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THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

COINLAB, INC., a Delaware Corporation,  
  
Plaintiff,  
  
v.  
  
MT. GOX KK, a Japanese corporation, and  
TIBANNE KK, a Japanese corporation,  
  
Defendants.

No. 2:13-cv-00777-MJP

STIPULATED PROTECTIVE ORDER

NOTE ON MOTION CALENDAR:  
Friday, November 8, 2013

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged: documents, materials, electronically stored information ("ESI") and/or other information that consists of , or contains information from, non-public financial statements, customer information and records, customer lists, bank records, business

1 plans and forecasts, supplier lists and records, patent applications, and programming code.

2 3. “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” MATERIAL

3 “Highly Confidential - Attorney Eyes Only” material are those Confidential materials the  
4 disclosure of which to another Party or non-party would create a substantial risk of serious injury  
5 or harm that cannot be avoided by less restrictive means.

6 4. SCOPE

7 The protections conferred by this agreement cover not only Confidential material and  
8 Highly Confidential - Attorneys’ Eyes Only material (as defined above), but also (1) any  
9 information copied or extracted from such materials; (2) all copies, excerpts, summaries, or  
10 compilations of such materials; and (3) any testimony, conversations, or presentations by parties  
11 or their counsel that might reveal such materials. However, the protections conferred by this  
12 agreement do not cover information that is in the public domain or becomes part of the public  
13 domain through trial or otherwise. In entering into this Stipulation and Order the parties reserve,  
14 and are not waiving, all rights to object to the production of any material on any basis allowable  
15 by law, and all rights to take any other steps allowable by law with respect to materials that are  
16 not discoverable.

17 5. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 5.1 Basic Principles. A receiving party may use Confidential material and Highly  
19 Confidential - Attorneys’ Eyes Only material that is disclosed or produced by another party or by  
20 a non-party in connection with this case only for prosecuting, defending, or attempting to settle  
21 this litigation. Confidential material may be disclosed only to the categories of persons and under  
22 the conditions described in paragraph 5.2 of this agreement. Highly Confidential - Attorneys’  
23 Eyes Only material may be disclosed only to the categories of persons and under the conditions  
24 described in paragraph 5.3 of this agreement e Confidential material and Highly Confidential -  
25 Attorneys’ Eyes Only material must be stored and maintained by a receiving party at a location  
26 and in a secure manner that ensures that access is limited to the persons authorized under this  
27 agreement.

28 5.2 Disclosure of “CONFIDENTIAL” Material. Unless otherwise ordered by the court

1 or permitted in writing by the designating party, a receiving party may disclose any confidential  
2 material only to:

3 (a) the receiving party's counsel of record in this action, as well as employees  
4 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

5 (b) the officers, directors, and employees (including in house counsel) of the  
6 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
7 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
8 designated;

9 (c) experts and consultants to whom disclosure is reasonably necessary for this  
10 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

11 (d) the court, court personnel, and court reporters and their staff;

12 (e) copy or imaging services retained by counsel to assist in the duplication of  
13 confidential material, provided that counsel for the party retaining the copy or imaging service  
14 instructs the service not to disclose any confidential material to third parties and to immediately  
15 return all originals and copies of any confidential material;

16 (f) during their depositions, witnesses in the action to whom disclosure is  
17 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
18 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
19 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
20 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
21 under this agreement;

22 (g) the author or recipient of a document containing the information or a  
23 custodian or other person who otherwise possessed or knew the information.

24 5.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"  
25 Material. Unless otherwise ordered by the court or permitted in writing by the designating party,  
26 a receiving party may disclose any "Highly Confidential -- Attorneys' Eyes Only" material only  
27 to:

28 (a) the receiving party's counsel of record in this action, as well as employees

1 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

2 (b) experts and consultants to whom disclosure is reasonably necessary for this  
3 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (c) the court, court personnel, and court reporters and their staff;

5 (d) copy or imaging services retained by counsel to assist in the duplication of  
6 confidential material, provided that counsel for the party retaining the copy or imaging service  
7 instructs the service not to disclose any confidential material to third parties and to immediately  
8 return all originals and copies of any confidential material;

9 (e) during their depositions, witnesses in the action to whom disclosure is  
10 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
11 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
12 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
13 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
14 under this agreement; and,

15 (f) the author or recipient of a document containing the information or a  
16 custodian or other person who otherwise possessed or knew the information.

