

3. BurstNET® grants to you a non-exclusive, non-transferable license to use and display the BurstNET® service and software on the servers and equipment with which you utilize the BurstNET® service. The BurstNET® service and software are owned by BurstNET® and their structure and organization constitute valuable trade secrets of BurstNET®.

4. Advertising, Solicitation and Name Harvesting. You may not use BurstNET® service to send unsolicited advertising, promotional material, or other forms of solicitation to other Clients unless you receive the expressed written permission of the Client. You may not use the BurstNET® service to collect or "harvest" screen names of other Clients without the expressed prior permission of the Client. BurstNET® reserves the right to block or filter mass email solicitations on or through the BurstNET® service. The vast majority of newsgroups and mailing lists on the Internet are not commercial in nature, and participants in such groups may object strongly to commercial postings, solicitations, or advertisements.

5. Internet Conduct. Generally, the Internet consists of the following areas available through BurstNET; Email, Newsgroups, Instant Messaging, Video, and the World Wide Web). The Internet is not owned or operated by, or in any way affiliated with BurstNET® or any of its affiliates; it is a separate, independent network of computers and is not part of BurstNET®. Your use of the Internet is solely at your own risk. When using the Internet and all of its components, Clients must conduct themselves responsibly according to the Internet's own particular code of conduct. Participating successfully on the Internet is really a matter of common sense. Although BurstNET® does not control the Internet, your conduct on the Internet when using your BurstNET® account is subject to BurstNET® rules. Because BurstNET® wants to be a good Internet citizen, it prohibits Clients from engaging in certain conduct on the Internet through or by means of BurstNET® including the following: (1) Chain Letters. Chain letters are prohibited on the BurstNET® network and are inappropriate on the Internet. Posting a chain letter to an Internet newsgroup (or via email on the Internet) from your site may result in your BurstNET® services site being terminated.

6. Other Inappropriate Posts. Each newsgroup and mailing list on the Internet focuses on a particular set of topics and posts not related to these topics are not welcomed by the participants. We suggest that all Clients become familiar with the guidelines, themes, and culture of the specific newsgroups and mailing lists in which they wish to participate. Posting or distributing inappropriate material on or from your site (i.e. spamming or mail bombing) may result in suspension or termination of your BurstNET® account.

7. Copyright and Proprietary Materials. You should be aware that much of the Content available on the Internet is protected by copyright, trademarks, trade secrets and other rights of the independent third parties or their licensors who make such content available on the Internet. Clients use of such Content will be subject to the specific restrictions place on such Content by the owners or licensors of the Rights in such Content and all applicable laws and regulations. Transmitting to the Internet or posting on your site copyright or other material of any kind which is subject to rights of any person or entity without the express permission of the right's holder is prohibited and will result in termination of your BurstNET® Service and possible civil and /or criminal liability.

8. Offensive or Objectionable Material. BurstNET® reserves the right to request you remove any material which BurstNET® deems offensive, hurtful, or otherwise objectionable. Failure to do so may result in blocking your BurstNET® service(s) or termination of the Agreement by BurstNET®.

You understand that except for content, products or services expressly available at BurstNET's® Web site, neither BurstNET®, nor any of its affiliates, controls, provides, operates, or is responsible for any content, goods, or services available on the Internet. All such content, goods, and services are made accessible on the Internet by independent third parties and are not part of BurstNET® or controlled by BurstNET®, BurstNET® neither endorses nor is responsible for the accuracy or reliability of such content, goods, or services available on the Internet, which are the sole responsibility of such independent third parties, and your use thereof is solely at your own risk. Neither BurstNET® nor its affiliates shall be held responsible or liable, directly, or indirectly, for any loss or damage caused or alleged to have been caused by your use of or reliance on any content, goods or services available on the Internet or your inability to access the Internet or any site on the Internet. The foregoing provisions of this paragraph shall apply with equal force even where BurstNET® features or displays a link with any particular Web site.

You should be aware that the Internet contains content, goods, and services that you may find obscene, improper, hurtful, or otherwise offensive and that may not be suitable for certain individuals or for minors who are accessing the Internet. BurstNET® does not have the capability or right to monitor, or review, or restrict any content, goods, or services made available by third parties on the Internet, nor to edit or remove any such questionable content after posting on the Internet. In addition, you should be aware that the Internet provides access to users who are not part of BurstNET® and whose conduct and communication may also be found harmful or offensive to clients or which would otherwise breach the BurstNET® rules if they were subject to it. BurstNET® and its affiliates specifically disclaim any responsibility for (and under no circumstances be liable for) any conduct, content, goods, and services available on or through the Internet (including without limitation any part of the Web).

Your use of the Internet is subject to all applicable local, state, national, and international laws and regulations. Without limiting the other rights available to BurstNET®, BurstNET® retains the right but not the obligation, in its sole discretion and without prior notice or liability, to restrict and/or terminate your access to the Internet and BurstNET® services, if your use of the Internet violates any such laws or regulations, any prohibitions upon your conduct in connection with the Internet raised in this paragraph or otherwise restricts or inhibits any other user from enjoying the Internet or their BurstNET® services.

EXHIBIT C

Service Level Agreement (SLA)

BurstNET® is proud to offer an exceptional level of performance, reliability, and service. That is why we are making commitments to our customers in the form of a Service Level Agreement (SLA) which provides certain rights and remedies regarding the performance of the BurstNET® network. The BurstNET® Service Level Agreement (SLA) guarantees our network/equipment reliability and performance. This Service Level Agreement (SLA) applies to customers of BurstNET's® web hosting, reseller, dedicated server, co-location, e-commerce, and Internet access services.

Uptime Guarantee: BurstNET® strives to maintain a 99.999% network and service uptime level, and guarantees at least 99.5%. This uptime percentage is a monthly figure, and is calculated solely by BurstNET® monitoring systems or BurstNET® authorized/contracted outside monitoring services. If BurstNET® fails to meet its 99.5% uptime guarantee, and it is not due to one of the exceptions below, credits will be made available to each client, upon request, on a case by case basis. BurstNET® does not credit a full month's service for minor downtime. This would not be financially healthy for BurstNET®, and in turn would only negatively affect the service level BurstNET® provides to you. "Partial refunds for partial downtime" is our standard policy. In extreme circumstances, BurstNET® may distribute full month credits, but this is dealt with on a case by case basis. Details on how credit amounts are calculated can be found below.

Exceptions: Customer shall not receive any credits under this SLA in connection with any failure or deficiency of the BurstNET® network caused by or associated with:

- Circumstances beyond reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, "Acts of God" (ie...fire, flood, earthquake, tornado, etc.), strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Service Level Agreement.
- Telco Failure (ie...a backhoe cutting a fiber line somewhere)
- Backbone peering point issues (ie...Level3™ having a router go down in Virginia that wipes out Internet service a portion of the entire East Coast)

Initial: _____ Date ____/____/____

- Scheduled maintenance for hardware/software upgrades
- Hardware failure (faulty hardware is rare, but cannot be predicted nor avoided), BurstNET® utilizes only name brand hardware of the highest quality and performance.
- Software bugs/flaws (Exploits and bugs may develop that cause security issues or downtime)
- DNS issues not within the direct control of BurstNET®
- Network floods, hacks, attacks from outside parties or individuals
- Failure or error of any BurstNET® monitoring or measurement system
- Weather which may affect performance of wireless access equipment performance.
- Client's acts or omissions, including without limitation, any negligence, willful misconduct, or use of BurstNET® service(s) in breach of BurstNET® Policy and Service Guidelines (AUP), by Client or others authorized by Client.

Connectivity: BurstNET's® goal is to make the BurstNET® network available to Clients, free of outages, as best possible. An "outage" is defined as an instance in which Client is unable to transmit and receive IP packets due to a BurstNET® service failure for more than 15 consecutive minutes, excluding service failures relating to BurstNET's® scheduled maintenance and upgrades. The BurstNET® network does not include client premises equipment or any Telco access facilities connecting Client's premises to such infrastructure. BurstNET's™ goal is to keep Average Round-Trip Latency on the BurstNET® network to 85 milliseconds or less. BurstNET® defines "Average Round-Trip Latency", with respect to a given month, as the average time required for round-trip packet transfers between the BurstNET® network and major US backbone peering points during such month, as measured by BurstNET®. BurstNET's® goal is to keep Average Packet Loss on the BurstNET® network to 1% or less. BurstNET® defines "Average Packet Loss", with respect to a given month, as the average percentage of IP packets transmitted on the BurstNET® network during such month that are not successfully delivered, as measured by BurstNET®.

Measurement: BurstNET® will periodically (on average every 5 minutes) monitor BurstNET® network and server availability using software and hardware components capable of measuring application traffic and responses. Client acknowledges that such measurements may not measure the exact path traversed by Client's Internet connection, and that such measurements constitute measurements across the BurstNET® network but not other networks to which Client may connect. BurstNET® reserves the right to periodically change the measurement points and methodologies it uses without notice to Client. Full network and server reporting will be posted to a location designated by BurstNET® and made available to Client.

Hardware Failure: BurstNET® stands behind all equipment on our network. Faulty hardware is rare, but cannot be predicted nor avoided. BurstNET® utilizes only name brand hardware of the highest quality and performance. BurstNET® will replace all faulty hardware affecting performance levels of equipment within 48 hours, which includes hardware issues that cause server crashes or speed issues. Hardware failure resulting in complete network/server outage/downtime will be corrected within two hours of problem identification. Router failure is an exception to this SLA guarantee, and may require on-site Cisco™ engineers or backbone provider emergency personnel to correct the problem. Router failure is governed by current BurstNET® contracts with Cisco™ and backbone providers in regard to the emergency repair service in case of such an issue. Software re-installation and data replacement after server failure, will be completed with 10 hours of problem identification. BurstNET® will replace all faulty hardware on dedicated servers (rented or leased servers), at no charge to the Client, with an unlimited free replacement policy. This includes parts ordered as upgrades. BurstNET® will replace all faulty hardware on all non-purchased dedicated and wireless access customer premise equipment, at no charge to the Client, unless equipment has been tampered with, or damage is caused by direct neglect/action(s) of Client.

