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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

INTELLIGENT SCM, LLC,  
Plaintiff,  
v.  
QANNU PTY LTD, et al.,  
Defendants.

Case No. CV-14-06417-MMM (VBKx)  
The Honorable Margaret M. Morrow  
~~proposed~~ **PROTECTIVE ORDER**

**1. PURPOSE AND LIMITS OF THIS ORDER**

Discovery in this action is likely to involve confidential, proprietary, or private information requiring special protection from public disclosure and from use for any purpose other than this litigation and other related proceedings. Thus, the Court enters this Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it gives from public disclosure and use extends only to the specific material entitled to confidential treatment under the applicable legal principles. This Order does not automatically authorize the filing under seal of material designated under this Order. Instead, the parties must comply with L.R. 79-5.1 if they seek to file anything under seal. This Order does not govern the use at trial of material designated under this Order.

1           **2. DESIGNATING PROTECTED MATERIAL**

2           **2.1 Over-Designation Prohibited.** Any party or non-party who  
3 designates information or items for protection under this Order as  
4 “CONFIDENTIAL” (a “designator”) must only designate specific material that  
5 qualifies under the appropriate standard. To the extent practicable, only those parts  
6 of documents, items, or oral or written communications that require protection shall  
7 be designated. Mass, indiscriminate, or routinized designations are prohibited.  
8 Unjustified designations expose the designator to sanctions, including the Court’s  
9 striking all confidentiality designations made by that designator. Designation under  
10 this Order is allowed only if the designation is necessary to protect material that, if  
11 disclosed to persons not authorized to view it, would cause competitive or other  
12 recognized harm. Material may not be designated if it has been made public, or if  
13 designation is otherwise unnecessary to protect a secrecy interest. If a designator  
14 learns that information or items that it designated for protection do not qualify for  
15 protection at all or do not qualify for the level of protection initially asserted, that  
16 designator must promptly notify all parties that it is withdrawing the mistaken  
17 designation.

18           **2.2 Manner and Timing of Designations.** Designation under this  
19 Order requires the designator to affix the legend “CONFIDENTIAL” to each page  
20 that contains protected material. For testimony given in deposition or other  
21 proceeding, the designator shall specify all protected testimony. It may make that  
22 designation during the deposition or proceeding, or may invoke, on the record or by  
23 written notice to all parties on or before the next business day, a right to have up to  
24 21 days from the deposition or proceeding to make its designation.

25           **2.2.1** A party or non-party that makes original documents or  
26 materials available for inspection need not designate them for protection until after  
27 the inspecting party has identified which material it would like copied and  
28 produced. During the inspection and before the designation, all material shall be

1 treated as CONFIDENTIAL. After the inspecting party has identified the  
2 documents it wants copied and produced, the producing party must designate the  
3 documents, or portions thereof, that qualify for protection under this Order.

4           2.2.2 Parties shall give advance notice if they expect a  
5 deposition or other proceeding to include designated material so that the other  
6 parties can ensure that only authorized individuals are present at those proceedings  
7 when such material is disclosed or used. The use of a document as an exhibit at a  
8 deposition shall not in any way affect its designation. Transcripts containing  
9 designated material shall have a legend on the title page noting the presence of  
10 designated material, and the title page shall be followed by a list of all pages  
11 (including line numbers as appropriate) that have been designated. The designator  
12 shall inform the court reporter of these requirements. Any transcript that is prepared  
13 before the expiration of the 21-day period for designation shall be treated during  
14 that period as if it had been designated CONFIDENTIAL unless otherwise agreed.  
15 After the expiration of the 21-day period, the transcript shall be treated only as  
16 actually designated.

17           **2.3 Inadvertent Failures to Designate.** An inadvertent failure to  
18 designate does not, standing alone, waive protection under this Order. Upon  
19 assertion or correction of a designation, all recipients must make reasonable efforts  
20 to ensure that the material is treated according to this Order.

### 21           **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

22           All challenges to confidentiality designations shall proceed under L.R. 37-1  
23 through L.R. 37-4.

### 24           **4. ACCESS TO DESIGNATED MATERIAL**

25           **4.1 Basic Principles.** A receiving party may use designated material  
26 only for this litigation and other related proceedings. “Other related proceedings”  
27 are defined as other actions or proceedings involving: (a) one of the parties to this  
28 litigation; (b) entities in which a party has an ownership interest; or (c) an officer,

1 director, member, manager, or employee of a party. Designated material may be  
2 disclosed only to the categories of persons and under the conditions described in  
3 this Order.

4 **4.2 Disclosure of CONFIDENTIAL Material Without Further**  
5 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the  
6 designator, a receiving party may disclose any material designated  
7 CONFIDENTIAL only to:

8 4.2.1 The receiving party's outside counsel in this action and  
9 employees of outside counsel to whom disclosure is reasonably necessary;

10 4.2.2 If the receiving party is an individual, the receiving party;

11 4.2.3 If the receiving party is an organization, the officers,  
12 directors, members, managers, and employees of the receiving party or entities in  
13 which it has an ownership interest, to whom disclosure is reasonably necessary, and  
14 who have signed the Agreement to Be Bound (Exhibit A), and their support staff  
15 and each of their counsel;

16 4.2.4 Experts and consultants consulted or retained by the  
17 receiving party's outside counsel of record to whom disclosure is reasonably  
18 necessary, and who have signed the Agreement to Be Bound (Exhibit A), and their  
19 support staff;

20 4.2.5 The Court and its personnel;

21 4.2.6 Outside court reporters and their staff, professional jury or  
22 trial consultants, and professional vendors to whom disclosure is reasonably  
23 necessary;

24 4.2.7 During their depositions, witnesses in the action or other  
25 related proceedings to whom disclosure is reasonably necessary and who have been  
26 asked on the record to sign the Agreement to Be Bound (Exhibit A), however the  
27 deposition shall proceed if the witness refuses to sign; and  
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1                   4.2.8 The author or recipient of a document containing the  
2 material, or a custodian or other person who otherwise possessed or knew the  
3 information.

