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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

TRANSPERFECT GLOBAL, INC.,  
TRANSPERFECT TRANSLATIONS  
INTERNATIONAL, INC., AND  
TRANSLATIONS.COM, INC.,

Plaintiffs/Counterclaim  
Defendants,

v.

MOTIONPOINT CORPORATION,

Defendant/Counterclaim  
Plaintiffs.

Case No. CV 10-02590 CW

~~PROPOSED~~ STIPULATED  
PROTECTIVE ORDER

**Date:**  
**Time:**  
**Dept.:** Ctrm. 2  
**Judge:** Hon. Claudia Wilken

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action is 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, each of the parties, Plaintiffs TransPerfect Global, Inc., TransPerfect Translations International, Inc. and Translations.com, Inc., (collectively "TransPerfect") on the one hand; and Defendant MotionPoint Corporation ("MotionPoint"), on the other hand, contends that they

1 possess confidential information related to this case. The parties wish to ensure that such  
2 confidential information (as defined below) shall not be used for any purpose other than this  
3 litigation, shall not be made public, and shall not be disseminated beyond the extent necessary for  
4 this case. Accordingly, the following procedure shall be adopted for the protection of the parties'  
5 respective confidential information.

6 The parties acknowledge that this Order does not confer blanket protections on all  
7 disclosures or responses to discovery and that the protection it affords from public disclosure and  
8 use extends only to the limited information or items that are entitled to confidential treatment  
9 under the applicable legal principles. The parties further acknowledge, as set forth in Section  
10 14.4, below, that this Protective Order does not entitle them to file confidential information under  
11 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and standards that will  
12 be applied when a party seeks permission from the Court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
15 information or items under this Order.

16 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how  
17 it is generated, stored or maintained) or tangible things that qualify for protection under Federal  
18 Rule of Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and their support  
20 staff.

21 2.4 Designating Party: a Party or Non-Party that designates, pursuant to this  
22 Order, information or items that it produces in disclosures or in responses to discovery as  
23 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or  
24 "HIGHLY CONFIDENTIAL – SOURCE CODE."

25 2.5 Disclosure or Discovery Material: all items or information, regardless of  
26 the medium or manner in which it is generated, stored, or maintained (including, among other  
27 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
28 or responses to discovery in this matter.

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

6           2.7    "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
7 Information or Items: extremely sensitive "Confidential Information or Items," disclosure of  
8 which to another Party or Non-Party would create a substantial risk of serious harm that could not  
9 be avoided by less restrictive means.

10          2.8    "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:  
11 extremely sensitive "Confidential Information or Items" representing computer code and  
12 associated comments and revision histories, formulas, engineering specifications, or schematics  
13 that define or otherwise describe in detail the algorithms or structure of software or hardware  
14 designs, disclosure of which to another Party or Non-Party would create a substantial risk of  
15 serious harm that could not be avoided by less restrictive means.

16          2.9    Non-Party: any natural person, partnership, corporation, association, or  
17 other legal entity not named as a Party to this action.

18          2.10   Outside Counsel of Record: attorneys who are not employees of a party to  
19 this action but are retained to represent or advise a party to this action and have appeared in this  
20 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
21 that party.

22          2.11   Party: any party to this action, including all of its officers, directors,  
23 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
24 staffs).

25          2.12   Producing Party: a Party or Non-Party that produces Disclosure or  
26 Discovery Material in this action.

27          2.13   Professional Vendors: persons or entities that provide litigation support  
28 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and

1 organizing, storing, or retrieving data in any form or medium) and their employees and  
2 subcontractors.

3 2.14 Protected Material: any Disclosure or Discovery Material that is  
4 designated, pursuant to this Order, as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –  
5 ATTORNEYS’ EYES ONLY” or as “HIGHLY CONFIDENTIAL – SOURCE CODE.”

6 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
7 from a Producing Party.

8 3. SCOPE

9 The protections conferred by this Protective Order cover not only Protected Material (as  
10 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
11 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
12 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
13 However, the protections conferred by this Protective Order do not cover the following  
14 information: (a) any information that is in the public domain at the time of disclosure to a  
15 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
16 a result of publication not involving a violation of this Order, including becoming part of the  
17 public record through trial or otherwise; and (b) any information known to the Receiving Party  
18 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
19 obtained the information lawfully and under no obligation of confidentiality to the Designating  
20 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

21 4. DURATION

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

1           5.     DESIGNATING PROTECTED MATERIAL

2                     5.1     Exercise of Restraint and Care in Designating Material for Protection.

