UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeney

In the Matter of

Jerk, LLC, a limited liability company,
also d/b/a JERK.COM, and

DOCKET NO. 9361

John Fanning,
individually and as a member of
Jerk, LLC.

EXHIBITS TO COMPLAINT COUNSEL’S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE FOR TRIAL

VOLUME 8
NEW ACCOUNT PROCEDURES
Dedicated Server

APPROVAL:
☑ Approved by Management
☑ Approved by Accounting
☑ Verify Identity
☑ Government ID
☑ Credit Card

PAYMENT AND ACCOUNT SET-UP:
☑ Create Account
☑ Create Invoice
☑ Set Agent to Sales Rep or Partner
☑ Memorize Transaction for Next Billing
☑ Receive Payment
☑ Add Account to CRM
☑ Log Agent Commissions (If Applicable)

PROVISIONING
☑ Assign Datacenter
☑ Order Hardware
☑ Assign Hardware (Mach Name) AVL.1020
☑ Allocate Server IP Addresses
☑ Allocate Switch Port(s) SW1-P3
☑ Rack Location
☑ Test Hardware
☑ Monitoring
☑ Send Email/Welcome Kit

ACCOUNT FINALIZATION
☑ Send Thank You Letter
☑ Scan and File Paperwor
**CUSTOMER INFORMATION**

- Company Name: NeXtCapital L.L.C.
- Phone:
- FAX: New Customer X Existing Customer
- Order Date: 11/1/2006
- Requested Install Date: 11/4/2006
- Service Address:
- City: 
- State: 
- Billing Address:
- City: 
- State: 

**SERVICES ORDERED**

- Space: NA
  - Monthly Service Fee: $ 55.00
  - One-time set-up Fee: $ 46.00
  - Total cost for first month: $ 198.00
- Hardware Specifications / Service Inclusions:
  - Promo Package, 2000GB/Month PE SC420, 2Gig SDRAM, P3.0, 100Mbps Burst, 3 IP, Support, 10GB Backup, 5 Tests

**LENGTH OF SERVICE AGREEMENT**

- Month to Month

**CREDIT CARD INFO**

- Card Number: [redacted]
- Expiration: [redacted]
- Name On Card: [redacted]
- Billing Address: [redacted]
- Bill Credit Card each month: YES
- Invoice Quarterly (in advance): YES
- Invoice Annually (in advance): YES

**SIGNATURES**

- NeXtCapital CTO: [redacted]
- Title/Position: Chairman
- Date: 11/1/2006
EBUSINESS HOSTING SOLUTIONS SERVICE SUBSCRIPTION AGREEMENT

1. HOSTING SERVICES. Host will provide connection to all organizations and individuals who agree to abide by Host's access terms, conditions, and fee schedules.

User is responsible for providing any equipment and/or software necessary to access Host's system and Internet facilities, unless otherwise provided for in this Agreement.

User is entitled to use any Internet services and time-share computer software provided by Host. User is responsible for any licensing fees for any "shareware" products provided by Host to User.

Host will provide the Hosting services in the service package chosen by User, and set forth on page one of the Service Order Form, including a server or space on a shared server, connection of the server to Host's high-speed Internet connection, backup of the server's hard disk and other maintenance on the server, domain name, e-mail, and file transfer services as provided in the chosen service package, automated server monitoring and limited log file generation and access. All equipment provided by Host shall remain Host's property.

The services and software offered are subject to change and limitation at Host's discretion, as is any pricing schedule. Host will notify User of any changes by electronic or postal mail to the agent named in this Agreement or other User officer a minimum of 14 days in advance, unless the change is judged by Host to be necessary to preserve proper security or functioning of Host's system. If User objects to any change in service, unless the change is one Host has determined is necessary for security purposes or to maintain proper operation of Host's system, User will be entitled to cancel its account.

User's continued use of the Hosting services after the effective date of such modified general terms and conditions, policies, or changes in services or software will constitute User's acceptance of such modified terms.

This Agreement covers only Internet services and any time-share software related to the provision of Internet services. Dedicated Hosting services, and any ancillary services such as domain name service and electronic mail.

2. FEES. User will pay (a) subscription fees in advance, (b) fees for other goods or services as invoiced, and (c) any security deposit, in each case per the applicable price schedule set forth on page one of the Service Order Form.

3. TERMINATION AND REINSTATEMENT. This Agreement may be terminated by either party on not less than 30-day prior written notice.

If User (a) becomes bankrupt or otherwise insolvent or (b) fails to pay for services rendered in accordance with the terms hereof or (c) commits any other breach of this Agreement, Host may, at its sole discretion and without notice or judicial intervention, discontinue performance and terminate this Agreement for default and pursue any other remedies available at law or in equity.

If User's account is suspended due to lack of payment, User will pay the then current reinstatement fee, in addition to all other charges then due and payable, prior to restoration of service.

4. CUSTOMER SUPPORT. Host will provide User reasonable amounts of consultation via telephone and/or electronic mail in the use of the system, but cannot promise to assist with any services that are not maintained or controlled by Host.

5. DISCLAIMER AND LIMITATION OF LIABILITY. With the exception of any express warranty herein, neither Host, nor its affiliates (hereinafter "Host"), nor its suppliers make any warranty, and each of them disclaims any liability, with respect to:

(a) the accuracy, completeness, currency, error-free nature, or fitness for any particular purpose of any data or services accessed on or through the Host system, or

(b) system performance levels, including but not limited to resource utilization, response time or overhead, unless such a performance guarantee is part of the chosen Hosting services package represented by a SLA, or

(c) any loss or inconvenience associated with Host's suspension, termination, or deletion of User's account, or
ANY OTHER WARRANTY, EXPRESS OR IMPLIED. INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF
MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

NO ORAL ADVICE OR WRITTEN ADVICE GIVEN BY HOST OR ITS STAFF OR AGENTS SHALL CREATE A WARRANTY.

Host will not be liable for delay in delivery or performance of hosting or design services, and is excused from any failure to deliver
or perform, due to causes beyond its reasonable control unless a specific level of service is guaranteed via a SLA.

Host will not be liable for any damage or inconvenience caused by any necessary or scheduled maintenance to Host's system, or
for any service lapses or loss of customer data caused by forces beyond Host's reasonable control. Host recommends that User
make archival copies or otherwise download any important information stored on Host's system, in addition to any backups Host
may perform.

THE SOLE AND ENTIRE MAXIMUM LIABILITY OF HOST TO ANY USER FOR ANY AND ALL PROVEN LOSS, CLAIM,
DAMAGE OR LIABILITY OF ANY KIND (INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT) WITH RESPECT TO ALL
SERVICES PROVIDED BY HOST AND ANY ACT OR OMISSION OF HOST WILL CONSIST OF A DUTY TO REFUND NOT
MORE THAN THE AMOUNTS PAID BY THE USER TO HOST DURING THE YEAR PRECEDING SUCH LOSS, CLAIM,
DAMAGE OR LIABILITY. IN NO EVENT WILL HOST BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL
 DAMAGES, EVEN IF HOST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

User, by signing this Agreement or connecting to the Host system, (a) accepts the use of the system/interconnection (including
any programs, data, or services) "AS IS"; and (b) waives any and all claims relating thereto, whether such claims are against Host
or any of its suppliers or affiliates.

Should any legal action or threat of legal action result as a result of User's use, or of any of Host's system, interconnection
facilities, or services. User agrees to indemnify Host, its staff, or Host's other Users, for any costs incurred in defending against
any such threat or action, including reasonable attorneys' fees and any equipment replacement costs, even if User is no longer a
customer of Host when such expenses arise. This clause also applies to third-party claims as well as any legal action taken by
Host against User for breach of this Agreement, damage caused by User to Host's system, or for failure to pay expenses User is
obligated to pay Host.

USE RESTRICTIONS AND INDEMNIFICATION. User agrees to adhere to Host's "Acceptable Use Policy", a copy of which is
attached to this Agreement, and which policy may be changed from time to time - User agrees to adhere to all such changes it
has notice of.

User will indemnify and hold Host harmless from any costs, expenses (including reasonable attorneys fees) or liability resulting
from any claim based on User's use of the system. Such indemnification will not be applicable with respect to claims of gross
negligence, willful misconduct or infringement by Host. Such indemnity will survive the termination or expiration of this
Agreement.

GENERAL. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent or
subsequent breach of this Agreement or any provision thereof. If any provision of the Agreement is or becomes illegal or
otherwise unenforceable, such provision will not invalidate the other provisions hereof, provided if Host determines that any such
unenforceable provision is essential, it may terminate this Agreement upon notice.

User grants any permissions or licenses (including but not limited to copyright licenses), as may be required, and within User's
power to grant, to Host in order to provide Internet and related services to User, or as may be required for Host to operate for
User's benefit.

This Agreement is governed by the laws of the State of New Hampshire. The parties agree that the courts (state and federal)
located in New Hampshire, will have non-exclusive jurisdiction to determine the validity, construction and performance of this
Agreement and the legal relations between the parties.

This Agreement constitutes the entire Agreement between Host and User, and supersedes all prior agreements, proposals,
representations, or other communications, relative to the subject matter hereof. Paragraph headings are included for
convenience and are not to be used to interpret this Agreement.
This Agreement may not be assigned by User with the written consent of Host.

