

Exclusive License Agreement

This Exclusive License Agreement is between Q'Max Solutions Inc. ("QSI") and ENVIRONMENTAL SOLUTIONS FOR PETROLEUM SERVICES – FREE ZONE – S.A.E. ("Licensee").

1. LICENSE AND PAYMENT

- 1.1 **License.** QSI hereby grants Licensee a worldwide, perpetual (unless terminated under section 1.6), and non-transferable (except to a permitted assignee of this agreement under section 2.5) license under all Intellectual Property Rights owned by QSI to exploit such Intellectual Property Rights in the Territory in any manner, including to: (1) use, make, have made, sell, offer for sale, and import any invention or article, (2) practice any method or process, and (3) use, reproduce, create derivative works of, distribute, publicly perform, and publicly display any work of authorship. Licensee may sublicense to third parties the licenses granted in this section 1.1. This license is exclusive (even as to QSI) in the Territory. Licensee shall not exercise the license granted in this section 1.1 outside the Territory or permit or authorize any sublicensee to do so. QSI shall use commercially reasonable efforts to prosecute and maintain any Intellectual Property Rights included in this license that are subject to any registration or application with a governmental entity.
- 1.2 **Delivery.** Within a reasonable time following the date of this agreement, QSI shall deliver to Licensee a copy of the tangible embodiments of the copyrights, trade secrets, and know-how included in the licensed Intellectual Property Rights, including any works of authorship and the Licensed Software in source and object code forms, but excluding any non-technology-related records. During the first six months of this agreement, QSI shall make available to Licensee its Rackspace-hosted server and Licensee may make a copy of the Licensed Software made available on that server.
- 1.3 **Trademarks.** Licensee shall use the Trademarks included in the licensed Intellectual Property Rights in a manner consistent with the quality standards and trademark usage practices followed by QSI prior to the grant of the license in this agreement.
- 1.4 **Maintenance Services.** During the first six months of this agreement, QSI shall deliver to Licensee all updates, upgrades, new versions, error corrections, or bug fixes for the Licensed Software created by QSI.
- 1.5 **Payment and Expenses.** No later than 30 days following the end of each month during the first five years of this agreement, Licensee shall pay QSI \$2500 in U.S. dollars.
- 1.6 **Term and Termination.** This agreement begins on the Effective Date and continues until terminated under this section 1.6. QSI may only terminate this agreement if Licensee does not pay QSI the amounts in section 1.5 when they are due and such failure to pay continues for more than 60 days after QSI has provided Licensee with notice of nonpayment. Termination of this agreement shall also terminate any sublicenses.

- 1.7 **Disclaimer.** The licensed Intellectual Property Rights and any tangible embodiments provided to Licensee are provided “AS IS” and QSI does not make any representations or warranties to Licensee with respect to such Intellectual Property Rights or tangible embodiments, whether express or implied, by statute, usage, trade custom, or otherwise. QSI does not guarantee or warrant that the Licensed Software will be secure or free of defects or meet Licensee’s requirements.
- 1.8 **Definitions.** As used in this agreement, the following definitions apply:
- (a) **“Intellectual Property Rights”** means common law and statutory rights recognized in any jurisdiction in the world, in, to, or associated with: (1) patents, patent applications, and invention disclosures; (2) copyrights, copyright registrations and applications, and mask work rights; (3) the protection of trade or industrial secrets or confidential information; (4) trademarks, service marks, and other designations of source or origin (collectively, **“Trademarks”**); (5) industrial designs; (6) databases and data collections; (7) all other intellectual property rights and proprietary rights; (8) for any items described in (1) through (7) above, any divisions, continuations, continuations-in-part, counterparts, re-examinations, post-grant reviews, inter parties reviews, supplemental examinations, provisionals, renewals, reissuances, extensions, and rights to apply for, file for, certify, register, record, or perfect; or (9) rights of attribution, paternity, integrity, modification, disclosure and withdrawal, and any other rights throughout the world that may be known as or referred to as “moral rights,” “artist’s rights,” or “droit moral.”
 - (b) **“Licensed Software”** means the MAXSITE suite of software of engineering applications, including any updates, upgrades, new versions, error corrections, or bug fixes and any data associated or used with such software.
 - (c) **“Territory”** means the countries of Egypt and Algeria.

2. MISCELLANEOUS

- 2.1 **Governing Law.** New York law governs all adversarial proceedings arising out of this agreement.
- 2.2 **Exclusive Jurisdiction.** Any adversarial proceeding arising out of this agreement shall be brought exclusively in the state and federal courts located in New York.
- 2.3 **Severability.** The parties acknowledge that if a dispute between the parties arises out of this agreement or the subject matter of this agreement, they would want the court to interpret this agreement as follows: (1) with respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; (2) if an unenforceable provision is modified or disregarded in accordance with this section 2.3, by holding that the rest of the agreement will remain in effect as

written; (3) by holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and (4) if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, by holding the entire agreement unenforceable.

- 2.4 **Waiver.** No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.
- 2.5 **Assignment.** Upon notice to QSI, Licensee may assign this agreement in its entirety to a third party.
- 2.6 **Amendment.** No modification of this agreement will be effective unless it is in writing and signed by the parties.
- 2.7 **Notices.** For a notice of other communication under this agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national transportation company (with all fees prepaid), (3) by fax, (4) by registered or certified mail, return receipt requested and postage prepaid, or (5) by email, when directed to the email address below. A valid notice or other communication under this agreement via the methods (1) through (4) above will be effective when received by the party to which it is addressed and if via email, when receipt is confirmed by a non-automated response. If the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, the notice or communication will be deemed received upon that rejection, refusal, or inability to deliver. Notices or other communications to a party must be addressed using the information specified below for that party or any other information specified by that party in a notice under this section 2.7.

QSI Notice:	Licensee Notice:
Rafael Diaz-Granados	Mohamed Abo Zaid
President & CEO	Middle East & Africa Operations Manager
11700 Katy Freeway, Suite 200	Building 61/3, Yasmeen Service Area, 1st Settlement
Houston, Texas 77079	New Cairo, Egypt
Email: RADG@qmax.com	Email: Mohamed.AboZaid@qmax.com

- 2.8 **Entire Agreement.** This agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all prior or contemporaneous discussions, or presentations and proposals, written or oral relating to such subject matter.
- 2.9 **Effectiveness and Date.** This agreement will become effective when all parties have signed it. Each party is signing this agreement on the date stated opposite that party's signature. The date of this agreement will be the date this agreement is signed by the

last party to sign it (as indicated by the date associated with that party's signature) (the "Effective Date"). If a party signs this agreement but fails to date their signature, the date the other party receives the signing party's signature will be deemed to be the date the signing party signed this agreement.

Q'MAX SOLUTIONS INC.

Date: May 22, 2020

By:  _____

Name: Rafael Diaz-Granados

Title: President & CEO

ENVIRONMENTAL SOLUTIONS FOR PETROLEUM SERVICES – FREE ZONE – S.A.E.

Date: May 22, 2020

By: _____

Name: Alex Church

Title: Manager Director

last party to sign it (as indicated by the date associated with that party's signature) (the "Effective Date"). If a party signs this agreement but fails to date their signature, the date the other party receives the signing party's signature will be deemed to be the date the signing party signed this agreement.

Date: May 22, 2020

Q'MAX SOLUTIONS INC.

By:  _____

Name: Rafael Diaz-Granados

Title: President & CEO

Date: May 22, 2020

ENVIRONMENTAL SOLUTIONS FOR PETROLEUM SERVICES – FREE ZONE – S.A.E.

By:  _____

Name: Byron A Church

Title: Manager Director

Exclusive License Agreement

This Exclusive License Agreement is between Q'Max Solutions Inc. ("QSI") and INTERNATIONAL DRILLING FLUIDS & ENGINEERING SERVICES COMPANY (IDEC) LTD. ("Licensee").

1. LICENSE AND PAYMENT

- 1.1 **License.** QSI hereby grants Licensee a worldwide, perpetual (unless terminated under section 1.6), and non-transferable (except to a permitted assignee of this agreement under section 2.5) license under all Intellectual Property Rights owned by QSI to exploit such Intellectual Property Rights in the Territory in any manner, including to: (1) use, make, have made, sell, offer for sale, and import any invention or article, (2) practice any method or process, and (3) use, reproduce, create derivative works of, distribute, publicly perform, and publicly display any work of authorship. Licensee may sublicense to third parties the licenses granted in this section 1.1. This license is exclusive (even as to QSI) in the Territory. Licensee shall not exercise the license granted in this section 1.1 outside the Territory or permit or authorize any sublicensee to do so. QSI shall use commercially reasonable efforts to prosecute and maintain any Intellectual Property Rights included in this license that are subject to any registration or application with a governmental entity.
- 1.2 **Delivery.** Within a reasonable time following the date of this agreement, QSI shall deliver to Licensee a copy of the tangible embodiments of the copyrights, trade secrets, and know-how included in the licensed Intellectual Property Rights, including any works of authorship and the Licensed Software in source and object code forms, but excluding any non-technology-related records. During the first six months of this agreement, QSI shall make available to Licensee its Rackspace-hosted server and Licensee may make a copy of the Licensed Software made available on that server.
- 1.3 **Trademarks.** Licensee shall use the Trademarks included in the licensed Intellectual Property Rights in a manner consistent with the quality standards and trademark usage practices followed by QSI prior to the grant of the license in this agreement.
- 1.4 **Maintenance Services.** During the first six months of this agreement, QSI shall deliver to Licensee all updates, upgrades, new versions, error corrections, or bug fixes for the Licensed Software created by QSI.
- 1.5 **Payment and Expenses.** No later than 30 days following the end of each month during the first five years of this agreement, Licensee shall pay QSI \$2500 in U.S. dollars.
- 1.6 **Term and Termination.** This agreement begins on the Effective Date and continues until terminated under this section 1.6. QSI may only terminate this agreement if Licensee does not pay QSI the amounts in section 1.5 when they are due and such failure to pay continues for more than 60 days after QSI has provided Licensee with notice of nonpayment. Termination of this agreement shall also terminate any sublicenses.

- 1.7 **Disclaimer.** The licensed Intellectual Property Rights and any tangible embodiments provided to Licensee are provided “AS IS” and QSI does not make any representations or warranties to Licensee with respect to such Intellectual Property Rights or tangible embodiments, whether express or implied, by statute, usage, trade custom, or otherwise. QSI does not guarantee or warrant that the Licensed Software will be secure or free of defects or meet Licensee’s requirements.
- 1.8 **Definitions.** As used in this agreement, the following definitions apply:
- (a) **“Intellectual Property Rights”** means common law and statutory rights recognized in any jurisdiction in the world, in, to, or associated with: (1) patents, patent applications, and invention disclosures; (2) copyrights, copyright registrations and applications, and mask work rights; (3) the protection of trade or industrial secrets or confidential information; (4) trademarks, service marks, and other designations of source or origin (collectively, **“Trademarks”**); (5) industrial designs; (6) databases and data collections; (7) all other intellectual property rights and proprietary rights; (8) for any items described in (1) through (7) above, any divisions, continuations, continuations-in-part, counterparts, re-examinations, post-grant reviews, inter parties reviews, supplemental examinations, provisionals, renewals, reissuances, extensions, and rights to apply for, file for, certify, register, record, or perfect; or (9) rights of attribution, paternity, integrity, modification, disclosure and withdrawal, and any other rights throughout the world that may be known as or referred to as “moral rights,” “artist’s rights,” or “droit moral.”
 - (b) **“Licensed Software”** means the MAXSITE suite of software of engineering applications, including any updates, upgrades, new versions, error corrections, or bug fixes and any data associated or used with such software.
 - (c) **“Territory”** means the United Arab Emirates and Kurdistan.

2. MISCELLANEOUS

- 2.1 **Governing Law.** New York law governs all adversarial proceedings arising out of this agreement.
- 2.2 **Exclusive Jurisdiction.** Any adversarial proceeding arising out of this agreement shall be brought exclusively in the state and federal courts located in New York.
- 2.3 **Severability.** The parties acknowledge that if a dispute between the parties arises out of this agreement or the subject matter of this agreement, they would want the court to interpret this agreement as follows: (1) with respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; (2) if an unenforceable provision is modified or disregarded in accordance with this section 2.3, by holding that the rest of the agreement will remain in effect as

written; (3) by holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and (4) if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, by holding the entire agreement unenforceable.

- 2.4 **Waiver.** No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.
- 2.5 **Assignment.** Upon notice to QSI, Licensee may assign this agreement in its entirety to a third party.
- 2.6 **Amendment.** No modification of this agreement will be effective unless it is in writing and signed by the parties.
- 2.7 **Notices.** For a notice of other communication under this agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national transportation company (with all fees prepaid), (3) by fax, (4) by registered or certified mail, return receipt requested and postage prepaid, or (5) by email, when directed to the email address below. A valid notice or other communication under this agreement via the methods (1) through (4) above will be effective when received by the party to which it is addressed and if via email, when receipt is confirmed by a non-automated response. If the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, the notice or communication will be deemed received upon that rejection, refusal, or inability to deliver. Notices or other communications to a party must be addressed using the information specified below for that party or any other information specified by that party in a notice under this section 2.7.

QSI Notice:	Licensee Notice:
Rafael Diaz-Granados	Mohamed Abo Zaid
President & CEO	Middle East & Africa Operations Manager
11700 Katy Freeway, Suite 200	Building 61/3, Yasmeen Service Area, 1st Settlement
Houston, Texas 77079	New Cairo, Egypt
Email: RADG@qmax.com	Email: Mohamed.AboZaid@qmax.com

- 2.8 **Entire Agreement.** This agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all prior or contemporaneous discussions, or presentations and proposals, written or oral relating to such subject matter.
- 2.9 **Effectiveness and Date.** This agreement will become effective when all parties have signed it. Each party is signing this agreement on the date stated opposite that party's signature. The date of this agreement will be the date this agreement is signed by the

last party to sign it (as indicated by the date associated with that party's signature) (the "Effective Date"). If a party signs this agreement but fails to date their signature, the date the other party receives the signing party's signature will be deemed to be the date the signing party signed this agreement.

Date: May 22, 2020

Q'MAX SOLUTIONS INC.


By:  _____

Name: Rafael Diaz-Granados

Title: President & CEO

Date: May 22, 2020

INTERNATIONAL DRILLING FLUIDS & ENGINEERING SERVICES COMPANY (IDEC) LTD.

By:  _____

Name: Celina Carter

Title: Secretary

Exclusive License Agreement

This Exclusive License Agreement is between Q'Max Solutions Inc. ("QSI") and Q'Max America Inc. ("Licensee").

1. LICENSE AND PAYMENT

- 1.1 **License.** QSI hereby grants Licensee a worldwide, perpetual (unless terminated under section 1.6), and non-transferable (except to a permitted assignee of this agreement under section 2.5) license under all Intellectual Property Rights owned by QSI to exploit such Intellectual Property Rights in the Territory in any manner, including to: (1) use, make, have made, sell, offer for sale, and import any invention or article, (2) practice any method or process, and (3) use, reproduce, create derivative works of, distribute, publicly perform, and publicly display any work of authorship. Licensee may sublicense to third parties the licenses granted in this section 1.1. This license is exclusive (even as to QSI) in the Territory. Licensee shall not exercise the license granted in this section 1.1 outside the Territory or permit or authorize any sublicensee to do so. QSI shall use commercially reasonable efforts to prosecute and maintain any Intellectual Property Rights included in this license that are subject to any registration or application with a governmental entity.
- 1.2 **Delivery.** Within a reasonable time following the date of this agreement, QSI shall deliver to Licensee a copy of the tangible embodiments of the copyrights, trade secrets, and know-how included in the licensed Intellectual Property Rights, including any works of authorship and the Licensed Software in source and object code forms, but excluding any non-technology-related records. During the first six months of this agreement, QSI shall make available to Licensee its Rackspace-hosted server and Licensee may make a copy of the Licensed Software made available on that server.
- 1.3 **Trademarks.** Licensee shall use the Trademarks included in the licensed Intellectual Property Rights in a manner consistent with the quality standards and trademark usage practices followed by QSI prior to the grant of the license in this agreement.
- 1.4 **Maintenance Services.** During the first six months of this agreement, QSI shall deliver to Licensee all updates, upgrades, new versions, error corrections, or bug fixes for the Licensed Software created by QSI.
- 1.5 **Payment and Expenses.** No later than 30 days following the end of each month during the first five years of this agreement, Licensee shall pay QSI \$2500 in U.S. dollars.
- 1.6 **Term and Termination.** This agreement begins on the Effective Date and continues until terminated under this section 1.6. QSI may only terminate this agreement if Licensee does not pay QSI the amounts in section 1.5 when they are due and such failure to pay continues for more than 60 days after QSI has provided Licensee with notice of nonpayment. Termination of this agreement shall also terminate any sublicenses.

