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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ITRENEW, INC.,

Plaintiff,

v.

BLANCCO TECHNOLOGY
GROUP and BLANCCO OY LTD.,

Defendant.

Case No. 5:16-cv-03221-EMC

STIPULATED PROTECTIVE ORDER
FOR LITIGATION INVOLVING
PATENTS, HIGHLY SENSITIVE
CONFIDENTIAL INFORMATION
AND/OR TRADE SECRETS

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation 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 Order does not confer blanket protections on all disclosures or responses to discovery and that 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. The parties further acknowledge, as set forth in Section 14.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the

standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely sensitive “Confidential Information or Items” representing computer source code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

1 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity
2 not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action but
4 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
5 party or are affiliated with a law firm which has appeared on behalf of that party.

6 2.11 Party: any party to this action, including all of its officers, directors, employees, consultants,
7 retained experts, and Outside Counsel of Record (and their support staffs).

8 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
9 this action.

10 2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,
11 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
12 retrieving data in any form or medium) and their employees and subcontractors.

13 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
14 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as “HIGHLY
15 CONFIDENTIAL – SOURCE CODE.”

16 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
17 Party.

18 3. SCOPE

19 The protections conferred by this Stipulation and Order cover not only Protected Material (as
20 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
21 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
22 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
23 conferred by this Stipulation and Order do not cover the following information: (a) any information that is in
24 the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after
25 its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including
26 becoming part of the public record through trial or otherwise; and (b) any information known to the
27 Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source
28 who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.

1 Any use of Protected Material at trial shall be governed by a separate agreement or order.

2 4. DURATION

3 Even after final disposition of this litigation, the confidentiality obligations imposed by this Order
4 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise
5 directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this
6 action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all
7 appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions
8 or applications for extension of time pursuant to applicable law.

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
11 Party that designates information or items for protection under this Order must take care to limit any such
12 designation to specific material that qualifies under the appropriate standards. To the extent it is practical to
13 do so, the Designating Party must designate for protection only those parts of material, documents, items, or
14 oral or written communications that qualify – so that other portions of the material, documents, items, or
15 communications for which protection is not warranted are not swept unjustifiably within the ambit of this
16 Order.

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

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

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
25 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

26 Material that qualifies for protection under this Order must be clearly so designated before the
27 material is disclosed or produced.

28 Designation in conformity with this Order requires:

1 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
2 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
4 CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If only a portion or
5 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the
6 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
7 portion, the level of protection being asserted.

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

20 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
21 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all
22 protected testimony and specify the level of protection being asserted. When it is impractical to identify
23 separately each portion of testimony that is entitled to protection and it appears that substantial portions of
24 the testimony may qualify for protection, the Designating Party may invoke on the record (before the
25 deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific
26 portions of the testimony as to which protection is sought and to specify the level of protection being
27 asserted. Only those portions of the testimony that are appropriately designated for protection within the 21
28 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating

1 Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
2 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
3 EYES ONLY.”

4 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other
5 proceeding to include Protected Material so that the other parties can ensure that only authorized individuals
6 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
7 proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation
8 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 Transcripts containing Protected Material shall have an obvious legend on the title page that the
10 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including
11 line numbers as appropriate) that have been designated as Protected Material and the level of protection
12 being asserted by the Designating Party. The Designating Party shall inform the court reporter of these
13 requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall
14 be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
15 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall
16 be treated only as actually designated.

17 (c) for information produced in some form other than documentary and for any other
18 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
19 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.
21 If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent
22 practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
24 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
25 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party
26 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this
27 Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.¹ Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days,

¹ Alternative: It may be appropriate in certain circumstances for the parties to agree to shift the burden to move on the Challenging Party after a certain number of challenges are made to avoid an abuse of the process. The burden of persuasion would remain on the Designating Party.