8. CHANGES IN LEGISLATION. Should any changes in legislation require any changes to this Agreement or any services provided by Host, Host reserves the right to make any such changes, as are determined necessary or prudent, at Host's sole discretion, without giving User advanced notice. If such changes are made, Host promises to send by electronic or postal mail notice of any changes in a reasonable time period. In event of such changes, User may terminate service without the required 30 day notice, but is not entitled to a refund of any payments already made for services.

Client Initials: 

Form Rev: 03.10

CX0402-006
Service Level Agreement (SLA)

30 Day Satisfaction Guarantee: Netriplex guarantees all services and rented hardware with a 30 day satisfaction guarantee. If you are not completely satisfied with the level of service or rented hardware within the first 30 days from contract execution, you may cancel the remainder of the contract without any further recourse or amounts due. To satisfy the 30 day satisfaction guarantee, you must present a written statement of dissatisfaction to our accounting department prior to the expiration of 30 days from the date of contract execution. Setup fees and first month recurring fees are non-refundable.

Service Credits: service credits are available for services contracted for, but not delivered according to the service level agreement. Service credits are not available to customers more than 30 days in arrears on their billing cycle. Valid approved service credits will appear as a credit for services on the next billable invoice. Service credits shall not result in monies paid by Netriplex directly to the customer. All service credit requests must be in writing and emailed directly to billing@netriplex.com within 10 days from the date of the service level failure. Failure to request a service credit within 10 days of the service failure will result in an automatic waiver of any rights under the Master Service Level Agreement. Normal scheduled maintenance and upgrades are not covered in the uptime guarantee.

100% Network Guarantee: Netriplex offers a 100% uptime guarantee on all network related services (i.e. bandwidth, routers, switches, servers and cabling). The 100% uptime guarantee is applicable to all network services delivered to customer. Customer generated outages caused by failed equipment (if collocated), exploited/compromised servers, misconfigurations or traffic in excess of the maximum allowed by contract are not subject to the SLA. Service credits are based directly on all equipment and/or services affected by a network outage. Services or hardware not related to the network outage will not qualify for a service credit.

Performance: Netriplex guarantees a maximum average 40ms (milliseconds) network route from the input connection to the customer equipment through the internal network and out to the first BGP peer calculated over a 24 hour period.

Availability: Netriplex guarantees 100% uptime on all redundant Internet connectivity. Connectivity is measured as traffic routing into and out of rented customer equipment through the internal network out to Internet carriers. Netriplex does not guarantee third party owner latency or peering problems not utilized by Netriplex.

Power Guarantee: Netriplex guarantees a 100% uptime on all power located in the datacenter area for customer use. Power is defined as TXU supplied power and alternate power via UPS battery backup power and generator supplied power.

Hardware Guarantee: Netriplex guarantees all rented hardware components will be replaced any failed component at no cost to the customer. Hardware replacement will begin immediately upon identification of the hardware failure and is guaranteed to be complete within 2 hours of problem identification. Hardware is defined as the routers, switches, disk arrays, tape backup systems, processors, RAID, hard disks, motherboards, NIC cards, power supplies, raid controllers, and any other hardware rented through Netriplex.

Scheduled Maintenance: The scheduled maintenance and upgrade window for all customers are limited to Sunday(s) only and will be performed from 2:00am to 4:00am eastern standard time. Notification from Netriplex administrative staff will occur at least 3 days prior to work performed. Notification failure of normal (non-emergency) maintenance by Netriplex staff will result in an application of the uptime guarantee.

Netriplex shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to external circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of interruption or delay in telecommunications, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Services. Netriplex agrees to exercise reasonable care to prevent such occurrences; however, under no circumstances will Netriplex be held liable for any financial or other damages due to such interruptions. In no event shall Netriplex be liable to Customer or any other person for any special, incidental, consequential or punitive damages of any kind, including, without limitation, refunds of fees, loss of profits, cost of cover, loss of income or cost of replacement services.

NetCapital Hosting_Order_Form 110106

Form Rev. 03.10.a
Acceptable Use Policy

1. LEGAL USES. Host's system and services may not be used in any way which violates Federal, State, Local, or International law. This prohibits, but is not limited to, any actions which are threatening, obscene, defamatory, or which violate trade secret, copyright or patent protection, or rights of privacy or publicity, or which result in the spread of computer viruses or other damaging programs or data files, or which violate any export restrictions (including making non-exportable information or software available to foreign nationals as may be prohibited by law). In the event User is suspected of any such violation, Host reserves the right to immediately suspend or terminate User's account.

2. NETWORK TRANSMISSIONS. User is responsible for any materials passed via Host's system to other networks, and agrees to comply with any restrictions posed by the other network's terms of service or acceptable use policies.

3. PROHIBITED MATERIALS. User is strictly forbidden from hosting websites that contain pornographic materials or that are otherwise considered objectionable. Unlawful, obscene, indecent, or immoral Internet material (like child pornography) is not permitted, and Host will cooperate with local, state, federal, and international authorities in the removal of such materials. User agrees not to post any unlawful, obscene, indecent, or immoral Internet material, and User acknowledges that all material stored on Host's system is stored or transmitted at User's own risk.

4. COPYRIGHT ISSUES. User agrees not to upload, download from, make available for public access, or transmit through Host's system any copyrighted material in violation of the copyright owner's rights in that material. By uploading, downloading, making available for public access, or transmitting any copyright-protected material, User waives that User has the proper authorization to make or authorize the making of any copies involved with such uploading, downloading, making available for public access, or transmission. Unauthorized copying, or authorizing the copying of protected works in excess of any legal right through Host's system is a violation of federal law and international treaties, and may result in not only termination of User's account, but also may result in civil and/or criminal fines and prison sentences.

5. SECURITY CONCERNS. User is responsible for choosing and keeping a secure password and for maintaining the security of the System.

6. CONFIDENTIALITY. User will protect the confidentiality of any files and electronic mail stored on or exchanged over Host's system, except as may be necessary to provide the requested Internet services, or as may be necessary to prevent the unauthorized copying or transmission of Host's system, or to protect Host's rights or property.

USER acknowledges that no system on the Internet can be guaranteed safe from unauthorized intrusion, and therefore any confidential information stored on or transmitted through Host's system is stored or transmitted at User's own risk.

User may not attempt to bypass any security mechanisms in place on Host's systems, or use any of Host's systems or services to attempt to bypass any security mechanisms in place on any other system. This includes, but is not limited to, port scanning, running any password cracking software, or attempting to access a system which any user knows or reasonably should know he or she is not authorized to access in the manner or to the extent attempted.

User agrees to remove any copyright ownership information, or falsely such information, on any files uploaded, downloaded, or transmitted via Host's system.

User explicitly licenses Host to make any copies of copyright protected materials necessary to provide Internet and related services to User, as well as any necessary copies necessary to preserve and maintain Host's system and User's files and electronic mail.

User explicitly licenses Host to make any copies, without limitation, of any copyrighted materials submitted to a public forum maintained on Host's system, or submitted to any forum to which Host provides access. This clause cannot be modified by either party unless any modification is in writing and signed by both parties.
NEW ACCOUNT PROCEDURES
Dedicated Server

APPROVAL:
- Approved by Management
- Approved by Accounting
- Verify Identity
- Government ID
- Credit Card

PAYMENT AND ACCOUNT SET-UP:
- Create Account
- Create Invoice
- Set Agent to Sales Rep or Partner
- Memorize Transaction for Next Billing
- Receive Payment
- Add Account to CRM
- Log Agent Commissions (if Applicable)

PROVISIONING
- Assign Datacenter
- Order Hardware
- Assign Hardware (Mach Name)
- Allocate Server IP Addresses
- Allocate Switch Port(s)
- Rack Location
- Test Hardware
- Monitoring
- Send Email/Welcome Kit

ACCOUNT FINALIZATION
- Send Thank You Letter
- Scan and File Paperwork

Partially
Neuropiex

International Headquarters

Customer Information

Company Name: Netwire Inc.
Phone: 
Fax: 
New Customer: X
Existing Customer: 

Order Date: 1/15/2006
Requested Install Date: 1/11/2006

Service Address:
City:
State:
Zip:

Billing Address:
City:
State:
Zip:

Administrative Contact: John W. Fanning
Phone: 
Email: 

Technical Contact: 
Phone: 
Email: 

Billing Contact: John W. Fanning
Phone: 
Email: 

Emergency Contact: John W. Fanning
Phone: 
Email: 

User Name: 
Password: 
How many IP addresses are needed: 
Domain Name: 

Services Ordered

Space: NA
Monthly Service Fee: $198.00
One-time set-up Fee: $ - 
Total cost for first month: $198.00

Hardware Specifications / Service Inclusions

Two servers under Promo Package, 300GB/month PE SC420, 10Gbps network, 2Gig SDRAM, P3.0, 250GB SATA HD, 100Mbps Burst, 3 IP, Support, 10GB Backup, 5 Teads.