- 1.7 **Disclaimer.** The licensed Intellectual Property Rights and any tangible embodiments provided to Licensee are provided “AS IS” and QSI does not make any representations or warranties to Licensee with respect to such Intellectual Property Rights or tangible embodiments, whether express or implied, by statute, usage, trade custom, or otherwise. QSI does not guarantee or warrant that the Licensed Software will be secure or free of defects or meet Licensee’s requirements.
- 1.8 **Definitions.** As used in this agreement, the following definitions apply:
- (a) **“Intellectual Property Rights”** means common law and statutory rights recognized in any jurisdiction in the world, in, to, or associated with: (1) patents, patent applications, and invention disclosures; (2) copyrights, copyright registrations and applications, and mask work rights; (3) the protection of trade or industrial secrets or confidential information; (4) trademarks, service marks, and other designations of source or origin (collectively, **“Trademarks”**); (5) industrial designs; (6) databases and data collections; (7) all other intellectual property rights and proprietary rights; (8) for any items described in (1) through (7) above, any divisions, continuations, continuations-in-part, counterparts, re-examinations, post-grant reviews, inter parties reviews, supplemental examinations, provisionals, renewals, reissuances, extensions, and rights to apply for, file for, certify, register, record, or perfect; or (9) rights of attribution, paternity, integrity, modification, disclosure and withdrawal, and any other rights throughout the world that may be known as or referred to as “moral rights,” “artist’s rights,” or “droit moral.”
 - (b) **“Licensed Software”** means the MAXSITE suite of software of engineering applications, including any updates, upgrades, new versions, error corrections, or bug fixes and any data associated or used with such software.
 - (c) **“Territory”** means the United States, including any of its territories.

2. MISCELLANEOUS

- 2.1 **Governing Law.** New York law governs all adversarial proceedings arising out of this agreement.
- 2.2 **Exclusive Jurisdiction.** Any adversarial proceeding arising out of this agreement shall be brought exclusively in the state and federal courts located in New York.
- 2.3 **Severability.** The parties acknowledge that if a dispute between the parties arises out of this agreement or the subject matter of this agreement, they would want the court to interpret this agreement as follows: (1) with respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; (2) if an unenforceable provision is modified or disregarded in accordance with this section 2.3, by holding that the rest of the agreement will remain in effect as

written; (3) by holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and (4) if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, by holding the entire agreement unenforceable.

- 2.4 **Waiver.** No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.
- 2.5 **Assignment.** Upon notice to QSI, Licensee may assign this agreement in its entirety to a third party.
- 2.6 **Amendment.** No modification of this agreement will be effective unless it is in writing and signed by the parties.
- 2.7 **Notices.** For a notice of other communication under this agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national transportation company (with all fees prepaid), (3) by fax, (4) by registered or certified mail, return receipt requested and postage prepaid, or (5) by email, when directed to the email address below. A valid notice or other communication under this agreement via the methods (1) through (4) above will be effective when received by the party to which it is addressed and if via email, when receipt is confirmed by a non-automated response. If the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, the notice or communication will be deemed received upon that rejection, refusal, or inability to deliver. Notices or other communications to a party must be addressed using the information specified below for that party or any other information specified by that party in a notice under this section 2.7.

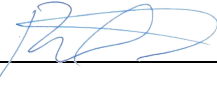
QSI Notice:	Licensee Notice:
Rafael Diaz-Granados	Chris Pennington
President & CEO	US Vice President
11700 Katy Freeway, Suite 200	11700 Katy Freeway, Suite 200
Houston, Texas 77079	Houston, Texas 77079
Email: RADG@qmax.com	Email: CPennington@AnchorUSA.com

- 2.8 **Entire Agreement.** This agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all prior or contemporaneous discussions, or presentations and proposals, written or oral relating to such subject matter.
- 2.9 **Effectiveness and Date.** This agreement will become effective when all parties have signed it. Each party is signing this agreement on the date stated opposite that party's signature. The date of this agreement will be the date this agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) (the "**Effective Date**"). If a party signs this agreement but fails to date their signature, the

date the other party receives the signing party's signature will be deemed to be the date the signing party signed this agreement.

Date: May 22, 2020

Q'MAX SOLUTIONS INC.

By:  _____

Name: Rafael Diaz-Granados

Title: President & CEO

Date: May 22, 2020

Q'MAX AMERICA INC.

By:  _____

Name: Rafael Diaz-Granados

Title: President

Exclusive License Agreement

This Exclusive License Agreement is between Q'Max Solutions Inc. ("QSI") and QMAX ARABIAN OIL AND GAS SERVICES CO. ("Licensee").

1. LICENSE AND PAYMENT

- 1.1 **License.** QSI hereby grants Licensee a worldwide, perpetual (unless terminated under section 1.6), and non-transferable (except to a permitted assignee of this agreement under section 2.5) license under all Intellectual Property Rights owned by QSI to exploit such Intellectual Property Rights in the Territory in any manner, including to: (1) use, make, have made, sell, offer for sale, and import any invention or article, (2) practice any method or process, and (3) use, reproduce, create derivative works of, distribute, publicly perform, and publicly display any work of authorship. Licensee may sublicense to third parties the licenses granted in this section 1.1. This license is exclusive (even as to QSI) in the Territory. Licensee shall not exercise the license granted in this section 1.1 outside the Territory or permit or authorize any sublicensee to do so. QSI shall use commercially reasonable efforts to prosecute and maintain any Intellectual Property Rights included in this license that are subject to any registration or application with a governmental entity.
- 1.2 **Delivery.** Within a reasonable time following the date of this agreement, QSI shall deliver to Licensee a copy of the tangible embodiments of the copyrights, trade secrets, and know-how included in the licensed Intellectual Property Rights, including any works of authorship and the Licensed Software in source and object code forms, but excluding any non-technology-related records. During the first six months of this agreement, QSI shall make available to Licensee its Rackspace-hosted server and Licensee may make a copy of the Licensed Software made available on that server.
- 1.3 **Trademarks.** Licensee shall use the Trademarks included in the licensed Intellectual Property Rights in a manner consistent with the quality standards and trademark usage practices followed by QSI prior to the grant of the license in this agreement.
- 1.4 **Maintenance Services.** During the first six months of this agreement, QSI shall deliver to Licensee all updates, upgrades, new versions, error corrections, or bug fixes for the Licensed Software created by QSI.
- 1.5 **Payment and Expenses.** No later than 30 days following the end of each month during the first five years of this agreement, Licensee shall pay QSI \$2500 in U.S. dollars.
- 1.6 **Term and Termination.** This agreement begins on the Effective Date and continues until terminated under this section 1.6. QSI may only terminate this agreement if Licensee does not pay QSI the amounts in section 1.5 when they are due and such failure to pay continues for more than 60 days after QSI has provided Licensee with notice of nonpayment. Termination of this agreement shall also terminate any sublicenses.

- 1.7 **Disclaimer.** The licensed Intellectual Property Rights and any tangible embodiments provided to Licensee are provided “AS IS” and QSI does not make any representations or warranties to Licensee with respect to such Intellectual Property Rights or tangible embodiments, whether express or implied, by statute, usage, trade custom, or otherwise. QSI does not guarantee or warrant that the Licensed Software will be secure or free of defects or meet Licensee’s requirements.
- 1.8 **Definitions.** As used in this agreement, the following definitions apply:
- (a) **“Intellectual Property Rights”** means common law and statutory rights recognized in any jurisdiction in the world, in, to, or associated with: (1) patents, patent applications, and invention disclosures; (2) copyrights, copyright registrations and applications, and mask work rights; (3) the protection of trade or industrial secrets or confidential information; (4) trademarks, service marks, and other designations of source or origin (collectively, **“Trademarks”**); (5) industrial designs; (6) databases and data collections; (7) all other intellectual property rights and proprietary rights; (8) for any items described in (1) through (7) above, any divisions, continuations, continuations-in-part, counterparts, re-examinations, post-grant reviews, inter parties reviews, supplemental examinations, provisionals, renewals, reissuances, extensions, and rights to apply for, file for, certify, register, record, or perfect; or (9) rights of attribution, paternity, integrity, modification, disclosure and withdrawal, and any other rights throughout the world that may be known as or referred to as “moral rights,” “artist’s rights,” or “droit moral.”
 - (b) **“Licensed Software”** means the MAXSITE suite of software of engineering applications, including any updates, upgrades, new versions, error corrections, or bug fixes and any data associated or used with such software.
 - (c) **“Territory”** means the country of Saudi Arabia.

2. MISCELLANEOUS

- 2.1 **Governing Law.** New York law governs all adversarial proceedings arising out of this agreement.
- 2.2 **Exclusive Jurisdiction.** Any adversarial proceeding arising out of this agreement shall be brought exclusively in the state and federal courts located in New York.
- 2.3 **Severability.** The parties acknowledge that if a dispute between the parties arises out of this agreement or the subject matter of this agreement, they would want the court to interpret this agreement as follows: (1) with respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; (2) if an unenforceable provision is modified or disregarded in accordance with this section 2.3, by holding that the rest of the agreement will remain in effect as

written; (3) by holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and (4) if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, by holding the entire agreement unenforceable.

- 2.4 **Waiver.** No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.
- 2.5 **Assignment.** Upon notice to QSI, Licensee may assign this agreement in its entirety to a third party.
- 2.6 **Amendment.** No modification of this agreement will be effective unless it is in writing and signed by the parties.
- 2.7 **Notices.** For a notice of other communication under this agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national transportation company (with all fees prepaid), (3) by fax, (4) by registered or certified mail, return receipt requested and postage prepaid, or (5) by email, when directed to the email address below. A valid notice or other communication under this agreement via the methods (1) through (4) above will be effective when received by the party to which it is addressed and if via email, when receipt is confirmed by a non-automated response. If the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, the notice or communication will be deemed received upon that rejection, refusal, or inability to deliver. Notices or other communications to a party must be addressed using the information specified below for that party or any other information specified by that party in a notice under this section 2.7.

QSI Notice:	Licensee Notice:
Rafael Diaz-Granados	Mohamed Abo Zaid
President & CEO	Middle East & Africa Operations Manager
11700 Katy Freeway, Suite 200	Building 61/3, Yasmeen Service Area, 1st Settlement
Houston, Texas 77079	New Cairo, Egypt
Email: RADG@qmax.com	Email: Mohamed.AboZaid@qmax.com

- 2.8 **Entire Agreement.** This agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all prior or contemporaneous discussions, or presentations and proposals, written or oral relating to such subject matter.
- 2.9 **Effectiveness and Date.** This agreement will become effective when all parties have signed it. Each party is signing this agreement on the date stated opposite that party's signature. The date of this agreement will be the date this agreement is signed by the

last party to sign it (as indicated by the date associated with that party's signature) (the "Effective Date"). If a party signs this agreement but fails to date their signature, the date the other party receives the signing party's signature will be deemed to be the date the signing party signed this agreement.

Date: May 22, 2020

Q'MAX SOLUTIONS INC.

By:  _____

Name: Rafael Diaz-Granados

Title: President & CEO

Date: May 22, 2020

QMAX ARABIAN OIL AND GAS SERVICES CO.

By: _____

Name: Guido Rivas

Title: Director

last party to sign it (as indicated by the date associated with that party's signature) (the "Effective Date"). If a party signs this agreement but fails to date their signature, the date the other party receives the signing party's signature will be deemed to be the date the signing party signed this agreement.

Date: May 22, 2020

Q'MAX SOLUTIONS INC.

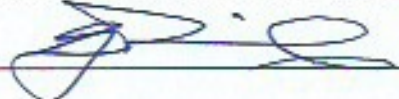
By:  _____

Name: Rafael Diaz-Granados

Title: President & CEO

Date: May 22, 2020

QMAX ARABIAN OIL AND GAS SERVICES CO.

By:  _____

Name: Guido Rivas

Title: Director

Exclusive License Agreement

This Exclusive License Agreement is between Q'Max Solutions Inc. ("QSI") and QMAX SOLUTIONS COLOMBIA ("Licensee").

1. LICENSE AND PAYMENT

- 1.1 **License.** QSI hereby grants Licensee a worldwide, perpetual (unless terminated under section 1.6), and non-transferable (except to a permitted assignee of this agreement under section 2.5) license under all Intellectual Property Rights owned by QSI to exploit such Intellectual Property Rights in the Territory in any manner, including to: (1) use, make, have made, sell, offer for sale, and import any invention or article, (2) practice any method or process, and (3) use, reproduce, create derivative works of, distribute, publicly perform, and publicly display any work of authorship. Licensee may sublicense to third parties the licenses granted in this section 1.1. This license is exclusive (even as to QSI) in the Territory. Licensee shall not exercise the license granted in this section 1.1 outside the Territory or permit or authorize any sublicensee to do so. QSI shall use commercially reasonable efforts to prosecute and maintain any Intellectual Property Rights included in this license that are subject to any registration or application with a governmental entity.
- 1.2 **Delivery.** Within a reasonable time following the date of this agreement, QSI shall deliver to Licensee a copy of the tangible embodiments of the copyrights, trade secrets, and know-how included in the licensed Intellectual Property Rights, including any works of authorship and the Licensed Software in source and object code forms, but excluding any non-technology-related records. During the first six months of this agreement, QSI shall make available to Licensee its Rackspace-hosted server and Licensee may make a copy of the Licensed Software made available on that server.
- 1.3 **Trademarks.** Licensee shall use the Trademarks included in the licensed Intellectual Property Rights in a manner consistent with the quality standards and trademark usage practices followed by QSI prior to the grant of the license in this agreement.
- 1.4 **Maintenance Services.** During the first six months of this agreement, QSI shall deliver to Licensee all updates, upgrades, new versions, error corrections, or bug fixes for the Licensed Software created by QSI.
- 1.5 **Payment and Expenses.** No later than 30 days following the end of each month during the first five years of this agreement, Licensee shall pay QSI \$2500 in U.S. dollars.
- 1.6 **Term and Termination.** This agreement begins on the Effective Date and continues until terminated under this section 1.6. QSI may only terminate this agreement if Licensee does not pay QSI the amounts in section 1.5 when they are due and such failure to pay continues for more than 60 days after QSI has provided Licensee with notice of nonpayment. Termination of this agreement shall also terminate any sublicenses.