3     Each Party or Non-Party that designates information or items for protection under this Order must  
4     take care to limit any such designation to specific material that qualifies under the appropriate  
5     standards. To the extent it is practical to do so, the Designating Party must designate for  
6     protection only those parts of material, documents, items, or oral or written communications that  
7     qualify – so that other portions of the material, documents, items, or communications for which  
8     protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

13                    If it comes to a Designating Party's attention that information or items that it  
14     designated for protection under this Order do not qualify for protection at all or do not qualify for  
15     the level of protection initially asserted, that Designating Party must promptly notify all other  
16     parties that it is withdrawing the original designation.

17                    5.2     Manner and Timing of Designations. Except as otherwise provided in this  
18     Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
19     Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
20     designated before the material is disclosed or produced.

21                    Designation in conformity with this Order requires:

22                    (a)     for information in documentary form (e.g., paper or electronic  
23     documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
24     Producing Party affix the legend "CONFIDENTIAL," "HIGHLY CONFIDENTIAL –  
25     ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page  
26     that contains protected material.

27                    A Party or Non-Party that makes original documents or materials available for  
28     inspection need not designate them for protection until after the inspecting Party has indicated

1 which material it would like copied and produced. During the inspection and before the  
2 designation, all of the material made available for inspection shall be deemed “HIGHLY  
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the  
4 documents it wants copied and produced, the Producing Party must determine which documents,  
5 or portions thereof, qualify for protection under this Order. Then, before producing the specified  
6 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL,”  
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL,  
8 SOURCE CODE) to each page that contains Protected Material.

9 (b) for testimony given in deposition or in other pretrial or trial  
10 proceedings, that the Designating Party identify on the record, before the close of the deposition,  
11 hearing, or other proceeding, all protected testimony and specify the level of protection being  
12 asserted. When it is impractical to identify separately each portion of testimony that is entitled to  
13 protection and it appears that substantial portions of the testimony may qualify for protection, the  
14 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding  
15 is concluded) a right to have up to 21 days after the Designating Party receives the written  
16 transcript to identify the specific portions of the testimony as to which protection is sought and to  
17 specify the level of protection being asserted. Only those portions of the testimony that are  
18 appropriately designated for protection within the 21 days shall be covered by the provisions of  
19 this Protective Order.

20 Transcript pages containing Protected Material must be separately bound by the  
21 court reporter, who must affix on each such page the legend “CONFIDENTIAL” or “HIGHLY  
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Designating Party.

23 Alternatively, a Designating Party may specify, at the deposition or up to 21 days  
24 after receiving the transcript, if that period is properly invoked, that the entire transcript shall be  
25 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 Any transcript that is prepared before the expiration of a 21-day period for  
27 designation shall be treated during that period as if it had been designated “HIGHLY  
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After

1 the expiration of that period, the transcript or portions thereof shall be treated only as actually  
2 designated.

3 Parties shall give the other parties notice if they reasonably expect a deposition,  
4 hearing or other proceeding to include Protected Material so that the other parties can ensure that  
5 only authorized individuals pursuant to Section 7 of this Order, including those who have signed  
6 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  
8 designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
9 ONLY."

10 (c) for information produced in some form other than documentary and  
11 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of  
12 the container or containers in which the information or item is stored the legend  
13 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or  
14 "HIGHLY CONFIDENTIAL – SOURCE CODE." If only a portion or portions of the  
15 information or item warrant protection, the Producing Party, to the extent practicable, shall  
16 identify the protected portion(s) and specify the level of protection being asserted.

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
18 failure to designate qualified information or items does not, standing alone, waive the Designating  
19 Party's right to secure protection under this Order for such material. Upon timely correction of a  
20 designation, the Receiving Party must make reasonable efforts to assure that the material is  
21 treated in accordance with the provisions of this Order.

## 22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
24 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's  
25 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary  
26 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its  
27 right to challenge a confidentiality designation by electing not to mount a challenge promptly  
28 after the original designation is disclosed.