Length of Service Agreement: Month to Month

Federal Tax ID or Social Security# of responsible party: 

Credit Card Info (Visa, Mastercard, American Express or Discover)

Card Number: 
Expiration: 11/07
Name On Card: 
Billing Address: 

Bill Credit Card each month: X YES NO

Invoice Quarterly (in advance) X YES NO

Invoice Annually (in advance) X YES NO

(10% discount applied for annual pre-pay)

Net Capital Hosting Order Form 111506

Form Rev. 03.10a

CX0402-010
EBUSINESS HOSTING SOLUTIONS SERVICE SUBSCRIPTION AGREEMENT

1. HOSTING SERVICES. Host will provide connection to all organizations and individuals who agree to abide by Host's access terms, conditions, and fee schedules.

User is responsible for providing any equipment and/or software necessary to access Host's system and Internet facilities, unless otherwise provided for in this Agreement.

User is entitled to use any Internet services and time-share computer software provided by Host. User is responsible for any licensing fees for any "shareware" products provided by Host to User.

Host will provide the Hosting services provided in the service package chosen by User, and set forth on page one of the Service Order Form, including a server or space on a shared server, connection of the server to Host's high-speed Internet connection, backup of the server's hard disk and other maintenance on the server, domain name, e-mail, and file transfer services as provided in the chosen service package, automated server monitoring and limited log file generation and access. All equipment provided by Host shall remain Host's property.

The services and software offered are subject to change and limitation at Host's discretion, as is any pricing schedule. Host will notify User of any changes by electronic or postal mail to the agent named in this Agreement or other User officer a minimum of 14 days in advance, unless the change is judged by Host to be necessary to preserve proper security or functioning of Host's system. If User objects to any change in service, unless the change is one Host has determined is necessary for security purposes or to maintain proper operation of Host's system, User will be entitled to cancel its account.

User's continued use of the Hosting services after the effective date of such modified general terms and conditions, policies, or changes in services or software will constitute User's acceptance of such modified terms.

The Agreement covers only Internet services and any time-share software related to the provision of Internet services, Dedicated Hosting services, and any auxiliary services such as domain name service and electronic mail.

2. FEES. User will pay (a) subscription fees in advance, (b) fees for other goods or services as invoiced, and (c) any security deposit, in each case per the applicable price schedule set forth on page one of the Service Order Form.

3. TERMINATION AND REINSTATEMENT. This Agreement may be terminated by either party on not less than 30-days prior written notice.

If User (a) becomes bankrupt or otherwise insolvent or (b) fails to pay for services rendered in accordance with the terms hereof or (c) commits any other breach of this Agreement, Host may, at its sole discretion and without notice or judicial intervention, discontinue performance and terminate this Agreement for default and pursue any other remedies available at law or in equity.

If User's account is suspended due to lack of payment, User will pay the then current reinstatement fee, in addition to all other charges then due and payable, prior to restoration of service.

4. CUSTOMER SUPPORT. Host will provide to User reasonable amounts of consultation via telephone and/or electronic mail in the use of the system, but cannot promise to assist with any services that are not maintained or controlled by Host.

5. DISCLAIMER AND LIMITATION OF LIABILITY. With the exception of any express warranty herein, neither Host, nor its affiliates (hereinafter "Host"), nor its suppliers make any warranty, and each of them disclaims any liability, with respect to:

(a) the accuracy, completeness, currentness, error-free nature, or fitness for any particular purpose of any data or services accessed on or through the Host system, or

(b) any loss or inconvenience associated with Host's suspension, termination, or deletion of User's account, or
NO ORAL ADVICE OR WRITTEN ADVICE GIVEN BY HOST OR ITS STAFF OR AGENTS SHALL CREATE A WARRANTY.

Host will not be liable for delay in delivery or performance of hosting or design services, and is excused from any failure to deliver or perform, due to causes beyond its reasonable control unless a specific level of service is guaranteed via SLA.

Host will not be liable for any damage or inconvenience caused by any necessary or scheduled maintenance to Host's system, or for any service failure or loss of customer data caused by forces beyond Host's reasonable control. Host recommends that User make archival copies or otherwise download any important information stored on Host's system, in addition to any backups Host may perform.

THE SOLE AND ENTIRE MAXIMUM LIABILITY OF HOST TO ANY USER FOR ANY AND ALL PROVEN LOSS, CLAIM, DAMAGE OR LIABILITY OF ANY KIND (INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT) WITH RESPECT TO ALL SERVICES PROVIDED BY HOST AND ANY ACT OR OMISSION OF HOST WILL CONSIST OF A DUTY TO REFUND NOT MORE THAN THE AMOUNTS PAID BY THE USER TO HOST DURING THE YEAR PRECEDING SUCH LOSS, CLAIM, DAMAGE OR LIABILITY. IN NO EVENT WILL HOST BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF HOST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

User, by signing this Agreement or connecting to the Host system, (a) accepts the use of the system/interconnection (including any programs, data, or services) "AS IS"; and (b) waives any and all claims relating thereto, whether such claims are against Host or any of its suppliers or affiliates.

Should any legal action or threat of legal action result as a result of User's use, or of any of Host's system, interconnection facilities, or services, User agrees to indemnify Host, its staff, or Host's other Users, for any costs incurred in defending against any such threat or action, including reasonable attorneys' fees and any equipment replacement costs, even if User is no longer a customer of Host when such expenses arise. This clause also applies to third party claims as well as any legal action taken by Host against User for breach of this Agreement, damage caused by User to Host's system, or for failure to pay expenses User is obligated to pay Host.

6. USE RESTRICTIONS AND INDEMNIFICATION. User agrees to adhere to Host's "Acceptable Use Policy", a copy of which is attached to this Agreement, and which policy may be changed from time to time - User agrees to adhere to all such changes it has notice of.

User will indemnify and hold Host harmless from any costs, expenses (including reasonable attorneys fees) or liability resulting from any claim based on User's use of the system. Such indemnification will not be applicable with respect to claims of gross negligence, willful misconduct or infringement by Host. Such indemnity will survive the termination or expiration of this Agreement.

7. GENERAL. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of this Agreement or any provision thereof. If any provision of this Agreement is or becomes illegal or otherwise unenforceable, such provision will not invalidate the other provisions hereof; provided if Host determines that any such unenforceable provision is essential, it may terminate this Agreement upon notice.

User grants any permissions or licenses (including but not limited to copyright licenses), as may be required, and within User's power to grant, to Host in order to provide Internet and related services to User, or as may be required for Host to operate for User's benefit.

This Agreement is governed by the laws of the State of New Hampshire. The parties agree that the courts (state and federal) located in New Hampshire, will have non-exclusive jurisdiction to determine the validity, construction and performance of this Agreement and the legal relations between the parties.

This Agreement constitutes the entire Agreement between Host and User, and supersedes all prior agreements, proposals, representations, or other communications, relative to the subject matter hereof. Paragraph headings are included for convenience and are not to be used to interpret this Agreement.

Client initials: [Signature]

NetCatalyst Hosting_Order_Form 111506

Form Rev 03.16.1

NetCatalyst Hosting_Order_Form 111506

Form Rev 03.16.1

CX0402-012
5. CHANGES IN LEGISLATION. Should any changes in legislation require any changes to this Agreement or any services provided by Host, Host reserves the right to make any such changes, as are determined necessary or prudent, at Host's sole discretion, without giving User advanced notice. If such changes are made, Host promptly to send by electronic or postal mail notice of any changes in a reasonable time period. In event of such changes, User may terminate service without the required 30 day notice, but is not entitled to a refund of any payments already made for services.
30 Day Satisfaction Guarantee: Netrix guarantees all services and rented hardware with a 30 day satisfaction guarantee. If you are not completely satisfied with the level of service or rented hardware within the first 30 days from contract execution, you may cancel the remainder of the contract without any further recourse or amounts due. To satisfy the 30 day satisfaction guarantee, you must present a written statement of dissatisfaction to our accounting department prior to the expiration of 30 days from the date of contract execution. Setup fees and first month recurring fees are non-refundable.

Service Credits: Service credits are available for services contracted for, but not delivered according to the service agreement. Service credits are not available to customers more than 30 days in arrears on their billing cycle. Valid approved service credits will appear as a credit on the next billable invoice. Service credits shall not result in monies paid by Netrix directly to the customer. All service credit requests must be in writing and emailed directly to billing@Netrix.com within 10 days from the date of the service level failure. Failure to request a service credit within 10 days of the service failure will result in an automatic waiver of any rights under the Master Service Level Agreement. Normal scheduled maintenance and upgrades are not covered in the uptime guarantee.

100% Network Guarantee: Netrix offers a 100% uptime guarantee on all network related services (i.e. bandwidth, routers, switches, servers and cabling). The 100% uptime guarantee is applicable to all network services delivered to customers. Customer generated outages created by failed equipment (if collocated), expired/licensed servers, misconfigurations or traffic in excess of the maximum allowed by contract are not subject to the SLA. Service credits are based directly on all equipment and/or services affected by a network outage. Services or hardware not related to the network outage will not qualify for a service credit.

Performance: Netrix guarantees a maximum average 40ms (milliseconds) network route from the input connection to the customer equipment through the internal network and out to the first BGP peer calculated over a 24 hour period.

Availability: Netrix guarantees 100% uptime on all redundant internal connectivity. Connectivity is measured as traffic routing into and out of rented customer equipment through the internal network out to Internet carriers. Netrix does not guarantee third party carrier latency or peering problems not utilized by Netrix.

