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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN JOSE DIVISION**

17 **INTERSERVE, INC., dba TECHCRUNCH,) Case No. CV-09-5812 JW (PVT)**
18 **a Delaware corporation, and CRUNCHPAD,)**
19 **INC., a Delaware corporation,)**
20 **Plaintiffs,)**
21 **vs.)**
22 **FUSION GARAGE PTE. LTD., a Singapore)**
23 **company,)**
24 **Defendant.)**

25 1. PURPOSES AND LIMITATIONS

26 Disclosure and discovery activity in this action are likely to involve production of
27 confidential, proprietary, or private information for which special protection from public disclosure
28 and from use for any purpose other than prosecuting this litigation would be warranted.

1 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
2 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
3 all disclosures or responses to discovery and that the protection it affords extends only to the
4 limited information or items that are entitled under the applicable legal principles to treatment as
5 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated
6 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule
7 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied
8 when a party seeks permission from the court to file material under seal.

9 2. DEFINITIONS

10 2.1 Party: any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and outside counsel (and their support staff).

12 2.2 Disclosure or Discovery Material: all items or information, regardless of the
13 medium or manner generated, stored, or maintained (including, among other things, testimony,
14 transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery
15 in this matter.

16 2.3 “Confidential” Information or Items: information (regardless of how generated,
17 stored or maintained) or tangible things that qualify for protection under standards developed under
18 F.R.Civ.P. 26(c).

19 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items: extremely
20 sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would
21 create a substantial risk of serious injury that could not be avoided by less restrictive means.

22 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
23 Producing Party.

24 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
25 Material in this action.

26 2.7 Designating Party: a Party or non-party that designates information or items
27 that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential
28 — Attorneys’ Eyes Only.”

1 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
2 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

3 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
4 retained to represent or advise a Party in this action.

5 2.10 House Counsel: attorneys who are employees of a Party. “House Counsel”
6 does not include Michael Arrington.

7 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
8 their support staffs).

9 2.12 Expert: a person with specialized knowledge or experience in a
10 matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
11 witness or as a consultant in this action and who is not a past or a current employee of a Party or of a
12 competitor of a Party’s and who, at the time of retention, is not anticipated to become an employee of
13 a Party or a competitor of a Party’s. This definition includes a professional jury or trial consultant
14 retained in connection with this litigation.

15 2.13 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
17 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
18 subcontractors.

19 3. SCOPE

20 The protections conferred by this Stipulation and Order cover not only Protected Material (as
21 defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts,
22 summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or
23 counsel to or in court or in other settings that might reveal Protected Material.

24 4. DURATION

25 Even after the termination of this litigation, the confidentiality obligations imposed by this
26 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
27 otherwise directs.
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5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. A Designating Party must take care to designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other parties), expose the Designating Party to sanctions.

If it comes to a Party’s or a non-party’s attention that information or items that it designated for protection do not qualify for protection at all, or do not qualify for the level of protection initially asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being

1 asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
2 ONLY”).

3 A Party or non-party that makes original documents or materials available for
4 inspection need not designate them for protection until after the inspecting Party has indicated which
5 material it would like copied and produced. During the inspection and before the designation, all of
6 the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
8 copied and produced, the Producing Party must determine which documents, or portions thereof,
9 qualify for protection under this Order, then, before producing the specified documents, the
10 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) on each page that contains Protected Material.
12 If only a portion or portions of the material on a page qualifies for protection, the Producing Party
13 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
14 margins) and must specify, for each portion, the level of protection being asserted (either
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

16 (b) for testimony given in deposition or in other pretrial or trial proceedings,
17 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
18 close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any
19 portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to
21 protection, and when it appears that substantial portions of the testimony may qualify for protection,
22 the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before
23 the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific
24 portions of the testimony as to which protection is sought and to specify the level of protection being
25 asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).
26 Only those portions of the testimony that are appropriately designated for protection within the 20
27 days shall be covered by the provisions of this Stipulated Protective Order.
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1 Transcript pages containing Protected Material must be separately bound by
2 the court reporter, who must affix on each such page the legend “CONFIDENTIAL” or “HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or nonparty offering
4 or sponsoring the witness or presenting the testimony.

5 (c) for information produced in some form other than documentary, and for
6 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
7 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only portions of the information
9 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
10 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential – Attorneys’
11 Eyes Only.”

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
13 designate qualified information or items as “Confidential” or “Highly Confidential – Attorneys’ Eyes
14 Only” does not, standing alone, waive the Designating Party’s right to secure protection under this
15 Order for such material. If material is appropriately designated as “Confidential” or “Highly
16 Confidential – Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party, on
17 timely notification of the designation, must make reasonable efforts to assure that the material is
18 treated in accordance with the provisions of this Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
21 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
22 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its
23 right to challenge a confidentiality designation by electing not to mount a challenge promptly after the
24 original designation is disclosed.

25 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
26 Party’s confidentiality designation must do so in good faith and must begin the process by conferring
27 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for
28 the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the

1 confidentiality designation was not proper and must give the Designating Party an opportunity to
2 review the designated material, to reconsider the circumstances, and, if no change in designation is
3 offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next
4 stage of the challenge process only if it has engaged in this meet and confer process first.

5 6.3 Judicial Intervention. A Party that elects to press a challenge to a
6 confidentiality designation after considering the justification offered by the Designating Party may file
7 and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
8 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.
9 Each such motion must be accompanied by a competent declaration that affirms that the movant has
10 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
11 forth with specificity the justification for the confidentiality designation that was given by the
12 Designating Party in the meet and confer dialogue.