- 1.7 **Disclaimer.** The licensed Intellectual Property Rights and any tangible embodiments provided to Licensee are provided “AS IS” and QSI does not make any representations or warranties to Licensee with respect to such Intellectual Property Rights or tangible embodiments, whether express or implied, by statute, usage, trade custom, or otherwise. QSI does not guarantee or warrant that the Licensed Software will be secure or free of defects or meet Licensee’s requirements.
- 1.8 **Definitions.** As used in this agreement, the following definitions apply:
- (a) **“Intellectual Property Rights”** means common law and statutory rights recognized in any jurisdiction in the world, in, to, or associated with: (1) patents, patent applications, and invention disclosures; (2) copyrights, copyright registrations and applications, and mask work rights; (3) the protection of trade or industrial secrets or confidential information; (4) trademarks, service marks, and other designations of source or origin (collectively, **“Trademarks”**); (5) industrial designs; (6) databases and data collections; (7) all other intellectual property rights and proprietary rights; (8) for any items described in (1) through (7) above, any divisions, continuations, continuations-in-part, counterparts, re-examinations, post-grant reviews, inter parties reviews, supplemental examinations, provisionals, renewals, reissuances, extensions, and rights to apply for, file for, certify, register, record, or perfect; or (9) rights of attribution, paternity, integrity, modification, disclosure and withdrawal, and any other rights throughout the world that may be known as or referred to as “moral rights,” “artist’s rights,” or “droit moral.”
 - (b) **“Licensed Software”** means the MAXSITE suite of software of engineering applications, including any updates, upgrades, new versions, error corrections, or bug fixes and any data associated or used with such software.
 - (c) **“Territory”** means the country of Colombia.

2. MISCELLANEOUS

- 2.1 **Governing Law.** New York law governs all adversarial proceedings arising out of this agreement.
- 2.2 **Exclusive Jurisdiction.** Any adversarial proceeding arising out of this agreement shall be brought exclusively in the state and federal courts located in New York.
- 2.3 **Severability.** The parties acknowledge that if a dispute between the parties arises out of this agreement or the subject matter of this agreement, they would want the court to interpret this agreement as follows: (1) with respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; (2) if an unenforceable provision is modified or disregarded in accordance with this section 2.3, by holding that the rest of the agreement will remain in effect as

written; (3) by holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and (4) if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, by holding the entire agreement unenforceable.

- 2.4 **Waiver.** No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.
- 2.5 **Assignment.** Upon notice to QSI, Licensee may assign this agreement in its entirety to a third party.
- 2.6 **Amendment.** No modification of this agreement will be effective unless it is in writing and signed by the parties.
- 2.7 **Notices.** For a notice of other communication under this agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national transportation company (with all fees prepaid), (3) by fax, (4) by registered or certified mail, return receipt requested and postage prepaid, or (5) by email, when directed to the email address below. A valid notice or other communication under this agreement via the methods (1) through (4) above will be effective when received by the party to which it is addressed and if via email, when receipt is confirmed by a non-automated response. If the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, the notice or communication will be deemed received upon that rejection, refusal, or inability to deliver. Notices or other communications to a party must be addressed using the information specified below for that party or any other information specified by that party in a notice under this section 2.7.

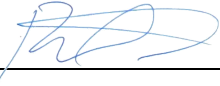
QSI Notice:	Licensee Notice:
Rafael Diaz-Granados	Juan Pablo Villaneda
President & CEO	General Manager
11700 Katy Freeway, Suite 200	Calle 100 No. 8A-49 Torre B Oficina 1018 - World Trade Center
Houston, Texas 77079	Bogotá, 110221 Colombia
Email: RADG@qmax.com	Email: Juan.Villaneda@qmax.com

- 2.8 **Entire Agreement.** This agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all prior or contemporaneous discussions, or presentations and proposals, written or oral relating to such subject matter.
- 2.9 **Effectiveness and Date.** This agreement will become effective when all parties have signed it. Each party is signing this agreement on the date stated opposite that party's signature. The date of this agreement will be the date this agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) (the

“Effective Date”). If a party signs this agreement but fails to date their signature, the date the other party receives the signing party’s signature will be deemed to be the date the signing party signed this agreement.

Date: May 22, 2020

Q'MAX SOLUTIONS INC.

By:  _____

Name: Rafael Diaz-Granados

Title: President & CEO

Date: May 22, 2020

QMAX SOLUTIONS COLOMBIA

By:  _____

Name: Daniel Sarmiento

Title: Deputy Legal Rep

Exclusive License Agreement

This Exclusive License Agreement is between Q'Max Solutions Inc. ("QSI") and QMAX MEXICO, S.A. DE C.V. ("Licensee").

1. LICENSE AND PAYMENT

- 1.1 **License.** QSI hereby grants Licensee a worldwide, perpetual (unless terminated under section 1.6), and non-transferable (except to a permitted assignee of this agreement under section 2.5) license under all Intellectual Property Rights owned by QSI to exploit such Intellectual Property Rights in the Territory in any manner, including to: (1) use, make, have made, sell, offer for sale, and import any invention or article, (2) practice any method or process, and (3) use, reproduce, create derivative works of, distribute, publicly perform, and publicly display any work of authorship. Licensee may sublicense to third parties the licenses granted in this section 1.1. This license is exclusive (even as to QSI) in the Territory. Licensee shall not exercise the license granted in this section 1.1 outside the Territory or permit or authorize any sublicensee to do so. QSI shall use commercially reasonable efforts to prosecute and maintain any Intellectual Property Rights included in this license that are subject to any registration or application with a governmental entity.
- 1.2 **Delivery.** Within a reasonable time following the date of this agreement, QSI shall deliver to Licensee a copy of the tangible embodiments of the copyrights, trade secrets, and know-how included in the licensed Intellectual Property Rights, including any works of authorship and the Licensed Software in source and object code forms, but excluding any non-technology-related records. During the first six months of this agreement, QSI shall make available to Licensee its Rackspace-hosted server and Licensee may make a copy of the Licensed Software made available on that server.
- 1.3 **Trademarks.** Licensee shall use the Trademarks included in the licensed Intellectual Property Rights in a manner consistent with the quality standards and trademark usage practices followed by QSI prior to the grant of the license in this agreement.
- 1.4 **Maintenance Services.** During the first six months of this agreement, QSI shall deliver to Licensee all updates, upgrades, new versions, error corrections, or bug fixes for the Licensed Software created by QSI.
- 1.5 **Payment and Expenses.** No later than 30 days following the end of each month during the first five years of this agreement, Licensee shall pay QSI \$2500 in U.S. dollars.
- 1.6 **Term and Termination.** This agreement begins on the Effective Date and continues until terminated under this section 1.6. QSI may only terminate this agreement if Licensee does not pay QSI the amounts in section 1.5 when they are due and such failure to pay continues for more than 60 days after QSI has provided Licensee with notice of nonpayment. Termination of this agreement shall also terminate any sublicenses.

- 1.7 **Disclaimer.** The licensed Intellectual Property Rights and any tangible embodiments provided to Licensee are provided “AS IS” and QSI does not make any representations or warranties to Licensee with respect to such Intellectual Property Rights or tangible embodiments, whether express or implied, by statute, usage, trade custom, or otherwise. QSI does not guarantee or warrant that the Licensed Software will be secure or free of defects or meet Licensee’s requirements.
- 1.8 **Definitions.** As used in this agreement, the following definitions apply:
- (a) **“Intellectual Property Rights”** means common law and statutory rights recognized in any jurisdiction in the world, in, to, or associated with: (1) patents, patent applications, and invention disclosures; (2) copyrights, copyright registrations and applications, and mask work rights; (3) the protection of trade or industrial secrets or confidential information; (4) trademarks, service marks, and other designations of source or origin (collectively, **“Trademarks”**); (5) industrial designs; (6) databases and data collections; (7) all other intellectual property rights and proprietary rights; (8) for any items described in (1) through (7) above, any divisions, continuations, continuations-in-part, counterparts, re-examinations, post-grant reviews, inter parties reviews, supplemental examinations, provisionals, renewals, reissuances, extensions, and rights to apply for, file for, certify, register, record, or perfect; or (9) rights of attribution, paternity, integrity, modification, disclosure and withdrawal, and any other rights throughout the world that may be known as or referred to as “moral rights,” “artist’s rights,” or “droit moral.”
 - (b) **“Licensed Software”** means the MAXSITE suite of software of engineering applications, including any updates, upgrades, new versions, error corrections, or bug fixes and any data associated or used with such software.
 - (c) **“Territory”** means the country of Mexico.

2. MISCELLANEOUS

- 2.1 **Governing Law.** New York law governs all adversarial proceedings arising out of this agreement.
- 2.2 **Exclusive Jurisdiction.** Any adversarial proceeding arising out of this agreement shall be brought exclusively in the state and federal courts located in New York.
- 2.3 **Severability.** The parties acknowledge that if a dispute between the parties arises out of this agreement or the subject matter of this agreement, they would want the court to interpret this agreement as follows: (1) with respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; (2) if an unenforceable provision is modified or disregarded in accordance with this section 2.3, by holding that the rest of the agreement will remain in effect as

written; (3) by holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and (4) if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, by holding the entire agreement unenforceable.

- 2.4 **Waiver.** No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.
- 2.5 **Assignment.** Upon notice to QSI, Licensee may assign this agreement in its entirety to a third party.
- 2.6 **Amendment.** No modification of this agreement will be effective unless it is in writing and signed by the parties.
- 2.7 **Notices.** For a notice of other communication under this agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national transportation company (with all fees prepaid), (3) by fax, (4) by registered or certified mail, return receipt requested and postage prepaid, or (5) by email, when directed to the email address below. A valid notice or other communication under this agreement via the methods (1) through (4) above will be effective when received by the party to which it is addressed and if via email, when receipt is confirmed by a non-automated response. If the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, the notice or communication will be deemed received upon that rejection, refusal, or inability to deliver. Notices or other communications to a party must be addressed using the information specified below for that party or any other information specified by that party in a notice under this section 2.7.


QSI Notice:	Licensee Notice:
Rafael Diaz-Granados	Carlos Castro
President & CEO	Country Manager
11700 Katy Freeway, Suite 200	Prolongacion Avenida 27 de Febrero #3017 Fraccionamiento Galaxias Villahermosa, Centro,
Houston, Texas 77079	Tabasco, CP, 86035 Mexico
Email: RADG@qmax.com	Email: carlos.castro@qmax.com

- 2.8 **Entire Agreement.** This agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all prior or contemporaneous discussions, or presentations and proposals, written or oral relating to such subject matter.
- 2.9 **Effectiveness and Date.** This agreement will become effective when all parties have signed it. Each party is signing this agreement on the date stated opposite that party's signature. The date of this agreement will be the date this agreement is signed by the

last party to sign it (as indicated by the date associated with that party's signature) (the "Effective Date"). If a party signs this agreement but fails to date their signature, the date the other party receives the signing party's signature will be deemed to be the date the signing party signed this agreement.

Date: May 22, 2020

Q'MAX SOLUTIONS INC.

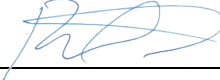
By:  _____

Name: Rafael Diaz-Granados

Title: President & CEO

Date: May 22, 2020

QMAX MEXICO, S.A. DE C.V.

By:  _____

Name: Rafael Diaz-Granados

Title: President

Exclusive License Agreement

This Exclusive License Agreement is between Q'Max Solutions Inc. ("QSI") and UNITED QMAX DRILLING FLUIDS COMPANY CO. ("Licensee").

1. LICENSE AND PAYMENT

- 1.1 **License.** QSI hereby grants Licensee a worldwide, perpetual (unless terminated under section 1.6), and non-transferable (except to a permitted assignee of this agreement under section 2.5) license under all Intellectual Property Rights owned by QSI to exploit such Intellectual Property Rights in the Territory in any manner, including to: (1) use, make, have made, sell, offer for sale, and import any invention or article, (2) practice any method or process, and (3) use, reproduce, create derivative works of, distribute, publicly perform, and publicly display any work of authorship. Licensee may sublicense to third parties the licenses granted in this section 1.1. This license is exclusive (even as to QSI) in the Territory. Licensee shall not exercise the license granted in this section 1.1 outside the Territory or permit or authorize any sublicensee to do so. QSI shall use commercially reasonable efforts to prosecute and maintain any Intellectual Property Rights included in this license that are subject to any registration or application with a governmental entity.
- 1.2 **Delivery.** Within a reasonable time following the date of this agreement, QSI shall deliver to Licensee a copy of the tangible embodiments of the copyrights, trade secrets, and know-how included in the licensed Intellectual Property Rights, including any works of authorship and the Licensed Software in source and object code forms, but excluding any non-technology-related records. During the first six months of this agreement, QSI shall make available to Licensee its Rackspace-hosted server and Licensee may make a copy of the Licensed Software made available on that server.
- 1.3 **Trademarks.** Licensee shall use the Trademarks included in the licensed Intellectual Property Rights in a manner consistent with the quality standards and trademark usage practices followed by QSI prior to the grant of the license in this agreement.
- 1.4 **Maintenance Services.** During the first six months of this agreement, QSI shall deliver to Licensee all updates, upgrades, new versions, error corrections, or bug fixes for the Licensed Software created by QSI.
- 1.5 **Payment and Expenses.** No later than 30 days following the end of each month during the first five years of this agreement, Licensee shall pay QSI \$2500 in U.S. dollars.
- 1.6 **Term and Termination.** This agreement begins on the Effective Date and continues until terminated under this section 1.6. QSI may only terminate this agreement if Licensee does not pay QSI the amounts in section 1.5 when they are due and such failure to pay continues for more than 60 days after QSI has provided Licensee with notice of nonpayment. Termination of this agreement shall also terminate any sublicenses.

- 1.7 **Disclaimer.** The licensed Intellectual Property Rights and any tangible embodiments provided to Licensee are provided “AS IS” and QSI does not make any representations or warranties to Licensee with respect to such Intellectual Property Rights or tangible embodiments, whether express or implied, by statute, usage, trade custom, or otherwise. QSI does not guarantee or warrant that the Licensed Software will be secure or free of defects or meet Licensee’s requirements.
- 1.8 **Definitions.** As used in this agreement, the following definitions apply:
- (a) **“Intellectual Property Rights”** means common law and statutory rights recognized in any jurisdiction in the world, in, to, or associated with: (1) patents, patent applications, and invention disclosures; (2) copyrights, copyright registrations and applications, and mask work rights; (3) the protection of trade or industrial secrets or confidential information; (4) trademarks, service marks, and other designations of source or origin (collectively, **“Trademarks”**); (5) industrial designs; (6) databases and data collections; (7) all other intellectual property rights and proprietary rights; (8) for any items described in (1) through (7) above, any divisions, continuations, continuations-in-part, counterparts, re-examinations, post-grant reviews, inter parties reviews, supplemental examinations, provisionals, renewals, reissuances, extensions, and rights to apply for, file for, certify, register, record, or perfect; or (9) rights of attribution, paternity, integrity, modification, disclosure and withdrawal, and any other rights throughout the world that may be known as or referred to as “moral rights,” “artist’s rights,” or “droit moral.”
 - (b) **“Licensed Software”** means the MAXSITE suite of software of engineering applications, including any updates, upgrades, new versions, error corrections, or bug fixes and any data associated or used with such software.
 - (c) **“Territory”** means the United States, including any of its territories.

2. MISCELLANEOUS

- 2.1 **Governing Law.** New York law governs all adversarial proceedings arising out of this agreement.
- 2.2 **Exclusive Jurisdiction.** Any adversarial proceeding arising out of this agreement shall be brought exclusively in the state and federal courts located in New York.
- 2.3 **Severability.** The parties acknowledge that if a dispute between the parties arises out of this agreement or the subject matter of this agreement, they would want the court to interpret this agreement as follows: (1) with respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; (2) if an unenforceable provision is modified or disregarded in accordance with this section 2.3, by holding that the rest of the agreement will remain in effect as

written; (3) by holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and (4) if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, by holding the entire agreement unenforceable.