Power Guarantee: Netrix guarantees a 100% uptime on all power located in the datacenter area for customer use. Power is defined as TXU supplied power and alternate power via UPS battery backup power and generator supplied power.

Hardware Guarantee: Netrix guarantees all rented hardware components and will replace any failed component at no cost to the customer. Hardware replacement will begin immediately upon identification of the hardware failure and is guaranteed to be complete within 2 hours of problem identification. Hardware is defined as the routers, switches, disk arrays, tape backup systems, processors, RAM, hard disks, motherboards, NIC cards, power supplies, raid controllers, and any other hardware rented through Netrix.

Scheduled Maintenance: The scheduled maintenance and upgrade window for all customers is limited to Sunday(s) only and will be performed from 2:00am to 4:00am eastern standard time. Notification from Netrix administrative staff will occur at least 3 days prior to work performed. Notification failure of non-emergency maintenance by Netrix is guaranteed to result in an application of the uptime guarantee.

Netrix shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to external circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of internet or delay in telecommunications, failure of third party software or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of the Services. Netrix agrees to exercise reasonable care to prevent such occurrences; however, under no circumstances shall Netrix be held liable for any financial or other damages due to such interruptions. In no event shall Netrix be liable to Customer or any other person for any special, incidental, consequential or punitive damages of any kind, including, without limitation, refunds of fees, loss of profits, cost of cover, loss of income or cost of replacement services.
Acceptable Use Policy

1. LEGAL USES. Host's system and services may not be used in any way which violates Federal, State, Local, or International law. This prohibition, but is not limited to, any actions which are threatening, obscene, defamatory, or which violate trade secret, copyright or patent protection, or rights of privacy or publicity, or which result in the spread of computer viruses or other damaging programs or data files, or which violate any export restrictions (including making non-exportable information or software available to foreign nationals as may be prohibited by law). In the event User is suspected of any such violation, Host reserves the right to immediately suspend or terminate User's account.

2. NETWORK TRANSMISSIONS. User is responsible for any materials passed via Host's system to other networks, and agrees to comply with any restrictions posed by the other network's terms of service or acceptable use policies.

3. PROHIBITED MATERIALS. User is strictly forbidden from hosting websites that contain pornographic materials or that send Unsolicited Commercial Email (UCE) otherwise known as SPAM.

4. CONFIDENTIALITY. Host will protect to the best of its ability the confidentiality of any files and electronic mail stored on or exchanged over the system, except as may be necessary to provide the requested Internet services, or as may be necessary to preserve the security and proper operation of Host's system, or to protect Host's rights or property.

Host, except as otherwise provided for in this Agreement or as required by law, will use its best efforts to avoid disclosing the contents of private electronic mail to anyone other than addresses, authorized recipients, or those to whom such disclosure is necessary to assure forwarding or delivery.

User acknowledges that no system on the Internet can be guaranteed safe from unauthorized intrusion, and therefore any confidential information stored on or transmitted through Host's system is stored or transmitted at User's own risk.

5. SECURITY CONCERNS. User is responsible for choosing a secure password and for keeping it secret.

User may not attempt to bypass any security mechanisms in place on Host's system, or use any of Host's systems or services to attempt to bypass any security mechanisms in place on any remote system. This includes, but is not limited to, port scanning, running any password cracking software, or attempting to access a system which any user knows or reasonably should know he or she is not authorized to access in the manner or to the extent attempted.

6. COPYRIGHT ISSUES. User agrees not to upload, download from, make available for public access on, or transmit through Host's system any copyrighted material in violation of the copyright owner's rights in that material. By uploading, downloading, making available for public access, or transmitting any copyright-protected material, User warrants that User has the proper authorization to make or authorize the making of any copies involved with such uploading, downloading, making available for public access, or transmission. Unauthorized copying, or authorizing the copying of protected works in excess of any legal right through Host's system is a violation of federal law and international treaties, and may result in not only termination of User's account, but also may result in civil and/or criminal fines and prison sentences.

User agrees not to remove any copyright ownership information, or falsify such information, on any files uploaded, downloaded, made publicly available through, or transmitted via Host's system.

User explicitly licenses Host to make any copies of copyright protected materials necessary to provide Internet and related services to User, as well as make any necessary copies necessary to preserve and maintain Host's system and User's files and electronic mail.

User explicitly licenses Host to make any copies, without limitation, of any copyrighted materials submitted to a public forum maintained on Host's system, or submitted to any forum to which Host provides access. This clause cannot be modified by either party unless any modification is in writing and signed by both parties.
## SERVER PROVISIONING WORKSHEET

**COMPANY:** Netwire Inc.

### Machine(s) to configure:

<table>
<thead>
<tr>
<th>Name:</th>
<th>AVL1028</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose:</td>
<td>Database Server</td>
</tr>
<tr>
<td>Components:</td>
<td>Intel Dual Processor Board</td>
</tr>
<tr>
<td></td>
<td>Dual 2.8GHz XEON processor</td>
</tr>
<tr>
<td></td>
<td>4 GB RAM</td>
</tr>
<tr>
<td></td>
<td>SCSI RAID card</td>
</tr>
<tr>
<td></td>
<td>3 x 73GB Drives, RAID 5</td>
</tr>
<tr>
<td></td>
<td>Unbreakable Oracle (Linux) or Centos</td>
</tr>
<tr>
<td>Partitions:</td>
<td>root 30GB; /u01 100GB; /tmp 10GB</td>
</tr>
</tbody>
</table>

### IP Address(es):

- 208.69.230.32/29
- 208.69.230.34-38 - useable IP range
- 208.69.230.33 - gateway
- 255.255.255.248 - subnet
- 208.69.230.39 - broadcast

### Tech notes:

- [Signature]
- [Date]
- [Time]
- [Technician name]
- [Completed date]
- [Completed time]
- [Rack Location]: Row 3, Rack 8
- [Power Bar & Port(s)]
- [Switch Port(s)]:
**CUSTOMER INFORMATION**

- **Company Name:** Netwire Inc.
- **Phone:**
- **Fax:**
- **Address:**
  - **City:**
  - **State:**
  - **Zip:**
- **Billing Address:**
  - **City:**
  - **State:**
  - **Zip:**
- **Administrative Contact:** John W Fanning
  - **Phone:**
  - **Email:**
- **Technical Contact:**
  - **Phone:**
  - **Email:**
- **Billing Contact:** John W Fanning
  - **Phone:**
  - **Email:**
- **Emergency Contact:** John W Fanning
  - **Phone:**
  - **Email:**
  - **PAGER:**

**SERVICES ORDERED**

- **Order Date:** 11/27/2006
- **Requested Install Date:** 11/28/2006

**Hardware Specifications / Service Inclusions**

- PE 2550 Dual 1.4GHz CPU, 2 GigaRAM, 2x30GB RAID
- 100Mbps port, 336 monthly transfer, the other has dual 1.1GHz processors. 3 IP, Support, 10GB Backup, 6 Tests.

**LENGTH OF SERVICE AGREEMENT**

- Month to Month

**FEDERAL TAX ID OR SOCIAL SECURITY# OF REASONABLE PARTY:**

**CREDIT CARD INFO (VISA, MASTERCARD, AMERICAN EXPRESS OR DISCOVER)**

- Card Number:
- Expiration:
- Name On Card:
- Billing Address:

**BILL CREDIT CARD EACH MONTH:**

- **YES**
- **NO**

**INVOICE QUARTERLY (IN ADVANCE):**

- **YES**
- **NO**

**INVOICE ANNUALLY (IN ADVANCE):**

- **YES**
- **NO**

**10% DISCOUNT EXTENDED FOR ANNUAL PRE-PAY**

**NET/PLEX HOSTING ORDER FORM**

**CLIENT APPROVAL**

- **Prepared by:** John W Fanning
- **Signed:**
- **Title/Position:** Chairman
- **Date:** Nov 27

**NET/PLEX HOSTING ORDER FORM**

- **Printed Name:**
- **Signature:**
- **Title/Position:**
- **Date:**

**Form Rev. 08.10.6**
EBUSINESS HOSTING SOLUTIONS SERVICE SUBSCRIPTION AGREEMENT

1. HOSTING SERVICES. Host will provide connection to all organizations and individuals who agree to abide by Host's access terms, conditions, and fee schedules.

User is responsible for providing any equipment and/or software necessary to access Host's system and Internet facilities, unless otherwise provided for in this Agreement.

User is entitled to use any Internet services and time-share computer software provided by Host. User is responsible for any licensing fees for any "shareware" products provided by Host to User.

Host will provide the Hosting services provided in the service package chosen by User, and set forth on page one of the Service Order Form, including a server or space on a shared server, connection of the server to Host's high-speed Internet connection, backup of the server's hard disk and other maintenance on the server, domain name, e-mail, and file transfer services as provided in the chosen service package, automated server monitoring and limited log file generation and access. All equipment provided by Host shall remain Host's property.

The services and software offered are subject to change and limitation at Host's discretion, as is any pricing schedule. Host will notify User of any changes by electronic or postal mail to the agent named in this Agreement or other User's office a minimum of 14 days in advance, unless the change is judged by Host to be necessary to preserve proper security or functioning of Host's system. If User objects to any change in service, unless the change is one Host has determined is necessary for security purposes or to maintain proper operation of Host's system, User will be entitled to cancel its account.