Credits: Credit requests must be made on the BurstNET® web site, by filling out the "Service Level Agreement (SLA) Request" form. Each request in connection with network/server outages/downtime must be received by BurstNET® within five days of the occurrence. Each request in connection with Average Round-Trip Latency or Average Packet Loss in a calendar month must be received by BurstNET® within five days after the end of such month. The total amount credited to a Client for BurstNET® not meeting SLA service levels will not exceed the service fees paid by Client BurstNET® for such services for the period in question. Each validly requested credit will be applied to a Client invoice within 30 days after BurstNET's® receipt of such request. Credits are exclusive of any applicable taxes charged to Client or collected by BurstNET®. Upon Client's request (in accordance with the procedure set forth below), BurstNET® will issue a credit to Client for network/server outages/downtime occurring during any calendar month that are reported by Client to BurstNET® and confirmed by BurstNET's® measurement reporting. Such credit will be equal to one day's worth (1/30th) of the monthly fees paid by Client, (for all service fees paid if network outage, or specific affected service fees paid if individual server downtime) multiplied by each hour (or portion thereof rounded to nearest next hour) of the cumulative duration of such outage/downtime. If Average Round-Trip Latency on the BurstNET® network for a calendar month exceeds 85 milliseconds, then upon Client's request, BurstNET® will issue a credit to Client equal to six day's worth (1/5th) of the monthly service fees paid by Client for such month. If Average Packet Loss exceeds 1% during a calendar month, then upon Client's request, BurstNET® will issue a credit to Client equal to five day's worth (1/5th) of the monthly service fees paid by Client for such month.

General: BurstNET® reserves the right to change or modify this SLA to benefit the Client, and will post changes to location currently housing this SLA at time of modification, which will be made available to Client. Except as set forth in this SLA, BurstNET® makes no claims regarding the availability or performance of the BurstNET® network or servers. Specific terms/points of this SLA may be adjusted on a case by case basis by the specific Service Agreement signed/agreed by client. In case of difference terms/points in SLA and Service Agreement, the Service Agreement terms/points prevail over this general SLA policy. The Service Agreement signed/agree client, is above and beyond this SLA, and Service Agreement terms are in affect, including, but not limited to, limitations of liability.

EXHIBIT D

BURSTNET® BASIC POLICY & SERVICE GUIDELINES (AUP)

This Acceptable Use Policy (AUP) applies to all individuals, businesses, organizations, resellers, and end-clients (collectively, "users") employing any BurstNET® services, hardware, property or other products. Use of BurstNET® resources constitutes acceptance of all policies in effect at the time of use. Modification to this policy may be made at any time and will be immediately effective upon posted changes. BurstNET® reserves the right to protect its resources, users, and reputation from any activity deemed damaging, offensive or abusive. To this measure, BurstNET® will act as sole arbiter in determining violations of this policy.

Provision. Use of BurstNET® services indicates the acknowledgment that:

- Users are responsible for the security of accounts, systems, passwords, etc...and will not hold BurstNET® liable for any loss or damages caused by exploitation or any other misuse of BurstNET® resources.
- BurstNET® is not responsible for any damages, anticipated or otherwise, caused by viewing materials, links, or other content posted to systems on the local network or linked via this network. All users agree to indemnify BurstNET® from any claims resulting from any use of its services.
- Adult content is sanctioned by applicable local and federal governments/laws. Legal adult content is permitted on all BurstNET® product lines. The viewing, downloading, or possession of legal adult content by BurstNET® users and other Internet viewers, is not governed by BurstNET® policy, and is left to the discretion of individuals requesting this material.
- BurstNET® may monitor its network and audit systems for any data or activity indicating potential policy violations.
- BurstNET® reserves the right to remove any account without prior notice. If BurstNET® deactivates an account due to the direct or indirect participation of users engaging in illicit activities, any rights to a refund are forfeited by the client/reseller in control of the account at the time of the violation. Furthermore, no refunds for advance payments will be granted for deactivated accounts. Critical offenses and involvement in illegal activity will negate any perceived obligation of BurstNET® to return data.

Initial: _____ Date ____/____/____

Abusive Client: BurstNET® may, at its discretion, suspend or terminate the service of any client/reseller who is financially delinquent, abusive/harassing to BurstNET® personnel, or causes general disruption to the operation of the company and service of its users. Examples of such activity include, but are not limited to:

- verbal or written abuse of BurstNET® personnel (obscene language, threats, etc.)
- excessive complaints or persistent disregard for alerts, warnings, and/or notices
- repeated reactivation of abusive users
- consistent errors or administrative changes causing unnecessary workload
- spamming BurstNET® email addresses, ticket systems, and/or servers
- frequent late or bounced payments
- issuing chargebacks
- public harassment or derogatory/false/exaggerated forum/discussion group postings

Abuse of BurstNET® Systems and Resources: Any damaging or abusive activity, whether unlawful or considered to be detrimental to the operations of BurstNET® resources, is a violation of this policy. Any attempt to harm equipment owned by BurstNET®, or hosted in its facilities, is strictly prohibited. Violations will result in legal action, to the fullest allowable extent.

Illegal Usage Restrictions: Resources provided by BurstNET® may be used only for lawful purposes. Examples of unlawful content include, but are not limited to:

- unlicensed hosting of, linking to, or any involvement in the transmission of copyrighted media, applications, published works, or any data protected by trade secret, without sufficient rights to engage in this activity
- child pornography and/or kidnapping material
- content deemed to be terroristic in nature
- material posted to incite violence
- violations of human and animal rights, including the display of acts of cruelty and other abuse
- pyramid/ponzi schemes
- fraudulent sites and other forms of "phishing" (emails/forms/sites used to gather personal information from unsuspecting individuals)
- cracking programs and/or key generators
- violations of import/export restrictions

Prohibited Usage Restrictions: In addition to activities governed by law, BurstNET® strictly prohibits:

- IRC and associated applications (including bouncers, "bots", etc.)
- malware (malicious software) and/or botnets
- automation tools, auto typers, macros and bots used to circumvent restrictions on games or other applications (e.g. RuneScape bots)
- network and systems abuse scripts
- circumvention of and/or provision of instructions to circumvent security measures
- unnecessary port scans
- threatening, harassing, or obscene content
- anonymizers/proxies without password protection and sufficient logging (including open mail proxies, anonymous web surfing proxies)
- proxy detection scripts
- unsolicited and/or mass advertising via forums, blogs, comment forms, and newsgroups
- mail bombing, email address harvesting, and/or unsolicited email (including bulk mail sent to unconfirmed recipients and individual unsolicited advertisement or link exchange requests)
- HYIPs (high-yield investment programs)
- excessive overutilization of resource limits
- evasion of bans or blacklistings by changing domains/IPs

*** Links to unacceptable content are also prohibited.

Bulk Email & Blacklisting: BurstNET® understands that bulk email is an important mechanism for keeping people informed. However, spamming from the BurstNET® network, and spamvertising (unsolicited advertising of) sites hosted on the BurstNET® network, is prohibited. Legitimate bulk email meets the following criteria:

- ALL recipients have confirmed willingness to be added to a distribution list by clicking on confirmation links or (preferably) by responding to verification emails.
- Distributed messages include valid headers, removal instructions, and information on the method by which the subscribed addresses were obtained.

The usage of partially confirmed recipient lists is not allowed. All bulk email senders must post privacy policies and must be clearly identified to recipients during the subscription and confirmation process. The usage of third-party distribution lists is prohibited. If BurstNET® approaches a client for evidence of confirmation, the request must be honored within 48 hours of the initial spam alert. Deactivation of an account or service may be required, until proof of confirmation is provided and approved. BurstNET® reserves the right to require termination of any services involved in the transmission of unsolicited email. If any activities lead to blacklisting, the involved client/reseller may be charged an abuse fee of \$100.00.

Policy Violations: Storage, presentation, or transmission of any material in violation of any laws, or otherwise prohibited by BurstNET®, is cause for temporary account deactivation, server/service termination, or complete cancellation of all account services. The BurstNET® Abuse Dept will make an attempt to contact the involved client via email when the first sign of a possible violation is noted. This notification may occur before or after a service is disabled. Alerts are provided as a courtesy. Prompt responses to alerts are required. When an alert is sent, the designated abuse contact is responsible for acknowledging his/her understanding of the offense and providing an adequate response, to the satisfaction of BurstNET®, within 24 hours of the notice. Failure to sufficiently respond to an abuse alert will lead to suspension of any active services involved in abusive activity and will result in a \$50.00 fee. If reactivation is warranted, all abuse fees and any outstanding service fees must be paid prior to service being reactivated. Repeated abuse and/or failure to respond to abuse alerts will result in service termination.

Note: It is extremely important to ensure that the abuse email address on record is valid and monitored at all times. This is the address used for abuse notifications and warnings. The address may be set within the client management interface.

Direct clients/resellers are fully responsible for any activity found to originate from products and/or services under their care. In any case involving unauthorized parties utilizing a BurstNET® service for abuse, the direct client/reseller is responsible for locating and stopping all affected applications, until the source of the problem is found and removed. BurstNET® may opt to disable all services until the client can perform such an investigation or the system can be secured or reinstalled. If the support of BurstNET® is required for the investigation, the client agrees to compensate BurstNET® at a rate of \$65 USD/hour for such service. Reinstallations are performed at a flat-rate of \$25 USD (which does not include any operating system changes or licensing costs). Direct clients/resellers are responsible for maintaining secure systems. This includes, but is not limited to:

Initial: _____ Date ____/____/____

- requesting kernel updates
- applying application patches

BurstNET® will not be responsible for securing dedicated servers, virtual private servers, user accounts/web sites, or third-party applications. Direct clients/resellers with fully managed support services, may be entitled to a higher level of support than clientele with basic management. Further details may be found in the BurstNET® Managed Services Definition and Backup Policy.