- 2.4 **Waiver.** No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.
- 2.5 **Assignment.** Upon notice to QSI, Licensee may assign this agreement in its entirety to a third party.
- 2.6 **Amendment.** No modification of this agreement will be effective unless it is in writing and signed by the parties.
- 2.7 **Notices.** For a notice of other communication under this agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national transportation company (with all fees prepaid), (3) by fax, (4) by registered or certified mail, return receipt requested and postage prepaid, or (5) by email, when directed to the email address below. A valid notice or other communication under this agreement via the methods (1) through (4) above will be effective when received by the party to which it is addressed and if via email, when receipt is confirmed by a non-automated response. If the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, the notice or communication will be deemed received upon that rejection, refusal, or inability to deliver. Notices or other communications to a party must be addressed using the information specified below for that party or any other information specified by that party in a notice under this section 2.7.

QSI Notice:	Licensee Notice:
Rafael Diaz-Granados	Mohamed Abo Zaid
President & CEO	Middle East & Africa Operations Manager
11700 Katy Freeway, Suite 200	Building 61/3, Yasmeen Service Area, 1st Settlement
Houston, Texas 77079	New Cairo, Egypt
Email: RADG@qmax.com	Email: Mohamed.AboZaid@qmax.com

- 2.8 **Entire Agreement.** This agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all prior or contemporaneous discussions, or presentations and proposals, written or oral relating to such subject matter.
- 2.9 **Effectiveness and Date.** This agreement will become effective when all parties have signed it. Each party is signing this agreement on the date stated opposite that party's signature. The date of this agreement will be the date this agreement is signed by the

last party to sign it (as indicated by the date associated with that party's signature) (the "Effective Date"). If a party signs this agreement but fails to date their signature, the date the other party receives the signing party's signature will be deemed to be the date the signing party signed this agreement.

Date: May 22, 2020

Q'MAX SOLUTIONS INC.

By:  _____

Name: Rafael Diaz-Granados

Title: President & CEO

Date: May 22, 2020

UNITED QMAX DRILLING FLUIDS COMPANY CO.

By: _____

Name: Guido Rivas

Title: Member

last party to sign it (as indicated by the date associated with that party's signature) (the "Effective Date"). If a party signs this agreement but fails to date their signature, the date the other party receives the signing party's signature will be deemed to be the date the signing party signed this agreement.

Date: May 22, 2020

Q'MAX SOLUTIONS INC.

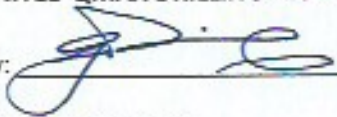
By:  _____

Name: Rafael Diaz-Granados

Title: President & CEO

Date: May 22, 2020

UNITED QMAX DRILLING FLUIDS COMPANY CO.

By:  _____

Name: Guido Rivas

Title: Member

TERM RENEWAL AGREEMENT

Customer Account Information	
Customer Name	QMax Solutions
Account Number	2963059
Business Development Consultant	Clint Butler
Account Manager	Kerry Hendricks
Effective Date	<p>[EITHER] This Term Renewal Agreement is conditional and subject to Rackspace's express email acceptance of Customer's signed copy of this Term Renewal Agreement. The Effective Date of this Term Renewal Agreement shall be (i) the first calendar day of the month following the date of Rackspace's acceptance email, if the signed Term Renewal Agreement is received by Rackspace before the 25th day of the month; or (ii) the first calendar day of the month after next following the date of Rackspace's acceptance email, if the signed Term Renewal Agreement is received by Rackspace after the 25th day of the month.</p> <p>[OR – RACKSPACE US, INC. ACCOUNTS ONLY] The first calendar day of the month following the date of Rackspace's receipt of Customer's signed copy of this Term Renewal Agreement, if received by Rackspace before the 25th day of the month; or the first calendar day of the month after next following the date of Rackspace's receipt of Customer's signed copy of this Term Renewal Agreement, if received by Rackspace after the 25th day of the month.</p>
New Term (# months)	36

Customer Contact Information	
Billing Contact Name	Janet Hall
Telephone	832-672-4485
Email Address	Janet.hall@qmax.com
Address	11700 Katy Freeway STE 200
City	Houston
Postal Code	77079
State/Province	Texas
Country	United States

This Term Renewal Agreement is between the Rackspace entity ("**Rackspace**") identified in the agreement for the Rackspace Services set out in this Term Renewal Agreement (the "**Agreement**") and the customer identified above ("**Customer**"), each a "**party**" and together the "**parties**", effective as of the effective date set out above ("**Effective Date**"). The parties acknowledge and agree:

1. The pricing in the current monthly fee column of the table below is the monthly recurring fee that Customer is paying (in addition to any utility fees and one-time charges) for the Services set out in this Term Renewal



Agreement, as of the date of preparation of this Term Renewal Agreement by Rackspace (the "Current Monthly Fee").

2. Upon the Effective Date, the then current term of the Services shall be extended for the number of months identified in the table above (as extended, the "New Term"). Notwithstanding anything to the contrary in the Agreement, following expiry of the New Term the Services shall automatically renew for consecutive 90 day periods (each an "Auto Renewal Period") unless: (i) the parties enter into an agreement for a fixed term extension or (ii) either party provides the other with written notice of non-renewal at least 90 days prior to the expiration of the then current term.

3. From the first invoice following the Effective Date and until expiry of the New Term, Customer shall pay Rackspace the amount in the new monthly fee column of the table below on a monthly basis (the "New Monthly Fee" plus any subsequent additional upgrade charges), for the Services set out in this Term Renewal Agreement, in addition to any utility fees and one-time charges.

4. Upon expiration of the New Term, Customer shall pay Rackspace the amount in the future monthly fee column of the table below on a monthly basis (the "Future Monthly Fee", plus any subsequent additional upgrade charges) for the Services set out in this Term Renewal Agreement, in addition to any utility fees and one-time charges; and Rackspace may increase the Future Monthly Fee following expiry of the New Term in accordance with the Agreement.

5. Notwithstanding anything to the contrary in the Agreement, if at any time a third-party license provider directly or indirectly increases the fee that they charge Rackspace for Customer's use of Third Party Software (meaning any third party software applications or services used in connection with the Services), Rackspace may increase Customer's fees by the same percentage amount on giving at least 90 days advance written notice.

6. The Agreement is ratified, confirmed and remains in full force and effect as amended by this Term Renewal Agreement (including by the New Term, New Monthly Fee, Future Monthly Fee, the End of Life Terms at <http://www.rackspace.com/information/legal/eolterms.php>, and any Additional Terms set out below).

Additional Terms			

Prepay Contract	Yes		No	x
Prepay Term				
Total Prepay Amount				

Device	Current Monthly Fee	New Monthly Fee	Future Monthly Fee	Device Notes
614052	\$794.50	\$675.33	\$866.01	614052-fw1.accenture.com
614053	\$794.50	\$675.33	\$866.01	614053-fw2.accenture.com
689889	\$1,761.00	\$1,496.85	\$1,919.49	689889-hyp3.ord1.rvi.local
750068	\$1,337.75	\$1,137.09	\$1,337.75	FibreSwitch1a.qmaxsolutions.com
750071	\$1,337.76	\$1,137.10	\$1,337.76	FibreSwitch1b.qmaxsolutions.com
750072	\$1,761.00	\$1,496.85	\$1,919.49	750072-hyp4.ord1.rvi.local
750076	\$1,761.00	\$1,496.85	\$1,919.49	750076-hyp5.ord1.rvi.local



906915	\$1,761.00	\$1,496.85	\$1,919.49	906915-hyp6.ord1.rvi.local
918866	\$150.00	\$150.00	\$150.00	918866-colo1.qmaxsolutions.com
918867	\$150.00	\$150.00	\$150.00	918867-colo2.qmaxsolutions.com
980102	\$6,200.00	\$6,200.00	\$6,200.00	980102- dSAN1.qmaxsolutions.com
980104	\$2,685.00	\$2,685.00	\$2,685.00	980104-DAE1.qmaxsolutions.com
Totals:	Current Monthly Fee Total	New Monthly Fee Total	Future Monthly Fee Total	
	\$20,493.51	\$18,797.25	\$21,270.48	

SIGNATURE PAGE FOLLOWS

The persons signing below warrant and represent that they are authorized to sign this Term Renewal Agreement on behalf of their respective parties.

Customer:
By: Janet Hall
Printed Name: Janet Hall
Title: VP/CIO
Date Signed: 3/19/19

Rackspace:
By: _____
Printed Name: _____
Title: _____
Date Signed: _____

Rackspace Service Order Instructions

This Service Order is valid only if accepted before 31 March 2019. Other than completion of the signatory information sections, changes may not be made to the Service Order. Unauthorized changes are not legally binding on Rackspace. Should you have any questions or concerns about the contents, please contact your sales representative.

INSTRUCTIONS

Service Order	
Agreement	This section specifies the terms and conditions which constitute the complete agreement between your company and Rackspace for the Services selected by you.
Acceptance	Complete the signature information sections, and obtain the signature of an authorized officer of your Company using Rackspace's E-Signature feature. The authorized Customer representative will receive an email with a link to the myRackspace Portal. The Customer will review, accept, and fill out required form. In the Electronic Signature section, an IP capture will display. Upon submittal of electronically signed contract and required form, a confirmation e-mail will be sent to the Customer.
Services	
Services Detail	This section describes the products and services which will comprise your Services and specifies the pricing for them.
Decommissioned Devices	This section outlines Rackspace's policy for decommissioned devices as applicable.
Deployment Commitment	The time period within which Rackspace has committed to deploy the Services selected, if applicable.
Bandwidth Overages	Specifies Rackspace's fees for bandwidth overages, if applicable.

Service Order

This Service Order is between Rackspace US, Inc (“we” or “**Rackspace**”) and the customer who signs below (“you” or “**Customer**”). The following terms are incorporated in this Service Order by reference:

- i. This Service Order is subject to and governed by the Rackspace Master Services Agreement (“MSA”) located at <https://www.rackspace.com/information/legal/msa> as of the date of your acceptance of this Service Order
- ii. The Dedicated Hosting Product Terms found at <https://www.rackspace.com/information/legal/dedicatedhostingterms> as of the date of your acceptance of this Service Order apply to your use of the dedicated hosting services

The Agreement constitutes the complete and exclusive agreement between the parties regarding the subject matter and supersedes and replaces any prior understanding or communication, written or oral. The individual signing represents to Rackspace that they are authorized to sign on behalf of Customer. Customer accepts the terms of the Agreement, including any document or terms referenced above.

Accepted by Customer (All Fields Required)

Signature:

67.200.184.162

Printed Name: Brad Hilliard

Job Title: IT Director

Company: QMax Solutions

Date: 2019-03-14T16:03:40.000-05:00

Accepted by Rackspace US, Inc

Signature:



Printed Name: Michael Bross

Job Title: VP & Deputy General Counsel

Date: 14 March 2019

Services

Current Customer Information:

Company Name: QMax Solutions	Type of Contract: Upgrade
Data Center: Elk Grove Village (ORD1)	Term: 12 months
Service Level: Intensive	

Solution Detail:

VM Recovery Upgrade

VMR Proxy Servers

Virtual Machine Recovery for Managed Backup			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
4	\$0.00 USD	\$121.70 USD	\$0.00 USD	\$486.80 USD
<ul style="list-style-type: none"> A minimum of 15% free disk space is required on all VMware datastores containing Virtual Machines. Virtual Machine backup jobs are stopped if less than 5% free disk space is available. VM Recovery Proxy uses VMware hypervisor snapshot functionality as a basis for backups. VM Recovery Proxy provides file, folder and Virtual Machine image recovery options. Backup and restore times depend on usage of hypervisor and network during running processes. Client-based data de-duplication is utilized in order to reduce backup times. Hypervisor Processor: Dual Processor 18-Core QTY: 1 Operating System: Windows Server 2012 R2 Standard - 64Bit - Virtual Machine QTY: 18 vRam: vRAM (MB) QTY: 4096 vCPUs: vCPU - Single Core QTY: 4 vDisk: vDisk (GB) QTY: 60 Backup Agent: Managed Backup VM Recovery Proxy Agent QTY: 1 				

VMR upgrade to existing VMs

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> OS Type: Windows QTY: 1 Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 MBU Schedule: Weekly Full + Daily Incremental QTY: 1 Associated To: 621143 621143-ts1.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 639866 639866-Focus.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 735844 735844-Q1S1.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 735846 735846-Q1S2.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 743166 743166-QAFE1.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 753969 753969-AXUAOS2.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 753970 753970-AXUAOS1.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 753975 753975-AXUSP1.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 778785 778785-AXPAOS0.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 778786 778786-AXPAOS1.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 778787 778787-AXPAOS2.qmaxsolutions.com 				



VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 778789 778789-AXPAOS3.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 780414 780414-AXPSP1.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 780415 780415-AXPSP2.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 780416 780416-AXPRDS1.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 780418 780418-AXPRDS2.qmaxsolutions.com 				



VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 780419 780419-AXPRDS3.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 852875 852875-AXQAPPS1.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 862358 862358-AXPRDS4.qmaxsolutions.com 				

VMware Server Virtualization VM Upgrade			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Utility	Setup	Utility
1	\$0.00 USD	\$6.00 USD	\$0.00 USD	\$6.00 USD
<ul style="list-style-type: none"> • OS Type: Windows QTY: 1 • Backup Agent: Base Backup Agent + VM Recovery Agent - Virtual Machine QTY: 1 • MBU Schedule: Weekly Full + Daily Incremental QTY: 1 • Associated To: 862359 862359-AXPRDS5.qmaxsolutions.com 				

Service Order Total

Monthly Recurring ⁽¹⁾	\$0.00 USD
Monthly Utility Fee ⁽²⁾	\$606.80 USD
Total Monthly Invoice ⁽³⁾	\$606.80 USD
Setup Fee	\$0.00 USD
One Time Fee	\$0.00 USD
Total One Time/Setup Fee	\$0.00 USD

Please note that the prices above exclude applicable taxes

1. Your Services Description may comprise several distinct services. Rackspace may raise an invoice for each service separately on the service's online date.
2. Monthly Utility Fee may change based on usage.
3. The amount due under the Total Monthly Invoice may change if your use of bandwidth-based products and services exceeds the subscribed amount.

Deployment Schedule

The services described in the Solutions Detail above will be deployed beginning from the time that Rackspace has completed verification and credit check procedures, has received all required information from Customer, and has completed implementation call, as applicable. See Section 2.1 of the Product Terms and Conditions for more detail.

Please note any virtual machines and dedicated servers will be deployed promptly following the completion of the implementation call (where applicable), and billing will commence upon completion of their deployment. Storage and other services will be deployed as they are available following the implementation call. If you prefer to have all Services deployed simultaneously, please notify your Account Manager or Implementation Lead. Changes to deployment dates require a modified contract.

The services will be deployed 10 business days beginning from the time Rackspace has completed the above procedures, as applicable.

Bandwidth Overages (US Data Centers)

The bandwidth amounts included in this order constitute aggregate totals of use for the configuration described. This amount is independent of, and not increased directly by, the number of servers or other devices. Rackspace makes no promise that additional servers or devices will include the same amount or any additional amount of bandwidth. If you purchase pre-paid bandwidth in excess of the bandwidth included with your Services, charges for the overages will be billed at the rate of your prepay bandwidth. If you do not purchase pre-paid bandwidth in excess of the bandwidth included with your Services, you will be charged \$0.50 USD per GB for Services provided from a US data center.

For Services provided from a non-US data center, please refer to <https://www.rackspace.com/information/legal/standardbandwidth> for bandwidth and backup pricing.

Dear Customer,

We are excited to build your order; however, there are a few missing pieces that we need from you in order to finalize and deploy your system. Please fill out the below required information (where applicable) and return to your Rackspace Team. If you need assistance, or have questions, please contact your Business Development Consultant as soon as possible.

Thank you!

If there is segmentation between servers, in what network segment do the new devices go? (Please specify each device, or ALL devices)

Please specify behind which existing network device(s) if any, your new devices go:

Please confirm the IP scheme that will not conflict with your existing configuration:

How would you like your new devices named? (Attach separately if additional room is required)

(Windows devices have a 7 character limit.)

