Card. "Card Association" means Visa, MasterCard, Discover Network, American Express, Japanese Credit Bureau, and/or a Debit Network, as applicable.

B. Cardholder Identification. You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if: (i) the Card has expired; (ii) the signature on the sales draft does not correspond with the signature on the Card; (iii) the account number embossed on the Card does not match the account number on the Card's magnetic strip (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file. You may not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver's license number as a condition for honoring a Card unless permitted under the Laws and Rules (defined in Section 14, below). You may not require a Cardholder to complete a postcard or similar device that includes the Cardholder's account number, Card expiration date, signature, or any other Card account data in plain view when mailed.

C. Card Recovery. You will use your reasonable, best efforts to recover any Card: (i) on Visa Cards if the printed four digits above the embossed account number do not match the first four digits of the embossed account number; (ii) if you are advised by Processor or Bank (or a designee) the issuer of the Card or the designated voice authorization center to retain it; (iii) if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder; or (iv) for MasterCard Cards, the embossed account number, indent printed account number and or encoded account number do not agree or the Card does not have a MasterCard hologram on the lower right corner of the Card face.

D. Surcharge. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, except as permitted by the Rules. This paragraph does not prohibit you from offering a discount from the standard price to induce a person to pay by cash, check or similar means rather than by using a Card.

E. Return Policy. You will properly disclose to the Cardholder at the time of the Card transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.

F. No Claim Against Cardholder. You will not have any claim against or right to receive payment from a Cardholder unless Processor and Bank refuses to accept the Sales Draft (as defined in Section 3) or revokes a prior acceptance of the Sales Draft after receipt or a chargeback or otherwise. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services included in a Sales Draft, and if you receive any such payments you promptly will remit them to Processor and Bank.

G. Disputes With Cardholder. All disputes between you and any Cardholder relating to any Card transaction will be settled between you and the Cardholder. Neither Processor or Bank bear any responsibility for such transactions.

2. Authorization.

A. Required on all Transactions. You will obtain a prior authorization for the total amount of a transaction via electronic terminal or device before completing any transaction, and you will not process any transaction that has not been authorized. You will follow any instructions received during the authorization process. Upon receipt of authorization you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder.

B. Effect. Authorizations are not a guarantee of acceptance or payment of the Sales Draft. Authorizations do not waive any provisions of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card.

C. Unreadable Magnetic Stripes. When you present Card transactions for authorization electronically, and if your terminal is unable to read the magnetic stripe on the card, you will obtain an imprint of the card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Processor and Bank for processing. Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions.

3. Presentment of Sales Drafts.

A. Forms. You will use a Sales Draft ("Sales Draft") or other form approved by Processor and Bank to document each Card transaction. Each Sales Draft will be legibly imprinted with: (i) merchant's name, location and account number; (ii) the information embossed on the Card presented by the Cardholder (either electronically or manually, and truncated, if applicable); (iii) the date of the transaction; (iv) a brief description of the goods or services involved); (v) the transaction authorization number; (vi) the total amount of the sale including any applicable taxes, or credit transaction; and (vii) adjacent to the signature line, a notation that all sales are final, if applicable.

B. Signatures. Sales Drafts must be signed by the Cardholder unless the Card transaction is a valid mail/telephone order Card transaction, or PIN-based Debit Card transaction, which fully complies with the requirements set forth in this Agreement. You may not require the Cardholder to sign the Sales Draft before you enter the final transaction amount in the Sales Draft.

C. Reproduction of Information. If the following information embossed on the Card and the Merchant's name is not legibly imprinted on the Sales Draft, you will legibly reproduce on the Sales Draft before submitting it to Processor and Bank: (i) the Cardholder's name; (ii) account number (truncated, if applicable); (iii) expiration date and (iv) the Merchant's name and place of business. Additionally, for MasterCard transactions you will legibly reproduce the name of the Bank issuing the Card as it appears on the face of the Card.

D. Delivery and Retention of Sales Drafts. You will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction (or such longer period as the Rules require).

E. Electronic Transmission. In using electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed (unless otherwise permitted by the Rules). Failure to do so may result in the assessment of a transaction surcharge on non-qualifying transactions. If you provide your own electronic terminal or similar device, such terminals must meet Processor's and Bank's requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to Processor and Bank or their agent in the form Processor and Bank from time to time specifies or as required under the Rules. If Processor or Bank requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within 24 hours following the request.

4. Deposit of Sales Drafts and Funds Due Merchant.

A. Deposit of Funds.

i. Deposits. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C § 365 as amended from time to time. Subject to this Section, Bank will deposit to the Designated Account (defined in Section 6 below) funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, fines, chargebacks, or fees). You understand and agree that Bank may withhold deposit and payment to you without notice until the expiration of any chargeback period for: a) mail order, telephone order, or Internet transactions on Cards issued by non-U.S. financial institutions, and b) if Processor or Bank determine, in their sole and reasonable discretion, that a transaction or batch of transactions poses a risk of loss. Neither Processor nor Bank are responsible for any losses you may incur, including but not limited to NSF fees, due to such delayed deposit of funds. You acknowledge that your obligation to Processor and Bank for all amounts owed under this Agreement arise out of the same transaction as Processor and Bank's obligation to deposit funds to the Designated Account.

ii. Provisional Credit. Not withstanding the previous sentences, under no circumstance will Processor or Bank be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Processor and Bank. All Sales Drafts and deposits are subject to audit and final checking by Processor and Bank and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and subject to chargebacks and adjustments: (i) in accordance with the Rules; (ii) for any of your obligations to Processor and Bank, and (iii) in any other situation constituting suspected fraud or a breach of this Agreement, whether or not a transaction is charged back by the Card issuer. Processor and Bank may elect to grant conditional credit for individual or groups of any funds evidenced by Sales Drafts. Final credit for those conditional funds will be granted within Processor and Bank's sole discretion.

iii. Processing Limits. Processor and Bank may impose a cap on the volume and ticket amount of Sales Drafts that they will process for you, as indicated to you by Processor and Bank. This limit may be changed by Processor and Bank upon written notice to you.

B. Chargebacks. You are fully liable for all transactions returned for whatever reason, otherwise known as "chargebacks". You will pay on demand the value of all chargebacks. Authorization is granted to offset from incoming transactions and to debit the Designated Account, the Reserve Account (defined in Section 7, below) or any other account held at Bank or at any other financial institution the amount of all chargebacks. You will fully cooperate in complying with the Rules regarding chargebacks.

C. Excessive Activity. Your presentation to Processor and Bank of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period: (i) the dollar amount of chargebacks and/or retrieval requests in excess of 1% of the average monthly dollar amount of your Card transactions; (ii) sales activity that exceeds by 25 % of the dollar volume indicated on the Application, or (iii) the dollar amount of returns equals 20% of the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, Processor and Bank to take any action they deem necessary including but not limited to, suspension or termination of processing privileges or creation or maintenance of a Reserve Account in accordance with this Agreement..

D. Credit.

i. Credit Memoranda. You will issue a credit memorandum in any approved form, instead of making a cash advance, a disbursement or a refund on any Card transaction. Bank will debit the Designated Account for the total face amount of each credit memorandum submitted to Bank. You will not submit a credit relating to any Sales Draft not originally submitted to Bank, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will within the time period specified by the Rules, provide a credit memorandum or credit statement for every return of goods or forgiveness of debt for services which were the subject of a Card transaction.

ii. Revocation of Credit. Processor or Bank may refuse to accept any Sales Draft, and Processor and Bank may revoke prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with this Agreement, the Laws or the Rules; (b) the Cardholder disputes his liability to Processor and Bank for any reason, including but not limited to a contention that the Cardholder did not receive the goods or services, that the goods or services provided were not as ordered or pursuant to those chargeback rights enumerated in the Rules, or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Processor and Bank any amount previously credited to you for a Sales Draft not accepted by Processor and Bank or where accepted, is revoked by Processor and Bank.

E. Reprocessing. Not withstanding any authorization or request from a Cardholder, you will not re-enter or reprocess any transaction which has been charged back.

F. Miscellaneous. You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement.

G. Debit Card Processing.

i. "Debit Networks" means those debit card networks accepted by Processor, including but not limited to the following organizations and their successors: Star, NYCE, Pulse, Interlink, AFFN, Alaska, Jeanie, Accel, and Money Station.

ii. Credit Refunds. You will attempt to settle in good faith any dispute between you and a Cardholder involving a transaction. You will establish a fair, consistent policy for the exchange and return of merchandise and for the adjustment of amounts due on Debit Card sales. You will promptly initiate a refund to the customer (which may be made in cash, by an adjustment draft or with a check or cashier's check, as permitted by the Rules) whenever you determine that a Debit Card transaction should be canceled or reversed.

iii. Adjustments. Except as the Debit Networks may permit, you will not make any cash refunds or payments for returns or adjustments on Debit Card transactions but will instead complete an adjustment form provided or approved by Processor. The Debit Card Sales Draft for which no refund or return will be accepted by you must be clearly and conspicuously marked (including on the Cardholder's copy) as "final sale" or "no return" and must comply with the Rules.

iv. Error Resolution. You will refer Debit Card Cardholders with questions or problems to the institution that issued the Debit Card. You will cooperate with Processor and with each applicable Debit Network and its other members to resolve any alleged errors relating to transactions. You will permit and will pay all expenses of periodic examination and audit of functions related to each Debit Network, at such frequency as the applicable Debit Network deems appropriate. Audits will meet Debit Network standards, and the results will be made available to the Debit Network.