User's continued use of the Hosting services after the effective date of such modified general terms and conditions, policies, or changes in services or software will constitute User's acceptance of such modified terms.

This Agreement covers only Internet services and any time-share software related to the provision of Internet services, Dedicated Hosting services, and any ancillary services such as domain name service and electronic mail.

2. FEES. User will pay (a) subscription fees in advance, (b) fees for other goods or services as invoiced, and (c) any security deposit, in each case per the applicable price schedule set forth on page one of the Service Order Form.

3. TERMINATION AND RESTATEMENT. This Agreement may be terminated by either party on not less than 30-days prior written notice.

If User (a) becomes bankrupt or otherwise insolvent or (b) fails to pay for services rendered in accordance with the terms hereof or (c) commits any other breach of this Agreement, Host may, at its sole discretion and without notice or judicial intervention, discontinue performance and terminate this Agreement for default and pursue any other remedies available at law or in equity.

If User's account is suspended due to lack of payment, User will pay the then current reinstatement fee, in addition to all other charges then due and payable, prior to restoration of service.

4. CUSTOMER SUPPORT. Host will provide to User reasonable amounts of consultation via telephone and/or electronic mail in the use of the system, but cannot promise to assist with any services that are not maintained or controlled by Host.

5. DISCLAIMER AND LIMITATION OF LIABILITY. With the exception of any express warranty herein, neither Host, nor its affiliates, nor its suppliers makes any warranty, and each of them disclaims any liability, with respect to:

(a) the accuracy, completeness, currentness, error-free nature, or fitness for any particular purpose of any data or services accessed on or through the Host system, or

(b) system performance levels, including but not limited to resource utilization, response time or overhead, unless such a performance guarantee is part of the chosen Hosting services package represented by a SLA, or

(c) any loss or inconvenience associated with Host's suspension, termination, or deletion of User's account, or

[Signature]

[Client initials]

NetCapital Hosting_Order_Form 112106

Form Rev. 03.10.04

CX0402-018
NO ORAL ADVICE OR WRITTEN ADVICE GIVEN BY HOST OR ITS STAFF OR AGENTS SHALL CREATE A WARRANTY.

Host will not be liable for delay in delivery of performance of hosting or design services, and is excused from any failure to deliver or perform, due to causes beyond its reasonable control unless a specific level of service is guaranteed via a SLA.

Host will not be liable for any damage or inconvenience caused by any necessary or scheduled maintenance to Host's system, or for any service latency or loss of customer data caused by forces beyond Host's reasonable control. Host recommends that User make archival copies or otherwise download any important information stored on Host's system, in addition to any backups Host may perform.

THE SOLE AND ENTIRE MAXIMUM LIABILITY OF HOST TO ANY USER FOR ANY AND ALL PROVEN LOSS, CLAIM, DAMAGE OR LIABILITY OF ANY KIND (INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT) WITH RESPECT TO ALL SERVICES PROVIDED BY HOST AND ANY ACT OR OMission OF HOST WILL CONSIST OF A DUTY TO REFUND NOT MORE THAN THE AMOUNTS PAID BY THE USER TO HOST DURING THE YEAR PRECEDING SUCH LOSS, CLAIM, DAMAGE OR LIABILITY. IN NO EVENT WILL HOST BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF HOST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

User, by signing this Agreement or connecting to the Host system, (a) accepts the use of the system/interconnection (including any programs, data, or services) "AS IS"; and (b) waives any and all claims relating thereto, whether such claims are against Host or any of its suppliers or affiliates.

Should any legal action or threat of legal action result as a result of User's use, or of any of Host's system, interconnection facilities, or services, User agrees to indemnify Host, its staff, or Host's other Users, for any costs incurred in defending against any such threat or action, including reasonable attorneys' fees and any equipment replacement costs, even if User is no longer a customer of Host when such expenses arise. This clause also applies to third party claims as well as any legal action taken by Host against User for breach of this Agreement, damage caused by User to Host's system, or for failure to pay User is obligated to pay Host.

8. USE RESTRICTIONS AND INDEMNIFICATION. User agrees to adhere to Host's "Acceptable Use Policy", a copy of which is attached to this Agreement, and which policy may be changed from time to time - User agrees to adhere to all such changes it has notice of.

User will indemnify and hold Host harmless from any costs, expenses (including reasonable attorneys fees) or liability resulting from any claim based on User's use of the system. Such indemnification will not be applicable with respect to claims of gross negligence, willful misconduct or infringement by Host. Such indemnity will survive the termination or expiration of this Agreement.

7. GENERAL. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the Agreement or any provision therein. If any provision of the Agreement is or becomes illegal or otherwise unenforceable, such provision will not invalidate the other provisions hereof, provided if Host determines that any such unenforceable provision is essential, it may terminate this Agreement upon notice.

User grants any permissions or licenses (including but not limited to copyright licenses), as may be required, and within User's power to grant, to Host in order to provide Internet and related services to User, or as may be required for Host to operate for User's benefit.

This Agreement is governed by the laws of the State of New Hampshire. The parties agree that the courts (state and federal) located in New Hampshire, will have non-exclusive jurisdiction to determine the validity, construction and performance of this Agreement and the legal relations between the parties.

This Agreement constitutes the entire Agreement between Host and User, and supersedes all prior agreements, proposals, representations, or other communications, relative to the subject matter hereof. Paragraph headings are included for convenience and are not to be used to interpret this Agreement.

Client Initiate: [Signature]

NetCapiitl Hosting Order Form 11-2796

Form Rev. 03.10.a
1. LEGAL USES. Host's system and services may not be used in any way which violates Federal, State, Local, or International law. This prohibits, but is not limited to, any actions which are threatening, obscene, defamatory, or which violate trade secret, copyright or patent protection, or rights of privacy or publicity, or which result in the spread of computer viruses or other damaging programs or data files, or which violate any export restrictions (including making non-exportable information or software available to foreign nationals as may be prohibited by law). In the event User is suspected of any such violation, Host reserves the right to

This Agreement may not be assigned by User with the written consent of Host.

8. CHANGES IN LEGISLATION. Should any changes in legislation require any changes to this Agreement or any services provided by Host, Host reserves the right to make any such changes, as are determined necessary or prudent, at Host's sole discretion, without giving User advanced notice. If such changes are made, Host promises to send by electronic or posted mail notice of any changes in a reasonable time period. In event of such changes, User may terminate service without the required 30 day notice, but is not entitled to a refund of any payments already made for services.
SERVICE ORDER FORM

CUSTOMER INFORMATION

Company Name: Netwine Inc.
Phone: __________________________
Fax: __________________________
Order Date: 12/13/2006
Requested Install Date: 12/21/2006

Service Address: __________________________
City: __________________________
State: __________________________
Zip: __________________________

Billing Address: __________________________
City: __________________________
State: __________________________
Zip: __________________________

Administrative Contact: John W. Fanning
Phone: __________________________
Fax: __________________________

Technical Contact: __________________________
Phone: __________________________
Email: __________________________

Billing Contact: __________________________
Phone: __________________________
Email: __________________________

Emergency Contact: __________________________
Phone: __________________________
Email: __________________________
Pager: __________________________

User Name: __________________________
Password: __________________________

How many IP addresses are needed: __________________________
Domain Name: __________________________

CLIENT APPROVAL

Signature: __________________________
Title/Position: __________________________
Date: 12/14/06

SERVICE ORDERED

Shared: X
Virtual Ded:
Dedicated: X
Co-Location:
Other: 

Space: NA
Monthly Service Fee: $308.00
One-time set-up Fee: $--
Total cost for first month: $308.00

Hardware Specifications / Service Inclusions:
PE 2650 Dual 2.8GHz CPU, 4 GigDRAM, 3x/7SCSI Raids, 100Mbps, 10 Tests. Private IP addresses. Please do use Credit Card # on file for this account.

Length of Service Agreement: 36 month term

Federal Tax ID# or Social Security# of responsible party:
# __________________________

Credit Card Info (Visa, Mastercard, American Express or Discover)
Card Number: __________________________
Expiration: __________________________
Name On Card: __________________________
Billing Address: __________________________

Bill Credit Card each month: X YES NO
Invoice Quarterly (in advance) X YES NO
Invoice Annually (in advance) X YES NO

NETRIPLEX APPROVAL

Printed Name: __________________________
Signature: __________________________
Title/Position: __________________________
Date: 12/16/06

NetCapital Hosting_Order Form 12/13/06

Form Rev. 03.10.0
Service Agreement

EBUSINESS HOSTING SOLUTIONS SERVICE SUBSCRIPTION AGREEMENT

1. HOSTING SERVICES. Host will provide connection to all organizations and individuals who agree to abide by Host's access terms, conditions, and fee schedules.

User is responsible for providing any equipment and/or software necessary to access Host's system and Internet facilities, unless otherwise provided for in this Agreement.

User is entitled to use any Internet services and time-share computer software provided by Host. User is responsible for any licensing fees for any "shareware" products provided by Host to User.

Host will provide the Hosting services provided in the service package chosen by User, and set forth on page one of the Service Order Form, including a server or space on a shared server, connection of the server to Host's high-speed Internet connection, backup of the server's hard disk and other maintenance on the server, domain name, e-mail, and file transfer services as provided in the chosen service package, automated server monitoring and limited log file generation and access. All equipment provided by Host shall remain Host's property.