17 5.4 For purposes of Paragraphs 5.2(c) and 5.3(b), a consultant and/or expert shall be  
18 defined as a person who is retained or employed as a bona fide consultant or expert for purposes  
19 of the Litigation, whether full or part time, by or at the direction of counsel for a party, who is  
20 neither an employee of a party nor anticipated to become such an employee, and has no business  
21 relationship with the party for whom he/she/it is acting as a consultant, or any affiliate of such  
22 party.  
23

24 5.5 Filing Confidential Material. Before filing Confidential material or Highly  
25 Confidential - Attorneys’ Eyes Only material or discussing or referencing any such materials in  
26 court filings, the filing party shall confer with the designating party to determine whether the  
27 designating party will remove the Confidential or Highly Confidential - Attorneys’ Eyes Only  
28 designation, whether the document can be redacted, or whether a motion to seal or stipulation and

1 proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed  
2 and the standards that will be applied when a party seeks permission from the court to file  
3 material under seal.

4 6. DESIGNATING PROTECTED MATERIAL

5 6.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
6 or non-party that designates information or items for protection under this agreement must take  
7 care to limit any such designation to specific material that qualifies under the appropriate  
8 standards. The designating party must designate for protection only those parts of material,  
9 documents, items, or oral or written communications that qualify, so that other portions of the  
10 material, documents, items, or communications for which protection is not warranted are not  
11 swept unjustifiably within the ambit of this agreement.

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

16 If it comes to a designating party's attention that information or items that it  
17 designated for protection do not qualify for protection, the designating party must promptly notify  
18 all other parties that it is withdrawing the mistaken designation.

19 6.2 Manner and Timing of Designations. Except as otherwise provided in this  
20 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
21 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
22 be clearly so designated before or when the material is disclosed or produced.

23 (a) Information in documentary form: (e.g., paper or electronic documents and  
24 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
25 the designating party must affix the word "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL --  
26 ATTORNEYS' EYES ONLY, as the case may be, to each page that contains confidential  
27 material. If only a portion or portions of the material on a page qualifies for protection, the  
28 producing party also must clearly identify the protected portion(s) (e.g., by making appropriate

1 markings in the margins).

2 (b) Testimony given in deposition or in other pretrial or trial proceedings: the  
3 parties must identify on the record, during the deposition, hearing, or other proceeding, all  
4 protected testimony, without prejudice to their right to so designate other testimony after  
5 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a  
6 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

7 (c) Other tangible items: the producing party must affix in a prominent place  
8 on the exterior of the container or containers in which the information or item is stored the word  
9 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
10 the producing party, to the extent practicable, shall identify the protected portion(s).

11 (d) Designating Material as “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES  
12 ONLY: Before a producing party can designate documents as “HIGHLY CONFIDENTIAL --  
13 ATTORNEYS’ EYES ONLY” the party will meet and confer with the receiving party and  
14 identify the categories of documents to be designated “HIGHLY CONFIDENTIAL --  
15 ATTORNEYS’ EYES ONLY” and the reasons for the designation. If the parties agree on  
16 allowing a “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” designation the  
17 documents may be so designated and produced. If the parties cannot agree, the producing party  
18 shall have the burden to file a motion for protective order to allow an “HIGHLY  
19 CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” designation and such motion shall be filed  
20 within two (2) weeks of the meet and confer. If such a motion is not filed within such two (2)  
21 week period the documents may be designated as Confidential and produced.

22 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
23 designate qualified information or items does not, standing alone, waive the designating party’s  
24 right to secure protection under this agreement for such material. Upon timely correction of a  
25 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
26 in accordance with the provisions of this agreement.

27 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

28 7.1 Timing of Challenges. Subject to section 6.2 (d), above, at any time any party or

1 non-party may challenge a designation of Confidential or Highly Confidential - Attorneys' Eyes  
2 Only. Unless a prompt challenge to a designating party's designation is necessary to avoid  
3 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or  
4 delay of the litigation, a party does not waive its right to challenge such a designation by electing  
5 not to mount a challenge promptly after the original designation is disclosed.