5. Other Types of Transactions.

A. Mail/Telephone Order. Processor and Bank caution against mail orders or telephone orders or any transaction in which the Cardholder and Card are not present ("mail/telephone orders") due to the high incidence of customer disputes. You will perform AVS and obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/telephone order transactions, you will type or print legibly on the signature line the following as applicable: telephone order or "TO" or mail order or "MO". You must promptly notify Processor and Bank if your retail/mail order/telephone order mix changes from the percentages represented to Processor and Bank in the Merchant Application. Processor and Bank may cease accepting mail/telephone order transactions, or limit its acceptance of such transactions, or increase their fees, or terminate this Agreement, or impose a Reserve Account (defined in Section 7.A), if this mix changes. You may not deposit a mail/telephone order Sales Draft before the product is shipped.

B. Recurring Transactions. For recurring transactions, you must obtain a written request from the Cardholder for the goods and services to be charged to the Cardholders account, the frequency of the recurring charge, and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder (ii) notice from Processor or Bank, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words "Recurring Transaction".

C. Multiple Sales Drafts. You will include a description and total amount of goods and services purchased in a single transaction on a single Sales Draft or transaction record, unless (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules.

D. Partial Completion.

i. Prior Consent. You will not accept for payment by Card any amount representing a deposit or partial payment for goods or services to be delivered in the future without the prior written consent of Processor or Bank. Such consent will be subject to Bank's final approval. The acceptance of a Card for payment or partial payment of goods or services to be delivered in the future without prior consent will be deemed a breach of this Agreement and cause for immediate termination, in addition to any other remedies available under the Laws or Rules.

ii. Acceptance. If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement, the Rules, and the Laws. Cardholders must execute one Sales Draft when making a deposit with a Card and a second Sales Draft when paying the balance. You will note upon the Sales Draft the words "deposit" or "balance" as appropriate. You will not deposit the Sales Draft labeled "balance" until the goods have been delivered to Cardholder or you have fully performed the services.

E. Future Delivery. You will not present any Sales Draft or other memorandum to Bank for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery without Processor or Bank's prior written authorization. Such consent will be subject to Bank's final approval. If Processor or Bank have given such consent, you represent and warrant to Processor and Bank that you will not rely on any proceeds or credit resulting from such transactions to purchase or furnish goods or services. You will maintain sufficient working capital to provide for the delivery of goods or services at the agreed upon future date, independent of any credit or proceeds resulting from sales drafts or other memoranda taken in connection with future delivery transactions.

F. Electronic Commerce. You may process electronic commerce ("EC") transactions only if you have so indicated on the Application, and only if you have obtained CD's consent. If you submit EC transactions without such consent, Processor may immediately terminate this Agreement. If you have obtained CD's consent, you submit EC transactions, you acknowledge that you have received a copy of the Visa Cardholder Information Security Program ("CISP") manual. If you present EC transactions, such transactions must comply with the CISP requirements and all other applicable Rules and Law. You understand that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; and ii) you have obtained consent to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. You must offer Cardholders a secure transaction method, such as Secure Sockets Layer (SSL) or 3-D Secure. All communication costs related to EC transactions are your responsibility. You understand that Processor will not manage the EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Bank into a depository institution of the United States in U.S. currency.

i. Requirements. For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. You need not to obtain a second authorization if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your web site must contain all of the following information: a) complete description of the goods or services offered, b) returned merchandise and refund policy, c) customer service contact, including electronic mail address and/or telephone number, d) transaction currency (such as U.S. or Canadian dollars), e) export or legal restrictions, if known, f) delivery policy, consumer data privacy policy, g) your security method for transmission of payment data, and h) the Visa flag symbol in full color. If you store cardholder account numbers, expiration dates, and other personal cardholder data in a database, you must follow Discover Network, Visa and MasterCard guidelines on securing such data. You shall immediately notify Processor of any suspected or confirmed loss or theft of any transaction information. In addition, you must provide reasonable access to Discover Network, Visa, MasterCard, a Debit Network or independent third party to verify your ability to prevent future security breaches in a manner consistent with the requirements of any Rule.

ii. Cardholder Information Security. You agree that you are, and will remain, fully compliant with the Payment Card Industry Data Security Standard required by Discover Network and the Card Associations, including but not limited to undertaking the required annual or quarterly self-assessments and Web infrastructure scans, as appropriate. If you accept EC transactions, you must: install and maintain a working network firewall to protect data accessible via the Internet; keep security patches up-to-date; encrypt stored data and data sent over open networks; use and update antivirus software, restrict access to data by business "need-to-know"; assign a unique ID to each person with computer access to data; not use vendor-supplied defaults for system passwords and other security parameters; track access to data by unique ID; regularly test security systems and processes; maintain a policy that addresses information security for employees and contractors; and restrict physical access to cardholder information. When outsourcing administration of information assets, networks, or data you must retain legal control of proprietary information and use limited "need-to-know" access to such assets, networks or data. Further, you must reference the protection of cardholder information and compliance with the Visa CISP Rules in contracts with other service providers. You agree to indemnify and reimburse Processor and Bank immediately for any loss, liability, assessment or fine incurred due to your breach of this Section.

G. American Express, and Diners Club Transaction. Upon your request, Processor and Bank will provide authorization and/or data capture service, for Diners Club and American Express transactions. By signing this Merchant Agreement, Merchant agrees to abide by the terms and conditions of Diners Club and American Express. I understand that the Diners Club Agreement will be sent to the business entity indicated on this application. By accepting the Diners Club card for goods and/or services Merchant agrees to be bound by the terms and conditions of the Agreement. Processor and Bank are not responsible for funding such transactions. Initial setup fees may apply.

H. Cash Advances. You will not deposit any transaction for purpose of obtaining or providing a cash advance. You agree that any such deposit shall be grounds for immediate termination.

I. Prohibited Transactions. You will not accept or deposit any fraudulent transaction and you may not, under any circumstances, present for deposit directly or indirectly, a transaction which originated with any other merchant or any other source. You will not, under any circumstance, engage in any transaction prohibited by the Rules or deposit telemarketing transactions unless you obtain Bank or Processor's prior written consent. Such consent will be subject to Bank's final approval. If you process any such transactions, you may be immediately terminated and Bank may hold funds and/or require you to establish a Reserve Account. Further, you may be subject to Discover Network or the Card Association reporting requirements. You will not: accept cash, checks or other negotiable items from any Cardholder and forward a credit through Discover Network or any Card Association or Debit Network (i.e., as a purported payment or deposit to an account maintained by the Cardholder); forward any transaction or initiate any reversal of a transaction that did not originate between you and the Cardholder; complete any transaction that you know or should have known to be fraudulent or not authorized by the Cardholder; accept any Debit Card in payment for any legal services or for expenses related to the defense of any crime (other than a traffic violation); or any domestic relations matter where services or expenses are furnished a person whose name is not embossed on the Debit Card or any bankruptcy, insolvency, or other proceeding affecting the creditors of any Cardholder; present for processing a transaction that does not represent a sale of goods or service directly between Cardholder and you. You will fully cooperate with Processor, Discover Network and with each Card Association in the event that Processor, Discover Network or any Card Association determines that there is a substantial risk of fraud arising from your access to Discover Network and the Card Association. You will take whatever actions Processor, Discover Network or Card Associations reasonably deem necessary in order to protect Discover Network, such Card Association, its members, and its Cardholders. Neither Discover Network, the Card Associations, Processor, nor any of their respective personnel will have any liability to you for any action taken in good faith.

J. Debit Card Transactions.

i. For each PIN-based Debit Card sale, the Cardholder must enter his Personal Identification Number ("PIN") through a PIN pad located at the point of sale.

ii. Each PIN pad will be situated to permit Cardholders to input their PINs without revealing them to other persons, including your personnel.

iii. You will instruct personnel that they may not ask any Cardholder to disclose the PIN and that in the event that any of your personnel nevertheless becomes aware of any Cardholder's PIN, such personnel will not use such PIN or create or maintain any record of such PIN, and will not disclose such PIN to any other person.

iv. The PIN message must be encrypted from the PIN pad to the point of sale device connected to a Debit Network used to initiate transactions ("Terminal") and from the Terminal to the Debit Network and back so that the PIN message will not be in the clear at any point in the transaction.

v. You will comply with any other requirements relating to PIN security as required by Bank or by any Debit Network.

vi. A transaction receipt in conformity with Regulation E and the Rules will be made available to the Cardholder.

vii. You may not establish a minimum or maximum transaction amount as a condition for use of a Debit Card.

viii. You may not charge any Cardholder for the use of any Debit Card unless the Rules so permit.

ix. You may not collect tax as a separate cash transaction.