1                   6.2     Meet and Confer. The Challenging Party shall initiate the dispute  
2 resolution process by providing written notice of each designation it is challenging and describing  
3 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the  
4 written notice must recite that the challenge to confidentiality is being made in accordance with  
5 this specific paragraph of the Protective Order. The parties shall attempt to resolve each  
6 challenge in good faith and must begin the process by conferring directly (in voice to voice  
7 dialogue; other forms of communication are not sufficient) within 14 calendar days of the date of  
8 service of notice. In conferring, the Challenging Party must explain the basis for its belief that the  
9 confidentiality designation was not proper and must give the Designating Party an opportunity to  
10 review the designated material, to reconsider the circumstances, and, if no change in designation  
11 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to  
12 the next stage of the challenge process, *i.e.*, “Judicial Intervention,” only if it has engaged in this  
13 meet and confer process first, and only after the Designating Party has been given five calendar  
14 days to respond to the Challenging Party’s objection.

15                   6.3     Judicial Intervention. If the Parties cannot resolve a challenge without  
16 court intervention, the Designating Party shall file and serve a motion to retain confidentiality  
17 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21  
18 calendar days of the initial notice of challenge or within 14 calendar days of the parties agreeing  
19 that the meet and confer process will not resolve their dispute, whichever is earlier. Each such  
20 motion must be accompanied by a competent declaration affirming that the movant has complied  
21 with the meet and confer requirements imposed in the preceding paragraph. Failure by the  
22 Designating Party to make such a motion including the required declaration within 21 calendar  
23 days (or 14 calendar days, if applicable) shall automatically waive the confidentiality designation  
24 for each challenged designation. In addition, the Challenging Party may file a motion challenging  
25 a confidentiality designation at any time if there is good cause for doing so, including a challenge  
26 to the designation of a deposition transcript or any portions thereof. Any motion brought  
27 pursuant to this provision must be accompanied by a competent declaration affirming that the  
28 movant has complied with the meet and confer requirements imposed by the preceding paragraph.



1 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
2 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
3 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
4 sanctions.

5 Unless the Designating Party has waived the confidentiality designation by failing  
6 to file a motion to retain confidentiality as described above, all parties shall continue to afford the  
7 material in question the level of protection to which it is entitled under the Producing Party's  
8 designation until the Court rules on the challenge.

9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
11 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
12 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
13 disclosed only to the categories of persons and under the conditions described in this Order.  
14 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
15 section 15 below (FINAL DISPOSITION).

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

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
20 disclose any information or item designated "CONFIDENTIAL" only to:

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

24 (b) the officers, directors, and employees of the Receiving Party to  
25 whom disclosure is reasonably necessary for this litigation;

26 (c) Experts (as defined in this Order) of the Receiving Party to whom  
27 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment  
28 and Agreement to Be Bound" (Exhibit A);

- 1 (d) the court and its personnel;
- 2 (e) court reporters and their staff, professional jury or trial consultants,  
3 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who  
4 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
- 5 (f) during their depositions, witnesses in the action to whom disclosure  
6 is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be  
7 Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court.  
8 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material  
9 must be separately bound by the court reporter and may not be disclosed to anyone except as  
10 permitted under this Protective Order.
- 11 (g) the author or recipient of a document containing the information,  
12 the original source of the information or a custodian or other person who otherwise possessed or  
13 knew the information.

14 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
15 ONLY" and "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items. Unless  
16 otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving  
17 Party may disclose any information or item designated "HIGHLY CONFIDENTIAL –  
18 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" only to:

- 19 (a) the Receiving Party's Outside Counsel of Record in this action, as  
20 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to  
21 disclose the information for this litigation and who have signed the "Acknowledgment and  
22 Agreement to Be Bound" that is attached hereto as Exhibit A;
- 23 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
24 necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be  
25 Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(1), below,  
26 have been followed;
- 27 (c) the court and its personnel;
- 28

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

4 (e) the author or recipient(s) (including "cc" and "bcc") of a document  
5 containing the information, the original source of the information or a custodian or other person  
6 who otherwise possessed, received, or knew the information.

7 7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY  
8 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE  
9 CODE" Information or Items to Experts.

10 (a) (1) Unless otherwise ordered by the Court or agreed to in writing by  
11 the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
12 information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS'  
13 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" pursuant to paragraph 7.3(b)  
14 first must make a written request to the Designating Party that (1) sets forth the full name of the  
15 Expert and the city and state of his or her primary residence, (2) attaches a copy of the Expert's  
16 current resume, (3) identifies the Expert's current employer(s), (4) identifies each person or entity  
17 from whom the Expert has received compensation or funding for work in his or her areas of  
18 expertise or to whom the expert has provided professional services, including in connection with  
19 a litigation, at any time during the preceding five years, and (5) identifies (by name and number  
20 of the case, filing date, and location of court) any litigation in connection with which the Expert  
21 has offered expert testimony, including through a declaration, report, or testimony at a deposition  
22 or trial, during the preceding five years.