The services and software offered are subject to change and limitation at Host's discretion, as is any pricing schedule. Host will notify User of any changes by electronic or postal mail to the agent named in this Agreement or other User officer a minimum of 14 days in advance, unless the changes are judged by Host to be necessary to preserve proper security or functioning of Host's system. If User objects to any change in service, unless the change is one Host has determined is necessary for security purposes or to maintain proper operation of Host's system, User will be entitled to cancel its account.

User's continued use of the Hosting services after the effective date of such modified general terms and conditions, policies, or changes in services or software will constitute User's acceptance of such modified terms.

This Agreement covers only Internet services and any time-share software related to the provision of Internet services, Dedicated Hosting services, and any auxiliary services such as domain name service and electronic mail.

2. FEES. User will pay (a) subscription fees in advance, (b) fees for other goods or services as invoiced, and (c) any security deposit, in each case per the applicable price schedule set forth on page one of the Service Order Form.

3. TERMINATION AND REINSTATEMENT. This Agreement may be terminated by either party on not less than 30-days prior written notice.

If User (a) becomes bankrupt or otherwise insolvent or (b) fails to pay for services rendered in accordance with the terms hereof or (c) commits any other breach of this Agreement, Host may, at its sole discretion and without notice or judicial intervention, discontinue performance and terminate this Agreement for default and pursue any other remedies available at law or in equity.

If User's account is suspended due to lack of payment, User will pay the then current reinstatement fee, in addition to all other charges then due and payable, prior to restoration of service.

4. CUSTOMER SUPPORT. Host will provide to User reasonable amounts of consultation via telephone and/or electronic mail in the use of the system, but cannot promise to assist with any services that are not maintained or controlled by Host.

5. DISCLAIMER AND LIMITATION OF LIABILITY. With the exception of any express warranty herein, neither Host nor its affiliates (hereinafter "Host"), nor its suppliers make any warranty, and each of them disclaims any liability, with respect to:

(a) the accuracy, completeness, currentness, error-free nature, or fitness for any particular purpose of any data or services accessed on or through the Host system, or

(b) system performance levels, including but not limited to resource utilization, response time or overhead, unless such a performance guarantee is part of the chosen Hosting services package represented by a SLA, or

(c) any loss or inconvenience associated with Host's suspension, termination, or deletion of User's account, or

Client Initiates: [Signature]

NetCoCapital Hosting Order Form 12/12/06

Form Rev. 03.03.08
(d) ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

NO ORAL ADVICE OR WRITTEN ADVICE GIVEN BY HOST OR ITS STAFF OR AGENTS SHALL CREATE A WARRANTY.

Host will not be liable for delay in delivery or performance of hosting or design services, and is excused from any failure to deliver or perform, due to causes beyond its reasonable control unless a specific level of service is guaranteed via a SLA.

Host will not be liable for any damage or inconvenience caused by any necessary or scheduled maintenance to Host's system, or for any service lapses or loss of customer data caused by forces beyond Host's reasonable control. Host recommends that User make archival copies or otherwise download any important information stored on Host's system, in addition to any backups Host may perform.

THE SOLE AND ENTIRE MAXIMUM LIABILITY OF HOST TO ANY USER FOR ANY AND ALL PROVEN LOSS, CLAIM, DAMAGE OR LIABILITY OF ANY KIND (INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT) WITH RESPECT TO ALL SERVICES PROVIDED BY HOST AND ANY ACT OR OMISSION OF HOST WILL CONSIST OF A DUTY TO REFUND NOT MORE THAN THE AMOUNTS PAID BY THE USER TO HOST DURING THE YEAR PRECEDING SUCH LOSS, CLAIM, DAMAGE OR LIABILITY, IN NO EVENT WILL HOST BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF HOST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

User, by signing this Agreement or connecting to the Host system, (a) accepts the use of the system/interconnection (including any programs, data, or services) "AS IS"; and (b) waives any and all claims relating thereto, whether such claims are against Host or any of its suppliers or affiliates.

Should any legal action or threat of legal action result as a result of User's use, or of any of Host's system, interconnection facilities, or services, User agrees to indemnify Host, its staff, or Host's other Users, for any costs incurred in defending against any such threat or action, including reasonable attorneys' fees and any equipment replacement costs, even if User is no longer a customer of Host when such expenses arise. This clause also applies to third party claims as well as any legal action taken by Host against User for breach of this Agreement, damage caused by User to Host's system, or for failure to pay expenses User is obligated to pay Host.

6. USE RESTRICTIONS AND INDEMNIFICATION. User agrees to adhere to Host's "Acceptable Use Policy", a copy of which is
CX0410
Bank of America
Legal Order Processing
CA9-705-05-19
P.O. Box 3609
Los Angeles, CA 90051

October 31, 2012

Federal Trade Commission
Sarah Schroeder
WESTERN REGION 901 MARKET STREET, SUITE 570
San Francisco, CA 94103

RE: Reference # ___________
Case: Jerk
Name: ___________

I, ___________, declare that I am employed by Bank of America N. A. in the subpoena processing department and the Bank's designated duly authorized Custodian of Records for documents and/or information produced under the referenced legal order. The Bank reserves the right to designate another Custodian as it deems appropriate in the event an actual appearance is required concerning the records produced herein. I certify the authenticity of the records produced herewith and that they were:

a) Made at or near the time of the occurrence, condition or event of the matters set forth by, or from information transmitted by, a person with knowledge of those matters.
b) Kept in the course of regularly conducted activity.
c) Made by the regularly conducted activity as a regular practice, by the personnel of the business.

The identity of the records produced is as follows.

- Statements, Deposits, Offsets, Checks, Signature Card, Wires Transfers in the name of Jerk LLC
  for the time period of 4/29/09 to 9/30/12

The enclosed records are true copies of bank records in the custodian's possession as described in the referenced legal order. I am familiar with the mode of preparation of the enclosed records and they are prepared as follows:

CHECKS: The checks drawn on the customer's account were presented to the Bank. While processing the item, an image of the front and back of the item was taken in the sequence the item was processed. The Bank stored the image in a secure environment. In response to this subpoena/legal order, the Bank retrieved and produced an image of the check.

SIGNATURE CARDS: The customer whose name appears on the signature card submitted the form to the Bank to open deposit account(s). The customer provided information that was relied upon by the Bank. The customer signed the form. The signature card was stored at and retrieved from the Banking Center or the Bank's record center.

STATEMENTS: Each statement was prepared after the closing date of the account cycle as indicated on the statement. The statement reflects debits (from checks, point of sale, ATM and teller withdrawals, fees, etc.) and credits (deposits, etc) to the account during the period covered by the statement.

DEPOSITS: Deposits are processed by the Bank at a central processing center. When the transaction was processed, a microfilm image of the front and back of the item was taken in the sequence the transaction was processed. The Bank stored the microfilm in a secure facility. In response to this subpoena/legal order, the Bank retrieved the microfilm reel and produced an image of the item.
OTHER: Original records were prepared or received at or near the time of their creation and were stored by the Bank in the ordinary course of business. Upon receipt of this subpoena, the Bank searched and retrieved the original records and prepared a true and correct copy, using generally accepted photocopying techniques.

MISSING ITEMS: Copies of requested transactions may be missing for the following reasons: Item is not on film; item is fogged, blank, black, damaged, destroyed or not available; item is covered by another item; transaction relates to an electronic transaction; or there are other reasons that prevent the Bank from completing a thorough search of records or producing the record(s).

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 31 day of October, 2012, in the city of Los Angeles, in the State of CA

Should you need to forward any additional correspondence to us regarding this matter, please direct it to the address noted above. When contacting the Bank regarding this Subpoena, please use the Reference

SR; Operations Representative
CA - Legal Order Processing

State Of California )
County Of Los Angeles )

On October 31, 2012 before me, personally appeared [redacted] who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above
Signature of Notary Public
CX0411
MARKED CONFIDENTIAL
REDACTED IN ITS ENTIRETY
CX0420
CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY

Pursuant to 28 U.S.C. § 1746

I, [redacted], have personal knowledge of the facts set forth below and am competent to testify as follows:

1. I have authority to certify the authenticity of the records produced by Stripe, Inc. (“Stripe”) and attached to this certification.

2. The documents produced are true copies of records of regularly conducted activity that:
   a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
   b) Were kept in the course of the regularly conducted activity of Stripe; and
   c) Were created in the regular course of business by Stripe

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 5th day of September, 2012.

[Signature]

Title: General Counsel & Corp. Secretary
CX0421
MARKED CONFIDENTIAL
REDACTED IN ITS ENTIRETY
CX0422
MARKED CONFIDENTIAL
REDACTED IN ITS ENTIRETY
CX0423
MARKED CONFIDENTIAL
REDACTED IN ITS ENTIRETY
CX0424
MARKED CONFIDENTIAL
REDACTED IN ITS ENTIRETY
CX0426
CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY
Pursuant to 28 U.S.C. § 1746

1. I, __________, have personal knowledge of the facts set forth below and am competent to testify as follows:

2. I have authority to certify the authenticity of the records produced by Paypal, Inc. and attached hereto.

3. The documents produced and attached hereto by Paypal, Inc. are originals or true copies of records of regularly conducted activity that:
   a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
   b) Were kept in the course of the regularly conducted activity of Paypal, Inc.; and
   c) Were made by the regularly conducted activity as a regular practice of Paypal, Inc.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on November 21, 2012.