K. Debit Card Terminals. Debit Card terminals, including hardware and software, must be certified for use by Bank and by all of the Debit Networks. Terminals must include encrypted PIN pads which allow entry of up to sixteen character PINs, printers and a keyboard lock function. You are responsible for compliance with all Rules regarding the use of Terminals, regardless of whether such Terminals are obtained through CD or through a third party.

6. Designated Account.

A. Establishment and Authority. Merchant will establish and maintain an account at an ACH receiving depository institution approved by Bank ("Designated Account"). Merchant will maintain sufficient funds in the designated Account to satisfy all obligations, including fees, contemplated by this Agreement. Merchant irrevocably authorizes Bank to debit the Designated Account for chargebacks, fees and any other penalties or amounts owed under this Agreement. This authority will remain in effect for at least 2 years after termination of this Agreement whether or not you have notified Processor and Bank of a change to the Designated Account. Merchant must obtain prior written consent from Bank or Processor to change the Designated Account. If Merchant does not get that consent, Processor and Bank may immediately terminate the Agreement and may take other action necessary, as determined by them within their sole discretion.

B. Deposit. Bank will initiate a deposit in an amount represented on Sales Drafts to the Designated Account subject to Section 4 of this Agreement upon receipt of funds from Visa, MasterCard, or a Debit Network. Typically, the deposit will be initiated 3 business days following Processor's receipt of the Sales Draft, except for mail order/telephone order and electronic commerce transactions, which will be initiated 5 business days following receipt of the Sales Draft. "Business Day" means Monday through Friday, excluding holidays observed by the Federal Reserve Bank of New York. Merchant authorizes Bank and Processor to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant conditional credit for any entry. Bank, in its sole discretion, may grant you provisional credit for transaction amounts in the process of collection, subject to receipt of final payment by Bank and subject to all chargebacks.

C. Asserted Errors. You must promptly examine all statements relating to the Designated Account, and immediately notify Processor and Bank in writing of any errors. Your written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description

f the asserted error, and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by Processor and Bank within 30 calendar days after you received the periodic statement containing the asserted error. You may not make any loss or expense relating to any asserted error for 60 calendar days immediately following Processor's receipt of your written notice. During that 60 day period, Processor and Bank will be entitled to investigate the asserted error.

D. Indemnity. You will indemnify and hold Processor and Bank harmless for any action they take against the Designated Account, the Reserve Account, or any other account pursuant to this Agreement.

E. ACH Authorization. You authorize Processor and Bank to initiate debit/credit entries to the Designated Account, the Reserve Account, or any other account maintained by you at any institution, all in accordance with this Agreement. This authorization will remain in effect beyond termination of this Agreement, in the event you change the Designated Account, this authorization will apply to the new account.

7. Security Interests, Reserve Account, Recoupment and Set-Off.

A. Security Interests.

i. Security Agreement. This Agreement is a security agreement under the Uniform Commercial Code. You grant to Processor and Bank a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Sales Draft; and (iv) any and all amounts which may be due to you under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). You agree to provide other collateral or security to Processor and Bank to secure your obligations under this Agreement upon Processor or Bank's request. These security interests and liens will secure all of your obligations under this Agreement and any other agreements now existing or later entered into between you and Processor and Bank. This security interest may be exercised by Processor and Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets.

ii. Perfection. Upon request of Processor or Bank, you will execute one or more financing statements or other documents to evidence this security interest. You represent and warrant that no other person or entity has a security interest in the Secured Assets. Further, with respect to such security interests and liens, Processor and Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. You will obtain from Processor and Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and Processor and Bank are not required to file a motion for relief from a bankruptcy action automatic stay for Processor or Bank to realize on any of its collateral (including any Reserve Account). Nevertheless you agree not to contest or object to any motion for relief from the automatic stay filed by Processor or Bank. You authorize Processor or Bank and appoint Processor or Bank your attorney in fact to sign your name to any financing statement used for the perfection of any security interest or lien granted hereunder.

B. Reserve Account.

i. Establishment. You will establish and maintain a non-interest bearing deposit account ("Reserve Account") at Bank initially or at any time in the future as requested by Processor and Bank, with sums sufficient to satisfy your current and future obligations as determined by Processor and Bank. You authorize Bank to debit the Designated Account or any other account you have at Bank or any other financial institution to establish or maintain funds in the Reserve Account. Bank may deposit into the Reserve Account funds it would otherwise be obligated to pay you, for the purpose of establishing, maintaining or increasing the Reserve Account in accordance with this Section, if it determines such action is reasonably necessary to protect its interests.

ii. Authorizations. Bank may, without notice to you, apply deposits in the Reserve Account against any outstanding amounts you owe under this Agreement or any other agreement between you and Processor or Bank. Also, Processor and Bank may exercise their rights under this Agreement against the Reserve Account to collect any amounts due to Processor or Bank including, without limitation, rights of set-off and recoupment.

iii. Funds. Funds in the Reserve Account will remain in the Reserve Account until 270 calendar days following the later of termination of this Agreement or your last transmission of sales drafts to Processor or Bank, provided, however, that you will remain liable to Processor and Bank, for all liabilities occurring beyond such 270 day period. After the expiration of such 270 day period you must provide Processor with written notification indicating you desire a release of any funds remaining in the Reserve Account in order to receive such funds. You agree that you will not use these funds in the Reserve Account for any purpose, including but not limited to paying chargebacks, fees, fines or other amounts you owe Processor and Bank under this Agreement, Bank (and not Merchant) shall not have sole control of the Reserve Account.

iv. Assurance. In the event of a bankruptcy proceeding and the determination by the court that this Agreement is assumable under Bankruptcy Code § 365, as amended from time to time, you must establish or maintain a Reserve Account in an amount satisfactory to Processor and Bank.

C. Recoupment and Set Off. Processor and Bank have the right of recoupment and set-off. This means that they may offset or recoup any outstanding/ uncollected amounts owed by you from: (i) any amounts they would otherwise be obligated to deposit into the Designated Account; (ii) any other amounts Bank or Processor may owe you under this Agreement or any other agreement; and (iii) any funds in the Designated Account or Reserve Account. You acknowledge that in the event of a bankruptcy proceeding, in order for you to provide adequate protection under Bankruptcy Code § 362 to Processor and Bank, you must create or maintain the Reserve Account as required by Processor and Bank, and Processor and Bank must have the right to offset against the Reserve Account for any and all obligations which you may owe to Processor and Bank, without regard to whether the obligations relate to Sales Drafts initiated or created before or after the filing of the bankruptcy petition.

D. Remedies Cumulative. The rights and remedies conferred upon Processor and Bank in this Agreement, at law or in equity, are not intended to be exclusive of each other. Rather, each and every right of Processor and Bank under this Agreement, at law or in equity, will be cumulative and concurrent and in addition to every other right.

8. Fees and Other Amounts Owed Bank.

A. Fees and Taxes. You will pay Processor and Bank fees for services, forms and equipment in accordance with the rates set forth on the Application. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day's or month's activity, or will be netted out from the funds due you attributable to Sales Drafts presented to Processor and Bank. Processor and Bank reserve the right to adjust the fees set forth on the Application and in this Section, in accordance with Section 16.I, below, provided that Bank must approve, in advance, any fee to or obligation of Merchant arising from or related to performance of this Agreement. You are also obligated to pay all taxes, and other charges imposed by any governmental authority on the services provided under this Agreement. Bank may not assign or otherwise transfer an obligation to pay or reimburse Merchant arising from, or related to, performance of this Agreement to Processor.

B. Other Amounts Owed. You will immediately pay Processor and Bank any amount incurred by Processor and Bank attributable to this Agreement (including but not limited to chargebacks, fines imposed by Visa or MasterCard, non-sufficient fund fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. You authorize Bank to debit via ACH the Designated Account, Merchant Account, or any other account you have at Bank or at any other financial institution for any amount you owe Processor or Bank under this Agreement or under any other contract, note, guaranty, instrument or dealing of any kind now existing or later entered into between you and Processor or Bank, whether your obligation is direct, indirect, primary, secondary, fixed, contingent, joint or several. In the event Processor or Bank demand sums due or such ACH does not fully reimburse Processor and Bank for the amount owed, you will immediately pay Processor and Bank such amount.

C. Merchant Maintenance Supply/Replacement Program ("MMP"). You are responsible for purchasing all supplies required to properly process Card transactions (sales slips, printer rolls, etc.). If you elect to participate in the MMP, you understand that supply quantities provided by CD will be based on your monthly transaction count. Enrollment in MMP also entitles merchant to free refurbished replacement equipment after at least one statement cycle on/with CD. Equipment is under warranty for the life of merchant's enrollment in MMP. Terminal/Peripheral replacement will only apply to those terminals/ peripherals that have submitted or settled batch/transactions. A monthly fee is required for each terminal/peripheral you have. If your terminal/peripheral type is unavailable, CD will substitute the terminal/peripheral at its discretion. CD may choose to cancel the merchant's MMP at any time without notice. This program does not cover (i) terminals/peripherals that have been subject to: water damage; and (ii) Products that have been damaged due to alteration or modification (iii) Non-Payment Card Industry Data Security Standards ("PCI DSS") compliant terminals/peripherals. In these instances, the merchant will be charged the full purchase price of the refurbished replacement equipment. This program is non-transferable without written consent.