Devices are assigned the following default partitioning:

Linux: LVM file system./boot – 250MB, swap -2GB, /tmp – 2GB, /var/log -10% disk size, /- 35% disk size, remainder for growth

Windows: Single C:\ Partition

If you require different partitioning than the default, please specify the Custom Partitioning on servers:

Domain preference:

FOR INTERNAL USE:

Contract For:

Date of completion of QC Space & Power Ticket:

Was the Virtualization Sizing Tool used (if VMs included in configuration):

Yes (Please attach) No

Please add any migration or special build notes:

If adding SAN or DAS, please attach necessary configuration detail.

Toll Free: 1.800.961.2888 | International: 1.210.312.4700 | www.rackspace.com

Copyright © Rackspace | Rackspace® and Fanatical Support® are service marks of Rackspace registered in the United States and other countries. All trademarks, service marks, images, products and brands remain the sole property of their respective holders.

RACKSPACE® HOSTING | 1 FANATICAL PLACE | WINDCREST, TX 78218 U.S.A.

Rackspace Service Order Instructions

This Service Order is valid only if accepted before 31 January 2018. Other than completion of the signatory information sections, changes may not be made to the Service Order. Unauthorized changes are not legally binding on Rackspace. Should you have any questions or concerns about the contents, please contact your sales representative.

INSTRUCTIONS

Service Order	
Agreement	This section specifies the terms and conditions which constitute the complete agreement between your company and Rackspace for the Services selected by you.
Acceptance	Complete the signature information sections, and obtain the signature of an authorized officer of your Company using Rackspace's E-Signature feature. The authorized Customer representative will receive an email with a link to the myRackspace Portal. The Customer will review, accept, and fill out required form. In the Electronic Signature section, an IP capture will display. Upon submittal of electronically signed contract and required form, a confirmation e-mail will be sent to the Customer.
Services	
Services Detail	This section describes the products and services which will comprise your Services and specifies the pricing for them.
Decommissioned Devices	This section outlines Rackspace's policy for decommissioned devices as applicable.
Deployment Commitment	The time period within which Rackspace has committed to deploy the Services selected, if applicable.
Bandwidth Overages	Specifies Rackspace's fees for bandwidth overages, if applicable.

Service Order

This Service Order is between Rackspace US, Inc (“we” or “**Rackspace**”) and the customer who signs below (“you” or “**Customer**”). The following terms are incorporated in this Service Order by reference:

- i. This Service Order is subject to and governed by the Rackspace Global Services Agreement (“GSA”) located at <https://www.rackspace.com/information/legal/gsa> as of the date of your acceptance of this Service Order
- ii. The Dedicated Hosting Product Terms found at <https://www.rackspace.com/information/legal/dedicatedhostingterms> as of the date of your acceptance of this Service Order apply to your use of the dedicated hosting services

The Agreement constitutes the complete and exclusive agreement between the parties regarding the subject matter and supersedes and replaces any prior understanding or communication, written or oral. The individual signing represents to Rackspace that they are authorized to sign on behalf of Customer. Customer accepts the terms of the Agreement, including any document or terms referenced above.

Accepted by Customer (All Fields Required)

Signature: 67.200.184.162
Printed Name: William B Hilliard
Job Title: Global IT Infrastructure Director
Company: QMax Solutions
Date: 2017-12-17T16:09:38.000-06:00

Accepted by Rackspace US, Inc

Signature: _____
Printed Name: _____
Job Title: _____
Date: _____

Services

Current Customer Information:

Company Name: QMax Solutions	Type of Contract: Upgrade
Data Center: Elk Grove Village (ORD1)	Term: 12 months
Service Level: Intensive	

Solution Detail:

Option 1

Configuration 1

Colo Device			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Monthly	Setup	Monthly
2	\$0.00 USD	\$150.00 USD	\$0.00 USD	\$300.00 USD
<ul style="list-style-type: none"> • Customer Device's Make: Meraki Firewall • Customer Device's Model: Meraki Firewall • Colocation Server: Colo Device - Dual Corded QTY: 1 <ul style="list-style-type: none"> ◦ Includes Space, Power and Network Connectivity ◦ Number of rack units per dual corded colo device ◦ Includes secure storage of a spare device, if provided 				

Service Order Total

Monthly Recurring ⁽¹⁾	\$300.00 USD
Monthly Utility Fee ⁽²⁾	\$0.00 USD
Total Monthly Invoice ⁽³⁾	\$300.00 USD
Setup Fee	\$0.00 USD
One Time Fee	\$0.00 USD
Total One Time/Setup Fee	\$0.00 USD

Please note that the prices above exclude applicable taxes

1. Your Services Description may comprise several distinct services. Rackspace may raise an invoice for each service separately on the service's online date.
2. Monthly Utility Fee may change based on usage.
3. The amount due under the Total Monthly Invoice may change if your use of bandwidth-based products and services exceeds the subscribed amount.

Deployment Schedule

The services described in the Solutions Detail above will be deployed beginning from the time that Rackspace has completed verification and credit check procedures, has received all required information from Customer, and has completed implementation call, as applicable. See Section 2.1 of the Product Terms and Conditions for more detail.

Please note any virtual machines and dedicated servers will be deployed promptly following the completion of the implementation call (where applicable), and billing will commence upon completion of their deployment. Storage and other services will be deployed as they are available following the implementation call. If you prefer to have all Services deployed simultaneously, please notify your Account Manager or Implementation Lead. Changes to deployment dates require a modified contract.

The services will be deployed 10 business days beginning from the time Rackspace has completed the above procedures, as applicable.

Bandwidth Overages (US Data Centers)

The bandwidth amounts included in this order constitute aggregate totals of use for the configuration described. This amount is independent of, and not increased directly by, the number of servers or other devices. Rackspace makes no promise that additional servers or devices will include the same amount or any additional amount of bandwidth. If you purchase pre-paid bandwidth in excess of the bandwidth included with your Services, charges for the overages will be billed at the rate of your prepay bandwidth. If you do not purchase pre-paid bandwidth in excess of the bandwidth included with your Services, you will be charged \$0.50 USD per GB for Services provided from a US data center.

For Services provided from a non-US data center, please refer to <http://www.rackspace.com/information/legal/bandwidthpricing> for bandwidth and backup pricing.

Dear Customer,

We are excited to build your order; however, there are a few missing pieces that we need from you in order to finalize and deploy your system. Please fill out the below required information (where applicable) and return to your Rackspace Team. If you need assistance, or have questions, please contact your Business Development Consultant as soon as possible.

Thank you!

If there is segmentation between servers, in what network segment do the new devices go? (Please specify each device, or ALL devices)

Please specify behind which existing network device(s) if any, your new devices go:

Please confirm the IP scheme that will not conflict with your existing configuration:

How would you like your new devices named? (Attach separately if additional room is required)

(Windows devices have a 7 character limit. Ex: 1234567.hostname.com)

Devices are assigned the following default partitioning:

Linux: LVM file system./boot – 250MB, swap -2GB, /tmp – 2GB, /var/log -10% disk size, /- 35% disk size, remainder for growth

Windows: Single C:\ Partition

If you require different partitioning than the default, please specify the Custom Partitioning on servers:

Domain preference:

FOR INTERNAL USE:

Contract For:

Date of completion of QC Space & Power Ticket:

Was the Virtualization Sizing Tool used (if VMs included in configuration):

Yes (Please attach) No

Please add any migration or special build notes:

If adding SAN or DAS, please attach necessary configuration detail.

Toll Free: 1.800.961.2888 | International: 1.210.312.4700 | www.rackspace.com

Copyright © Rackspace | Rackspace® and Fanatical Support® are service marks of Rackspace registered in the United States and other countries. All trademarks, service marks, images, products and brands remain the sole property of their respective holders.

RACKSPACE® HOSTING | 1 FANATICAL PLACE | WINDCREST, TX 78218 U.S.A.

Rackspace Service Order Instructions

This Service Order is valid only if accepted before 31 October 2017. Other than completion of the signatory information sections, changes may not be made to the Service Order. Unauthorized changes are not legally binding on Rackspace. Should you have any questions or concerns about the contents, please contact your sales representative.

INSTRUCTIONS

Service Order	
Agreement	This section specifies the terms and conditions which constitute the complete agreement between your company and Rackspace for the Services selected by you.
Acceptance	Complete the signature information sections, and obtain the signature of an authorized officer of your Company using Rackspace's E-Signature feature. The authorized Customer representative will receive an email with a link to the myRackspace Portal. The Customer will review, accept, and fill out required form. In the Electronic Signature section, an IP capture will display. Upon submittal of electronically signed contract and required form, a confirmation e-mail will be sent to the Customer.
Services	
Services Detail	This section describes the products and services which will comprise your Services and specifies the pricing for them.
Decommissioned Devices	This section outlines Rackspace's policy for decommissioned devices as applicable.
Deployment Commitment	The time period within which Rackspace has committed to deploy the Services selected, if applicable.
Bandwidth Overages	Specifies Rackspace's fess for bandwidth overages, if applicable.

Service Order

This Service Order is between Rackspace US, Inc ("we" or "Rackspace") and the customer who signs below ("you" or "Customer"). The following terms are incorporated in this Service Order by reference:

- i. This Service Order is subject to and governed by the Rackspace Global Services Agreement ("GSA") located at <https://www.rackspace.com/information/legal/gsa> as of the date of your acceptance of this Service Order
- ii. The Dedicated Hosting Product Terms found at <https://www.rackspace.com/information/legal/dedicatedhostingterms> as of the date of your acceptance of this Service Order apply to your use of the dedicated hosting services

The Agreement constitutes the complete and exclusive agreement between the parties regarding the subject matter and supersedes and replaces any prior understanding or communication, written or oral. The individual signing represents to Rackspace that they are authorized to sign on behalf of Customer. Customer accepts the terms of the Agreement, including any document or terms referenced above.

Accepted by Customer (All Fields Required)

Signature: WB Hilliard
Printed Name: Brod Hilliard
Job Title: IT Infrastructure Dir.
Company: QMax
Date: 10/30/17

Accepted by Rackspace US, Inc

Signature: _____
Printed Name: _____
Job Title: _____
Date: _____



Services

Current Customer Information:

Company Name: QMax Solutions	Type of Contract: Migration
Data Center: Elk Grove Village (ORD1)	Term: 12 months
Service Level: Intensive	

Solution Detail:

Option 1

Configuration 1

New Migration Device <input checked="" type="checkbox"/> 689923				
VMware® Server Virtualization Hypervisor (750072)			Elk Grove Village (ORD1)	
Quantity	Per Unit Fees		Totals	
	Setup	Monthly	Setup	Monthly
1	\$0.00 USD	\$1,761.00 USD	\$0.00 USD	\$1,761.00 USD
<ul style="list-style-type: none"> • Server Platform: Dual Processor Dedicated Server Haswell QTY: 1 • Processor: Intel® Xeon® Processor E5-2699 v3, 45M Cache, 2.3GHz, 18-Core QTY: 2 • Random Access Memory: 256GB - HP QTY: 1 • RAID, Set 1: RAID 1 QTY: 1 • Drive Selection, Set 1: HP 300GB 12G SAS 15K 3.5inch SCC HDD QTY: 2 • Drive Partitioning: Rackspace Suggested Partitioning QTY: 1 • Operating System: ESXi - 64Bit QTY: 256 • Managed Infrastructure Support: Managed Infrastructure Support - VMware® Server Virtualization QTY: 1 <ul style="list-style-type: none"> ◦ Support for all VMware® Hypervisors and Virtual Infrastructure • Virtualization Support: Virtualization Support - VMware® Server Virtualization QTY: 1 <ul style="list-style-type: none"> ◦ Support for all Virtual Machines running Rackspace Supported Guest OS • VMware 10Gb Hypervisor Pod: HP 561-T Dual Port PCIe 10Gbase-T NIC (RJ-45) QTY: 1 • Expansion Connection: sSAN QTY: 1 • sSAN Expansion Card: Emulex LPE31002 FC Gen6 2-Port 16GFC SFP+ HBA QTY: 2 • Expansion Connection: Networking QTY: 1 • Networking Expansion Card: HP 366T 4-Port 1Gb (RJ-45) QTY: 1 • MBU Subscription: No Backup Included QTY: 1 • Bandwidth: 2000GB Bandwidth QTY: 1 <ul style="list-style-type: none"> ◦ Quantity is in GB ◦ Excluding SYD2 Data Center ◦ Subject to the Bandwidth Pricing Terms referenced at http://www.rackspace.com/information/legal/bandwidthpricing 				

Monthly Recurring ⁽¹⁾	\$1,761.00 USD
Monthly Utility Fee ⁽²⁾	\$0.00 USD
Total Monthly Invoice ⁽³⁾	\$1,761.00 USD
Setup Fee	\$0.00 USD



One Time Fee	\$0.00 USD
Total One Time/Setup Fee	\$0.00 USD

Please note that the prices above exclude applicable taxes

1. Your Services Description may comprise several distinct services. Rackspace may raise an invoice for each service separately on the service's online date.
2. Monthly Utility Fee may change based on usage.
3. The amount due under the Total Monthly Invoice may change if your use of bandwidth-based products and services exceeds the subscribed amount.

Decommissioned Devices

Rackspace will continue charging the customer for decommissioned devices until the customer has notified Rackspace via a support ticket entered on the MyRackspace® portal that these decommissioned devices are ready to be taken offline. The customer must specify the device number and date that the device can be removed from service.

689923-AXSQL0.qmaxsolutions.com	689923	\$1147.00 USD
Total		\$1147.00 USD

Deployment Schedule

The services described in the Solutions Detail above will be deployed beginning from the time that Rackspace has completed verification and credit check procedures, has received all required information from Customer, and has completed implementation call, as applicable. See Section 2.1 of the Product Terms and Conditions for more detail.

Please note any virtual machines and dedicated servers will be deployed promptly following the completion of the implementation call (where applicable), and billing will commence upon completion of their deployment. Storage and other services will be deployed as they are available following the implementation call. If you prefer to have all Services deployed simultaneously, please notify your Account Manager or Implementation Lead. Changes to deployment dates require a modified contract.

The services will be deployed 15 business days beginning from the time Rackspace has completed the above procedures, as applicable.

Bandwidth Overages (US Data Centers)

The bandwidth amounts included in this order constitute aggregate totals of use for the configuration described. This amount is independent of, and not increased directly by, the number of servers or other devices. Rackspace makes no promise that additional servers or devices will include the same amount or any additional amount of bandwidth. If you purchase pre-paid bandwidth in excess of the bandwidth included with your Services, charges for the overages will be billed at the rate of your prepay bandwidth. If you do not purchase pre-paid bandwidth in excess of the bandwidth included with your Services, you will be charged \$0.50 USD per GB for Services provided from a US data center.

For Services provided from a non-US data center, please refer to <http://www.rackspace.com/information/legal/bandwidthpricing> for bandwidth and backup pricing.

Free Days

Customer will receive 15 days free beginning on the Service Commencement Date for the Services identified above. Free days do not apply to non-recurring fees or utility fees.



Dear Customer,

We are excited to build your order; however, there are a few missing pieces that we need from you in order to finalize and deploy your system. Please fill out the below required information (where applicable) and return to your Rackspace Team. If you need assistance, or have questions, please contact your Business Development Consultant as soon as possible.

Thank you!

If there is segmentation between servers, in what network segment do the new devices go? (Please specify each device, or ALL devices)

Please specify behind which existing network device(s) if any, your new devices go:

Please confirm the IP scheme that will not conflict with your existing configuration:

How would you like your new devices named? (Attach separately if additional room is required)

(Windows devices have a 7 character limit. Ex: 1234567.hostname.com)

Devices are assigned the following default partitioning:

Linux: LVM file system./boot – 250MB, swap -2GB, /tmp – 2GB, /var/log -10% disk size, /- 35% disk size, remainder for growth

Windows: Single C:\ Partition

If you require different partitioning than the default, please specify the Custom Partitioning on servers:

Domain preference:

FOR INTERNAL USE:

Contract For:

QMax Solutions, #2963059, Contract Opp#3742635

Date of completion of QC Space & Power Ticket:

Was the Virtualization Sizing Tool used (if VMs included in configuration):

Yes (Please attach) No

Please add any migration or special build notes:

If adding SAN or DAS, please attach necessary configuration detail.