Resource Usage: Resource usage should be maintained within levels outlined in product descriptions and/or service contracts. Abuse caused by users or unauthorized parties may increase resource usage and lead to overage fees. Overage fees apply to any service utilizing more than its assigned bandwidth allocation, except for services advertised/sold as "UNMETERED". Overages will be calculated based on overall amount of GigaBytes (GB) transferred in a monthly period, unless a service is sold based on Megabits per Second (MBPS). Services sold by MBPS, will be calculated via the industry standard 95% method, unless otherwise specified in the service agreement contract. MRTG or other bandwidth reports are available, upon request. Bandwidth is supplied from a shared pool and is not supplied as guaranteed/dedicated bandwidth, unless advertised as such specifically. Burstable usage of the UNMETERED service/port is permitted. However, a service that has heavy sustained usage may have its port capped and the client/reseller associated with the service may be required to upgrade to a dedicated service plan. UNMETERED service is supplied on a "best-effort" basis, which may result in some slowdowns during peak traffic periods. Should a client/reseller utilize or require large amounts of bandwidth, beyond the standard bandwidth allocation, BurstNET® may require a deposit.

Port Usage: Basic Dedicated & Co-Located servers are installed on 100MBPS unthrottled ports, unless service is sold with a specified port size (ie, 10MBPS UNMETERED) or specified/requested as a "capped" port. BurstNET® reserves the right to monitor network usage and throttle the available speed (if a service significantly exceeds average usage) to conserve network resources and to prevent any large billing anomalies. This will generally not include short spikes in usage, but will include, and not be limited to, sustained transfers of significantly larger than average amounts of bandwidth. If, at any time, a client's or reseller's data transfer rate affects other BurstNET® clientele, BurstNET® reserves the right to throttle and/or disconnect the service at the source of the problem.

Filtering: BurstNET® reserves the right to block, filter, or throttle ports and/or IP address ranges. For example, this may include blocking Port 6667 (IRC), denying access from a known spammer's IP address range, or limiting the speed of point-to-point file-sharing programs (Kazaa, Limewire, eDonkey, etc...). This may also include prioritization of certain traffic types, such as Voice-over-IP (VOIP) phone call transmissions.

Virtual Hosting: BurstNET® is pleased to offer unlimited traffic/hits and server usage to Virtual Hosting clientele. "Unlimited traffic/hits" refers to the number of visitors to a website and NOT the total amount of bandwidth/data transfer. Each Virtual Hosting account is still limited to the bandwidth/data transfer included with its associated service/package. To maintain the integrity of our service, the following usage may be limited/disallowed on Virtual Hosting service:

- banner, graphic, or CGI scripts running from the service and/or being utilized on other domains/websites
- large graphic or download archives/galleries
- large chat room gatherings

If you do not qualify for unlimited traffic/hits, your account may be required to be upgraded. To reduce the load on a server, BurstNET® reserves the right to relocate any site to a different server and/or IP address.

Virtual Private Servers (VPS): To maintain the integrity of BurstNET® services, any VPS (virtual private server) utilizing heavy amounts of system resources may be temporarily disabled. When necessary, clients/resellers may be required to upgrade the service package to accommodate actual usage. Additionally, to reduce the load on servers, BurstNET® may relocate virtual private server containers to different nodes and/or IP addresses.

Internet Access: BurstNET® does not allow multiple dial-in connections on a single dial-up access account. Multiple computers/networks are permitted to a single BurstNET® Internet Access service. Internet Access clientele are responsible for maintaining/securing their computer systems. Should any system become infected with a virus and/or spyware which causes or threatens harm to the BurstNET® network, BurstNET® may suspend service until the source of the problem is found and corrected.

Backup Service: To maintain the integrity of backup services, BurstNET® may relocate any backup service to a different server and/or IP address in an effort to reduce the load on the current hosting server. Download/FTP sites, web-serving (httpd), and/or any usage that results in heavy upstream/outgoing bandwidth consumption (beyond that of normal backup operations) is not permitted on the backup service machines. This service is meant for the backup/restore/sharing/storing of data and not for usage normally performed by web/database servers.

Idle Timeouts: BurstNET® may disconnect any idle connection to the network. Average timeouts are:

FTP - 300 seconds
 Dial-Up - 10-15 minutes
 Telnet/SSH - 2 hours

Special Terms and Conditions – 100TB Service:

- **Service Limitation.** This service is a special limited time offer by BurstNET®, and may be cancelled, modified, or withdrawn at any time, following 14 days notice emailed to the Client.
- **Fair Usage Policy.** The service is provided to the Client for normal, fair, and reasonable usage. Bandwidth usage is to be reasonably consistent throughout every month, without irregular bandwidth usage patterns/spikes. In the event BurstNET®, in its sole discretion, determines that the Client is not using the service according to this Fair Use Policy, BurstNET® will be entitled to: (a) impose limits on the speed of the data the Client may transmit and/or receive with this service; (b) adjust pricing of service to regular/standard bandwidth rates; and/or (c) suspend or terminate the service provided to the Client, at BurstNET®'s sole discretion.
- **CDN or Media Streaming.** Client shall not be entitled to use the service for the purpose of operating a Content Distribution Network (CDN) and/or Streaming Media service, except with BurstNET®'s prior written consent, which consent may be approved or denied at BurstNET®'s sole discretion. Special requests to use the service to run such, may be approved on a case-by-case basis, and we do recommend you contact us to discuss.
- **Notice of Breach.** Whenever reasonably possible, in the event of a Client breach of any Special Terms and Conditions for this service, BurstNET® will email the Client allowing 24 hours to cure the breach, before BurstNET® takes any action. If the breach re-occurs within the 30 days following, BurstNET® may take any action permitted in the Fair Usage Policy, without further notice to the Client. Failure to comply with this policy may result in termination of service, and a refund not granted.

Initial: _____ Date ____/____/____

EXHIBIT E - CONTRACT SPECIFICATIONS

Authorized Representatives of Client and BurstNET™ have read the foregoing and all documents incorporated therein, and fully understand its contents and the contractual obligations required within, and by signing below, agree to and accept such terms effective as of the date signed by client below the Client Signature below;

CLIENT INFORMATION

Company Name: _____
Mailing Address: _____
City/Town: _____
State/Province: _____
Zip/Postal Code: _____
Country: _____
Daytime Phone: (____) _____
Evening Phone: (____) _____
Fax: (____) _____
Email Address: _____

Authorized Contact: _____
Position: _____

Authorized Signature:

Date: ____/____/____

PROVIDER INFORMATION

Company Name: BurstNET Technologies, Inc.
Mailing Address: PO Box #591
City/Town: Scranton
State/Province: Pennsylvania
Zip/Postal Code: 18501-0591
Country: United States
Daytime Phone: +1.5703432200
Fax: +1.5703439533
Email Address: sales@burst.net

Authorized Signature:

Name: _____
Position: _____
Date: ____/____/____



EXHIBIT 8.

1 DAVID SHONKA
Acting General Counsel
2
3 Ethan Arenson, DC # 473296
4 Carl Settlemyer, DC # 454272
5 Philip Tumminio, DC # 985624
6 Federal Trade Commission
7 600 Pennsylvania Avenue, N.W.
8 Washington, DC 20580
9 (202) 326-2204 (Arenson)
10 (202) 326-2019 (Settlemyer)
11 (202) 326-2204 (Tumminio)
12 (202) 326-3395 *facsimile*
13 earenson@ftc.gov
14 csettlemyer@ftc.gov
15 ptumminio@ftc.gov

16 Attorneys for Plaintiff Federal Trade Commission

FILED

JUN - 2 2009

RICHARD J. WHEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **San Jose Division**

20 **Federal Trade Commission,**

21 **Plaintiff,**

22 **v.**

23 **Pricewert LLC d/b/a 3FN.net, Triple Fiber**
24 **Network, APS Telecom and APX Telecom,**
25 **APS Communications, and APS**
26 **Communication,**

27 **Defendant.**

28 *09-2407*
Case No. ~~09-02447~~ RMW

**EX PARTE TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), has filed a Complaint for Injunctive and Other Equitable Relief, and has moved *ex parte* for a temporary restraining order and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure.

FINDINGS

The Court has considered the pleadings, declarations, exhibits, and memoranda filed in

TRO and
Order to Show Cause

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1 support of the Commission's motion and finds that:

- 2 1. This Court has jurisdiction over the subject matter of this case and there is good
3 cause to believe that it will have jurisdiction over all parties hereto; the Complaint
4 states a claim upon which relief may be granted against the Defendant under
5 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) (2006).
- 6 2. There is good cause to believe that Pricewert LLC also d/b/a 3FN.net, Triple Fiber
7 Network, APS Telecom and APX Telecom, APS Communications, and APS
8 Communication (the "Defendant"), has engaged in and is likely to engage in acts or
9 practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) (2006), and
10 that the Commission is, therefore, likely to prevail on the merits of this action;
- 11 3. There is good cause to believe that immediate and irreparable harm will result from
12 the Defendant's ongoing violations of Section 5(a) of the FTC Act unless the
13 Defendant is restrained and enjoined by Order of this Court. The evidence set
14 forth in the Commission's Memorandum of Law in Support of *Ex Parte* Motion
15 for Temporary Restraining Order and Order to Show Cause ("TRO Motion"), and
16 the accompanying declarations and exhibits, demonstrates that the Commission is
17 likely to prevail on its claim that Defendant has engaged in unfair acts or practices
18 in violation of Section 5(a) of the FTC Act by: recruiting, distributing and hosting
19 electronic code or content that inflicts harm upon consumers, including, but not
20 limited to, child pornography, botnet command and control servers, spyware,
21 viruses, trojans, and phishing-related sites; and configuring, deploying, and
22 operating botnets. There is good cause to believe that the Defendant will continue
23 to engage in such unlawful actions if not immediately restrained from doing so by
24 Order of this Court;
- 25 4. There is good cause to believe that immediate and irreparable damage to this
26 Court's ability to grant effective final relief will result from the sale, transfer, or
27 other disposition or concealment by the Defendant of its assets, business records,
28