9. Application, Indemnification, Limitation of Liability.

A. Application. You represent and warrant to Processor and Bank that all information in the Application is correct and complete. You must notify Processor in writing of any changes to the information in the Application, including but not limited to: any additional location or new business, (the identity of principals and/or owners, the form of business organization (i.e., sole, proprietorship partnership, etc.), type of goods and services provided and how sales are completed (i.e. by telephone, mail, or in person at your place of business). The notice must be received by Processor within 10 business days of the change. You will provide updated information to Processor within a reasonable time upon request. You are liable to Processor for all losses and expenses incurred by Processor arising out of your failure to report changes to it. Bank and Processor may immediately terminate this Agreement upon notification by you of a change to the information in the Application.

B. Indemnification. You will hold harmless and indemnify the Card Associations, Processor and Bank, their employees and agents (i) against all claims by third parties arising out of this Agreement, and (ii) for all attorneys' fees and other costs and expenses paid or incurred by Processor or Bank in the enforcement of the Agreement, including but not limited to those resulting from any breach by you of this Agreement and those related to any bankruptcy proceeding.

C. Limitation of Liability. Any liability of Processor or Bank under this Agreement, whether to you or any other party, whatever the basis of the liability, shall not exceed in the aggregate the difference between (i) the amount of fees paid by you to Processor and Bank during the month in which the transaction out of which the liability arose occurred, and (ii) assessments, chargebacks, and offsets against such fees which arose during such month. In the event more than one month is involved, the aggregate amount of Processor's and Bank's liability shall not exceed the lowest amount determined in accord with the foregoing calculation for any one month involved. Neither Processor Bank nor their agents, officers, directors, or employees shall be liable for indirect, special, or consequential damages.

D. Performance. Processor and Bank will perform all services in accordance with this Agreement. Processor and Bank make no warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. Processor and Bank disclaim all implied warranties including those of merchantability and fitness for a particular purpose. No party will be liable to the others for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party. Neither Processor nor Bank shall be liable for the acts or omissions of any third party. For purposes of this Agreement, Processor is the exclusive agent of Bank and Bank is at all times entirely responsible for, and in control of Processor's performance.

10. Representations and Warranties. You represent and warrant to Processor and Bank at the time of execution and during the term of this Agreement the following:

A. Information. You are a corporation, limited liability company, partnership or sole proprietorship validly existing and organized in the United States. All information contained on the Application or any other document submitted to Processor or Bank is true and complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Merchant. You are not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, unless you obtain the prior written consent of Processor and Bank.

B. Entity Power. Merchant and the person signing this Agreement have the authority to execute and perform this Agreement. This Agreement will not violate any law, or conflict with any other agreement to which you are subject.

C. No Litigation or Termination. There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never entered into an agreement with a third party to perform credit or debit card processing which has been terminated by that third party.

D. Transactions. All transactions are bona fide. No transaction involves the use of a Card for any purpose other than the purchase of goods or services from you nor does it involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with Processor and Bank.

E. Rule compliance. You will comply with the Laws and Rules.

11. Audit and financial information.

A. Audit. You authorize Processor or Bank to audit your records, systems, processes or procedures to confirm compliance with this Agreement, as amended from time to time. You will obtain, and will submit a copy of, an audit of your business when requested by Processor or Bank.

B. Financial Information.

i. Authorizations. You authorize Processor or Bank to make any business or personal credit inquiries they consider necessary to review the acceptance and continuation of this Agreement. You also authorize any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Processor and Bank.

ii. Documents. You will provide Processor or Bank personal and business financial statements and other financial information as requested from time to time. If requested, you will furnish within 120 calendar days after the end of each fiscal year to Processor and Bank a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.

12. Third Parties.

A. Services. You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. Processor and Bank have no responsibility for any transaction until that point in time Processor or Bank receive data about the transaction.

B. Use of Terminals Provided by Others. You will notify Processor and Bank immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than Processor and Bank or its authorize designee ("Third Party Terminals") to process transactions. If you elect to use Third Party Terminals you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to Processor and Bank, and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Processor nor Bank will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a Third Party Terminal.

C. Debit Network Requirements. In order to inform Cardholders that Debit Cards may be accepted at your locations, you will prominently display the trademark of each Debit Network at each location and will display signage of each Debit Network at the entrance, near all Terminals and on the window of such location. All uses by you of any Debit Network trademark will comply with the Rules. You acknowledge and agree that in displaying any such trademark, you will be subject to approval by the applicable Debit Network. You will under no circumstances be deemed to be a licensee or sublicensee of any trademark of any Debit Network, nor will you otherwise be deemed to have or to acquire any right, title or interest in such trademarks.

13. Term and Termination

A. Term. The Agreement will become effective on the date Bank executes this Agreement ("Effective Date"), provided, however that if you submit a transaction prior to the Effective Date, you will be bound by all terms of this Agreement. The Agreement will remain in effect for a period of 3 years ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below.

B. Termination. The Agreement may be terminated by Bank or Merchant to be effective at the end of the Initial Term or any Renewal Term by giving written notice of an intention not to renew at least 90 calendar days before the end of the current term. Further, this Agreement may be terminated at any time with or without notice and with or without cause by Processor and Bank. Processing under a particular Debit Network may be suspended or terminated (without terminating this entire Agreement) if: (i) the Debit Network determines to suspend or terminate processing; or (ii) automatically, upon termination or expiration of Processor's or your access to such Debit Network whether caused by termination or expiration of Processor's agreement with such Debit Network or otherwise. In addition, in the event that Processor's participation in such Debit Network is suspended for any reason, processing through such Debit Network by you will be suspended for the period of time of such suspension and Bank or Processor will immediately notify you of that event. Neither Processor, Bank, nor any Debit Network will have any liability to you as a result of any such suspension or termination.

C. Action upon Termination.

i. Terminated Merchant File. You acknowledge that Bank is required to report your business name and the name of Merchant's principals to Discover Network, Visa and MasterCard when Merchant is terminated due to the reasons listed in the Rules.

ii. Designated Account. All your obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Designated Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time, but in any event not less than the time specified in this agreement, you authorize Bank to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Designated Account or Reserve Account is not adequate, you will pay Processor and Bank the amount you owe it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.

iii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by Processor and immediately pay Processor and Bank any amounts you owe them for equipment costs.

iv. Early Termination. If you terminate this Agreement before the end of the Initial Term, you will immediately pay Bank, as deconversion costs, an early termination fee equal to $495. You agree that the early termination fee is not a penalty, but rather is reasonable in light of the financial harm caused by your early termination. Other remedies Bank or Processor may have under this Agreement still apply.

14. Compliance With Laws And Rules. You agree to comply with all rules and operating regulations issued from time to time by a Debit Network, Diners' Club, Discover Network, MasterCard, and Visa and any policies and procedures provided by Processor or Bank, including those set forth in the Merchant Operating Manual ("Rules"). The Rules are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time. You will assist Processor and Bank in complying with all Laws and Rules now or hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to Processor and Bank all instruments it may from time to time reasonably deem necessary.

15. Use of Trademarks and Confidentiality.

A. Use of Trademarks. Your use of Discover Network, Visa and MasterCard trademarks must fully comply with the Rules. Your use of Discover Network, Visa, MasterCard or other cards' promotional materials will not indicate directly or indirectly that Discover Network, Visa or MasterCard endorse any goods or services other than their own and you may not refer to Discover Network, Visa or MasterCard in stating eligibility for your products or services. If you have requested signage for the purpose of indicating acceptance of Debit Cards, you must display such signage for a minimum of 3 months. All point of sale displays or websites must include either appropriate Discover Network or Visa-owned marks to indicate acceptance of Debit and Other Cards or Visa approved signage to indicate acceptance of the limited acceptance category you have selected.

B. Confidentiality.

i. Cardholder Information. You will not disclose to any third party Cardholders' account information or other personal information except to an agent of yours assisting in completing a Card transaction, a Card Association, or as required by law. You must keep all systems and media containing account, Cardholder, or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and TIDs) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy all material containing Cardholders' account numbers, Card Imprints, Sales Drafts, Credit Vouchers (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused. You may not retain or store magnetic stripe, Discover Network CID or CVV2 data after authorization.

ii. Prohibitions. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of Processor and Bank (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information. If you have requested BIN information, you must only use this BIN information for product identification purposes at the point of sale, and not disclose this proprietary and confidential Visa BIN information to any third party without prior written permission from Visa.

iii. Disclosure. You authorize Processor and Bank to disclose your name and address to any third party who requests such information or otherwise has a reason to know such information.

C. Return to Bank. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of Processor and Bank and will be immediately returned to Processor upon termination of this Agreement. You will be fully liable for all loss, cost, and expense suffered or incurred by Processor and Bank arising out of the failure to return or destroy such materials following termination.

16. General Provisions.

A. Entire Agreement. This Agreement as amended from time to time, including the Rules, the Merchant Operating Manual, and the completed Merchant Application, all of which are incorporated into this Agreement, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded. This Agreement may be signed in one or more counterparts, all of which, taken together, will constitute one agreement.