23 (b) A Party that makes a request and provides the information specified  
24 in the preceding respective paragraph may disclose the subject Protected Material to the identified  
25 Expert unless, within five court days of delivering the request, the Party receives a written  
26 objection from the Designating Party. Any such objection must set forth in detail the grounds on  
27 which it is based.

28

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

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

16 8. PROSECUTION BAR

17 Absent written consent from the Producing Party, any individual who receives access to  
18 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL -  
19 SOURCE CODE" information shall not be involved in the prosecution of patents or patent  
20 applications relating to the technology described and/or embodied in U.S. Patent Nos. 7,580,960;  
21 7,584,216; 7,627,479; and 7,627,817 asserted in this action (including any patent or application  
22 claiming priority to or otherwise related to the patents asserted in this action), or the technology  
23 described and/or embodied in the source code at issue in this case, before any foreign or domestic  
24 agency, including the United States Patent and Trademark Office. For purposes of this paragraph,  
25 "prosecution" includes directly or indirectly drafting, amending, advising, or otherwise affecting  
26 the scope or maintenance of patent claims, including, for example, original prosecution, reissue  
27 and reexamination proceedings. To avoid any doubt, "prosecution" as used in this paragraph  
28 does not include representing a party challenging a patent before a domestic or foreign agency

1 (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*  
2 reexamination). This Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL –  
3 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information  
4 is first received by the affected individual and shall end two (2) years after final termination of  
5 this action.

6 9. SOURCE CODE

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

10 (b) Protected Material designated as "HIGHLY CONFIDENTIAL –  
11 SOURCE CODE" shall be subject to all of the protections afforded to "HIGHLY  
12 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information, and may be disclosed only to  
13 the individuals to whom "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
14 information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the following additional  
15 restrictions:

16 (1) If a Party is requested to produce electronic copies of  
17 material properly designated as "HIGHLY CONFIDENTIAL – SOURCE CODE," any such  
18 production shall be made on read-only media such as CDs or DVDs. The Designating Party shall  
19 provide to the Receiving Party two (2) identical CDs or DVDs (or sets of CDs or DVDs if the  
20 source code is too voluminous to fit on one disk) containing the requested materials.

21 (2) The Receiving Party shall only be permitted to load the  
22 material properly designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" contained in  
23 each CD or DVD into the RAM of a single computer. Once the material is loaded into the RAM  
24 of a single computer, the material may not be loaded into the RAM of another computer unless it  
25 is first removed from the first computer. The material properly designated as "HIGHLY  
26 CONFIDENTIAL – SOURCE CODE" from each CD or DVD may only be loaded onto one  
27 computer at any given time. Thus, at any given time, the Receiving Party may have at most two  
28 computers (one computer per each CD or DVD) containing material properly designated

1 "HIGHLY CONFIDENTIAL – SOURCE CODE."

2 (3) Any computer into whose RAM material properly  
3 designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" is copied must be disconnected  
4 from any and all networks before the material is copied onto the computer and must remain  
5 disconnected for the duration of the time the material remains on the computer. Only after all  
6 such material is removed from RAM and that computer has been shut down may any network  
7 connection be made or restored.

8 (4) The Receiving Party shall be permitted to load appropriate  
9 software onto a computer containing material properly designated as "HIGHLY  
10 CONFIDENTIAL – SOURCE CODE". In the event that this requires the computer to be  
11 connected to a network, the Receiving Party shall remove the material properly designated as  
12 "HIGHLY CONFIDENTIAL – SOURCE CODE" from the RAM before installing such  
13 software, and load the material properly designated as "HIGHLY CONFIDENTIAL – SOURCE  
14 CODE" onto the computer only after the computer has been shut down and disconnected from  
15 any network connection.

16 (5) Any computer into whose RAM material properly  
17 designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" is copied must remain in the law  
18 offices of the Receiving Party's Outside Counsel of Record and must be maintained in the direct  
19 control of only those persons specified in Section 7.3 of this Order as properly having access to  
20 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" material.