1 or other discoverable evidence if the Defendant receives advance notice of this
2 action. Based on the evidence cited in the Commission's Motion and
3 accompanying declarations and exhibits, the Commission is likely to be able to
4 prove that: (1) the Defendant has operated through a series of maildrops and shell
5 companies, with a principal place of business and its principals located outside of
6 the United States; (2) the Defendant has continued its unlawful operations
7 unabated despite requests from the Internet security community to cease its
8 injurious activities; (3) the Defendant is engaged in activities that directly violate
9 U.S. law and cause significant harm to consumers; and (4) that Defendant is likely
10 to relocate the harmful and malicious code it hosts and/or warn its criminal
11 clientele of this action if informed of the Commission's action. The Commission's
12 request for this emergency *ex parte* relief is not the result of any lack of diligence
13 on the Commission's part, but instead is based upon the nature of the Defendant's
14 unlawful conduct. Therefore, in accordance with Fed. R. Civ. P. 65(b) and Civil
15 L.R. 65-1, good cause and the interests of justice require that this Order be Granted
16 without prior notice to the Defendant, and, accordingly, the Commission is relieved
17 of the duty to provide the Defendant with prior notice of the Commission's motion;

- 18 5. There is good cause to believe that the Defendant, which is controlled by
19 individuals outside of the United States, has engaged in illegal activity using Data
20 Centers and Upstream Service Providers based in the United States and that to
21 immediately halt the injury caused by Defendant, such Data Centers and Upstream
22 Service Providers must be ordered to immediately disconnect Defendant's
23 computing resources from the Internet without providing advance notice to the
24 Defendant, prevent the Defendant and others from accessing such computer
25 resources, and prevent the destruction of data located on these computer resources;
- 26 6. Weighing the equities and considering the Plaintiff's likelihood of ultimate
27 success, this Order is in the public interest; and
28

- 1 7. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or
2 agency thereof for the issuance of a restraining order.
3

4 **DEFINITIONS**

5 For the purpose of this order, the following definitions shall apply:

- 6 1. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real,
7 personal, or intellectual property of Defendant or held for the benefit of Defendant
8 wherever located, including, but not limited to, chattel, goods, instruments,
9 equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or
10 other deliveries, shares of stock, inventory, checks, notes, accounts, credits,
11 receivables (as those terms are defined in the Uniform Commercial Code), cash,
12 and trusts, including but not limited to any other trust held for the benefit of
13 Defendant.
- 14 2. **“Botnet”** means a network of computers that have been compromised by malicious
15 code and surreptitiously programmed to follow instructions issued by a Botnet
16 Command and Control Server.
- 17 3. **“Botnet Command and Control Server”** means a computer or computers used to
18 issue instructions to, or otherwise control, a Botnet.
- 19 4. The term **“Child Pornography”** shall have the same meaning as provided in 18
20 U.S.C. § 2256.
- 21 5. **“Data Center”** means any person or entity that contracts with third parties to house
22 computer servers and associated equipment, and provides the infrastructure to
23 support such equipment, such as power or environmental controls.
- 24 6. **“Day”** shall have the meaning prescribed by and time periods in this Order shall be
25 calculated pursuant to Fed. R. Civ. P. 6(a).
- 26 7. **“Defendant”** means Pricewert LLC also d/b/a 3FN.net, Triple Fiber Network,
27 APS Telecom, APX Telecom, APS Communications, APS Communication, and
28

1 any other names under which it does business, and any subsidiaries, corporations,
2 partnerships, or other entities directly or indirectly owned, managed, or controlled
3 by Pricewert LLC.

4 8. **“Document”** is synonymous in meaning and equal in scope to the usage of the
5 term in the Federal Rules of Civil Procedure 34(a), and includes writing, drawings,
6 graphs, charts, Internet sites, Web pages, Web sites, electronic correspondence,
7 including e-mail and instant messages, photographs, audio and video recordings,
8 contracts, accounting data, advertisements (including, but not limited to,
9 advertisements placed on the World Wide Web), FTP Logs, Server Access Logs,
10 USENET Newsgroup postings, World Wide Web pages, books, written or printed
11 records, handwritten notes, telephone logs, telephone scripts, receipt books,
12 ledgers, personal and business canceled checks and check registers, bank
13 statements, appointment books, computer records, and other data compilations
14 from which information can be obtained and translated. A draft or non-identical
15 copy is a separate document within the meaning of the term.

16 9. **“Phishing”** means the use of email, Internet web sites, or other means to mimic or
17 copy the appearance of a trustworthy entity for the purpose of duping consumers
18 into disclosing personal information, such as account numbers and passwords.

19 10. **“Representatives”** means the following persons or entities who receive actual
20 notice of this temporary restraining order by personal service or otherwise: (1) the
21 Defendant’s officers, agents, servants, employees, and attorneys; and (2) all other
22 persons who are in active concert or participation with Defendant or its officers,
23 agents, servants, employees, or attorneys. A Data Center or Upstream Service
24 Provider that continues to provide services to Defendant after receiving actual
25 notice of this temporary restraining order is a Representative.

26 11. **“Spyware”** means any type of software that is surreptitiously installed on a
27 computer and, without the consent of the user, could collect information from a
28

1 computer, could allow third parties to control remotely the use of a computer, or
2 could facilitate botnet communications.

3 12. **“Trojan Horse”** means a computer program with an apparent or actual useful
4 function that contains additional, undisclosed malicious code, including but not
5 limited to spyware, viruses, or code that facilitates the surreptitious download or
6 installation of other software code.

7 13. **“Upstream Service Provider”** means any entity that provides the means to
8 connect to the Internet, including, but not limited to, the subleasing of Internet
9 Protocol addresses.

10 14. **“Viruses”** means computer programs designed to spread from one computer to
11 another and to interfere with the operation of the computers they infect.

12 **PROHIBITED BUSINESS ACTIVITIES**

13 **I.**

14 **IT IS THEREFORE ORDERED** that, Defendant and its Representatives are temporarily
15 restrained and enjoined from recruiting or willingly distributing or hosting Child Pornography,
16 Botnet Command and Control Servers, Spyware, Viruses, Trojan Horses, Phishing-related sites, or
17 similar electronic code or content that inflicts harm upon consumers.

18 **II.**

19 **IT IS FURTHER ORDERED** that Defendant and its Representatives are temporarily
20 restrained and enjoined from configuring, deploying, operating, or otherwise participating in or
21 otherwise willingly facilitating, any Botnet.

22 **SUSPENSION OF INTERNET CONNECTIVITY**

23 **III.**

24 **IT IS FURTHER ORDERED** that, pending determination of the Commission’s request
25 for a preliminary injunction, that:

26 A. Any Data Center in active concert or participation with and providing services to Defendant
27 or Defendant’s officers, agents, servants, or employees shall immediately, and without notifying

1 Defendant or Defendant's officers, agents, servants, or employees, take all reasonable and
2 necessary steps to make inaccessible to the Defendant and all other persons, all computers, servers
3 or electronic data storage devices or media and the content stored thereupon (hereafter "computer
4 resources"), leased, owned or operated by Defendant or Defendant's officers agents, servants, or
5 employees and located on premises owned by, or within the control of, the Data Center. Such
6 steps shall, at a minimum, include:

- 7 1. disconnecting such computer resources from the Internet and all other networks;
- 8 2. securing the area where such computer resources are located in a manner reasonably
9 calculated to deny access to the Defendant and its officers, agents, servants, or
10 employees; and
- 11 3. if such Data Center restricts access to its facilities by means of access credentials,
12 suspending all access credentials issued to Defendant or Defendant's officers,
13 agents, servants, or employees;

14 B. Any Upstream Service Provider in active concert or participation with and providing
15 services to Defendant or Defendant's officers, agents, servants, or employees shall immediately,
16 and without notifying Defendant or Defendant's officers, agents, servants, or employees, take all
17 reasonable and necessary steps to deny Internet connectivity to the Defendant and Defendant's
18 officers, agents, servants, and employees, including, but not limited to, suspending any IP
19 addresses assigned to the Defendant or Defendant's officers, agents, servants, or employees by the
20 Upstream Service Provider, and refraining from reassigning such IP addresses;

21 C. Any Data Center or Upstream Service Provider described in subparagraphs A and B above
22 providing services to Defendant or Defendant's officers, agents, servants, or employees, shall
23 preserve and retain documents relating to the Defendant or the Defendant's officers, agents,
24 servants, or employees; and

25 D. Agents of the Commission and other law enforcement agencies are permitted to enter the
26 premises of any of Defendant's Data Centers and Upstream Service Providers described in
27 subparagraphs A and B above to serve copies of this Order and to verify that the Data Centers and

1 Upstream Service Providers have taken the reasonable and necessary steps described in sub-
2 paragraphs A and B of this Paragraph.
3 *Provided, however,* nothing in Paragraph III shall be interpreted to deny access to any law
4 enforcement agency granted access pursuant to a court order, search warrant, or other lawful
5 process.

6 **ASSET FREEZE**

7 **IV.**

8 **IT IS FURTHER ORDERED** that the Defendant and its Representatives are hereby
9 temporarily restrained and enjoined from:

10 A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling,
11 concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security
12 interest or other interest in, or otherwise disposing of any funds, real or personal property,
13 accounts, contracts, consumer lists, shares of stock, or other assets, or any interest therein,
14 wherever located, that are: (1) owned or controlled by the Defendant, in whole or in part, for the
15 benefit of the Defendant; (2) in the actual or constructive possession of the Defendant; or (3)
16 owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or
17 other entity directly or indirectly owned, managed, or controlled by any the Defendant, including,
18 but not limited to, any assets held by or for, or subject to access by, the Defendant, at any bank or
19 savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity
20 trading company, precious metals dealer, or other financial institution or depository of any kind;
21 and

22 B. Opening or causing to be opened any safe deposit boxes titled in the name of the
23 Defendant, or subject to access by the Defendant.