B. Governing Law. This Agreement will be governed by the laws of the State of New York. Proper venue for any dispute arising from this agreement shall be in any state or federal court of competent jurisdiction in Queens County, New York. Merchant and Guarantor(s) agree to submit to the personal jurisdiction of courts located in Queens County, New York.

C. Exclusivity. During the Initial and any Renewal Term of this Agreement, you will not enter into an agreement with any other entity that provides Card processing services similar to those provided by Processor and Bank as contemplated by this Agreement without Processor and Bank's written consent.

D. Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. This Agreement may be executed by facsimile, and facsimile copies of signatures to this Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

E. Assignability. This Agreement may not be assigned by Merchant directly or by operation of law, without the prior written consent of Processor. If Merchant nevertheless assigns this Agreement without the consent of Processor, the Agreement shall be binding upon the assignee. Bank will be informed of any such assignment.

F. Notices. Any written notice under this Agreement will be deemed received upon the earlier of: (i) actual receipt or (ii) five calendar days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.

G. Bankruptcy. If your business fails, including bankruptcy, insolvency, or other suspension of business operations, you must not sell, transfer, or disclose any materials that contain Cardholder account numbers, personal information, or other Visa transaction information to third parties. You must either return this information to Processor or provide acceptable proof of destruction of this information. You will immediately notify Processor and Bank of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Processor and Bank on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing. Failure to comply with either of these requirements will be cause for immediate termination or any other action available to Processor and Bank under applicable Rules or Laws.

H. Attorneys' Fees. Merchant will be liable for and will indemnify and reimburse Processor and Bank for all attorneys' fees and other costs and expenses paid or incurred by Processor and Bank or their agents in the enforcement of this Agreement, or in collecting any amounts due from Merchant or resulting from any breach by Merchant of this Agreement.

I. Amendments. Bank and Processor may amend this Agreement at any time upon notice to you. With regard to increases in existing fees, or imposition of new fees, except for any fee increases imposed by Discover Network, Visa, MasterCard, or a Debit Network, you may cancel the Agreement if you object to the fee changes in writing within 30 days. If you do not object, and continue to process for 30 days after receiving notice of the fee change, you will be deemed to assent to the new fees.

J. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by Processor or Bank to exercise, or partial exercise of any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by the waiving party.

K. Independent Contractors. Processor, Bank and Merchant will be deemed independent contractors and will not be considered agent, joint venture or partner of the other.

L. Employee Actions. You are responsible for your employees' actions while in your employment.

M. Survival. Sections 4.A,4.B,6.7,8.9, 13.C,15,15.B, and 16.H will survive termination of this Agreement.

N. Bank Contact. You may contact Bank at the following address and telephone number:

Harris, N.A.
150 N. Martingale, Suite 900
Schaumburg, Illinois 60173

Merchant Initials: X_____ CD Initials: X_____

DISCLOSURE PAGE

Member Bank (Acquirer) Information

Acquirer Name: Harris, N.A.

Acquirer Address: 150 N. Martingale Road, Suite 900, Schaumburg, IL 60173

Acquirer Phone: 847-240-6600

Important Member Bank (Acquirer) Responsibilities

1. A Visa / MasterCard Member is the **only entity** approved to extend acceptance of Visa / MasterCard products directly to a Merchant.
2. A Visa / MasterCard Member must be a principal (signer) to the Merchant Agreement.
3. The Visa / MasterCard Member is responsible for educating Merchant on pertinent Visa / MasterCard Operating Regulations with which Merchant must comply.
4. The Visa / MasterCard Member is responsible for and must provide settlement funds to the Merchant.
5. The Visa / MasterCard Member is responsible for all funds held in reserve that are derived from settlement.

Merchant Information

Merchant Name: _____

Merchant Address: _____

Merchant Phone: _____

Important Merchant Responsibilities

1. Ensure compliance with cardholder data security and storage requirements.
2. Maintain fraud and chargebacks below thresholds.
3. Review and understand the terms of the Merchant Agreement.
4. Comply with Visa / MasterCard Operating Regulations.

The responsibilities listed above do not supercede terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Visa / MasterCard Member (Acquirer) is the ultimate authority should the Merchant have any problems.

_____ _____

Merchant Signature Date

_____

Merchant's Printed Name and Title

Exhibit C

Redacted

2.5.B.4 Acquirer Responsibility

An Acquirer must:

- Provide its Agents with the training and education, as specified by Visa U.S.A. and ensure that Agents are well versed on the Member's corporate policies and remain in compliance with those policies and
- Hold and control reserves that are accumulated and derived from the Merchant settlement funds or used to guarantee a Merchant's payment system obligations to the Member

Redacted

Redacted

7.3.11 Settlement Account

An MSP must not have access to any account for funds then or subsequently due to a Merchant for Activity and/or funds withheld from a Merchant for chargebacks arising out of Activity. A Member must not assign or otherwise transfer an obligation to pay or reimburse a Merchant to an MSP if the obligation arises from Activity.

Redacted

Exhibit D

VIA ELECTRONIC AND COURIER DELIVERY

July 16, 2009

Mr. Charles Moore
Mr. Marcelo Paladini
Mr. Dean Leavitt
Cynergy Data, LLC
30-30 47th Ave.
Long Island City, NY 11101

Re: BIN Sponsor Agreement, as amended, dated November 1, 2008 between Cynergy Data, LLC, and Harris N.A. (the "Agreement")

Gentlemen:

The purpose of this letter is to notify you that Cynergy Data, LLC is in default under the Agreement. Specifically, Cynergy has been holding merchant reserves rather than turning over these reserves to Harris/Moneris. This is in violation of Section 2.1 F of the Agreement. Further, holding merchant reserves is a violation of association rules. Failure to observe the rules as required under Section 5.2 of the Agreement constitutes an additional event of default.

We hereby demand that Cynergy immediately pay over to us all merchant reserves. Also, please be advised that Harris/Moneris is immediately exercising its right of set off under Section 4.5 C of the Agreement to fund the merchant reserves and to recover monies owed to it, and will continue to do so as necessary in the future.

Very truly yours,

Gregory Cohen

Woodfield Corporate Center
150 N. Martingale Road, Suite 900
Schaumburg, IL 60173
Phone: 800-471-9511 Fax: 847-240-6583

EXHIBIT 4

SETTLEMENT TERM SHEET
SUMMARY OF PROPOSED TERMS AND CONDITIONS
JUNE 2, 2010

This summary of the principal terms and conditions ("Summary") of a proposed settlement has been prepared exclusively for consideration by those parties listed as Settling Parties below (each a "Settling Party" and, collectively, the "Settling Parties"). The proposed settlement described in this Summary does not constitute a binding offer or agreement by any Settling Party or any of their respective affiliates or subsidiaries, and the obligations of any of these parties shall be only those obligations set forth in the definitive agreement approved, executed and delivered by the Settling Parties (the "Settlement Agreement") except that each Settling Party agrees that (i) it will negotiate in good faith to consummate the Settlement Agreement and all other documents contemplated thereby, and (ii) each Settling Party will seek approval of the Settlement Agreement by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

Reference is made to that certain stipulation by and among the Settling Parties dated December 18, 2009 and so ordered by the Bankruptcy Court on December 21, 2009 and any subsequent stipulations and orders of the Bankruptcy Court related thereto (the "Stipulation") and to that certain Escrow Agreement dated October 26, 2009, between Cynergy Data, LLC (now known as CD Liquidating Co., LLC) and Wilmington Trust Company as Escrow Agent (the "Existing Escrow Agreement").

Reference is also made to (1) the Objection of the Term B Parties and Second Lien Parties to Debtors' Notice of Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Cure Amounts, (2) the Objection by Moneris Solutions, Inc. to the Proposed Assumption and Assignment of Assumed Contracts and Proposed Cure Amounts and (3) the Response of Cynergy Holdings LLC to (i) Objection of Term B Parties and Second Lien Parties to Debtors' Notice of Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Cure Amounts and (ii) Debtors' Motion for an Order Pursuant to Sections 105, 363, 365, 503 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014, Among Other Things, (a) Approving the Sale of the Assets Free and Clear of All Liens, Claims and Encumbrances; (b) Approving Procedures for Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (c) Granting Related Relief as Requested (each an "Objection" and, collectively, the "Objections").

Summary of Settlement Terms

Settling Parties:

Harris/Moneris

Harris N.A. and Moneris Solutions, Inc., in its capacity and as agent for Harris N.A. or their successors or assigns as BIN Sponsor to Purchaser (collectively, "Moneris")

Term B Parties and Second Lien Parties (collectively, "Term B Parties")

Dymas Funding Company LLC, individually and as agent for the Term B Lenders and as agent for the Second Lien Lenders ("Dymas")

Ableco Finance LLC, as Term B Lender and as Second Lien Lender

A3 Funding LLC, as Term B Lender and as Second Lien Lender

Garrison Credit Investments I LLC, as Term B Lender

Term A Parties

Comerica Bank, as a Term A Lender and as agent for the Term A Lenders

Wells Fargo Capital Finance, LLC, formerly known as Wells Fargo Foothill, LLC, as a Term A Lender

Comerica Bank, as lender to Cynergy Liquidation Co. Plus, LLC, f/k/a Cynergy Prosperity Plus, LLC and as agent

Debtors

CD Liquidation Co., LLC, f/k/a Cynergy Data, LLC

Cynergy Data Holdings, Inc.