Toll Free: 1.800.961.2888 | International: 1.210.312.4700 | www.rackspace.com

Copyright © Rackspace | Rackspace® and Fanatical Support® are service marks of Rackspace registered in the United States and other countries. All trademarks, service marks, images, products and brands remain the sole property of their respective holders.

RACKSPACE® HOSTING | 1 FANATICAL PLACE | WINDCREST, TX 78218 U.S.A.



General Terms & Conditions

GENERAL TERMS AND CONDITIONS

1. THE HOSTING SERVICES AGREEMENT

The Hosting Services Agreement incorporates the following documents by reference: (i) the Services Description that describes the Services you are buying and related fees; (ii) these General Terms and Conditions containing the general terms and conditions applicable to all Services, (iii) the specific Product Terms and Conditions containing the additional terms for the particular Hosting Services you are buying, (iv) the Acceptable Use Policy, and (v) if your Hosted System will be provided from data centers located both in the United States and one or more non-U.S. jurisdictions, the Country Specific Terms that may be applicable in those jurisdictions. When we use the term “Hosting Services Agreement” or “Agreement” in any of these documents, we are referring collectively to all of them. The Agreement is effective as of the time that you sign the form of Agreement prepared by Rackspace, or accept the Agreement as part of Rackspace’s online order process.

2. DEFINED TERMS

Some words used in the Agreement have particular meanings:

“Acceptable Use Policy” or “AUP” means the Rackspace Acceptable Use Policy posted at <http://www.rackspace.com/information/legal/aup.php> ^[1] as of the date you sign the Agreement.

“Affiliate” means any and all legal entities which now or hereafter the ultimate parent of Rackspace controls. For the purpose of this definition, “control” shall mean an entity, directly or indirectly, holding more than fifty per cent (50%) of the issued share capital, or more than fifty per cent (50%) of the voting power at general meetings, or which has the power to appoint and to dismiss a majority of the directors or otherwise to direct the activities of such legal entity.

“Business Day” or “Business Hours” means 8:00 a.m. – 5:00 p.m. Monday through Friday,

United States central time, excluding federal public holidays in the United States.

“Confidential Information” means all information disclosed by one of us to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential including: (i) unpublished prices and other terms of service, audit and security reports, product development plans, nonpublic information of the parties relating to its business activities or financial affairs, data center designs (including non-graphic information you may observe on a tour of a data center), server configuration designs, and other proprietary information or technology, and (ii) information that is marked or otherwise conspicuously designated as confidential. Information that is developed by one of us on our own, without reference to the other’s Confidential Information, or that becomes available to one of us other than through violation of the Agreement or applicable law, shall not be “Confidential Information” of the other party. Confidential Information shall not include Customer Data.

“Country Specific Terms” means the addendum or addenda that may be incorporated into your Hosting Services Agreement if a portion of your Services are to be provided from a non-United States jurisdiction for which we have special legal terms.

“Customer Data” means all data, records, files, input materials, reports, forms and other such items that are received, stored, or transmitted using the Hosted System.

“Hosted System” means a combination of hardware, software and networking elements that comprise an information technology system. Depending on the Services you are buying, the Hosted System may consist of a dedicated system for your use only, or the right to use certain parts of a shared system that Rackspace maintains for many customers, or a combination of some dedicated elements and some shared elements.

“Hosting Services” means: (i) Rackspace’s provision for your use of the Hosted System described in the Services Description, and (ii) Support.

“Product Terms and Conditions” means the terms and conditions for the particular Hosting Services you are buying.

“Services Description” means: (i) the online order that you submit or accept for the Services, or (ii) any other written order (either in electronic or paper form) provided to you by Rackspace for signature that describes the type or types of services you are purchasing, and that is signed by you, either manually or electronically.

“Service Level Guaranty” or “Service Level Guaranties” means a guaranty or guaranties identified as a “Service Level Guaranty” or “Service Level Guaranties” in the applicable Product Terms and Conditions.

“Services” means Hosting Services and Supplementary Services, collectively.

“Supplementary Services” means those services you purchase from Rackspace other than the Hosting Services, such as database administration or “DBA” services, and assistance or support for the application that you operate on your Hosted System.

“Support” has the meaning stated in the applicable Product Terms and Conditions.

“The Fanatical Support Promise®” means the Rackspace commitment stated at <http://www.rackspace.com/whyrackspace/support/promise/elements.php> [2].

3. OUR OBLIGATIONS

Rackspace’s obligation to begin providing Services is contingent on your satisfaction of Rackspace’s credit approval criteria. Rackspace will provide the Hosting Services in accordance with the Service Description, the Service Level Guaranties, and other specifications in this Agreement. Rackspace will perform any Supplementary Services in a good and professional manner. Rackspace will maintain security practices that are at least as stringent as the minimum security practices described at <http://www.rackspace.com/information/legal/securitypractices.php> [3], and will provide the specific security services described in your Services Description. Rackspace will perform all Services in accordance with applicable law.

4. YOUR OBLIGATIONS

You must use reasonable security precautions in connection with your use of the Services. You must comply with the laws applicable to your use of the Services and with the Acceptable Use Policy. You must cooperate with Rackspace’s reasonable investigation of Service outages, security problems, and any suspected breach of the Agreement. You are responsible for keeping your account permissions, billing, and other account information up to date using your MyRackspace® portal or via another Rackspace defined process. You must pay when due the fees for the Services stated in the Services Description or other agreement between us.

Customer Data Security: In addition to the foregoing obligations, you acknowledge that you are solely responsible for taking steps to maintain appropriate security, protection and backup of Customer Data. Rackspace's security obligations with respect to Customer Data are limited to those obligations described in Section 3 above. Rackspace makes no other representation regarding the security of Customer Data. Customer is solely responsible for determining the suitability of the Services in light of the type of Customer Data used with the Services.

5. PROMISES WE DO NOT MAKE

5.1 We do not promise that the Services will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy, Customer Data, Confidential Information and property.

5.2 We disclaim any and all warranties not expressly stated in the Agreement including the implied warranties of merchantability, fitness for a particular purpose, and noninfringement. You are solely responsible for the suitability of the services chosen, including the suitability as it relates to your Customer Data. Any services that we are not contractually obligated to provide but that we may perform for you at your request and without any additional charge are provided on an AS IS basis.

5.3 We do not promise to backup your data unless you have purchased backup services. If you purchase backup services, we do not promise to retain the data backup for longer than the agreed data retention period.

5.4 We will provide Support only to your administrative or technical contacts listed on your account. We will not provide support directly to your end users unless specifically agreed in writing.

5.5 Certain Rackspace Services are designed to help you comply with various regulatory requirements that may be applicable to you. However, you are responsible for understanding the regulatory requirements applicable to your business and for selecting and using those Services in a manner that complies with the applicable requirements.

6. ACCESS TO YOUR CUSTOMER DATA OR USE OF THE SERVICES

Rackspace is not responsible to you or any third party for unauthorized access to your data or the unauthorized use of the Services unless the unauthorized access or use results from Rackspace's failure to meet its security obligations stated in Section 3 (Our Obligations) of these

General Terms and Conditions or the Services Description. You are responsible for the use of the Services by any employee of yours, any person you authorize to use the Services, any person to whom you have given access to the Services, and any person who gains access to your data or the Services as a result of your failure to use reasonable security precautions, even if such use was not authorized by you.

Rackspace agrees that it will not use or disclose Customer Data. Customer Data is and at all times shall remain the exclusive property of Customer and will remain in the exclusive care, custody, and control of Customer.

7. TAXES ON SERVICES

If Rackspace is required by law to collect taxes on the provision of the Service, you must pay Rackspace the amount of the tax that is due or provide Rackspace with satisfactory evidence of your exemption from the tax. You must provide Rackspace with accurate factual information to help Rackspace determine if any tax is due with respect to the provision of the Services.

8. EXPORT MATTERS

You represent and warrant that you are not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and are not otherwise a person to whom Rackspace is legally prohibited to provide the Services. You may not provide administrative access to the Services to any person (including any natural person or government or private entity) that is located in or is a national of any country that is embargoed or highly restricted under United States export regulations.

9. INTENTIONALLY OMITTED

10. SUSPENSION OF SERVICES

We may suspend Services without liability if: (i) we reasonably believe that the Services are being used in violation of the Agreement; (ii) you don't cooperate with our reasonable investigation of any suspected violation of the Agreement; (iii) there is an attack on your Hosted System or your Hosted System is accessed or manipulated by a third party without your consent, (iv) we are required by law, or a regulatory or government body to suspend your Services, or (v) there is another event for which we reasonably believe that the suspension of Services is necessary to protect the Rackspace network or our other customers. We will give you advance notice of a suspension under this paragraph of at least twelve (12) Business Hours unless we determine in our reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect Rackspace or its other customers from imminent and significant operational, legal, or security risk. If your Hosted System is compromised, then

you must address the vulnerability prior to Rackspace placing the Hosted System back in service or, at your request, we may be able to perform this work for you at our standard hourly rates as a Supplementary Service.

11. TERMINATION FOR BREACH

11.1 You may terminate the Agreement for breach if: (i) we materially fail to provide the Services as agreed and do not remedy that failure within ten (10) days of your written notice describing the failure, (ii) we fail to meet The Fanatical Support Promise® (subject to the conditions and procedures described at <http://www.rackspace.com/whyrackspace/support/promise/remedy.php> ⁽⁴⁾), or (iii) we materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within thirty (30) days of your written notice describing the failure.

11.2 We may terminate the Agreement for breach if: (i) we discover that the information you provided for the purpose of establishing the Services is materially inaccurate or incomplete, (ii) the individual signing the Agreement did not have the legal right or authority to enter into the Agreement on behalf of the person represented to be the customer, (iii) your payment of any invoiced amount is overdue and you do not pay the overdue amount within four (4) Business Days of our written notice, (iv) without notice if you have made payment arrangements via credit card or other third party, and the third party refuses to honor our charges, or (v) you fail to comply with any other provision of the Agreement and do not remedy the failure within thirty (30) days of our notice to you describing the failure. We may also terminate the Agreement for breach if you violate the AUP more than once even if you cure each violation, or if your agreement for any other Rackspace service is terminated for breach of the acceptable use policy applicable to that service.

11.3 Either of us may terminate the Agreement if the other party becomes insolvent or is unable to pay its debts or enters into or files (or has filed or commenced against it) a petition, arrangement, application, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or any similar laws of the United States or any state of the United States.

12. CONFIDENTIAL INFORMATION

Each of us agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights under the Agreement, or as may be required by law. Each of us agrees not to disclose the other's Confidential Information to any third person except as follows:

(i) to each of our respective service providers, agents and representatives, provided that such service providers, agents or representatives agree to confidentiality measures that are at least as stringent as those stated in this General Terms and Conditions;

- (ii) to a law enforcement or government agency if requested, or if either of us reasonably believes that the other's conduct may violate applicable criminal law;
- (iii) as required by law; or
- (iv) in response to a subpoena or other compulsory legal process, provided that each of us agrees to give the other written notice of at least seven (7) days prior to disclosing Confidential Information under this subsection (or prompt notice in advance of disclosure, if seven (7) days advance notice is not reasonably feasible), unless the law forbids such notice.

13. LIMITATION ON DAMAGES

13.1 We are not liable to you for failing to provide the Services unless such failure results from a breach of a Service Level Guaranty, or results from our gross negligence, willful misconduct, or intentional breach of the Agreement. The credits stated in the Service Level Guaranty are your sole and exclusive remedy for our failure to meet those guaranties for which credits are provided unless such failure is due to Rackspace's willful misconduct. Termination of the Agreement is your sole and exclusive remedy for our failure to meet The Fanatical Support Promise.

13.2 Neither of us (nor any of our employees, agents, affiliates or suppliers) is liable to the other for any lost profits or any other indirect, special, incidental or consequential loss or damages of any kind, or for any loss that could have been avoided by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages. In no event shall either of us be liable to the other for any punitive damages.

13.3 We are not liable to you for lost data unless and to the extent you purchase data backup services from Rackspace and we fail to provide the backup services as agreed. If you purchase backup services, you release Rackspace from liability for loss of data to the extent that the data has changed since the time that we were last required by the Agreement to perform a backup.

13.4 Notwithstanding anything in the Agreement to the contrary, except for liability based on willful misconduct or fraudulent misrepresentation, and liability for death or personal injury resulting from Rackspace's negligence, the maximum aggregate monetary liability of Rackspace and any of its employees, agents, suppliers, or affiliates in connection with the Services, the Agreement, and any act or omission related to the Services or Agreement, under any theory of law (including breach of contract, tort, strict liability, violation of law, and infringement) shall not exceed: (i) for Hosting Services an amount that is twelve (12) times one month's recurring fee under the Agreement for the Services that are the subject of the claim as of the time of the occurrence of the events giving rise to the claim, and (ii) for Supplementary Services, fees paid for the Supplementary Services that are the subject of the claim.

14. INDEMNIFICATION

14.1 If we, our affiliates, or any of our or their respective employees, agents, or suppliers (the “Indemnitees”) is faced with a legal claim by a third party arising out of your actual or alleged gross negligence, willful misconduct, violation of law, failure to meet the security obligations required by the Agreement, violation of the AUP, violation of your agreement with your customers or end users, or violation of Section 8 (Export Matters) or Section 16 (Software) of this General Terms and Conditions, then you will pay the cost of defending the claim (including reasonable attorney fees) and any damages award, fine or other amount that is imposed on the Indemnitees as a result of the claim. Your obligations under this subsection include claims arising out of the acts or omissions of your employees or agents, any other person to whom you have given access to the Services, and any person who gains access to the Services as a result of your failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by you. You must also pay reasonable attorney fees and other expenses we incur in connection with any dispute between persons having a conflicting claim to control your account with us, or any claim by your customer or end user arising from an actual or alleged breach of your obligations to them.

14.2 We will choose legal counsel to defend the claim, provided that these decisions must be reasonable and must be promptly communicated to you. You must comply with our reasonable requests for assistance and cooperation in the defense of the claim. We may not settle the claim without your consent, although such consent may not be unreasonably withheld. You must pay expenses due under this Section as we incur them.

15. PUBLICITY

You agree that we may publicly disclose that we are providing Services to you and may use your name and logo to identify you as our customer in promotional materials, including press releases. We will not use your name or logo in a manner that suggests an endorsement or affiliation.

16. SOFTWARE

16.1 General. You may not copy any software we provide for your use unless expressly permitted by the Agreement. You may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any software we provide for your use. Unless permitted by the terms of an open source software license, you may not reverse engineer, decompile or disassemble any software we provide for your use except and to the extent that you are expressly permitted by applicable law to do this, and then following at least ten (10) days advance written notice to us. In addition to the terms of our Agreement, your use of any Microsoft® software is governed by: (i) Microsoft's license terms that appear at <http://www.rackspace.com/information/legal/microsoftlicenseclient.php> ^[5], for client or redistributable software, (ii) Microsoft's license terms at www.rackspace.com/information/microsoftlicensemobility.php ^[6] for use of Microsoft software on the Rackspace Cloud under the license mobility program, and (iii) any use restrictions on your use of the Microsoft software as

indicated in your Services Description, such as a limitation on the number of users (a "SAL" license).