21 (6) For each computer into whose RAM material properly  
22 designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" is loaded into, the Receiving  
23 Party is required to secure the computer by creating a unique username and password for each  
24 person specified in Section 7.3 of this Order as properly having access to "HIGHLY  
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY" material. Any person who accesses the  
26 computer is required to log out from the computer if such person leaves the room from which the  
27 computer is located for more than one hour.

28 (7) For each computer into whose RAM material properly

1 designated as "HIGHLY CONFIDENTIAL – SOURCE CODE" is loaded into, the Receiving  
2 Party is required to maintain an electronic log of each person who accesses the computer which  
3 shall include the date and time of when the person logged in and out of the secure computer. For  
4 purposes of this provision, an event tracker on the computer's operating system that logs  
5 username log in and log out times is sufficient.

6 (8) The Receiving Party shall be permitted to print a maximum  
7 of two paper copies of portions of material properly designated as "HIGHLY CONFIDENTIAL –  
8 SOURCE CODE" provided that each page of paper be printed on paper bearing a "HIGHLY  
9 CONFIDENTIAL – SOURCE CODE" designation, include the filename of the file where the  
10 printed material properly designated as "HIGHLY CONFIDENTIAL – SOURCE CODE"  
11 originated and include a Bates Number for each page printed. The Receiving Party must maintain  
12 a log of any portions of material properly designated as "HIGHLY CONFIDENTIAL – SOURCE  
13 CODE" that includes the filename of the file where the printed material originated, the  
14 corresponding Bates Number or Bates Range, the date printed, the name of the person printing the  
15 material, and the name of the person to whom the printed copy is provided.

16 (9) The Receiving Party must maintain all paper copies of any  
17 printed portions material properly designated as "HIGHLY CONFIDENTIAL – SOURCE  
18 CODE" in a secured, locked area in the law offices of the Receiving Party's Outside Counsel of  
19 Record and must at all times be under the control of persons specified in Section 7.3 of this Order  
20 as properly having access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"  
21 material. The Receiving Party shall not create any electronic or other images of the paper copies  
22 and shall not convert any of the information contained in the paper copies into any electronic  
23 format. The Receiving Party shall only make additional paper copies if such additional copies are  
24 (1) necessary to prepare court filings, pleadings, or other papers (including a testifying expert's  
25 expert report), (2) necessary for deposition, or (3) necessary for use at a hearing or at trial. Any  
26 paper copies used during a deposition shall be retrieved by the Producing Party at the end of each  
27 day and must not be given to or left with a court reporter or any other individual.

28

1           10.    PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
2                    OTHER LITIGATION

3           If a Party is served with a subpoena or a court order issued in other litigation that compels  
4 disclosure of any information or items designated in this action as “CONFIDENTIAL,”  
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
6 SOURCE CODE” that Party must:

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

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

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

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

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

26                   (a)    The terms of this Order are applicable to information produced in  
27 this action by a Non-Party and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL  
28



1 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such  
2 information produced in connection with this litigation by Non-Parties is protected by the  
3 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
4 prohibiting a Non-Party from seeking additional protections.

5 (b) In the event that a Party is required, by a valid discovery request, to  
6 produce a Non-Party’s confidential information in its possession, and the Party is subject to an  
7 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the  
8 Party shall:

9 (1) promptly notify in writing the Requesting Party and the  
10 Non-Party that some or all of the information requested is subject to a confidentiality agreement  
11 with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the  
13 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific  
14 description of the information requested; and

15 (3) make the information requested available for inspection by  
16 the Non-Party.

17 (c) If the Non-Party fails to object or seek a protective order from this  
18 Court within 14 calendar days of receiving the notice and accompanying information, the  
19 Receiving Party may produce the Non-Party’s confidential information responsive to the  
20 discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not  
21 produce any information in its possession or control that is subject to the confidentiality  
22 agreement with the Non-Party before a determination by the Court. Absent a court order to the  
23 contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of  
24 its Protected Material.

25 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
27 Material to any person or in any circumstance not authorized under this Protective Order, the  
28 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized

1 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)  
2 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
3 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to  
4 Be Bound” that is attached hereto as Exhibit A.

5 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
6 PROTECTED MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
8 produced material is subject to a claim of privilege or other protection, the obligations of the  
9 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
10 provision is not intended to modify whatever procedure may be established in an e-discovery  
11 order that provides for production without prior privilege review. Pursuant to Federal Rule of  
12 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a  
13 communication or information covered by the attorney-client privilege or work product  
14 protection, the parties may incorporate their agreement in the protective order submitted to the  
15 court.