CD Liquidation Co. Plus, LLC, f/k/a Cynergy Prosperity Plus, LLC

Purchaser

Cynergy Holdings, LLC and Cynergy Data, LLC or each of their successors and assigns as ISO under the BIN Sponsor Agreement (collectively "Purchaser")

Settling Parties shall include the successors and assigns of each of the foregoing entities.

Closing Date: No later than July 29, 2010 (the "Closing Date"); unless otherwise agreed to by the parties.

Settlement Escrowed Funds: Upon the earliest of the following: the date on which an order of the Bankruptcy Court is issued (x) confirming the Debtors' plan of reorganization, if this settlement is incorporated into the plan or (y) approving the Settlement Agreement; the Escrowed Funds, as such term is defined in the Existing Escrow Agreement in the amount of $20,004,327.49 less amounts released from the Escrowed Funds prior to such date pursuant to the Stipulation (the "Settlement Escrowed Funds") shall be deposited into a segregated, interest bearing (no risk), escrow account (the "Settlement Escrow Account") with an unrelated, third party, escrow agent acceptable to each of the Settling Parties (Wilmington Trust Company, being deemed an acceptable escrow agent) subject to an escrow agreement in form and substance acceptable to the Settling Parties (the "Settlement Escrow Agreement"). The foregoing amount includes rolling reserve releases which were included in accounts payable of the Debtor but not paid prepetition in the amount of $302,011.82. Until the time set forth in the foregoing sentence, the Settlement Escrowed Funds shall remain in the current Escrow Account as defined in and pursuant to the Existing Escrow Agreement for distribution under the existing Stipulation. The Settlement Escrowed Funds shall be held in the Settlement Escrow Account to be disbursed in accordance with the Indemnification Coverage provisions herein and as cash collateral ("Cash Collateral") for (a) the secured claims of the Term A Parties, and the Term B Parties for obligations outstanding under the prepetition and postpetition financing facilities (to be defined in the Settlement Agreement) in the amounts set forth on a schedule attached to the Settlement Agreement

which schedule shall be updated on and as of the Determination Date (as defined below), respectively, including for any potential revived secured claim on account of payment by the Term A Parties or Term B Parties under the guaranty of the Indemnifying Parties' obligations (described below), and (collectively, the "Term A Parties Claims" and collectively, the "Term B Parties Claims") (b) the secured claims of Moneris for the Indemnification set forth herein.

Prior to and including November 3, 2014 (the "Determination Date"), the only distributions that may be made from the Settlement Escrow Account are (a) are monthly disbursements from net accrued interest (net of expenses under the Settlement Escrow Agreement) earned on the Settlement Escrowed Funds in the Settlement Escrow Account to Comerica Bank, as Agent for the Term A Lenders, for application to the indebtedness of Debtors to the Term A Parties until paid in full, and then to Dymas Funding Company LLC, as Agent for the Term B Parties for application to the indebtedness of Debtors to the Term B Parties until paid in full ("Interest Payments"), and (b) on account of Indemnification Payments to Moneris as set forth herein. Interest Payments and Indemnification Payments continue after the Determination Date as set forth below.

After the Determination Date, the only distributions that may be made from the Settlement Escrow Account are to Moneris, the Term A Parties or the Term B Parties as provided below. After the Determination Date, the Term A Parties, Term B Parties, Purchaser and Moneris will determine the expected present value of the remaining Cure Amount under a methodology acceptable to the parties and distribution of the remaining Settlement Escrowed Funds, as acceptable to such parties. Until such time as agreement is reached and definitive documentation acceptable to Moneris, Purchaser, the Term A Parties (unless paid in full), and the Term B Parties is fully executed with respect to the transaction in the foregoing sentence, the Indemnification survives and Indemnification Payments and Interest Payments shall continue to be made from the Settlement Escrow Account. So long as the Indemnification survives, no other entity besides Moneris, the Term A Parties, the Term B Parties and Purchaser to the extent of Purchaser's subrogation rights set forth herein, will have an interest in the Settlement Escrow Account and

	the Settlement Escrow Account will not be disposed of or encumbered other than as set forth herein. The Settlement Escrow Agent's fees and expenses shall be provided for and paid first from the assets of the Debtor's estate other than the Settlement Escrowed Funds in the Settlement Escrow Account pursuant to the confirmed plan, and any shortfall shall be paid from accrued interest earned on the funds in the Settlement Escrow Account. In no event shall the principal amount of the Settlement Escrowed Funds in the Settlement Escrow Account be used to pay fees and expenses of the Settlement Escrow Agent.
Indemnified Parties:	Indemnification of each of Moneris Solutions, Inc. and Harris N.A. and each of their respective parents, subsidiaries, affiliates and their respective shareholders, partners (both general and limited), members, officers, directors, employees and agents and each other person, if any, controlling each of them or any of their affiliates (each being an "Indemnified Party" and collectively, the "Indemnified Parties").
Indemnifying Parties:	Debtors, on a limited recourse basis (recourse limited to and capped at the principal amount of the Settlement Escrowed Funds) ("Indemnifying Party"). If the Term A Parties elect after the Determination Date, and subject to definitive agreement executed by Moneris, the Term A Parties, the Term B Parties, and Purchaser, to apply all or a portion of the Settlement Escrowed Funds to their Term A Parties Claims or Term B Parties Claims, as applicable, as permitted under that definitive agreement, then the obligations of the Indemnifying Parties under the Settlement Agreement will be severally guaranteed by the Term A Parties allocated as determined by the Term A Parties, and the amount of such guaranty shall be capped at the principal amount of the Settlement Escrowed Funds (excluding the amount of the Interest Payments received by the Term A Parties) applied by the Term A Parties to the Term A Parties Claims. If at the time of such election or any given time thereafter, either (i) Wells Fargo Capital Finance, LLC is no longer a subsidiary of an FDIC insured National Association providing banking services or Comerica Bank is no longer an FDIC insured Texas banking corporation or (ii) the rating by any of S&P, Moodys or Fitch of the senior debt of any Term A Party (or

its parent as applicable) is no longer investment grade, then such Term A Party may not apply any of the Settlement Escrowed Funds (other than Interest Payments as provided above) to its Term A Party Claims unless such Term A Party posts collateral, a letter of credit in favor of Moneris or some other form of security agreeable to Moneris, in its sole discretion. The Term B Parties may not apply any portion of the Settlement Escrowed Funds unless and until the Term B Parties post collateral, a letter of credit in favor of Moneris or some other form of security agreeable to Moneris, in its sole discretion. Following payment in full of the Term A Parties Claims, the Term B Parties may substitute and replace the Term A Parties as Guarantors under an assumption agreement reasonably acceptable to the Term A Parties, Term B Parties, Purchaser and the Indemnified Parties ("Assumption Transaction"), including both (a) a release of the Term A Parties, and (b) an assumption by the Term B Parties of all of the obligations of the Term A Parties in the Settlement Agreement, including indemnification of the Indemnified Parties for amounts applied by the Term A Parties to each of their Term A Parties Claims from the Settlement Escrowed Funds. If following payment in full of the Term A Parties Claims, the Term B Parties do not timely enter into an Assumption Transaction, all of the remaining Settlement Escrowed Funds shall be released to Moneris and held in accordance with the Bin Sponsor Agreement and each applicable Merchant Agreement. The Term A Parties, allocated as determined by the agreement of the Term A Parties, will severally, and after an Assumption Transaction, the Term B Parties will as determined by agreement of the Term B Parties, severally, guarantee in favor of Moneris the Indemnification Payments capped at the principal amount of the Settlement Escrow Account applied, respectively, by the Term A Parties or the Term B Parties to their respective Term A Parties Claims or Term B Parties Claims. Any payments by a Term A Party (or Term B Party as the case may be) under its guaranty of payment shall revive the secured claim against the Debtors of the paying Term A Party (or Term B Party as the case may be) to the extent of such payments.

Notwithstanding anything to the contrary (and without expanding any obligation of any Term A Party or Term B Party set forth above), in no event shall any Term A Party or Term B Party have any monetary or indemnity obligations to make any payments under its guaranty to

Moneris or a merchant (i) until such party elects after the Determination Date to apply the Settlement Escrowed funds to its respective Term A Parties Claims or Term B Parties Claims or (ii) in excess of the Settlement Escrowed Funds (exclusive of Interest Payments) that are applied in satisfaction of the Term A Parties Claims of such Term A Party or Term B Parties Claims of the Term B Party less payments previously made under the guaranty, and with respect to a particular merchant, in excess of the Settlement Escrowed Funds designated for such merchant's account; provided that nothing herein, including the cap and limitations on recourse with respect to Indemnification Payments set forth herein, limits the rights and remedies of Moneris at law or in equity for breach of the Settlement Agreement.