1 if applicable) shall automatically waive the confidentiality designation for each challenged designation. In
2 addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if
3 there is good cause for doing so, including a challenge to the designation of a deposition transcript or any
4 portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent
5 declaration affirming that the movant has complied with the meet and confer requirements imposed by the
6 preceding paragraph.

7 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
8 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
9 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
10 Designating Party has waived the confidentiality designation by failing to file a motion to retain
11 confidentiality as described above, all parties shall continue to afford the material in question the level of
12 protection to which it is entitled under the Producing Party's designation until the court rules on the
13 challenge.

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
16 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,
17 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of
18 persons and under the conditions described in this Order. When the litigation has been terminated, a
19 Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure
21 manner² that ensures that access is limited to the persons authorized under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
23 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
24 item designated "CONFIDENTIAL" only to:

25 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
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28 ² It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected Material in password-protected form.

1 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
2 litigation;

3 (b) the officers, directors, and employees of the Receiving Party to whom disclosure is
4 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
5 Bound” (Exhibit A);

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

9 (d) the court and its personnel;

10 (e) court reporters and their staff, professional jury or trial consultants, and Professional
11 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
14 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
15 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition
16 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court
17 reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

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

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

25 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
26 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
27 litigation ;

28 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this

1 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as
2 to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

3 (c) the court and its personnel;

4 (d) court reporters and their staff, professional jury or trial consultants,³ and Professional
5 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

7 (e) the author or recipient of a document containing the information or a custodian or other
8 person who otherwise possessed or knew the information.

9 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items
11 to Experts.

12 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a
13 Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been
14 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
15 – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party
16 that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
17 or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission
18 to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary
19 residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s),
20 (5) identifies each person or entity from whom the Expert has received compensation or funding for work in
21 his or her areas of expertise or to whom the expert has provided professional services, including in
22 connection with a litigation, at any time during the preceding five years,⁴ and (6) identifies (by name and
23 number of the case, filing date, and location of court) any litigation in connection with which the Expert has
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26 ³ Alternative: The parties may wish to allow disclosure of information not only to professional jury or trial consultants, but also to
27 mock jurors, to further trial preparation. In that situation, the parties may wish to draft a simplified, precisely tailored Undertaking
28 for mock jurors to sign.

⁴ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should
provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party
seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during
2 the preceding five years.⁵

3 (b) A Party that makes a request and provides the information specified in the preceding
4 respective paragraphs may disclose the subject Protected Material to the Expert unless, within 14 days of
5 delivering the request, the Party receives a written objection from the Designating Party. Any such objection
6 must set forth in detail the grounds on which it is based.

7 (c) A Party that receives a timely written objection must meet and confer with the
8 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within
9 seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to
10 the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-
11 5, if applicable) seeking permission from the court to do so. Any such motion must describe the
12 circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably
13 necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that
14 could be used to reduce that risk. In addition, any such motion must be accompanied by a competent
15 declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content
16 of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its
17 refusal to approve the disclosure.

18 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of proving
19 that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the
20 Receiving Party's need to disclose the Protected Material to its Expert.

21 8. PROSECUTION BAR

22 Absent written consent from the Producing Party, any individual who receives access to "HIGHLY
23 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE"
24 information shall not be involved in the prosecution of patents or patent applications relating to secure
25 electronic data erasure, including without limitation the patent at issue in this action and any patent or

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27 ⁵ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the termination
28 of the litigation that could foreseeably result in an improper use of the Designating Party's "HIGHLY CONFIDENTIAL –
ATTORNEYS' EYES ONLY" information.

1 application claiming priority to or otherwise related to the patent at issue in this action, before any foreign or
2 domestic agency, including the United States Patent and Trademark Office (“the Patent Office”).⁶ For
3 purposes of this paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or
4 otherwise affecting the scope or maintenance of patent claims.⁷ To avoid any doubt, “prosecution” as used
5 in this paragraph does not include representing a party challenging a patent before a domestic or foreign
6 agency (including, but not limited to, a reissue protest, ex parte reexamination, inter partes reexamination,
7 or inter partes review). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information is first
9 received by the affected individual and shall end two (2) years after final termination of this action.