13 The burden of persuasion in any such challenge proceeding shall be on the Designating
14 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
15 question the level of protection to which it is entitled under the Producing Party’s designation.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a non-party in connection with this case only for
19 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
20 disclosed only to the categories of persons and under the conditions described in this Order. When the
21 litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below
22 (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a location
24 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

25 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
26 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose
27 any information or item designated CONFIDENTIAL only to:
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1 (a) the Receiving Party’s Outside Counsel of record in this action, as well
2 as employees of said Counsel to whom it is reasonably necessary to disclose the information for this
3 litigation;

4 (b) the officers, directors, and employees (including House Counsel) of the
5 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the
6 “Agreement to Be Bound by Protective Order” (Exhibit A);

7 (c) experts (as defined in this Order) of the Receiving Party to whom
8 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound
9 by Protective Order” (Exhibit A);

10 (d) the Court and its personnel;

11 (e) court reporters, their staffs, and professional vendors to whom
12 disclosure is reasonably necessary for this litigation;

13 (f) during their depositions, witnesses in the action to whom disclosure is
14 reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions that reveal
15 Protected Material must be separately bound by the court reporter and may not be disclosed to anyone
16 except as permitted under this Stipulated Protective Order.

17 (g) the author of the document or the original source of the information.

18 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
19 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
20 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

22 (a) the Receiving Party’s Outside Counsel of record in this action, as well
23 as employees of said Counsel to whom it is reasonably necessary to disclose the information for this
24 litigation;

25 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
26 necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order”
27 (Exhibit A);

28 (c) the Court and its personnel;

1 (d) court reporters, their staffs, and professional vendors to whom
2 disclosure is reasonably necessary for this litigation; and

3 (e) the author of the document or the original source of the information.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
5 OTHER LITIGATION.

6 If a Receiving Party is served with a subpoena or an order issued in other litigation that would
7 compel disclosure of any information or items designated in this action as “CONFIDENTIAL” or
8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the Receiving Party must so notify
9 the Designating Party, in writing (by fax, if possible) immediately and in no event more than three
10 court days after receiving the subpoena or order. Such notification must include a copy of the
11 subpoena or court order.

12 The Receiving Party also must immediately inform in writing the Party who caused the
13 subpoena or order to issue in the other litigation that some or all the material covered by the subpoena
14 or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy
15 of this Stipulated Protective Order promptly to the Party in the other action that caused the
16 subpoena or order to issue.

17 The purpose of imposing these duties is to alert the interested parties to the existence of this
18 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
19 confidentiality interests in the court from which the subpoena or order issued. The Designating Party
20 shall bear the burdens and the expenses of seeking protection in that court of its confidential material
21 – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party
22 in this action to disobey a lawful directive from another court.

23 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
25 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
26 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
27 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
28 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d)

1 request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that
2 is attached hereto as Exhibit A.

3 10. FILING PROTECTED MATERIAL. Without written permission from the
4 Designating Party or a court order secured after appropriate notice to all interested persons, a Party
5 may not file in the public record in this action any Protected Material. A Party that seeks to file under
6 seal any Protected Material must comply with Civil Local Rule 79-5.

7 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
8 Producing Party, within sixty days after the final termination of this action, each Receiving Party must
9 return all Protected Material to the Producing Party. As used in this subdivision, “all Protected
10 Material” includes all copies, abstracts, compilations, summaries or any other form of reproducing or
11 capturing any of the Protected Material. With permission in writing from the Designating Party, the
12 Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether
13 the Protected Material is returned or destroyed, the Receiving Party must submit a written
14 certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by
15 the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that
16 was returned or destroyed and that affirms that the Receiving Party has not retained any copies,
17 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
18 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
19 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
20 even if such materials contain Protected Material. Any such archival copies that contain or constitute
21 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION),
22 above.

23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
25 person to seek its modification by the Court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
27 Order no Party waives any right it otherwise would have to object to disclosing or producing any
28 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no

1 Party waives any right to object on any ground to use in evidence of any of the material covered by
2 this Protective Order.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 DATED: March 10, 2010

WINSTON & STRAWN

6 /s/Davis S. Bloch

Andrew P. Bridges
David S. Bloch
Attorneys for Plaintiff
INTERSERVE, INC. dba
TECHCRUNCH and CRUNCHPAD

10 DATED: March 10, 2010

QUINN EMANUEL URQUHART
OLIVER & HEDGES LLP

13 /s/ Patrick Doolittle

Claude M. Stern
Patrick Doolittle
Attorneys for Defendant
FUSION GARAGE PTE. LTD.

16 **SIGNATURE ATTESTATION**

17 I am the ECF User whose identification and password are being used to file the foregoing
18 Stipulated Protective Order. In compliance with General Order 45.X.B., I hereby attest that the other
19 signatories to this filing have concurred in this filing.

20 Dated: March 10, 2010

Respectfully submitted,

22 By: /s/ David S. Bloch

David S. Bloch
Attorney for Plaintiff

24 PURSUANT TO STIPULATION, IT IS SO ORDERED

25 DATED: _____

Judge James Ware
United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of _____, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California in the case of **Interserve, Inc. dba TechCrunch and Crunchpad, Inc. v. Fusion Garage PTE. LTD, Case No. CV-09-5812 JW (PVT)**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____