Indemnification Coverage:

Where (1) the applicable merchant has been identified as having an unfunded rolling reserve in an amount per merchant as set forth on an agreed to Schedule to the Settlement Agreement which amount has been escrowed in the Existing Escrow Account minus (i) any distributions made on account of that merchant pursuant to the Stipulation and (ii) any prior Indemnification Payments made pursuant to the Settlement Agreement the difference of which represents all or part of the amount sought as an Indemnification Payment for that merchant, irrespective of any ISO level reserves, sub-ISO level reserves, QM reserves or any other reserves from the merchant to fund those losses pursuant to any agreement related to the BIN Sponsor Agreement, (2) the applicable merchant (i) has processed transactions resulting in settlement proceeds which are insufficient to cover such Merchant Loss (defined below) (to the extent of such insufficiency); (ii) was no longer processing transactions with the Debtors and/or is not currently processing transactions with the Purchaser, (iii) has closed merchant accounts with the Debtors and/or the Purchaser or (iv) has requested a return of, or Purchaser or Moneris consistent with their ordinary course of business have determined to return, part or all of such merchant's reserves in accordance with and as provided by the terms of the applicable merchant processing agreement, and (3) the requested payment is of the type of payment for a Merchant Loss (as defined herein) that would be sought to be recovered from a reserve account if such account was funded by the Debtors as of the Petition Date, the Indemnifying Parties shall provide

indemnification (the "Indemnification") to the Indemnified Parties for such merchant for all proceedings, actions, claims, suits, liabilities, losses, costs or expenses of any kind (including, but not limited to fees and expenses of legal counsel) attributed to a merchant, including all chargebacks, claims, fees, fines, returns, uncollected amounts due from such merchant, fraudulent practices of such merchant, attorneys fees incurred for collection, or requests for repayment of reserves (each a "Merchant Loss").

If the Indemnified Parties fail to take timely action to seek an Indemnification Payment (action within 7 Business Days of receipt by Moneris of a certification by Purchaser of a Merchant Loss would be considered timely), then Purchaser may send written notice to Moneris identifying such failure consistent with the terms of the Settlement Agreement and providing details of any Merchant Loss certified by an officer of Purchaser and if Moneris fails to take action within 7 Business Days of such notice, then to the extent such Merchant Losses otherwise would have been indemnified by the Indemnifying Parties, Purchaser shall be subrogated to the rights of the Indemnified Parties with respect to such Merchant Loss.

Timing of Indemnification Payment

Moneris will give notice to (a) the Settlement Escrow Agent, (b) Purchaser, (c) Comerica, as agent for Term A Parties, or, after an Assumption Transaction, Dymas, as agent for the Term B Parties, and (d) one individual designee of Comerica or, after an Assumption Transaction, of Dymas, on any Business Day (a "Payment Date"), on which Moneris wishes to collect a payment pursuant to the Indemnification (an "Indemnification Payment"). If on any such Payment Date, the Settlement Escrow Agent receives not later than 11:30 a.m. (Chicago, Illinois time) a written notice from Moneris, specifying (i) that an Indemnification Payment is to be made on such Payment Date, (ii) the principal amount of such Indemnification Payment and (iii) to the knowledge of Moneris, all of the applicable conditions to such Indemnification Payment have been satisfied, the Settlement Escrow Agent will transfer from the Settlement Escrow Account or, if for any reason funds are insufficient in the Settlement Escrow Account, the Term A Parties or Term B Parties, as applicable, will transfer by, not later than 3:30 p.m. (Chicago, Illinois time), on such Payment Date to Moneris' demand deposit account, in immediately available funds, an amount equal to such

	Indemnification Payment. In the event that such notice is received by Settlement Escrow Agent later than 11:30 a.m. (Chicago, Illinois time), such Indemnification Payment will be made on the next succeeding Business Day by no later than 3:30 p.m. (Chicago, Illinois time). Within 35 Business Days after the applicable Payment Date occurs, Comerica (or the Term B Parties' Agent if applicable after an Assumption Transaction), may provide notice of a request for return and recovery from Moneris of all or part of any such Indemnification Payment made on the Payment Date only because such payment was paid in error and was not otherwise due and owing to Moneris or a merchant. The Settlement Agreement will provide for a dispute mechanism if such a notice is delivered.
Security Provisions:	The obligations of Indemnifying Parties to indemnify the Indemnified Parties shall be secured by a perfected first priority security interest in the Settlement Escrow Account, including execution of a Demand Account Control Agreement, reasonably satisfactory to Moneris.
Litigation:	Hearing dates and other scheduling dates set forth in the Stipulation remain until Bankruptcy Court approval of the Settlement Agreement Withdrawal of all Objections upon approval of Settlement Agreement
Consents:	Purchaser Creditors Committee Bankruptcy Court Approval Must bind any trustee - chapter 7 or 11.
Releases:	Full release of any and all claims against Moneris arising on or before the date of the Bankruptcy Court order approving the Settlement Agreement and related in any way to the Settlement Escrowed Funds, Bin Sponsor Agreement or the Debtors, by the Debtors, Term A Parties, Term B Parties, Garrison Credit Opportunities Holdings, L.P. and Committee, except with respect to: (i) claims as set forth in the Settlement Agreement, (ii) claims for breach under the Settlement Agreement and (iii) claims for disgorgement by Moneris under the Order dated December December 21, 2009 (Docket No. 498) by the Bankruptcy Court in Debtors' bankruptcy cases regarding, among other things,

releases of escrowed funds, provided, however, that claims on account of such potential disgorgement obligations shall be included in the claims released if none of Debtors, Term A Parties, Term B Parties, or the Committee provide to Moneris, within 35 Business Days after the date upon which the Bankruptcy Court enters an order approving the Settlement Agreement, a notice of request for return and recovery of all or part of any payments received under the Order. Release by Purchaser of claims against Moneris, but solely to the extent relating to the Indemnification Payments received and used by Moneris to cover a Merchant Loss and not otherwise disgorged.

For the avoidance of doubt, the Settlement Agreement does not release claims as between the Debtors and Purchaser.

Full release of any and all claims arising on or before the date of the Bankruptcy Court order approving the Settlement Agreement by Moneris of the Debtors, Term A Parties, Term B Parties, Garrison Credit Opportunities Holdings, L.P. and Committee related to the Settlement Escrowed Funds, Bin Sponsor Agreement or the Debtors except (i) claims as set forth in the Settlement Agreement, and (ii) claims for breach under the Settlement Agreement For the avoidance of doubt, the Settlement Agreement does not release claims by Moneris against Purchaser for liabilities of the Debtors which were assumed by Purchaser, or adversely affect, in any way any rights, claims and interests of the Purchaser under the Sale Order, provided further that nothing in this sentence or in the other provisions of the Settlement Agreement shall provide the Purchaser with rights or remedies which are more expansive than those that are currently held by the Purchaser under the Sale Order except to the extent that such rights or remedies are expressly provided for in the other provisions of the Settlement Agreement.

Legal Fees and Costs

Immediately upon Bankruptcy Court approval of the Settlement Agreement, reimbursement from the Debtors' estate as part of the cure of the assumption of the Bin Sponsor Agreement of any and all attorney fees, expenses and disbursements incurred by Moneris in connection with Debtors' bankruptcy cases after October 26, 2009 through approval of the Settlement Agreement by a final, nonappealable order issued by the Bankruptcy Court; which amount shall not be deducted from the Settlement Escrowed Funds.

Permanent Injunction:	Permanent injunction issued by the Bankruptcy Court of all parties in interest in the Bankruptcy Cases against pursuit of claims (i) released under the Settlement Agreement or (ii) related to reserves identified in the Bankruptcy Cases as part of the Settlement Escrowed Funds, except such injunction shall exclude and not apply to (x) payments provided for under the Settlement Agreement or requests made by a merchant for return of a merchant reserve pursuant to and in accordance with the terms of the applicable merchant processing agreement by and among the merchant, the Debtors and Moneris and the Bankruptcy Court order approving the Settlement Agreement which portion of a reserve was not previously paid (and not otherwise disgorged) to Moneris and/or Purchaser as an Indemnification Payment and (y) except as specifically released herein by the Purchaser, any and all claims, rights and interests of Purchaser arising under the Sale Order.
Merchants:	For clarification, prior to and after a Determination Date, merchants seeking return payment, in part or in full, of a reserve which was designated as a Rolling Reserve and deposited into the Cure Reserve as defined in the Sale Order, may contact a representative at Purchaser requesting such return in accordance with the applicable merchant processing agreement. Payment of any such reserve to a merchant is subject to the terms and conditions of the applicable merchant processing agreement by and among the merchant, the Debtors, Purchaser, as assignee and Moneris.
Bankruptcy Court Approval:	Except as otherwise provided for, the Settlement Agreement is subject to the approval of the Bankruptcy Court pursuant to a final and non-appealable order therefrom. Undersigned parties consent and agree to use best efforts to obtain all court orders necessary to effectuate the transactions contemplated in Settlement Agreement. As soon as practicable, and in any event within 5 days after the Settlement Agreement is executed, the Debtors will file a motion in the Bankruptcy Court seeking approval thereof. If the Bankruptcy Court denies the Debtors' motion seeking approval of the Settlement Agreement, the Settlement Agreement shall terminate. In the event of a termination

pursuant to the preceding sentence, none of the terms and statements of the Settlement Agreement, nor any part of this Summary or any correspondence between or statements of the Settling Parties related to the negotiation, drafting or approval of this Summary or the Settlement Agreement shall be argued or deemed to be an admission against such party's interest in any litigation between the Settling Parties.