Digitally signed by
Date: 2012.11.21 11:35:58 -07'00'

Signature
CX0428
MARKED CONFIDENTIAL EXCEL SPREADSHEET
(SEEN ATTACHED DVD)
REDACTED IN ITS ENTIRETY
CX0432
Guys,

We are still working with jerk.com, but I am trying to negotiate a better deal and because we have not made much progress lately on financing we might have to switch the brand. I have reper.com which I want to launch, we could use both brands, settle on one, and we could switch the company name to reper which might make it easier to finance.

john

John W Fanning
Chairman Netcapital
Reper, if you’re a leper there is an extra fee.

John W Fanning
Chairman Netcapital

okay so coming up with a cool "Reper" jingle? Awesome.

On Apr 28, 2010, at 11:57 AM, wrote:

If email was Facebook, and I could "Like" reply, I would. :)

To me, the main motivation of a Reper video, beyond a quick site tour, is just so we can pronounce "reper" and people don't confuse it with "reaper." :P

On Apr 28, 2010, at 11:25 AM, wrote:

NOOOOOOOOOOOOOO!!!!!

John, 2001 wants its website back. There's not value added to watching someone talk. If we want
that we can all sign up for a dental convention in vegas and have more fun. I recommend we walk them through the site quickly in 1.5 - 3mins. That's how you do a quick demo in the web 2.0 world. Please don’t ask me to grow a mullet next! :)

On Apr 28, 2010, at 11:21 AM, John Fanning wrote:

Here is my idea. Click the little black man circle in the lower right of this page.

john

http://www.iversondesign.com/clients_2006/netmovies/presentation/

<image001.png>

John W Fanning
Chairman Netcapital

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From: [redacted]  
Sent: Wednesday, April 28, 2010 11:14 AM  
To: [redacted]  
Cc: John Fanning  
Subject: Re: Jerk.com + Reper.com

Right, so I'm just slightly modifying the last designs to feel more like one of those linked in style apps - and something the Romanians can develop. I'm not going to do a full branding exercise for the logo - but can put something together quickly from what John has sent over. What video were you thinking of doing? A screen cast or something so that we have the search area, a list of the things you can do, and a video to play where you do a walkthrough?

On Apr 22, 2010, at 2:50 PM, [redacted] wrote:
Hey

So John was thinking that it might be a good idea to introduce the brand "reper.com" (like Flickr, not like Grim) alongside the Jerk.com brand as kind of a more professional backend to help secure more investors. The idea is that Jerk.com would function as the user front-end social networking site, while Reper.com would function as more of a backend service for businesses that wanted to use our reputation services and information (ie, Jerk.com powered by Reper). We just wanted to get your thoughts on the new branding idea, and the direction we might take from a UI standpoint for that.

Thanks!
CX0438
UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
Office of Administrative Law Judges
---o0o---
In the Matter of
Jerk, LLC, a limited liability company, also d/b/a Jerk.Com,
and
John Fanning, individually and as a member of Jerk, LLC,
Respondents.

DEPOSITION OF

[Redacted]
Monday, August 11, 2014
10:35 a.m.
901 Market Street
Suite 570
San Francisco, California 94103
Pages 1 through 93

Reported By: [Redacted], CCRR, CLR, RPR, CSR No.[Redacted]
APPEARANCES

For the Federal Trade Commission:

Federal Trade Commission
Western Region/San Francisco
901 Market Street, Suite 570
San Francisco, California 94103
By: Kenneth Hatheway Abbe, Attorney at Law
  KAbbe@FTC.gov
  (415) 848-5182

By: Boris Yankilovich, Attorney at Law
  BYankilovich@FTC.gov
  (415) 848-5120

By:  

---o0o---
having been duly sworn, testified as follows:

EXAMINATION

By MR. ABBE:

Q. Good morning. Could you please state and spell your full name?

A. Sure. My name is [redacted].

Q. Thank you. And what city do you reside in, [redacted]?

A. I currently live in [redacted].

Q. My name is Kenneth Abbe. I am here representing the Federal Trade Commission in the matter of Jerk, LLC, and that's currently pending before the Chief Administrative Law Judge of the Federal Trade Commission. I am here with my colleagues Boris Yankilovich and [redacted] also of the Western Region San Francisco office.

I would like to give you some preliminary instructions about the deposition, and then I will ask you some questions.

A. Okay.
A. Extend Mac, if I remember correctly.

Q. Okay. Thank you.

So are you familiar with a website called Jerk.com?

A. I am.

Q. And what is Jerk.com?

A. Well, I have not seen it for quite some time, but when I worked on it, it was a startup that we were working on, to kind of bring a Wikipedia-like attention to people. So it was the idea that other people would create profiles about someone, and that they could provide positive or negative feedback or experiences that they have had with those people.

Q. When did the Jerk.com website launch?

A. I'm not entirely sure. When I started working on it, it already existed, but to my understanding it hadn't been running for all that long. Maybe a year or so.

Q. And so was that in 2009 that you are talking about?

A. Yes.

Q. Okay. Um, and you mentioned that you were working for somebody named John Fanning. Is that correct?

A. Yes.
But the way it would work, you would either register and link to your Facebook account, or register with your Facebook account and from there any of the publicly accessible information we could use to get your friends list, and start populating profiles based on your friends.

Q. Okay. So if you populated profiles from the friends, that meant if I have a friend on Facebook and I'm signing into Jerk --

A. Yes.

Q. -- that meant that that person now has a profile on Jerk?

A. Correct. That was one of the ways that some of the profiles were populated.

Q. Were there any other parts of the early direction of the website that you worked on?

A. Um, there were certainly some other ideas for features. I know there was the kind of the ever-present question of how to monetize the website, because at that point there was no idea of making money from it.

And one of the -- we talked a lot about that and there were certainly the idea of making it somewhat business-oriented as well, so that businesses could have profiles and it would kind of serve like Yelp, in that businesses could pay to have some control over what
Q. Okay.

I want to talk about the profiles on Jerk.com now. So how did Jerk.com populate its profiles?

A. While I worked on it most of the profiles were kind of scraped, I guess would be a term, from Facebook -- from what was publicly available at that point.

Q. What does "scraping" mean?

A. So Facebook exposes an API, which is an application programming interface, which allows third-party developers to use the information on Facebook when developing their own applications and websites. A part of that is the ability to access any information that Facebook users have made public on Facebook, and to use that when populating content for your own services.

Q. And did Jerk.com use this scraping procedure to populate its profiles?

A. Yeah, a large number of the profiles at that time were generated via that mechanism. I'm not exactly sure how it worked. I believe at least some of it was from people manually creating their own profiles on Jerk.com, and then giving accompany access to their friends list to create shell profiles for them on Jerk.com.
their Facebook profiles.

Q. The information that came in through the Facebook API, was that stored in Jerk.com?

A. I don't remember exactly what information was stored, but there was information stored by Facebook API, which certainly included their Facebook user identifier, so we could have a correlation between Jerk.com and their Facebook account, and certainly superficial information like first name, last name, and potentially a profile picture.

Q. Did Facebook -- did Facebook allow this scraping procedure at the time it was done?

A. I don't remember the exact Terms and Conditions, but I do know that there are certain pieces of information that Facebook would say you are allowed to store this information indefinitely, and then there were other categories of information where Facebook would say you could store this for six months, ninety days, and it would degrade in order of freshness, of content that Facebook believed would frequently change.

So that they would want you to store that less frequently, so that your users would have an accurate depiction of what was on Facebook.

Q. And do you know if Jerk.com was storing all of that information?
A. I do not know -- I don't remember what information was being stored. But I do believe that at that point there wasn't any kind of a data retention policy in place that would evict old information as it became stale.

Q. So would that be a violation of the Facebook guidelines to keep that information longer than Facebook intended it to be kept?

A. It certainly depends on what information was being stored. Whether or not it would be a violation of the guidelines, I seem to remember there were some things that didn't look quite right, and I don't know whether that was an oversight or whether it was an intentional decision.

But there may have been a violation in terms of how long content was being stored.

Q. Okay. And do you know if John Fanning had any role in determining how long that information was being stored?

A. I don't believe that he did actually, no.

Q. I want to return to the connection between Jerk.com and Facebook. Was there a Jerk.com application on the Facebook platform?

A. In a sense there was. We created kind of a shell of an application, because we had at one point
Q. Okay. What year does this refer to?
A. Good question. I would say this is probably 2009.
Q. Okay. Now this slide deck here, this is the one that you used to make pitches to investors?
A. Yes.
Q. And was this used at multiple pitches?
A. Yes.
Q. And did you write the text in this presentation?
A. It was written largely, kind of, by committee. We certainly discussed it while it was being written.
Q. And who was the committee?
A. That was [redacted] and myself working with John Fanning?
Q. You mentioned that you traveled to San Francisco to give a pitch.
A. Yes.
Q. Was this document used in that pitch in San Francisco?
A. Yes.
Q. And how was Jerk.com presented at these meetings? How did John Fanning describe Jerk?
A. He described it -- that's a good question. I'm trying to remember. He described it, I believe as a
startup that he was working on that he was still looking for some kind of angel investing for it.