6 7.2 Meet and Confer. Subject to section 6.2 (d), above, the parties must make every  
7 attempt to resolve any dispute regarding designations of Confidential material or Highly  
8 Confidential - Attorneys' Eyes Only material without court involvement. Any motion regarding  
9 confidential designations or for a protective order must include a certification, in the motion or in  
10 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference  
11 with other affected parties in an effort to resolve the dispute without court action. The  
12 certification must list the date, manner, and participants to the conference. A good faith effort to  
13 confer requires a face-to-face meeting or a telephone conference.

14 7.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
15 intervention, the designating party may file and serve a motion to retain confidentiality under  
16 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
17 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
18 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
19 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
20 the material in question as confidential until the court rules on the challenge.

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
22 LITIGATION

23 If a party is served with a subpoena or a court order issued in other litigation that compels  
24 disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
25 "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY", that party must:

26 (a) promptly notify the designating party in writing and include a copy of the  
27 subpoena or court order;

28 (b) promptly notify in writing the party who caused the subpoena or order to

1 issue in the other litigation that some or all of the material covered by the subpoena or order is  
2 subject to this agreement. Such notification shall include a copy of this agreement; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
4 the designating party whose Confidential material or Highly Confidential - Attorneys' Eyes Only  
5 material may be affected.

6 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a receiving party learns that, by inadvertence or otherwise, it has disclosed Confidential  
8 material or Highly Confidential - Attorneys' Eyes Only material to any person or in any  
9 circumstance not authorized under this agreement, the receiving party must immediately (a)  
10 notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to  
11 retrieve all unauthorized copies of the protected material, (c) inform the person or persons to  
12 whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that  
13 such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is  
14 attached hereto as Exhibit A.

15 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
16 MATERIAL

17 When a producing party gives notice to receiving parties that certain inadvertently  
18 produced material is subject to a claim of privilege or other protection, the obligations of the  
19 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
20 is not intended to modify whatever procedure may be established in an e-discovery order or  
21 agreement that provides for production without prior privilege review. Parties shall confer on an  
22 appropriate non-waiver order under Fed. R. Evid. 502.

23 11. NON TERMINATION AND RETURN OF DOCUMENTS

24 Within 60 days after the termination of this action, including all appeals, each receiving  
25 party must return all Confidential material or Highly Confidential - Attorneys' Eyes Only  
26 material to the producing party, including all copies, extracts and summaries thereof.  
27 Alternatively, the parties may agree upon appropriate methods of destruction.

28 Notwithstanding this provision, counsel are entitled to retain one archival copy of all

1 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
2 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
3 work product, even if such materials contain Confidential material or Highly Confidential -  
4 Attorneys' Eyes Only material. In such event, and notwithstanding any other provision in this  
5 stipulation and order, counsel shall be bound by the confidentiality obligations imposed by this  
6 stipulation and order for as long as counsel maintains possession of such material.

7 The confidentiality obligations imposed by this stipulation and order shall remain in effect  
8 until a designating party agrees otherwise in writing or this court orders otherwise.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 DATED: November 8, 2013.

BRESKIN JOHNSON & TOWNSEND PLLC

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12 By: s/ Roger M. Townsend

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DATED: November 8, 2013.

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(Admitted *pro hac vice*)  
  
Attorneys for Defendants

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Marsha J. Pechman  
Chief United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], 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 Western District of Washington on [date] in the case of *CoinLab, Inc. v. MtGox KK and Tibanne KK*, No. 2:13-cv-00777- MJP. 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 Western District of Washington 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: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of November, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Lindsey N Godfrey - lngodfrey@susmangodfrey.com,ahightower@susmangodfrey.com

Edgar Guy Sargent - esargent@susmangodfrey.com,ahightower@susmangodfrey.com

Floyd G Short - fshort@susmangodfrey.com,ahightower@susmangodfrey.com

Roger M Townsend - rtownsend@bjtlegal.com,mvizzare@bjtlegal.com,admin@bjtlegal.com

DATED this 8th day of November, 2013 at Seattle, Washington.

By s/ Louis D. Peterson  
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