If you use any non-Rackspace provided software on your Hosted System you represent and warrant to Rackspace that you have the legal right to use the software in that manner. On Rackspace's request you will certify in writing that you are in compliance with the requirements of this paragraph and any other software license restrictions that are part of the Agreement, and will provide evidence of your compliance as we may reasonably request.

16.2 Customer Provided Licenses. If Rackspace has agreed to install, patch or otherwise manage software in reliance on your license with a software vendor (rather than Rackspace's license with the software vendor), then you represent and warrant that you have a written license agreement with the vendor that permits Rackspace to perform these activities. You agree that you will provide Rackspace with evidence of licensing as Rackspace may reasonably require prior to the scheduled deployment date, and from time to time as necessary to update the status of the license. If you fail to provide the required evidence of licensing Rackspace may, at its option, either (i) delay the deployment date for the Hosted System that was to include such software until the evidence is provided, (ii) deploy the Hosted System in reliance on Rackspace's licensing agreement with the vendor, and charge you its standard fee for the use of the software until such time as the required evidence is provided, or (iii) suspend or terminate the Agreement. Please Note: Your licensed software may not be compatible with Rackspace's standard process for deploying and repairing Hosted Systems. In addition, in order to install the software Rackspace may require you to send the physical or electronic media provided to you by the vendor, both for deployment and again in the event of a failure of your Hosted System. You agree that Rackspace will not be in breach of any Service Level Guaranty or other obligation under this Agreement that would not have occurred but for a delay resulting from our agreement to use your licensed software.

17. RECOMMENDATIONS

Rackspace personnel may from time to time recommend third party software or other products and services for your consideration. RACKSPACE MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING PRODUCTS AND SERVICES THAT ARE NOT PURCHASED FROM RACKSPACE. Your use of any such products and services is governed by the terms of your agreement with the provider of those products and services.

18. WHO MAY USE THE SERVICE

You may permit your subsidiaries and affiliated companies to use the Services if you wish, however you are responsible for the acts or omissions of your permitted users. Rackspace will provide support only to you, not to your customers, subsidiaries or affiliates. There are no third party beneficiaries to the Agreement, meaning that your customers, subsidiaries, affiliates and other third parties do not have any rights against either of us under this Agreement.

19. INTENTIONALLY OMITTED

20. TEST SERVICES

If you use any Services that have been designated as a “Beta” service, limited release, pilot test, or with similar designation, then your use of that Service is subject to the terms at <http://www.rackspace.com/information/legal/testterms.php> ^[7].

21. SERVICES MANAGEMENT AGENT

You agree that you will not interfere with any services management software agent(s) that Rackspace installs on your Hosted System. Rackspace agrees that its agents will use only a minimal amount of computing resources, and will not interfere with your use of your Hosted System. Rackspace will use the agents to track system information so that it can more efficiently manage various service issues, such as patching exceptions and product life cycles. Rackspace may also use the agents to identify security vulnerabilities. Rackspace will not use the agents to view or capture your content or data. Your Services will become “unsupported” as described in the Product Terms if you disable or interfere with our services management software agent(s). You agree that Rackspace may access your Hosted System to reinstall services management software agents if you disable them or interfere with their performance.

22. NOTICES

Your routine communications to Rackspace regarding the Services, including any notice of non-renewal, should be sent to your Rackspace account team using the MyRackspace portal. If you want to give a notice regarding termination of the Agreement for breach, indemnification, or other non-routine legal matter, you should send it by electronic mail and first class United States mail to:

legalnotice@rackspace.com ^[8]

General Counsel

Rackspace US, Inc.

One Fanatical Place

City of Windcrest, Texas 78218

MAIL STOP: US109-2301

Rackspace's routine communications regarding the Services and legal notices will be posted on the MyRackspace portal or sent to the individual(s) you designate as your contact(s) on your account either by electronic mail (including an electronic mail referring you to a ticket posted on your MyRackspace portal), United States mail, or overnight courier. Notices are deemed received as of the time posted or delivered, or if that time does not fall within a Business Day, as of the beginning of the first Business Day following the time posted or delivered. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day. Notices must be given in the English language.

23. OWNERSHIP OF INTELLECTUAL PROPERTY

Each of us retains all right, title and interest in and to our respective trade secrets, inventions, copyrights and other intellectual property. Any intellectual property developed by Rackspace during the performance of the Services shall belong to Rackspace unless we have agreed with you in advance in writing that you shall have an interest in the intellectual property.

24. OWNERSHIP OF OTHER PROPERTY

You do not acquire any ownership interest in or right to possess the Hosted System, and you have no right of physical access to the Hosted System. We do not acquire any ownership interest in or right to the information you transmit to or from or store on your Rackspace servers or other devices or media.

25. INTELLECTUAL PROPERTY INFRINGEMENT

If Rackspace or any of its customers is faced with a credible claim that the Services infringe on the intellectual property rights of a third party, and Rackspace is not reasonably able to obtain the right to use the infringing element or modify the Services such that they do not infringe, then Rackspace may terminate the Services on reasonable notice of at least ninety (90) days, and will not have any liability on account of such termination except to refund amounts paid for Services not used as of the time of termination.

26. ASSIGNMENT/SUBCONTRACTORS

Neither party may assign the Agreement without the prior written consent of the other party except that Rackspace may assign the Agreement to an Affiliate with sufficient financial standing in order to meet its obligations under this Agreement or as part of a bona fide corporate reorganization or a sale of its business. Rackspace may use third party service providers to perform all or any part of the Services, but Rackspace remains responsible to you under this Agreement for Services performed by its third party service providers to the same extent as if Rackspace performed the Services itself.

27. FORCE MAJEURE

Neither of us will be in violation of the Agreement if the failure to perform the obligation is due to an event beyond our control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.

28. GOVERNING LAW, LAWSUITS

The Agreement is governed by the laws of the State of Texas, exclusive of any choice of law principle that would require the application of the law of a different jurisdiction, and the laws of the United States of America, as applicable. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods. Each of us agrees that any dispute or claim, including without limitation, statutory, contract or tort claims, relating to or arising out of this Agreement or the alleged breach of this Agreement, shall, upon timely written request of either of us, be submitted to binding arbitration. The party asserting the claim may elect to have the arbitration be in-person, telephonic or decided based on written submissions. The arbitration shall be conducted in the city in which you reside. The arbitration shall proceed in accordance with the commercial arbitration rules of the American Arbitration Association (“AAA”) in effect at the time the claim or dispute arose. The arbitration shall be conducted by one arbitrator from AAA or a comparable arbitration service, and who is selected pursuant to the applicable rules of the AAA. The arbitrator shall issue a reasoned award with findings of fact and conclusions of law and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Either you or we may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement, or to enforce or vacate an arbitration award. We will pay the fee for the arbitrator and your filing fee, to the extent that it is more than a court filing fee. We agree that we will not seek reimbursement of our fees and expenses if the arbitrator rules in our favor. Each of us waives any right to a trial by jury, and agrees that disputes will be resolved through arbitration. No claim subject to this provision may be brought as a class or collective action, nor may you assert such a claim as a member of a class or collective action that is brought by another claimant. Each of us agrees that we will not bring a claim under the Agreement more than two years after the time that the claim accrued. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

29. SOME AGREEMENT MECHANICS

These General Terms and Conditions, the applicable Product Terms, and any applicable Country Specific Terms are incorporated in your Agreement by reference to pages on the Rackspace website. Although we may from time to time revise the General Terms and Conditions, Product Terms, and Country Specific Terms posted on those pages, those revisions will not be effective as to an Agreement that you signed prior to the date we posted the revisions, and your Agreement will continue to be governed by the General Terms and Conditions and Product Terms posted on the effective date of the Agreement until the first day of any renewal or

extended term that follows the date we published the revision. However, if over time you accept multiple Agreements for a single Hosted System –for example to add service elements to an existing Hosted System, then the version of the General Terms and Conditions, Product Terms and Conditions, and Country Specific Terms (if any) referenced in the last Agreement will govern the entire Hosted System, unless otherwise agreed in writing.

Unless otherwise expressly permitted in this Agreement, the General Terms and Conditions, Product Terms and Conditions, Acceptable Use Policy, Country Specific Terms and Conditions, and any addenda referenced in any of them, may be amended only by a formal written agreement signed by both parties. A Services Description may be amended to modify, add, or remove Services, by a formal written agreement signed by both parties, or by an exchange of correspondence, including via electronic mail or the Rackspace ticketing system, that includes the express consent of an authorized individual for each of us. The pre-printed terms on your purchase order or other business forms will not become part of this Agreement.

If there is a conflict between the terms of any of the documents that comprise the Agreement, the documents will govern in the following order: signature page for Hosting Service Agreement, Country Specific Terms (if any), Services Description, Product Terms and Conditions, any addendum to the General Terms and Conditions, the General Terms and Conditions, and the Acceptable Use Policy. If any part of the Agreement is found unenforceable by a court, the rest of the Agreement will nonetheless continue in effect, and the unenforceable part shall be reformed to the extent possible to make it enforceable but still consistent with the business and financial objectives of the parties underlying the Agreement. Each of us may enforce each of our respective rights under the Agreement even if we have waived the right or failed to enforce the same or other rights in the past. The relationship between us is that of independent contractors and not business partners. Neither of us is the agent for the other, and neither of us has the right to bind the other on any agreement with a third party. The captions in the Agreement are for convenience only and are not part of the Agreement. The use of the word “including” in the Agreement shall be read to mean “including without limitation.” The words “our” and “us” refers to Rackspace, unless the context clearly indicates another meaning. The Agreement is effective when you sign it, even though the “initial term” may be defined in the Agreement with reference to the Service Commencement Date or other date. The following provisions shall survive expiration or termination of the Agreement: (i) Sections 5.1, 5.2, 7, 12, 13, 14, 20, 21, 22, 23, 24, 28, and 29 of this General Terms and Conditions, (ii) all provisions in the Agreement requiring you to pay fees for Services provided prior to the time of expiration or termination or requiring you to pay an early termination fee, and (iii) all other provisions of the Agreement that by their nature are intended to survive expiration or termination of the Agreement.

If you have made any change to the Agreement that you did not bring to our attention in a way that is reasonably calculated to put us on notice of the change, the change shall not become part of the Agreement.

The Agreement may be signed in multiple counterparts, which taken together will be considered

one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures.

© 2014 Rackspace US, Inc.

August 1, 2014 revision

Rackspace®, MyRackspace® and The Fanatical Support Promise® are registered trademarks of Rackspace US, Inc. in the United States and/or other countries. Microsoft is a registered trademark of Microsoft Corporation.

Source URL: <http://www.rackspace.com/information/legal/generalterms>



Managed Hosting Terms and Conditions (Intensive)

MANAGED HOSTING SERVICES TERMS AND CONDITIONS (Intensive® Service Level Guaranties)

In addition to the General Terms and Conditions, your use of the Managed Hosting Services (Intensive) is subject to the following additional terms and conditions:

1. ADDITIONAL DEFINED TERMS

Some words used in these Managed Hosting Services Terms and Conditions (Intensive) have particular meanings:

“Hosting Services” means Rackspace’s provision for your use of the Hosted System described in the Service Description.

“Personally Identifiable Information” or “PII” means: (i) a combination of any information that identifies an individual with that individual’s sensitive and non-public financial, health or other data or attribute, such as a combination of the individual’s name, address, or phone number with the individual’s social security number or other government issued number, financial account number, date of birth, address, biometric data, mother’s maiden name, or other personally identifiable information; (ii) any “non-public personal information” as that term is defined in the Gramm-Leach-Bliley Act found at 15 USC Subchapter 1, § 6809(4), and (iii) “protected health information” as defined in the Health Insurance Portability and Accountability Act found at 45 CFR §160.103.

“Service Commencement Date” means the date on which we provide the access codes that enable you to send and receive information from your Hosted System.

“Support” means: (i) the management of the Hosting Service by a service delivery team that includes a team leader, account manager, and support specialists with training and experience in hosted systems; (ii) availability of live support twenty four hours per day, seven days per week, year round; (iii) any specific support services described in Service Description; and (iv) use of the MyRackspace® customer portal.

2. DEPLOYMENT

2.1 Deployment Guaranty. If your Services Description provides a Deployment Guaranty, we will deploy the server(s) described in the Service Description within the timeframe stated in the Service Description, provided that you promptly provide all information that we reasonably request from you to complete deployment. Servers are deemed deployed as of the Service Commencement Date. Your sole and exclusive remedy for our failure to deploy the servers by the guaranteed time shall be a credit equal to the amount of the set up fee stated in the Service Description for the affected server(s). You are not entitled to a credit if you request or cause the deployment delay. This deployment guaranty does not apply to any software, other managed

services, or hardware devices other than the server(s).

2.2 Delayed Deployment. If you wish to delay the deployment of a Hosted System you may do so, provided that you give us written notice of your election to delay no later than five (5) days following the date you sign the Agreement. The requested delay may not continue for more than two (2) months following your signature on the Agreement. If you request a delay in deployment, we may charge you up to fifty percent (50%) of the monthly recurring fees for the Hosted System during the period of delay. You are not entitled to a credit under Subsection 2.1 above if you request the deployment delay. The initial term of the Agreement will begin when we deploy your Hosted System at your request, or on the second monthly anniversary of the date you sign the Agreement, whichever comes first. Following deployment we will charge you the full monthly recurring fee (plus other usage fees as applicable) for the full term of the Agreement.

3. ENCRYPTION OF PERSONALLY IDENTIFIABLE INFORMATION. The General Terms and Conditions require you to use reasonable security precautions in light of your use of the Services. For Hosting Services, this includes encrypting any PII transmitted to or from, or stored on, the Rackspace servers or storage devices you use.

4. SERVICE LEVEL GUARANTIES

4.1. Support.

4.1.1 Support Requests. Rackspace live support will be available 24 hours per day, 7 days per week, year round. You may request support by opening a support ticket via your MyRackspace portal or by calling your account team.

4.1.2 Response Times. We will respond to your support requests made via ticket or telephone within the following time frames:

Severity Level	Example	Response Time
Emergency: Server, switch, or site down	You cannot access your server or site from the public Internet.	Within 15 minutes
Urgent: Server or site functioning improperly or at less than optimal performance	Your server or site is accessible but in a reduced state (timeouts or slow response)	Within 1 hour
Standard: Non-critical; server or site is functioning normally, but you require information or assistance, wish to schedule maintenance, or any other non-immediate tasks	Your site is functioning with acceptable parameters, but you require assistance in loading software or have a help desk-type question	Within 4 hours

We will respond to you via support ticket, telephone call, or both depending upon the severity of the situation and consistent with any procedures we have established with you for your account.

4.1.3 Remedy. If we fail to meet the response time guaranties stated in this Section 4.1, you are entitled to a credit of \$250 per event, up to 100% of your monthly recurring fee for the affected

Hosted System for any calendar month. The response time guaranties stated above do not apply to support requests made via email.

4.2 Datacenter

4.2.1. Power. A/C power to the outbound port on your serving power distribution unit (PDU) will be available 100% of the time.

4.2.2. HVAC (Heating, Ventilation and Air Conditioning). Target ambient room temperature will be 72 degrees Fahrenheit in the server area of the datacenter. Ambient room temperature will not vary by more than +/- 5 degrees. Target Relative humidity will be 45% in the server area. Relative humidity will not vary by more than +/- 5%.

4.2.3. Network. The data center network will be available 100% of the time. "Network" means the portion of the network extending from the outbound port on your edge device to the outbound port on the border router and includes Rackspace managed switches, routers, and cabling. Network availability is defined as the ability to pass TCP/IP traffic with less than 3% packet loss and less than 30ms latency across the Rackspace network infrastructure.

4.2.4 Remedy. If Rackspace fails to meet any of the guaranties stated in this Section 4.2 and the failure adversely affects your Hosted System, you are entitled to a credit in the amount of 5% of your monthly recurring fee for the affected Hosted System per half hour of power outage, HVAC outage or network downtime, up to 100% of the monthly recurring fee for the affected components for any calendar month.