Representations and Warranties:

Customary for this type of transaction, including, the Settling Parties shall each represent and warrant that: (a) each such entity has full power and authority to enter into and execute the Settlement Agreement and to carry out the obligations and covenants created thereby; (b) the execution and delivery of the Settlement Agreement and the performance of the obligations and covenants created thereunder have been duly authorized by all necessary corporate action on the part of each such party, and no shareholder or other approval is necessary in order to bind each such party thereto; and (c) the execution and delivery of the Settlement Agreement and the performance of the obligations and covenants created thereby are in the best interest of each such party and will not result in any conflict with or breach or violation of, or default under, the certificate of incorporation or by-laws of such party. Representation by Garrison Credit Investments I LLC that Garrison Credit Opportunities Holdings, L.P. was never and is not a Term B Lender or Second Lien Lender and has no claim against or interest in the Debtors.

Representation by Debtors that, except as set forth on the Disclosure Schedules to the Settlement Agreement which Disclosure Schedules shall include a listing of all unfunded merchant reserves per merchant with a description of any outstanding issues or disputes associated therewith, to their knowledge and as of October 26, 2009, there are no monies owing by the Debtors related to or arising out of unfunded merchant reserves.

Covenants

Settlement Escrow Account documents to provide for certifications made by the Settlement Escrow Agent to each Settling Party on the 5th Business Day of each month as to the holdings and transactions with respect to the Settlement Escrowed Funds for the prior months end, including interest received during such month and the type and source of such interest and disbursements of interest. Investments by Settlement Escrow Agent must be acceptable to each of

	Moneris, each Term A Party and after an Assumption Transaction, Dymas Funding Company LLC.
Conditions Precedent:	Customary and appropriate for transactions of this type, including, without limitation, (i) execution and delivery of satisfactory definitive documentation customary for such transactions, (ii) bankruptcy court approval, (iii) obtaining necessary third party approvals (if any), (iv) prompt delivery to Moneris of drafts of the Settlement Escrow Agreement, Settlement Agreement, and pleadings to approve the Settlement Agreement; and (v) withdrawal with prejudice of objections by Garrison Credit Opportunities Holdings, L.P.
Events of Default:	Events of default customary and appropriate for a transaction of this kind and nature, including breach of any material obligation under the Settlement Agreement or Stipulation; certain bankruptcy or insolvency events.
Remedies for Default:	Customary and appropriate for a transaction of this kind and nature, including payment of legal fees and expenses for prevailing, non-breaching parties by breaching parties.
Acknowledgments:	Each of the Settling Parties acknowledges and agrees (a) that the Settlement Agreement, only to the extent it pertains to each Settling Party, and the transactions and documents contemplated thereby, only to the extent it pertains to each Settling Party, are fair and reasonable and are not unconscionable or the result of any fraud, duress, coercion, pressure or undue influence exercised by any party upon the others or by any person or persons; (b) that it has had the opportunity to obtain independent legal advice from counsel of its own selection with respect to the Settlement Agreement and the transactions and documents contemplated thereby and its respective rights and obligations thereunder; and (c) that it understands its respective rights and obligations thereunder and the relevant facts. Each of the Settling Parties acknowledge that the Settlement Agreement is entered into solely because of desire on the part of all concerned to bring to a close, and to foreclose, mutually vexatious litigation and shall never be treated as, or claimed to be, an admission of liability, fault, wrongdoing, injury or damages, all of which are, and remain, disputed.

	Settlement Agreement Jointly Drafted. The Settling Parties acknowledge that they jointly contributed to the drafting of the Settlement Agreement. In the event of ambiguity, no rule of contract interpretation or rule of contract construction based on an allegation that one party to the Settlement Agreement drafted the Settlement Agreement shall be applied to construe the Settlement Agreement for or against any party.
Challenges:	Any action relating to the Settlement Agreement shall be brought in the Bankruptcy Court unless and until the bankruptcy cases are closed by order of the Bankruptcy Court, after which such actions may be brought in the federal or state courts of New York and the Settling Parties consent to the personal jurisdiction of such court for such an action and to the venue of such court.
Business Day:	A day, other than a (i) Saturday, (ii) Sunday, or (iii) a day on which the banks in Illinois are not open for business.
Governing Law:	The Settlement Agreement shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of New York, without regard to its choice of law provisions.
	[Signature pages follow.]

Accepted and agreed to this 2nd day of June, 2010.

DYMAS FUNDING COMPANY LLC individually and as agent for the Term B Lenders and as agent for the Second Lien Lenders

By:_____
Name Eric Miller
Title: Managing Director

ABLECO FINANCE LLC

By:_____
Name Eric Miller
Title: Senior Vice President

A3 FUNDING LP

By:_____
Name Eric Miller
Title: Vice President

GARRISON CREDIT INVESTMENTS I LLC

By:_____
Name
Title:

Accepted and agreed to this 2nd day of June, 2010.

DYMAS FUNDING COMPANY LLC
individually and as agent for the Term B Lenders and as agent for the Second Lien Lenders

By:_____
Name
Title:

ABLECO FINANCE LLC

By:_____
Name
Title:

A3 FUNDING LP

By:_____
Name
Title:

GARRISON CREDIT INVESTMENTS I LLC

By: 
Name JULIAN WELDON
Title: SECRETARY

MONERIS SOLUTIONS, INC.

By:_____
Name
Title:

CD LIQUIDATION CO., LLC

By:_____
Name
Title:

CYNERGY DATA HOLDINGS, INC.

By:_____
Name
Title:

CD LIQUIDATION CO. PLUS, LLC

By:_____
Name
Title:

MONERIS SOLUTIONS, INC.

By:_____
Name
Title:

CD LIQUIDATION CO., LLC

By:_____
Name Charles M. Moore
Title: Chief Restructuring Officer

CYNERGY DATA HOLDINGS, INC.

By:_____
Name Charles M. Moore
Title: Chief Restructuring Officer

CD LIQUIDATION CO. PLUS, LLC

By:_____
Name Charles M. Moore
Title: Chief Restructuring Officer

CYNERGY HOLDINGS, LLC

By:_____
Name
Title:

CYNERGY DATA, LLC

By:_____
Name
Title:

COMERICA BANK

By:_____
Name
Title:

WELLS FARGO CAPITAL FINANCE, LLC
f/k/a WELLS FARGO FOOTHILL, LLC

By:_____
Name
Title:

OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF CD LIQUIDATION CO. PLUS, LLC, *et al.*

By:_____
Name
Title:

CYNERGY HOLDINGS, LLC

By:_____
Name
Title:

CYNERGY DATA, LLC

By:_____
Name
Title:

COMERICA BANK

By:_____
Name Vladimir R. Slapnik
Title: Vice President

WELLS FARGO CAPITAL FINANCE, LLC
f/k/a WELLS FARGO FOOTHILL, LLC

By:_____
Name
Title:

OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF CD LIQUIDATION CO. PLUS, LLC, *et al.*

By:_____
Name
Title:

CYNERGY HOLDINGS, LLC

By:_____
Name
Title:

CYNERGY DATA, LLC

By:_____
Name
Title:

COMERICA BANK

By:_____
Name
Title:

WELLS FARGO CAPITAL FINANCE, LLC
f/k/a WELLS FARGO FOOTHILL, LLC

By:_____
Name JOAN T. LEONARD
Title: MANAGING DIRECTOR

OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF CD LIQUIDATION CO. PLUS, LLC, *et al.*

By:_____
Name
Title:

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	Chapter 11
CD LIQUIDATION CO., LLC, f/k/a CYNERGY DATA, LLC, *et al.*,	:	Case No. 09-13038 (KG)
	:	(Jointly Administered)
Debtors.	:	

CERTIFICATE OF SERVICE

I hereby certify that copies of the MOTION OF MONERIS SOLUTIONS, INC. AND BMO HARRIS BANK N.A. FOR ORDER (1) ENFORCING (A) THE ORDER APPROVING THAT CERTAIN SETTLEMENT REGARDING RECONCILIATION OF AMOUNTS RELATED TO THE ROLLING RESERVE FUND, (B) THE ORDER CONFIRMING THE JOINT PLAN OF LIQUIDATION OF CD LIQUIDATION CO., LLC, CD LIQUIDATION CO. PLUS, LLC, AND CYNERGY DATA HOLDINGS, INC. AND (C) COMPLIANCE WITH THE JOINT PLAN OF LIQUIDATION OF DEBTORS AND (2) ENJOINING MARCELO PALADINI were served today by first class mail to the persons set forth below and all other parties via CM/ECF.

ASCHETTINO STRUHS LLP
Stephen A. Aschettino
Nicole Joy Leibman
1500 Broadway, 21st Floor
New York, New York 10036
Attorneys for Plaintiff Marcelo Paladini

Dated: August 31, 2012

/s/ Joseph N. Argentina, Jr.
Joseph N. Argentina, Jr. (DE 5453)
1100 N. Market Street, Suite 1000
Wilmington, DE 19801

Telephone: (302) 467-4200
Facsimile: (302) 467-4201