10 9. SOURCE CODE

11 (a) To the extent production of source code becomes necessary in this case, a
12 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE” if it
13 comprises or includes confidential, proprietary or trade secret source code.

14 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”
15 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
16 ONLY” information including the Prosecution Bar set forth in Paragraph 8, and may be disclosed only to
17 the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be
18 disclosed, as set forth in Paragraphs 7.3 and 7.4.

19 (c) Any source code produced in discovery shall be made available for inspection, in a
20 format allowing it to be reasonably reviewed and searched, during normal business hours or at other
21 mutually agreeable times, at an office of the Producing Party’s counsel or another mutually agreed upon
22 location. The source code shall be made available for inspection on a secured computer in a secured room
23 without Internet access or network access to other computers, and the Receiving Party shall not copy,
24 remove, or otherwise transfer any portion of the source code onto any recordable media or recordable
25 device. The Producing Party may visually monitor the activities of the Receiving Party’s representatives

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27 ⁶ It may be appropriate under certain circumstances to require Outside Counsel who receive access to “HIGHLY CONFIDENTIAL
– ATTORNEYS’ EYES ONLY” information to implement an “Ethical Wall.”

28 ⁷ Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 during any source code review, but only to ensure that there is no unauthorized recording, copying, or
2 transmission of the source code.⁸

3 (d) The Receiving Party may request paper copies of limited portions of source code
4 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers,
5 or for deposition or trial, but shall not request paper copies for the purposes of reviewing the source code
6 other than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide
7 all such source code in paper form including bates numbers and the label “HIGHLY CONFIDENTIAL -
8 SOURCE CODE.” The Producing Party may challenge the amount of source code requested in hard copy
9 form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the
10 Producing Party is the “Challenging Party” and the Receiving Party is the “Designating Party” for purposes
11 of dispute resolution.

12 (e) The Receiving Party shall maintain a record of any individual who has inspected
13 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper
14 copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall not
15 create any electronic or other images of the paper copies and shall not convert any of the information
16 contained in the paper copies into any electronic format. The Receiving Party shall only make additional
17 paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers
18 (including a testifying expert’s expert report), (2) necessary for deposition, or (3) otherwise necessary for
19 the preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing
20 Party at the end of each day and must not be given to or left with a court reporter or any other unauthorized
21 individual.

22 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
23 LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation that compels
25 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY

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27 ⁸ It may be appropriate under certain circumstances to require the Receiving Party to keep a paper log indicating the names of any
28 individuals inspecting the source code and dates and times of inspection, and the names of any individuals to whom paper copies of
portions of source code are provided.

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
2 that Party must:

3 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
4 of the subpoena or court order;

5 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
6 other litigation that some or all of the material covered by the subpoena or order is subject to this Protective
7 Order. Such notification shall include a copy of this Stipulated Protective Order; and

8 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
9 Designating Party whose Protected Material may be affected.⁹

10 If the Designating Party timely seeks a protective order, the Party served with the subpoena
11 or court order shall not produce any information designated in this action as “CONFIDENTIAL” or
12 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
13 CODE” before a determination by the court from which the subpoena or order issued, unless the Party has
14 obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of
15 seeking protection in that court of its confidential material – and nothing in these provisions should be
16 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
17 another court.

18 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
19 LITIGATION

20 (a) The terms of this Order are applicable to information produced by a Non-Party in
21 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. Such information produced by Non-Parties in
23 connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in
24 these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

25 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
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27 ⁹ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the
28 Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or
order issued.

1 Party's confidential information in its possession, and the Party is subject to an agreement with the Non-
2 Party not to produce the Non-Party's confidential information, then the Party shall:

3 1. promptly notify in writing the Requesting Party and the Non-Party that some or all
4 of the information requested is subject to a confidentiality agreement with a Non-Party;

5 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in
6 this litigation, the relevant discovery request(s), and a reasonably specific description of the information
7 requested; and

8 3. make the information requested available for inspection by the Non-Party.