16  
17 14. MISCELLANEOUS

18 14.1 Right to Further Relief. Nothing in this Order abridges the right of any  
19 person to seek its modification by the court in the future.

20 14.2 Right to Assert Other Objections. By stipulating to the entry of this  
21 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
22 producing any information or item on any ground not addressed in this Protective Order.  
23 Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
24 material covered by this Protective Order.

25 14.3 Export Control. Disclosure of Protected Material shall be subject to all  
26 applicable laws and regulations relating to the export of technical data contained in such  
27 Protected Material, including the release of such technical data to foreign persons or nationals in  
28

1 the United States or elsewhere. The Producing Party shall be responsible for identifying any such  
2 controlled technical data, and the Receiving Party shall take measures necessary to ensure  
3 compliance.

4           14.4 Filing Protected Material. Without written permission from the  
5 Designating Party or a court order secured after appropriate notice to all interested persons, a  
6 Party may not file in the public record in this action any Protected Material. A Party that seeks to  
7 file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected  
8 Material may only be filed under seal pursuant to a court order authorizing the sealing of the  
9 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue  
10 only upon a request establishing that the Protected Material at issue is privileged, protectable as a  
11 trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to  
12 file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the Court,  
13 then the Receiving Party may file the Protected Material in the public record pursuant to Civil  
14 Local Rule 79-5(e) unless otherwise instructed by the court.

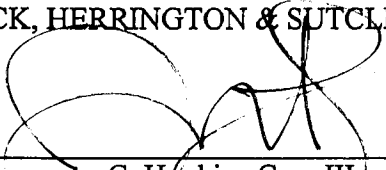
15           15. FINAL DISPOSITION

16           Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
17 Receiving Party must return all Protected Material to the Producing Party or destroy such  
18 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
19 compilations, summaries, and any other format reproducing or capturing any of the Protected  
20 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
21 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
22 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all  
23 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
24 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
25 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
26 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
27 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
28 product, and consultant and expert work product, even if such materials contain Protected

1 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
2 this Protective Order as set forth in Section 4 (DURATION).

3 Dated: ~~November~~ <sup>December</sup> 1, 2010

G. HOPKINS GUY, III  
JACOB M. HEATH  
JACOB A. SNOW  
ORRICK, HERRINGTON & SUTCLIFFE LLP

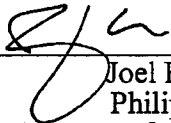


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G. Hopkins Guy, III  
Jacob M. Heath  
Jacob A. Snow  
Attorneys for Plaintiffs  
TransPerfect Global, Inc.;  
TransPerfect Translations International, Inc.; and  
Translations.com, Inc.

12 Dated: November ~~30~~, 2010

JOEL FREED  
PHILIP OU  
MCDERMOTT WILL & EMERY LLP

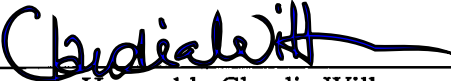


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Joel Freed  
Philip Ou  
Attorneys for Defendants  
MotionPoint Corporation

20 **IT IS SO ORDERED.**

21 DATED: 12/7/2010



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Honorable Claudia Wilken  
United States District Court Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I acknowledge that I, \_\_\_\_\_ [Print Name],  
of \_\_\_\_\_ [Place and  
Position of Employment], am about to receive confidential information obtained in the course of  
discovery in this action. I certify that I understand that such confidential information will be  
provided to me pursuant to the terms and restrictions of the PROTECTIVE ORDER entered by  
the United States District Court for the Northern District of California on September \_\_, 2010 in  
Case No. CV 10-02590 CW.

I further represent that I have been given a copy of and have read that PROTECTIVE  
ORDER and that I agree to be bound by all of its applicable terms. I also understand that  
documents and/or information having any confidential designation, and all copies, summaries,  
notes and other records that may be made regarding such documents and/or information, shall be  
disclosed to no one other than persons qualified under the PROTECTIVE ORDER to have access  
to such information.

I understand and acknowledge that violation of this Acknowledgement And Agreement  
To Be Bound or the PROTECTIVE ORDER may be punishable by contempt of Court and, thus, I  
expressly agree to be subject to the personal jurisdiction of the Northern District of California.

Date: \_\_\_\_\_  
Signature for [Name] \_\_\_\_\_

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