Q. And you mentioned how you described the Jerk.com website's purpose. How did John Fanning refer to the Jerk.com website, when he was using these slides for presentations?

A. To the best of my recollection it was largely in the same words that I would use when describing it. That it was a site designed to -- well, there's actually a slide here, which is page 4, that said to call attention to the extremes of human behavior.

And I think that was kind of the tag line that we tried to use. But I know he would also sometimes mention his ideas on online reputation management as another direction to eventually evolve the site.

Q. What were his ideas on online reputation management?

A. That it would be nice to have a one-stop shop, so to speak, so you could see the collated view of all the information about you written from other sources on the internet.

Q. Did the number of users come up in conversation during the pitches to investors?

A. Yes, it would occasionally come up.
A. Yes.

Q. Is that -- does that relate at all to what we have been discussing about populating profiles through Facebook?

A. I believe so, yes.

Q. Do you know which of the mechanisms we are talking about are attributable to this Facebook growth? Is it the scraping, or the users having their friends input into Jerk.com?

A. That, I do not know for sure. My intuition just on the size of the growth would be that it was largely the result of scraping of public profiles.

Though at the same time, because of the characteristics of exponential growth, it is entirely possible that if enough people started registering, you could see a jump like that.

My thoughts is that it was probably related to scraping.

Q. Okay. At the time this chart was made, were users able to upload photos to Jerk.com?

A. I don't know, actually. I don't believe there was much functionality in terms of that. I don't believe so, no.

Q. When we were talking about the Facebook scraping mechanism, do you know who it was that
shirt, I think that's probably __________. And then

John Fanning is leaning against the threshold in the
doorway.

Q. Okay. Do you know where this photo was taken?
A. No, I do not.

Q. Do you recognize the other people there, other
than __________?
A. I can't say I do from behind, no.

MR. ABBE: Okay. Let's see. I don't have --
Can we go off the record for a moment?

Thanks.

(Discussion off the record.)

(Recess.)

MR. ABBE: So we are back on the record.

I want to hand you a document that has been
marked CX0437.

(Exhibit CX0437 is marked for identification.)

MR. ABBE: This is an email dated June 5th
2010.

Q. Are you familiar with this document?
A. Yes. I seem to remember something about this
email conversation, yeah.

Yeah.

Q. So in the top email on the first page we have
John Fanning writing: Actually we can say we have over
Q. In terms of the sign up process for Jerk.com, how did users sign up to use Jerk.com?

A. Again, this is an area that I am still a little bit fuzzy on, because I don't know that I ever saw the work flow itself.

But presumably when you arrived at the website, there would be some form of a register button, and whether that was via Facebook's log-in API or whether you created an account on Jerk and then linked it to your Facebook account, I'm not entirely sure.

MR. ABBE: I am going to ask you about this document, going slightly out of order. This is CX-0436. (Exhibit CX0436 is marked for identification.)

MR. ABBE: This is an email dated March 10, 2010.

Q. Are you familiar with this email?

A. Yes, I am.

Q. And what's being discussed in this email?

A. When I received my position at [redacted], for confidentiality reasons they perform background checks, and I listed John as a reference on my previous employers sheet.

Q. So John was serving as a reference here?

A. Yes.

Q. And would you say that John was the one that
hired you to work on Jerk.com?
   A. Yes, I think that's a fair characterization.
   Q. Going back to the Facebook scraping and
friends gathering techniques.
   Would it be accurate or inaccurate for Jerk to
tell its users that all content, including the Jerk.com
profiles, were created by users.
   A. That sounds like an inaccurate statement to
me.
   Q. Okay. And that's because some of the profiles
were created through automated means?
   A. Correct.
   Q. And what are all the means, other than
Facebook, which could have resulted in a -- in a user
profile being created on Jerk.com?
   A. At the time I worked on it, it was either an
automated profile created through one of the Facebook
scraping mechanisms, or someone registering on the site.
   Q. Were there any other methods?
   A. Not that I knew about, no.
   MR. ABBE: Okay.
   (Exhibit CX0057 is marked for identification.)
   MR. ABBE: I would like to ask you a couple of
questions about this document. This document has been
marked CX0057.
CX0439
UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

Jerk, LLC, a limited liability company,
also d/b/a JERK.COM, and

John Fanning,
individually and as a member of
Jerk, LLC.

DOCKET NO. 9361

CERTIFICATION OF COMPLIANCE AND RECORDS
Pursuant to 28 U.S.C. § 1746

1. I, [name and title], have personal knowledge of the facts set forth below and am competent to testify as follows:

2. I have authority to certify the authenticity of the records produced by [company name] ("the Company") and attached hereto.

3. On behalf of the Company, I hereby certify that the Company has used its best efforts to respond to the Federal Trade Commission Subpoena ("Subpoena"). The Company has conducted a reasonable search and has provided all documents and information in its possession, custody, or control that are responsive to the requests contained in the subpoena and has substantially complied with those requests.

4. The documents produced and attached hereto by the Company in response to the Subpoena are originals or true copies of records of regularly conducted activity that:
a. Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

b. Were kept in the course of the regularly conducted activity of the Company; and

c. Were made by the regularly conducted activity as a regular practice of the Company.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on July 16, 2014
Thats sounds great. Can you tell me what you typically do to help is similar circumstances? Have you looked at the site? The traffic doubled last month and the site does not even really work.

john

On Tue, Jun 14, 2011 at 10:37 AM, [redacted] <[redacted]> wrote:

Dear John,

forwarded me your email about Jerk.com and suggested I drop you a line. I used to work with [redacted] at [redacted] before starting my own brand consultancy 10 years ago.

If you're still looking for some help with the positioning of Jerk.com, I'd be more than happy to join you for a short call where I could learn more about the business and what your goals are for the brand.

I look forward to hearing from you soon.

With best wishes,
I think you are right, but I think it's more than the domain name that's driving the growth, which is surprising given the truth of the fact that there is little reason for people to stay once they get there. I understand the budget issue, it's always the main issue with early stage companies. I am trying to get a sense for what you think a scope of work could be, based on how you think you could add the most value, in the shortest time. I have already found your perspective valuable.

john

---
John Fanning
Chairman
Netcapital
John

Good morning! Attached are some observations based on a quick analysis of your Google Analytics data.

I think the basic conclusion is that visitation to the website HAS increased in the past month or so...BUT, people are still not spending any significant amounts of time on the website and are unlikely to use it on a regular basis. In other words, you have a great domain name that attracts attention but little reason for people to stay on the site once they get there.

Look forward to hearing from you about how you'd like to proceed. As I mentioned, we really need to get a sense of project scope and budget before we can move forward from here.

Best,

This e-mail and any files transmitted with it are confidential and intended solely for the use of the party to whom they are addressed. If you have received this transmission in error, kindly notify the sender.
Thats sounds good and I agree with your perspective on how we could use help. I think What you have listed as 1, 2, 3, I would view as 3 1, 2. In terms of priority, rather than grab large tasks with results that are hard to measure my preference is to build with small incremental improvements that can be measured.

john
--
John Fanning
Chairman
Netcapital
From: [Redacted]  
Subject: Proposed scope of work  
Date: June 17, 2011 at 12:26 PM  
To: John Fanning [Redacted]

John

We've given some thought as to how we could work together, and there are basically three areas where we could add value:

1. Brand Strategy

1.1) The most important thing is for us to understand the vision and business objectives for Jerk.com. I'm sure this step is as simple as a phone call/meeting with you, and interviews with any other stakeholders in the business.

1.2) With a clearer understanding of your business strategy, we can lay the foundation for your brand strategy. This work would include an audit of competitors/peers to understand best practices and opportunities for differentiating Jerk.com. The end result of this phase would be a document outlining Jerk.com's value proposition, personas that define the needs/attitudes of the different target audiences, and key messages broken down by target audience.

2. Brand Identity

2.1) If it's determined that the current visual identity does not align well with your value proposition, then we would need to develop a new logo for Jerk.com and a new look for the site.

2.2) We could also develop a strong verbal identity for Jerk.com that may include a tagline, and a Brand Voice document (guidelines for how the brand should express itself verbally in a consistent manner).

2.3) At the end of any Brand Identity program, we would leave you with all the artwork, templates, and guidelines you need to be able to manage the brand effectively.

3. Digital Strategy & Development

3.1) This is the phase where we would look at the current web site and determine which features and functionality need to be added/maintained/eliminated. We also have the capability to develop and implement any changes that need to be made to the site and any other apps associated with the site.

We understand how difficult it is to find resources in an early stage company, but I think the minimum fee we could charge for the Brand Strategy phase would be $30,000. This is a significant discount from our usual fee for this type of work.

When you add Phases 2 and 3 in to the equation, I think you're probably looking at an additional $65k, making a grand total of $95k (we've tried hard to keep this under six figures!).

This is a fraction of what you would expect to pay at a larger agency like [Redacted] But we appreciate it's still a significant investment. We are, of course, open to other suggestions, as we'd really like to work with you on this brand.

I look forward to hearing from you soon with your thoughts.

Best,

[Redacted]