24 *Provided, however,* that the assets affected by Paragraph IV shall include: (1) all of the
25 assets of the Defendant existing as of the date this Order was entered; and (2) for assets obtained
26 after the date this Order was entered, only those assets of the Defendant that are derived from
27 conduct prohibited in Paragraphs I and II of this Order.

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1 **FINANCIAL REPORTS AND ACCOUNTING**

2 **V.**

3 **IT IS FURTHER ORDERED** that the Defendant, within five (5) days of receiving notice
4 of this Order, shall provide the Commission with completed financial statements, verified under
5 oath and accurate as of the date of entry of this Order, on the forms attached to this Order as
6 **Attachment A.**

7
8 **RETENTION OF ASSETS AND PRODUCTION OF RECORDS**
9 **BY FINANCIAL INSTITUTIONS**

10 **VI.**

11 **IT IS FURTHER ORDERED** that, any financial or brokerage institution, business entity,
12 or person served with a copy of this Order that holds, controls, or maintains custody of any account
13 or asset of the Defendant, or has held, controlled or maintained custody of any such account or
14 asset at any time prior to the date of entry of this Order, shall:

15 A. Hold and retain within its control and prohibit the withdrawal, removal, assignment,
16 transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any
17 such asset except by further order of the Court; and

18 B. Deny all persons access to any safe deposit box that is:

- 19 1. titled in the name of the Defendant; or
20 2. otherwise subject to access by Defendant.

21 **FOREIGN ASSET REPATRIATION AND ACCOUNTING**

22 **VII.**

23 **IT IS FURTHER ORDERED** that:

24 A. Defendant and its Representatives shall immediately upon service of this Order, or
25 as soon as relevant banking hours permit, transfer to the territory of the United States to a blocked
26 account whose funds cannot be withdrawn without further order of the court all funds and assets in
27 foreign countries held: (1) by Defendant; (2) for its benefit; or (3) under its direct or indirect
28 control, jointly or singly; and

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1 B. Defendant shall, within five (5) days of receiving notice of this Order each provide
2 the Commission with a full accounting, verified under oath and accurate as of the date of this
3 Order, of all funds, documents, and assets outside of the United States which are: (1) titled in the
4 Defendant's name; or (2) held by any person or entity for the benefit of the Defendant; or (3) under
5 the direct or indirect control, whether jointly or singly, of the Defendant; and

6 C. Defendant and its Representatives are temporarily restrained and enjoined from
7 taking any action, directly or indirectly, which may result in the encumbrance or dissipation of
8 foreign assets, including but not limited to:

- 9 1. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or
10 engaging in any other act, directly or indirectly, that results in a determination by a
11 foreign trustee or other entity that a "duress" event has occurred under the terms of a
12 foreign trust agreement; or
- 13 2. Notifying any trustee, protector or other agent of any foreign trust or other related
14 entities of the existence of this Order, or that an asset freeze is required pursuant to
15 a Court Order, until such time that a full accounting has been provided pursuant to
16 this Paragraph.

17 **ACCESS TO BUSINESS RECORDS**

18 **VIII.**

19 **IT IS FURTHER ORDERED** that the Defendant shall allow the Commission's
20 representatives, agents, and assistants access to the Defendant's business records to inspect and
21 copy documents so that the Commission may prepare for the preliminary injunction hearing and
22 identify and locate assets. Accordingly, the Defendant shall, within forty-eight (48) hours of
23 receiving notice of this Order, produce to the Commission and the Commission's representatives,
24 agents, and assistants for inspection, inventory, and/or copying, at Federal Trade Commission, 600
25 Pennsylvania Avenue NW, Room H-286, Washington DC 20580, Attention: Ethan Arenson, the
26 following materials: (1) all client information, including, but not limited to, names, phone
27 numbers, addresses, email addresses, and payment information for all clients of Defendant's
28

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1 services; (2) contracts; (3) correspondence, including, but not limited to, electronic correspondence
2 and Instant Messenger communications, that refer or relate to the Defendant's services; and (4)
3 accounting information, including, but not limited to, profit and loss statements, annual reports,
4 receipt books, ledgers, personal and business canceled checks and check registers, bank statements,
5 and appointment books.

6 *Provided, however,* this Paragraph excludes any record or other information pertaining to a
7 subscriber or customer of an electronic communications service or a remote computing service as
8 those terms are defined in the Electronic Communications Privacy Act, 18 U.S.C. § 2703(c)
9 (2006).

10 The Commission shall return produced materials pursuant to this Paragraph within five (5)
11 days of completing said inventory and copying.

12 **EXPEDITED DISCOVERY**

13 **IX.**

14 **IT IS FURTHER ORDERED** that pursuant to Federal Rules of Civil Procedure 30(a),
15 31(a), 34, and 45, and notwithstanding the provisions of Federal Rules of Civil Procedure 26(d)
16 and (f), 30(a)(2)(A)-(C), and 31(a)(2)(A)-(C), the Commission is granted leave, at any time after
17 entry of this Order to:

18 A. Take the deposition of any person or entity, whether or not a party, for the purpose
19 of discovering the nature, location, status, and extent of the assets of the Defendant; the location of
20 any premises where the Defendant conducts business operations; and

21 B. Demand the production of documents from any person or entity, whether or not a
22 party, relating to the nature, status, and extent of the assets of the Defendant; the location of any
23 premises where the Defendant, directly or through any third party, conducts business operations.
24 Three (3) calendar days notice shall be deemed sufficient for any such deposition, five (5) calendar
25 days notice shall be deemed sufficient for the production of any such documents, and twenty-four
26 (24) hours notice shall be deemed sufficient for the production of any such documents that are
27 maintained or stored only as electronic data. The provisions of this Section shall apply both to
28

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1 parties to this case and to non-parties. The limitations and conditions set forth in Federal Rules of
2 Civil Procedure 30(a)(2)(B) and 31(a)(2)(B) regarding subsequent depositions of an individual
3 shall not apply to depositions taken pursuant to this Section. Any such depositions taken pursuant
4 to this Section shall not be counted toward any limit on the number of depositions under the
5 Federal Rules of Civil Procedure or the Local Rules of Civil Procedure for the United States
6 District Court for Northern District of California, including those set forth in Federal Rules of Civil
7 Procedure 30(a)(2)(A) and 31(a)(2)(A).

8 **PRESERVATION OF RECORDS**

9 **X.**

10 **IT IS FURTHER ORDERED** that the Defendant and its Representatives are hereby
11 temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering,
12 transferring, writing over, or otherwise disposing of, in any manner, directly or indirectly, any
13 documents or records of any kind that relate to the business practices or business finances of the
14 Defendant, including but not limited to, computerized files and storage media on which
15 information has been saved (including, but not limited to, hard drives, DVDs, CD-ROMS, zip
16 disks, floppy disks, punch cards, magnetic tape, backup tapes, and computer chips), and any and all
17 equipment needed to read any such documents or records, FTP logs, Service Access Logs,
18 USENET Newsgroup postings, World Wide Web pages, books, written or printed records,
19 handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business
20 canceled checks and check registers, bank statements, appointment books, copies of federal, state
21 or local business or personal income or property tax returns, and other documents or records of any
22 kind that relate to the business practices or finances of the Defendant or its officers, agents,
23 servants, or employees.

24 **RECORD KEEPING/BUSINESS OPERATIONS**

25 **XI.**

26 **IT IS FURTHER ORDERED** that the Defendant is hereby temporarily restrained and
27 enjoined from:

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1 extended for an additional period not to exceed ten (10) days, or unless it is further extended
2 pursuant to Federal Rule of Civil Procedure 65.

3 **ORDER TO SHOW CAUSE REGARDING**
4 **PRELIMINARY INJUNCTION**
5 **XV.**

6 **IT IS FURTHER ORDERED**, pursuant to Federal Rule of Civil Procedure 65(b) that the
7 Defendant shall appear before this Court on the 15th day of June, 2009, at 9:00 a.m., to show
8 cause, if there is any, why this Court should not enter a Preliminary Injunction, pending final ruling
9 on the Complaint against the Defendant, enjoining it from the conduct temporarily restrained by
10 the preceding provisions of this order.

11 **SERVICE OF PLEADINGS, MEMORANDA, AND OTHER EVIDENCE**

12 **XVI.**

13 **IT IS FURTHER ORDERED** that the Defendant shall file with the Court and serve on
14 the Commission's counsel any answering affidavits, pleadings, motions, expert reports or
15 declarations, and/or legal memoranda no later than four (4) days prior to the hearing on the
16 Commission's request for a preliminary injunction. The Commission may file responsive or
17 supplemental pleadings, materials, affidavits, or memoranda with the Court and serve the same on
18 counsel for the Defendant no later than one (1) day prior to the preliminary injunction hearing in
19 this matter. Provided that service shall be performed by personal or overnight delivery, facsimile
20 or electronic mail, and documents shall be delivered so that they shall be received by the other
21 parties no later than 4:00 p.m. (Pacific Daylight Time) on the appropriate dates listed in this
22 Paragraph.

23 **MOTION FOR LIVE TESTIMONY; WITNESS IDENTIFICATION**

24 **XVII.**

25 **IT IS FURTHER ORDERED** that the question of whether this Court should enter a
26 preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the
27 Defendant during the pendency of this action shall be resolved on the pleadings, declarations,
28 exhibits, and memoranda filed by, and oral argument of, the parties. Live testimony shall be heard

1 only on further order of this Court or on motion filed with the Court and served on counsel for the
2 other parties at least three (3) days prior to the preliminary injunction hearing in this matter. Such
3 motion shall set forth the name, address, and telephone number of each proposed witness, a
4 detailed summary or affidavit revealing the substance of each proposed witness's expected
5 testimony, and an explanation of why the taking of live testimony would be helpful to this Court.
6 Any papers opposing a timely motion to present live testimony or to present live testimony in
7 response to another party's timely motion to present live testimony shall be filed with this Court
8 and served on the other parties at least two (2) days prior to the preliminary injunction hearing in
9 this matter, *provided* that service shall be performed by personal or overnight delivery, facsimile or
10 electronic mail, and documents shall be delivered so that they shall be received by the other parties
11 no later than 4:00 p.m. (Pacific Daylight Time) on the appropriate dates provided in this Paragraph.