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

6           **5.1 Subpoenas and Court Orders.** This Order in no way excuses  
7 non-compliance with a lawful subpoena or court order. The purpose of the duties  
8 described in this section is to alert the interested parties to the existence of this  
9 Order and to give the designator an opportunity to protect its confidentiality  
10 interests in the court where the subpoena or order issued.

11           **5.2 Notification Requirement.** If a party is served with a subpoena  
12 or a court order issued in other litigation that compels disclosure of any information  
13 or items designated in this action as CONFIDENTIAL, that party must:

14                   5.2.1 Promptly notify the designator in writing. Such  
15 notification shall include a copy of the subpoena or court order;

16                   5.2.2 Promptly notify in writing the party who caused the  
17 subpoena or order to issue in the other litigation that some or all of the material  
18 covered by the subpoena or order is subject to this Order. Such notification shall  
19 include a copy of this Order; and

20                   5.2.3 Cooperate with all reasonable procedures sought by the  
21 designator whose material may be affected.

22           **5.3 Wait For Resolution of Protective Order.** If the designator  
23 timely seeks a protective order, the party served with the subpoena or court order  
24 shall not produce any information designated in this action as CONFIDENTIAL  
25 before a determination by the court where the subpoena or order issued, unless the  
26 party has obtained the designator's permission. The designator shall bear the burden  
27 and expense of seeking protection of its confidential material in that court.  
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1           **6. UNAUTHORIZED DISCLOSURE OF DESIGNATED**  
2           **MATERIAL**

3           If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
4 designated material to any person or in any circumstance not authorized under this  
5 Order, it must immediately (1) notify in writing the designator of the unauthorized  
6 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the  
7 designated material, (3) inform the person or persons to whom unauthorized  
8 disclosures were made of all the terms of this Order, and (4) use reasonable efforts  
9 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

10           **7. PRODUCTION OF PRIVILEGED OR OTHERWISE**  
11           **PROTECTED MATERIAL**

12           When a producing party gives notice that certain produced material is subject  
13 to a claim of privilege or of protection as trial-preparation material, the obligations  
14 of the receiving parties are those set forth in Federal Rule of Civil Procedure  
15 26(b)(5)(B). Additionally, the parties agree that the producing party shall be  
16 permitted to (but is not required to) produce materials without asserting privilege  
17 or protection as trial preparation materials, and the producing party may identify the  
18 materials at a later date that are claimed to be privileged or protected. The parties  
19 agree that this later assertion of privilege or protection shall not be considered a  
20 waiver of the protection or privilege, even if the producing party failed to take  
21 reasonable steps to prevent disclosure of the privileged or protected materials, and  
22 even if the later assertion is not made at a reasonable time.

23           **8. FILING UNDER SEAL**

24           Without written permission from the designator or a Court order, a party may  
25 not file in the public record in this action any designated material. A party seeking  
26 to file under seal any designated material must comply with L.R. 79-5.1. Filings  
27 may be made under seal only pursuant to a court order authorizing the sealing of the  
28 specific material at issue. The fact that a document has been designated under this

1 Order is insufficient to justify filing under seal. Instead, parties must explain the  
2 basis for confidentiality of each document sought to be filed under seal. Because a  
3 party other than the designator will often be seeking to file designated material,  
4 cooperation between the parties in preparing, and in reducing the number and extent  
5 of, requests for under seal filing is essential. If a receiving party's request to file  
6 designated material under seal pursuant to L.R. 79-5.1 is denied by the Court, then  
7 the receiving party *may file the material in the public record* unless (1) *the*  
8 *designator* seeks reconsideration within four days of the denial, or (2) as otherwise  
9 instructed by the Court.

10 **9. FINAL DISPOSITION**

11 Within 60 days after the final disposition of this action, each party shall  
12 return all designated material to the designator or destroy all paper and electronic  
13 copies of such material, including all copies, abstracts, compilations, summaries,  
14 and any other format reproducing or capturing any designated material. The  
15 receiving party must submit a written certification to the designator by the 60- day  
16 deadline that (1) identifies (by category, where appropriate) all the designated  
17 material that was returned or destroyed, and (2) affirms that the receiving party has  
18 not retained any copies, abstracts, compilations, summaries, or any other format for  
19 reproducing or capturing any of the designated material. This provision shall not  
20 prevent counsel from retaining an archival copy of all pleadings, motion papers,  
21 trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
22 deposition and trial exhibits, expert reports, attorney work product, and consultant  
23 and expert work product, or copies of such materials located on backup tapes or  
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1 other not reasonably accessible systems or storage, even if such materials contain  
2 designated material. Any such archival copies remain subject to this Order.

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4 IT IS SO ORDERED.

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6 Dated: June 18, 2015

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United States Magistrate Judge

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