9 (c) If the Non-Party fails to object or seek a protective order from this court within 14
10 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-
11 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
12 protective order, the Receiving Party shall not produce any information in its possession or control that is
13 subject to the confidentiality agreement with the Non-Party before a determination by the court.¹⁰ Absent a
14 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this
15 court of its Protected Material.

16 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
18 Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the
19 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
20 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
21 the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d)
22 request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is
23 attached hereto as Exhibit A.

24 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
25 MATERIAL

26 When a Producing Party gives notice to Receiving Parties that certain inadvertently
27 _____

28 ¹⁰ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 produced material is subject to a claim of privilege or other protection, the obligations of the Receiving
2 Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
3 modify whatever procedure may be established in an e-discovery order that provides for production without
4 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
5 agreement on the effect of disclosure of a communication or information covered by the attorney-client
6 privilege or work product protection, the parties may incorporate their agreement in the stipulated protective
7 order submitted to the court.

8 14. MISCELLANEOUS

9 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
10 modification by the court in the future.

11 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
12 Party waives any right it otherwise would have to object to disclosing or producing any information or item
13 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to
14 object on any ground to use in evidence of any of the material covered by this Protective Order.

15 14.3 Filing Protected Material. Without written permission from the Designating Party or a court
16 order secured after appropriate notice to all interested persons, a Party may not file in the public record in
17 this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply
18 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order
19 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a
20 sealing order will issue only upon a request establishing that the Protected Material at issue is privileged,
21 protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request
22 to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the
23 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2)
24 unless otherwise instructed by the court.


25 15. FINAL DISPOSITION

26 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
27 Receiving Party must return all Protected Material to the Producing Party or destroy such material to the
28 extend reasonably feasible in the circumstances. As used in this subdivision, "all Protected Material"

1 includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any
2 of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
3 submit a written certification to the Producing Party (and, if not the same person or entity, to the
4 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the
5 Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained
6 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the
7 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
8 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
9 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product,
10 even if such materials contain Protected Material. Any such archival copies that contain or constitute
11 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

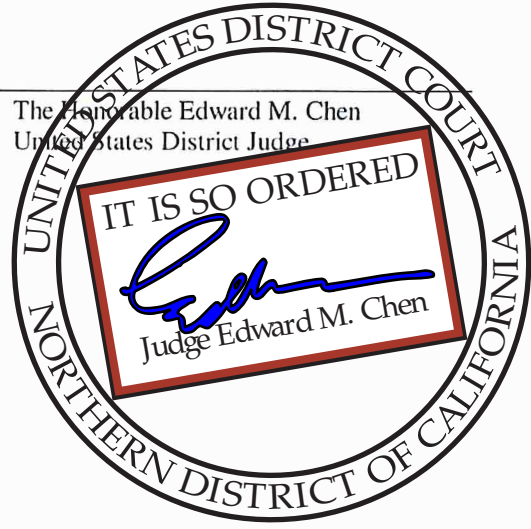
13 DATED: 9-26-16 
14 Attorneys for Plaintiff

15 DATED: 9/26/2016 
16 Attorneys for Defendant

17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

18 DATED: 10/26/2016

The Honorable Edward M. Chen
United States District Judge



1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address],

5 declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective
6 Order that was issued by the United States District Court for the Northern District of California on
7 _____[date] in the case of ITRenew, Inc. v. Blancco Technology Group and Blancco OY Ltd.,
8 Case No. 5:16-cv-03221-EMC. I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions
10 and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any
11 information or item that is subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order.

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

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full
18 address and telephone number] as my California agent for service of process in connection with this action
19 or any proceedings related to enforcement of this Stipulated Protective Order.

20
21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____
24 [printed name]

25 Signature: _____
26 [signature]

27
28