12 **SERVICE UPON THE COMMISSION**

13 **XVIII.**

14 **IT IS FURTHER ORDERED** that, with regard to any correspondence or pleadings related
15 to this Order, service on the Commission shall be performed by overnight mail delivery to the
16 attention of Ethan Arenson at the Federal Trade Commission, 600 Pennsylvania Avenue, NW,
17 Room H-286, Washington, DC 20580.

18
19
20 //

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28

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Order to Show Cause

RETENTION OF JURISDICTION

XIX.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes. No security is required of any agency of the United States for the issuance of a restraining order. Fed. R. Civ. P. 65(c).

SO ORDERED, this Second day of June, 2009, at 4:10 p.m.


UNITED STATES DISTRICT JUDGE

ATTACHMENT A

FEDERAL TRADE COMMISSION
FINANCIAL STATEMENT OF CORPORATE DEFENDANT

Instructions:

1. Complete all items. Enter "None" or "N/A" ("Not Applicable") where appropriate. If you cannot fully answer a question, explain why.
2. In completing this financial statement, "the corporation" refers not only to this corporation but also to each of its predecessors that are not named defendants in this action.
3. When an Item asks for information about assets or liabilities "held by the corporation," include ALL such assets and liabilities, located within the United States or elsewhere, held by the corporation or held by others for the benefit of the corporation.
4. Attach continuation pages as needed. On the financial statement, state next to the Item number that the Item is being continued. On the continuation page(s), identify the Item number being continued.
5. Type or print legibly.
6. An officer of the corporation must sign and date the completed financial statement on the last page and initial each page in the space provided in the lower right corner.

Penalty for False Information:

Federal law provides that any person may be imprisoned for not more than five years, fined, or both, if such person:

- (1) "in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry" (18 U.S.C. § 1001);
- (2) "in any . . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true" (18 U.S.C. § 1621); or
- (3) "in any (. . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information . . . knowing the same to contain any false material declaration." (18 U.S.C. § 1623)

For a felony conviction under the provisions cited above, federal law provides that the fine may be not more than the greater of (i) \$250,000 for an individual or \$500,000 for a corporation, or (ii) if the felony results in pecuniary gain to any person or pecuniary loss to any person other than the defendant, the greater of twice the gross gain or twice the gross loss. 18 U.S.C. § 3571.

BACKGROUND INFORMATION

Item 1. General Information

Corporation's Full Name _____

Primary Business Address _____ From (Date) _____

Telephone No. _____ Fax No. _____

E-Mail Address _____ Internet Home Page _____

All other current addresses & previous addresses for past five years, including post office boxes and mail drops:

Address _____ From/Until _____

Address _____ From/Until _____

Address _____ From/Until _____

All predecessor companies for past five years:

Name & Address _____ From/Until _____

Name & Address _____ From/Until _____

Name & Address _____ From/Until _____

Item 2. Legal Information

Federal Taxpayer ID No. _____ State & Date of Incorporation _____

State Tax ID No. _____ State _____ Profit or Not For Profit _____

Corporation's Present Status: Active _____ Inactive _____ Dissolved _____

If Dissolved: Date dissolved _____ By Whom _____

Reasons _____

Fiscal Year-End (Mo./Day) _____ Corporation's Business Activities _____

Item 3. Registered Agent

Name of Registered Agent _____

Address _____ Telephone No. _____

Item 4. Principal Stockholders

List all persons and entities that own at least 5% of the corporation's stock.

<u>Name & Address</u>	<u>% Owned</u>
_____	_____
_____	_____
_____	_____
_____	_____

Item 5. Board Members

List all members of the corporation's Board of Directors.

<u>Name & Address</u>	<u>% Owned</u>	<u>Term (From/Until)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Item 6. Officers

List all of the corporation's officers, including *de facto* officers (individuals with significant management responsibility whose titles do not reflect the nature of their positions).

<u>Name & Address</u>	<u>% Owned</u>
_____	_____
_____	_____
_____	_____
_____	_____

Item 7. Attorneys

List all attorneys retained by the corporation during the last three years.

<u>Name</u>	<u>Firm Name</u>	<u>Address</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I am submitting this financial statement with the understanding that it may affect action by the Federal Trade Commission or a federal court. I have used my best efforts to obtain the information requested in this statement. The responses I have provided to the items above are true and contain all the requested facts and information of which I have notice or knowledge. I have provided all requested documents in my custody, possession, or control. I know of the penalties for false statements under 18 U.S.C. § 1001, 18 U.S.C. § 1621, and 18 U.S.C. § 1623 (five years imprisonment and/or fines). I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on:

(Date)

Signature

Corporate Position

EXHIBIT 9.

1 DAVID SHONKA
Acting General Counsel
2
3 Ethan Arenson, DC # 473296
Carl Settlemyer, DC # 454272
Philip Tumminio, DC # 985624
4 Federal Trade Commission
600 Pennsylvania Avenue, N.W.
5 Washington, DC 20580
(202) 326-2204 (Arenson)
6 (202) 326-2019 (Settlemyer)
(202) 326-2204 (Tumminio)
7 (202) 326-3395 *facsimile*
earenson@ftc.gov
8 csettlemyer@ftc.gov
ptumminio@ftc.gov

E-Filed on 6/15/09

9 Attorneys for Plaintiff Federal Trade Commission
10

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **San Jose Division**

14 **Federal Trade Commission,**
15 **Plaintiff,**
16 **v.**
17 **Pricewert LLC d/b/a 3FN.net, Triple Fiber**
Network, APS Telecom and APX Telecom,
18 **APS Communications, and APS**
Communication,
19 **Defendant.**
20

Case No. C-09-2407 RMW

PRELIMINARY INJUNCTION

21 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), pursuant to Section
22 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), has filed a
23 Complaint for Injunctive and Other Equitable Relief, and moved *ex parte* for a temporary
24 restraining order and for an order to show cause why a preliminary injunction should not be
25 granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure. On June 2, 2009, this
26 Court granted the Commission’s motion and entered a Temporary Restraining Order and Order to
27 Show Cause against Defendant Pricewert LLC also d/b/a 3FN.net, Triple Fiber Network, APS
28 Telecom and APX Telecom, APS Communications, and APS Communication (D.E. 12). On
June 5, 2009 the court directed the FTC to submit a proposal for expeditiously addressing the

1 concerns of innocent third parties who claimed to be suffering harm as a result of the Temporary
2 Restraining Order. This request was prompted by written communication to the court by two non-
3 parties. The hearing on the Order to show Cause as to why a preliminary injunction should not
4 issue was held on June 15, 2009. The FTC appeared through its counsel Ethan Arenson and
5 Philip Tumminio. Karl S. Kronenberger of Kronenberger Burgoyne, LLP appeared on behalf of
6 third parties Suren Ter-Saakov and Tsuren LLC. Although the court had received communication
7 from Max Christopher who was identified as “Defendant’s authorized representative and
8 interpreter” indicating that counsel for defendant or a representative would appear, no one
9 appeared on behalf of defendant. After reviewing the papers and hearing the comments of
10 counsel, the Court makes the following findings and orders.

11
12 **FINDINGS**

13 The court has considered the pleadings, declarations, exhibits, and memoranda filed in
14 support of the Commission’s motion for a preliminary injunction and finds that:

- 15 1. This court has jurisdiction over the subject matter of this case and there is good
16 cause to believe that it will have jurisdiction over all parties hereto; the Complaint
17 states a claim upon which relief may be granted against the Defendant under
18 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) (2006).
- 19 2. There is good cause to believe that Pricewert LLC also d/b/a 3FN.net, Triple Fiber
20 Network, APS Telecom and APX Telecom, APS Communications, and APS
21 Communication (the “Defendant”), has engaged in and is likely to engage in acts or
22 practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) (2006), and
23 that the Commission is, therefore, likely to prevail on the merits of this action;
- 24 3. There is good cause to believe that immediate and irreparable harm will result from
25 the Defendant’s ongoing violations of Section 5(a) of the FTC Act unless the
26 Defendant is restrained and enjoined by Order of this court. The evidence set forth
27 in the Commission’s Memorandum of Law in Support of *Ex Parte* Motion for
28 Temporary Restraining Order and Order to Show Cause (“TRO Motion”), and the

1 accompanying declarations and exhibits, demonstrates that the Commission is
2 likely to prevail on its claim that Defendant has engaged in unfair acts or practices
3 in violation of Section 5(a) of the FTC Act by: recruiting, distributing and hosting
4 electronic code or content that inflicts harm upon consumers, including, but not
5 limited to, child pornography, botnet command and control servers, spyware,
6 viruses, trojans, and phishing-related sites; and configuring, deploying, and
7 operating botnets. There is good cause to believe that the Defendant will continue
8 to engage in such unlawful actions if not immediately restrained from doing so by
9 Order of this court;

10 4. There is good cause to believe that immediate and irreparable damage to this
11 court's ability to grant effective final relief will result from the sale, transfer, or
12 other disposition or concealment by the Defendant of its assets, business records,
13 or other discoverable evidence. Based on the evidence cited in the Commission's
14 TRO Motion and accompanying declarations and exhibits, the Commission is
15 likely to be able to prove that: (1) the Defendant has operated through a series of
16 maildrops and shell companies, with a principal place of business and its principals
17 located outside of the United States; (2) the Defendant has continued its unlawful
18 operations unabated despite requests from the Internet security community to cease
19 its injurious activities; and (3) the Defendant is engaged in activities that directly
20 violate U.S. law and cause significant harm to consumers;

21 5. There is good cause to believe that the Defendant, which is controlled by
22 individuals outside of the United States, has engaged in illegal activity using Data
23 Centers and Upstream Service Providers based in the United States and that to
24 immediately halt the injury caused by Defendant, such Data Centers and Upstream
25 Service Providers must be ordered to immediately disconnect or to maintain
26 disconnection of Defendant's computing resources from the Internet, prevent the
27 Defendant and others from accessing such computer resources, and prevent the
28 destruction of data located on these computer resources;

- 1 7. **“Defendant”** means Pricewert LLC also d/b/a 3FN.net, Triple Fiber Network,
2 APS Telecom, APX Telecom, APS Communications, APS Communication, and
3 any other names under which it does business, and any subsidiaries, corporations,
4 partnerships, or other entities directly or indirectly owned, managed, or controlled
5 by Pricewert LLC.
- 6 8. **“Document”** is synonymous in meaning and equal in scope to the usage of
7 the term in the Federal Rules of Civil Procedure 34(a), and includes
8 writing, drawings, graphs, charts, Internet sites, Web pages, Web sites,
9 electronic correspondence, including e-mail and instant messages,
10 photographs, audio and video recordings, contracts, accounting data,
11 advertisements (including, but not limited to, advertisements placed on the
12 World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup
13 postings, World Wide Web pages, books, written or printed records,
14 handwritten notes, telephone logs, telephone scripts, receipt books, ledgers,
15 personal and business canceled checks and check registers, bank
16 statements, appointment books, computer records, and other data
17 compilations from which information can be obtained and translated. A
18 draft or non-identical copy is a separate document within the meaning of
19 the term.
- 20 9. **“Phishing”** means the use of email, Internet web sites, or other means to mimic or
21 copy the appearance of a trustworthy entity for the purpose of duping consumers
22 into disclosing personal information, such as account numbers and passwords.
- 23 10. **“Representatives”** means the following persons or entities who receive actual
24 notice of this preliminary injunction by personal service or otherwise: (1) the
25 Defendant’s officers, agents, servants, employees, and attorneys; and (2) all other
26 persons who are in active concert or participation with Defendant or its officers,
27 agents, servants, employees, or attorneys. A Data Center or Upstream Service
28 Provider that continues to provide services to Defendant after receiving actual

1 notice of this preliminary injunction is a Representative.

- 2 11. **“Spyware”** means any type of software that is surreptitiously installed on a
3 computer and, without the consent of the user, could collect information from a
4 computer, could allow third parties to control remotely the use of a computer, or
5 could facilitate botnet communications.
- 6 12. **“Trojan Horse”** means a computer program with an apparent or actual useful
7 function that contains additional, undisclosed malicious code, including but not
8 limited to spyware, viruses, or code that facilitates the surreptitious download or
9 installation of other software code.
- 10 13. **“Upstream Service Provider”** means any entity that provides the means to
11 connect to the Internet, including, but not limited to, the subleasing of Internet
12 Protocol addresses.
- 13 14. **“Viruses”** means computer programs designed to spread from one computer to
14 another and to interfere with the operation of the computers they infect.

15
16 **PROHIBITED BUSINESS ACTIVITIES**

17 **I.**

18 **IT IS THEREFORE ORDERED** that, Defendant and its Representatives are
19 preliminarily restrained and enjoined from recruiting or willingly distributing or hosting Child
20 Pornography, Botnet Command and Control Servers, Spyware, Viruses, Trojan Horses, Phishing-
21 related sites, or similar electronic code or content that inflicts harm upon consumers.

22 **II.**

23 **IT IS FURTHER ORDERED** that Defendant and its Representatives are preliminarily
24 restrained and enjoined from configuring, deploying, operating, or otherwise participating in or
25 otherwise willingly facilitating, any Botnet.

1 to, suspending any IP addresses assigned to the Defendant or Defendant's officers, agents, servants,
2 or employees by the Upstream Service Provider, and refraining from reassigning such IP addresses,
3 and shall, if it has already taken such steps in compliance with the Temporary Restraining Order
4 previously issued in this case, continue to deny Internet connectivity to the Defendant and
5 Defendant's officers, agents, servants, and employees;

6 C. Any Data Center or Upstream Service Provider described in subparagraphs A and B
7 above providing services to Defendant or Defendant's officers, agents, servants, or employees,
8 shall preserve and retain documents relating to the Defendant or the Defendant's officers, agents,
9 servants, or employees; and

10 D. Agents of the Commission and other law enforcement agencies are permitted to
11 enter the premises of any of Defendant's Data Centers and Upstream Service Providers described
12 in subparagraph A and B above to serve copies of this Order and to verify that the Data Centers
13 and Upstream Service Providers have taken the reasonable and necessary steps described in sub-
14 paragraphs A and B of this Paragraph.

15 *Provided, however,* nothing in Paragraph III shall be interpreted to deny access to any law
16 enforcement agency granted access pursuant to a court order, search warrant, or other lawful
17 process, or to deny access to any receiver appointed by this court.

18
19 **ASSET FREEZE**

20 **IV.**

21 **IT IS FURTHER ORDERED** that the Defendant and its Representatives are hereby
22 preliminarily restrained and enjoined from:

23 A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling,
24 concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security
25 interest or other interest in, or otherwise disposing of any funds, real or personal property,
26 accounts, contracts, consumer lists, shares of stock, or other assets, or any interest therein,
27 wherever located, that are: (1) owned or controlled by the Defendant, in whole or in part, for the
28 benefit of the Defendant; (2) in the actual or constructive possession of the Defendant; or (3)

1 owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or
2 other entity directly or indirectly owned, managed, or controlled by the Defendant, including, but
3 not limited to, any assets held by or for, or subject to access by, the Defendant, at any bank or
4 savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity
5 trading company, precious metals dealer, or other financial institution or depository of any kind;
6 and

7 B. Opening or causing to be opened any safe deposit boxes titled in the name of the
8 Defendant, or subject to access by the Defendant.

9 *Provided, however,* that the assets affected by Paragraph IV shall include: (1) all of the
10 assets of the Defendant existing as of the date this Order was entered; and (2) for assets obtained
11 after the date this Order was entered, only those assets of the Defendant that are derived from
12 conduct prohibited in Paragraphs I and II of this Order.

13
14 **FINANCIAL REPORTS AND ACCOUNTING**

15 **V.**

16 **IT IS FURTHER ORDERED** that the Defendant, if it has not already done so in
17 compliance with the Temporary Restraining Order previously issued in this case, shall within five
18 (5) business days of receiving notice of this Order provide the Commission with completed
19 financial statements, verified under oath and accurate as of the date of entry of this Order, on the
20 forms attached to this Order as **Attachment A**.

21
22 **RETENTION OF ASSETS AND PRODUCTION OF RECORDS**
23 **BY FINANCIAL INSTITUTIONS**

24 **VI.**

25 **IT IS FURTHER ORDERED** that, any financial or brokerage institution, business entity,
26 or person served with a copy of this Order that holds, controls, or maintains custody of any account
27 or asset of the Defendant, or has held, controlled or maintained custody of any such account or
28 asset at any time prior to the date of entry of this Order, shall:

1 A. Hold and retain within its control and prohibit the withdrawal, removal, assignment,
2 transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any
3 such asset except by further order of the court; and

4 B. Deny all persons access to any safe deposit box that is:

- 5 1. titled in the name of the Defendant; or
- 6 2. otherwise subject to access by Defendant.

7
8 **FOREIGN ASSET REPATRIATION AND ACCOUNTING**

9 **VII.**

10 **IT IS FURTHER ORDERED** that:

11 A. Defendant and its Representatives shall, if it has not already done so in compliance
12 with the Temporary Restraining Order previously issued in this case, immediately upon service of
13 this Order, or as soon as relevant banking hours permit, transfer to the territory of the United States
14 to a blocked account whose funds cannot be withdrawn without further order of the court all funds
15 and assets in foreign countries held: (1) by Defendant; (2) for its benefit; or (3) under its direct or
16 indirect control, jointly or singly; and

17 B. Defendant shall, if it has not already done so in compliance with the Temporary
18 Restraining Order previously issued in this case, within five (5) business days of receiving notice
19 of this Order provide the Commission with a full accounting, verified under oath and accurate as of
20 the date of this Order, of all funds, documents, and assets outside of the United States which are:
21 (1) titled in the Defendant's name; or (2) held by any person or entity for the benefit of the
22 Defendant; or (3) under the direct or indirect control, whether jointly or singly, of the Defendant;
23 and

24 C. Defendant and its Representatives are preliminarily restrained and enjoined from
25 taking any action, directly or indirectly, which may result in the encumbrance or dissipation of
26 foreign assets, including but not limited to:

- 27 1. Sending any statement, letter, fax, e-mail or wire transmission, telephoning or
28 engaging in any other act, directly or indirectly, that results in a determination by a

1 foreign trustee or other entity that a “duress” event has occurred under the terms of a
2 foreign trust agreement; or

- 3 2. Notifying any trustee, protector or other agent of any foreign trust or other related
4 entities of the existence of this Order, or that an asset freeze is required pursuant to
5 a court Order, until such time that a full accounting has been provided pursuant to
6 this Paragraph.

7
8 **ACCESS TO BUSINESS RECORDS**

9 **VIII.**

10 **IT IS FURTHER ORDERED** that the Defendant, if it has not already done so in
11 compliance with the Temporary Restraining Order previously issued in this case, shall allow the
12 Commission’s representatives, agents, and assistants access to the Defendant’s business records to
13 inspect and copy documents. Accordingly, the Defendant shall, within forty-eight (48) hours of
14 receiving notice of this Order, produce to the Commission and the Commission’s representatives,
15 agents, and assistants for inspection, inventory, and/or copying, at Federal Trade Commission, 600
16 Pennsylvania Avenue NW, Room H-286, Washington DC 20580, Attention: Ethan Arenson, the
17 following materials: (1) all client information, including, but not limited to, names, phone
18 numbers, addresses, email addresses, and payment information for all clients of Defendant’s
19 services; (2) contracts; (3) correspondence, including, but not limited to, electronic correspondence
20 and Instant Messenger communications, that refer or relate to the Defendant’s services; and (4)
21 accounting information, including, but not limited to, profit and loss statements, annual reports,
22 receipt books, ledgers, personal and business canceled checks and check registers, bank statements,
23 and appointment books.

24 *Provided, however,* this Paragraph excludes any record or other information pertaining to a
25 subscriber or customer of an electronic communications service or a remote computing service as
26 those terms are defined in the Electronic Communications Privacy Act, 18 U.S.C. § 2703(c)
27 (2006).

1 The Commission shall return produced materials pursuant to this Paragraph within five (5)
2 days of completing said inventory and copying.

3
4 **COMMENCEMENT OF DISCOVERY**

5 **IX.**

6 **IT IS FURTHER ORDERED** that pursuant to Federal Rules of Civil Procedure 30(a),
7 31(a), 34, and 45, and notwithstanding the provisions of Federal Rules of Civil Procedure 26(d)
8 and (f), 30(a)(2)(A)-(C), and 31(a)(2)(A)-(C), the Commission is granted leave, at any time after
9 entry of this Order, to commence discovery.

10
11 **PRESERVATION OF RECORDS**

12 **X.**

13 **IT IS FURTHER ORDERED** that the Defendant and its Representatives are hereby
14 preliminarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering,
15 transferring, writing over, or otherwise disposing of, in any manner, directly or indirectly, any
16 documents or records of any kind that relate to the business practices or business finances of the
17 Defendant, including but not limited to, computerized files and storage media on which
18 information has been saved (including, but not limited to, hard drives, DVDs, CD-ROMS, zip
19 disks, floppy disks, punch cards, magnetic tape, backup tapes, and computer chips), and any and all
20 equipment needed to read any such documents or records, FTP logs, Service Access Logs,
21 USENET Newsgroup postings, World Wide Web pages, books, written or printed records,
22 handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business
23 canceled checks and check registers, bank statements, appointment books, and other documents or
24 records of any kind that relate to the business practices or finances of the Defendant or its officers,
25 agents, servants, or employees.

1 **RECORD KEEPING/BUSINESS OPERATIONS**

2 **XI.**

3 **IT IS FURTHER ORDERED** that the Defendant is hereby preliminarily restrained and
4 enjoined from:

5 A. Failing to maintain documents that, in reasonable detail, accurately, fairly, and
6 completely reflect its income, disbursements, transactions, and use of money; and

7 B. Creating, operating, or exercising any control over any business entity, including
8 any partnership, limited partnership, joint venture, sole proprietorship, or corporation, without first
9 providing the Commission with a written statement disclosing: (1) the name of the business entity;
10 (2) the address and telephone number of the business entity; (3) the names of the business entity's
11 officers, directors, principals, managers and employees; and (4) a detailed description of the
12 business entity's intended activities.

13
14 **DISTRIBUTION OF ORDER BY DEFENDANT**

15 **XII.**

16 **IT IS FURTHER ORDERED** that the Defendant shall immediately provide a copy of this
17 Order to each of its subsidiaries, Upstream Service Providers, Data Centers, divisions, sales
18 entities, successors, assigns, officers, directors, employees, independent contractors, client
19 companies, agents, and attorneys, and shall, within ten (10) calendar days from the date of entry of
20 this Order, provide the Commission with a sworn statement that it has complied with this provision
21 of the Order, which statement shall include the names, physical addresses, and e-mail addresses of
22 each such person or entity who received a copy of the Order.

23
24 **SERVICE OF ORDER**

25 **XIII.**

26 **IT IS FURTHER ORDERED** that copies of this Order may be served by any means
27 authorized by law, including facsimile transmission, upon any financial institution or other entity
28 or person that may have possession, custody, or control of any documents of the Defendant, or that

1 may otherwise be subject to any provision of this Order.

2
3 **SERVICE UPON THE COMMISSION**

4 **XIV.**

5 **IT IS FURTHER ORDERED** that, with regard to any correspondence or pleadings related
6 to this Order, service on the Commission shall be performed by overnight mail delivery to the
7 attention of Ethan Arenson at the Federal Trade Commission, 600 Pennsylvania Avenue, NW,
8 Room H-286, Washington, DC 20580.

9
10 **MODIFICATION OF ORDER**

11 **XV.**

12 The court has concerns about the potential hardship this Order may impose on the
13 defendant and others, arising from information provided by the defendant and a few third-parties
14 who have communicated with the court. By Order made contemporaneously with this Order, the
15 court has appointed a receiver to expeditiously deal with any claim by a third party that it has
16 suffered harm as a result of the restraining order or will suffer harm as a result of this Preliminary
17 Injunction. The court has also noted in the submission by Max Christopher, defendant's purported
18 representative, that defendant "is not going to hide or not appear in court," that "defendant always
19 has been willing to cooperate with authorities and is ready to assist the investigation" and is "ready
20 to cooperate and provide any information [it has] on its servers." Further, the submission by Mr.
21 Christopher notes that the asset freeze has limited defendant's opportunities to obtain legal
22 representation and defend and respond. Therefore, **IT IS FURTHER ORDERED** that defendant
23 may, on 48 hours' notice to parties who have appeared, seek modification of this Order including
24 immediate release of funds necessary to pay for legal representation on behalf of defendant.

25
26 **RETENTION OF JURISDICTION**

27 **XIV.**

28 **IT IS FURTHER ORDERED** that this court shall retain jurisdiction of this matter for all

1 purposes. No security is required of any agency of the United States for the issuance of a
2 preliminary injunction. Fed. R. Civ. P. 65(c).

3 **SO ORDERED**, this 15th day of June, 2009.

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RONALD M. WHYTE
United States District Judge

1 **Notice of this document has been electronically sent to:**

2 **Counsel for Plaintiff:**

3 Ethan Arenson earenson@ftc.gov
4 Carl Settlemyer csettlemyer@ftc.gov
Philip Tumminio ptumminio@ftc.gov

5
6 **Counsel for Defendants:**

7 (no appearance)

8 **Counsel for Proposed Intervenors:**

9 Karl Stephen Kronenberger karl@KBInternetlaw.com
10 Jeffrey Michael Rosenfeld Jeff@KBInternetlaw.com

11
12 Counsel are responsible for distributing copies of this document to co-counsel that have not
13 registered for e-filing under the court's CM/ECF program.

14
15
16 **Dated:** 6/15/09

17 TER
Chambers of Judge Whyte

ATTACHMENT A

FEDERAL TRADE COMMISSION
FINANCIAL STATEMENT OF CORPORATE DEFENDANT

Instructions:

1. Complete all items. Enter "None" or "N/A" ("Not Applicable") where appropriate. If you cannot fully answer a question, explain why.
2. In completing this financial statement, "the corporation" refers not only to this corporation but also to each of its predecessors that are not named defendants in this action.
3. When an Item asks for information about assets or liabilities "held by the corporation," include ALL such assets and liabilities, located within the United States or elsewhere, held by the corporation or held by others for the benefit of the corporation.
4. Attach continuation pages as needed. On the financial statement, state next to the Item number that the Item is being continued. On the continuation page(s), identify the Item number being continued.
5. Type or print legibly.
6. An officer of the corporation must sign and date the completed financial statement on the last page and initial each page in the space provided in the lower right corner.

Penalty for False Information:

Federal law provides that any person may be imprisoned for not more than five years, fined, or both, if such person:

- (1) "in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry" (18 U.S.C. § 1001);
- (2) "in any . . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true" (18 U.S.C. § 1621); or
- (3) "in any (. . . statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information . . . knowing the same to contain any false material declaration." (18 U.S.C. § 1623)

For a felony conviction under the provisions cited above, federal law provides that the fine may be not more than the greater of (i) \$250,000 for an individual or \$500,000 for a corporation, or (ii) if the felony results in pecuniary gain to any person or pecuniary loss to any person other than the defendant, the greater of twice the gross gain or twice the gross loss. 18 U.S.C. § 3571.

BACKGROUND INFORMATION

Item 1. General Information

Corporation's Full Name _____

Primary Business Address _____ From (Date) _____

Telephone No. _____ Fax No. _____

E-Mail Address _____ Internet Home Page _____

All other current addresses & previous addresses for past five years, including post office boxes and mail drops:

Address _____ From/Until _____

Address _____ From/Until _____

Address _____ From/Until _____

All predecessor companies for past five years:

Name & Address _____ From/Until _____

Name & Address _____ From/Until _____

Name & Address _____ From/Until _____

Item 2. Legal Information

Federal Taxpayer ID No. _____ State & Date of Incorporation _____

State Tax ID No. _____ State _____ Profit or Not For Profit _____

Corporation's Present Status: Active _____ Inactive _____ Dissolved _____

If Dissolved: Date dissolved _____ By Whom _____

Reasons _____

Fiscal Year-End (Mo./Day) _____ Corporation's Business Activities _____

Item 3. Registered Agent

Name of Registered Agent _____

Address _____ Telephone No. _____

Item 4. Principal Stockholders

List all persons and entities that own at least 5% of the corporation's stock.

<u>Name & Address</u>	<u>% Owned</u>
_____	_____
_____	_____
_____	_____
_____	_____

Item 5. Board Members

List all members of the corporation's Board of Directors.

<u>Name & Address</u>	<u>% Owned</u>	<u>Term (From/Until)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Item 6. Officers

List all of the corporation's officers, including *de facto* officers (individuals with significant management responsibility whose titles do not reflect the nature of their positions).

<u>Name & Address</u>	<u>% Owned</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Item 7. Attorneys

List all attorneys retained by the corporation during the last three years.

<u>Name</u>	<u>Firm Name</u>	<u>Address</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I am submitting this financial statement with the understanding that it may affect action by the Federal Trade Commission or a federal court. I have used my best efforts to obtain the information requested in this statement. The responses I have provided to the items above are true and contain all the requested facts and information of which I have notice or knowledge. I have provided all requested documents in my custody, possession, or control. I know of the penalties for false statements under 18 U.S.C. § 1001, 18 U.S.C. § 1621, and 18 U.S.C. § 1623 (five years imprisonment and/or fines). I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on:

(Date)

Signature

Corporate Position