4.3 Hardware Replacement

4.3.1 Hardware Repair or Replacement. Rackspace will repair or replace failed hardware components provided by Rackspace at no additional cost within one (1) hour of problem identification by Rackspace for dedicated server hardware, firewalls, and load balancers and within five (5) hours of problem identification by Rackspace for network attached storage devices, in each case excluding failed replication appliances (see Section 4.3.4 below). This guaranty does not include the time required to rebuild your system, such as the time required to configure a replacement device, rebuild a RAID array, reload the operating system, reload and configure applications, and/or restore from backup (if necessary).

4.3.2 High Availability Network Device Solution. A "high-availability" network device solution means two devices within a single datacenter (such as a firewall, load balancer, router, or switch) configured in a fail-over configuration and tested by Rackspace for reliability as part of the implementation process for your configuration. High availability network device solutions will be available 100% of the time. At your request, Rackspace will implement a high availability solution in a live configuration prior to testing the solution, but this guaranty will not apply until the testing is scheduled by you and successfully completed.

4.3.3 Remedy. If Rackspace fails to meet the guaranties stated in this Section 4.3 and the failure adversely affects your Hosted System, you are entitled to a credit in the amount of 5% of your monthly recurring fee per half hour of downtime (after the first one (1) hour or five (5) hours from problem identification for Section 4.3.1, as applicable), up to 100% of the monthly recurring fee for the affected component for any calendar month.

4.3.4 Replication Appliance. If a replication appliance (such as an EMC RecoverPoint appliance)

is unavailable due to a hardware failure, Rackspace will have a technical specialist and necessary parts onsite to begin repairs within six (6) hours of problem identification. If Rackspace fails to meet this guaranty and the failure adversely affects your Hosted System, you are entitled to a credit in the amount of 5% of your monthly recurring fee per half hour of delay in beginning repairs for the affected replication appliance, up to 100% of the monthly recurring fee.

4.4 Firewall

4.4.1 Default Rule Set. Unless you ask us to implement a different rule set during implementation, we will implement our standard “default-deny” rule set upon deployment of your firewall, which means that only a select few TCP/UDP ports will be open.

4.4.2 Changes to Rule Set. We will open additional ports and perform other basic configuration changes within twenty four (24) hours of the time that you open a ticket via your MyRackspace portal requesting the change. “Basic” configuration changes are common changes that can be performed from a remote console and require no physical hardware modifications or reconfigurations.

4.4.3 Remedy. If we fail to meet the guaranty stated in this Section 4.4, you are entitled to a service credit of \$250 per event, up to 100% of the monthly recurring fee for the affected firewall(s) for any calendar month.

4.5 Storage Area Network

4.5.1 Availability. We guarantee that your Storage Area Network (“SAN”) service will be available 99.99% of the time in a given calendar month, excluding scheduled maintenance and downtime or degradation due to hardware failure. Your SAN is unavailable if your SAN connected servers do not have access to the data stored on the SAN, and is measured from the time a trouble ticket is opened (either by you or by Rackspace) until access to the data is restored. If the SAN is unavailable due to a hardware failure, Rackspace will have a technical specialist and necessary parts onsite to begin repairs within six (6) hours of problem identification.

4.5.2 Remedy. If Rackspace fails to meet the guaranty stated in this Section 4.5 and the failure adversely affects your Hosted System, you are entitled to a credit in the amount of 5% of your monthly recurring fee per half hour of downtime (after the initial .01% of downtime) or delay in beginning repairs, as applicable, for the affected SAN service and each server directly connected to the SAN, up to 100% of the monthly recurring fee for the SAN service and those servers for any calendar month.

4.6 Patching

4.6.1 Supported Software. The guaranties stated in this Section 4.6 apply only to vendor supplied and supported patches, but do not apply to: (i) software that we did not provide to you as part of your Hosting Services, or (ii) Oracle database software (even if we provided it to you as part of your Hosting Services). Patching services for Oracle software may be arranged as a Supplementary Service for an hourly fee, and are not covered by this Service Level Guaranty.

4.6.2 Release, Testing. When software vulnerabilities are addressed by a vendor patch, we will categorize the patch as either “critical” or “non-critical,” in our commercially reasonable discretion. Prior to applying a patch to your environment, we will test the patch in our lab and in a Rackspace production environment.

4.6.3 Application (Opt In, Opt Out). Non-critical patches will be applied to your environment on a monthly basis, and critical patches will be applied on an as-needed basis. Unless otherwise agreed in advance, we will notify you via the ticketing system prior to the application of patches. Generally, patches will be applied unless you opt out of the patch, so if you do not want a particular patch applied to your environment, you must notify us via support ticket reasonably in advance of the patching window. However, for some vendor releases we may state in the ticket that you must opt in to the patch before we will apply it, in which case we will not apply the patch unless you notify us via ticket that you would like the patch applied.

4.6.4 Untested Patches. At your request we will apply patches to your configuration prior to completion of our testing, but we make no guaranty whatsoever about the outcome of the application of an untested patch. If you would like a patch applied to your environment prior to the time that Rackspace would normally apply a patch, Rackspace will do so within four (4) hours of the time that you open a support ticket requesting the application of the patch.

4.6.5 Alternative Procedure. Rackspace will not patch pursuant to the procedures described in this Subsection 4.6 if you have made other arrangements with Rackspace via support ticket or a signed, written agreement.

4.6.6 Remedy. If we materially fail to apply patches in accordance with the standards set forth in this Section 4.6 (or the standards stated in your alternative patching procedure, if applicable) and such failure adversely affects your Hosted System, you are entitled to a credit of \$250 per event, up to 100% of your monthly recurring fee for the affected environment for any calendar month.

4.6.7 Virtual Servers. This guaranty is subject to restrictions for virtual servers. See Section 18 (Virtualization) below.

4.7 Restoration of Backed Up Data

We will back up your data only if you have purchased data backup services.

4.7.1 Data Backup. Unless a custom backup solution is agreed to in advance, backups will be performed to a shared Managed Backup Infrastructure on a scheduled basis as described in the Services Description. Backups will be retained for the time agreed in the Service Description or other written agreement.

! Please Note: Open database files cannot be backed up without the use of a software backup agent. We will only back up a database if such a backup agent is used or you dump your database to flat files prior to scheduled backup.

4.7.2. Data Restoration

4.7.2.1. Local Restores. We will initiate restoration of your data stored onsite within two (2) hours of the time that you request the restore via a support ticket. You are allowed two (2) free local restoration events per calendar month. Additional restores will be billed at Rackspace's standard hourly rates.

4.7.2.2. Offsite Restores. We will initiate restoration of your data stored offsite within six (6) hours of the time that you request the restore via a support ticket. You are allowed one (1) free offsite restoration event per calendar month. Additional restores will be billed at our standard hourly rates.

! Please Note: Backups are not a snap-shot of your data, but are made over a period of hours. In the event you need a complete server recovery we cannot guaranty that the restore procedure will provide a fully functional operating system and/or application. We recommend that you migrate to a new server as soon as possible after a full restore to ensure reliability of the operating system and application.

Database duplications or “cloning” for purposes other than a restoration of lost or corrupted data are not included as part of your managed backup service and are not covered by this guaranty, but may be arranged as a Supplementary Service for an hourly fee.

4.7.3 Remedy. If we fail to restore the data that you have selected for backup in accordance with the standards stated in this Section 4.7, you are entitled to a service credit of \$500 per event, up to 100% of your monthly recurring fee for the affected configuration for any calendar month.

4.8 Monitoring and Response

4.8.1. Monitoring

4.8.1.1. Availability Monitoring. Rackspace will monitor up to 6 TCP ports (HTTP, HTTPS, SMTP, POP3, etc.) per server for service availability. General server availability is tested every five (5) minutes via ping. You will be alerted via ticket if port or ping monitors fail three consecutive times.

4.8.1.2. Fault Monitoring. Rackspace monitors status events on servers and network devices including network availability, process status, file system capacity, and backup success/failure. Rackspace also monitors core OS and application log files for critical/warning application and system events. For servers from the Dell PowerEdge and HP Proliant lines, we will also monitor server hardware faults.

4.8.1.3. Performance Monitoring. Rackspace monitors key performance metrics for the operating system (i.e. CPU, RAM, and Disk), and select applications (i.e. process statistics, users, throughput) and databases (i.e. caching, performance, transaction success).

4.8.2. Notification of Monitoring Alerts. We will notify you of monitoring alerts within the time frames stated in Section 4.1 (Support) above.

4.8.3 Remedy. If we fail to meet the monitoring alert notification guaranties stated in this Section 4.8, you are entitled to a credit of \$250 per event, up to 100% of your monthly recurring fee for the affected Hosted System for any calendar month.

4.9. Limitations on Credits

4.9.1 Cumulative Dollar Amount. Notwithstanding anything in this Agreement to the contrary, the maximum total credit for any calendar month for failure to meet Service Level Guaranties under this Agreement, shall not exceed 100% of your monthly recurring fee for the affected Hosted System. Credits that would be available but for this limitation will not be carried forward to future months.

4.9.2 Maintenance. You are not entitled to a credit for downtime or outages resulting from Maintenance. “Maintenance” means:

a. Rackspace maintenance windows - modification or repairs to shared infrastructure, such as

core routing or switching infrastructure that we provide notice of at least 72 hours in advance and that occurs during off peak hours in the time zone where the data center is located;

b. Scheduled customer maintenance – maintenance of your configuration that you request and that we schedule with you in advance (either on a case by case basis, or based on standing instructions), such as hardware or software upgrades;

c. Emergency maintenance – critical unforeseen maintenance needed for the security or performance of your configuration or Rackspace’s network.

4.9.3 Extraordinary Events. You are not entitled to a credit for downtime or outages resulting from denial of service attacks, virus attacks, hacking attempts, or any other circumstances that are not within our control.

4.9.4 Your Breach of the Agreement. You are not entitled to a credit if you are in breach of the Agreement (including your payment obligations to us) at the time of the occurrence of the event giving rise to the credit until you have cured the breach. You are not entitled to a credit if the event giving rise to the credit would not have occurred but for your breach of the Agreement.

4.9.5 Disabling or Removing of Monitoring or Security Services, Interference with Services. You must notify us in advance if you plan to disable, block, or remove any monitoring or security element of your Hosting Service for more than thirty (30) minutes. We will not issue you any credit for events that might have been avoided or mitigated if you had not disabled, blocked or removed our monitoring or security elements, or otherwise interfered with our ability to provide the Services. Monitoring and security elements include, without limitation, Microsoft Operations Manager, Microsoft Systems Management Server, Microsoft Active Directory, Winternals Defrag Manager, Dell OpenManage, Symantec, Nimbus, and ZENworks.

4.9.6 Logical Access. The Service Level Guaranties are contingent on Rackspace having full logical access to your configuration. No credit will be due if the credit would not have accrued but for your restriction of Rackspace’s logical access to your configuration.

4.9.7 Data Center Upgrades. We are constantly upgrading our data center facilities and in order for you to benefit from these upgrades, you agree that we may relocate your servers within our data centers, make changes to the provision of the Services, URLs and your IP addresses and may establish new procedures for the use of the Services. We may also make changes to DNS records and zones on Rackspace operated or managed DNS servers as we deem necessary for the operation of the shared network infrastructure. In each case we will give you reasonable advance notice and use all reasonable endeavors to minimize the effect that such change will have on your use of the Services.

4.10 Measurement of Time Periods For the purpose of determining whether a credit is due, time periods will be measured from the time stamp generated by our ticket system, or the time an interruption is recorded in our monitoring system, as applicable. You may open a support ticket to document the start time for a support request or other incident, or if you contact us by telephone to request support, we will open a ticket. If you contact us by phone, there may be a delay between the time of the call and the time we open a ticket.

4.11 Requests You must request a credit in writing either via a support ticket or by postal mail no later than seven (7) days following the occurrence of the event giving rise to the credit. We will contact you within 30 days to approve or reject the claim or to request more information. If the

claim is approved, the credit will appear on your monthly invoice following approval.

5. TERM. The initial term of the Agreement begins on the Service Commencement Date unless otherwise provided in Section 2.2 (Delayed Deployment)) and continues for the period stated in the Service Description. Upon expiration of the initial term, we may offer you the option of renewing the Agreement for one or more additional terms having a fixed number of months. If you do not renew the Agreement for a fixed term, it will automatically renew for successive extended terms of three (3) months each unless and until one of us provides the other with notice of non-renewal at least ninety (90) days in advance of the expiration of the initial term or then current extended term, as applicable. If you add service elements to a Hosted System by a subsequent agreement, we may use the word “coterminous” to describe the initial term of the subsequent agreement for those additional elements. If the term of an agreement is “coterminous,” the initial term of the agreement shall expire of the last day of the initial term of the agreement that initially established the Hosted System.

6. FEES

6.1 Your first invoice will include the initial one-time set-up fee and a pro rated monthly recurring fee from the Service Commencement Date to the last day of the calendar month. We may require you to pay the initial invoice before beginning the Hosting Service. Following the Service Commencement Date, monthly recurring fees will be billed monthly in advance on or around the first day of each calendar month. Non-recurring fees, such as bandwidth overages, will be billed monthly in arrears.

6.2 Fees are due within five (5) days of invoice date. If you have arranged for payment by credit card or ACH, Rackspace may charge your card or account on or after the invoice date. Rackspace may suspend all Services, and services provided pursuant to any unrelated agreement, if payment of any invoiced amount is overdue, and you do not pay the overdue amount within four (4) Business Days of our written notice to your billing contact. You agree that if your Services are reinstated after a suspension for non-payment, you will pay a reasonable reinstatement fee. Rackspace may charge interest on overdue amounts at 1.5% per month (or the maximum legal rate if it is less than 1.5%). If any amount is overdue by more than thirty (30) days and Rackspace brings a legal action to collect, or engages a collection agency, you must also pay Rackspace’s costs of collection, including reasonable attorney fees and court costs. If your check is returned for insufficient funds, we may charge you a fee up to the maximum amount permitted by law. Fees must be paid in U.S. Dollars. Invoices that are not disputed within 180 days of invoice date are conclusively deemed accurate.

7. FEE INCREASES

7.1 Increase in Producer Price Index. If during the initial term or any renewal term there is an increase in the Producer Price Index over the Producer Price Index reported for the month in which you signed your Agreement, we may increase your fees by the same percentage as the increase in the Producer Price Index; provided that we may not increase your fees under this Subsection more often than once per twelve (12) months, and we must give you at least thirty (30) days advance written notice of the increase. The “Producer Price Index” means the Producer Price Index for Finished Goods, WPUSOP3000, not seasonally adjusted, and first published as “preliminary” data by the United States Bureau of Labor Statistics in its PPI Detailed Report or successor publication. For historical information on the Producer Price Index you may visit the Bureau of Labor Statistics website. (Example: if the Producer Price Index for the month

in which you sign the Agreement is 186, and then increases in a subsequent month during the term of the Agreement to 195, we may increase your fees by up to 4.8%).

7.2 Increase During Extended Term. If following the expiration of the initial term or any renewal term you do not sign a renewal of your Agreement but continue to use your Services for extended three month terms as described in Section 5 (Term) above, then we may increase your fees at any time by any amount, in our sole discretion, on ninety (90) days advance written notice.

8. TERMINATION FOR CONVENIENCE. You may terminate this Agreement for convenience at any time on ninety (90) days advance written notice.

9. EARLY TERMINATION FEE. If you terminate this Agreement for convenience or we terminate this Agreement for your breach, in addition to other amounts you may owe, you must pay an early termination fee equal to the total monthly recurring fees for the remaining portion of the then-current term. You will not be charged an early termination fee under this Section in the event you terminate this Agreement as part of an agreement to establish a replacement for the Hosted System in a different Rackspace service segment, even if the overall fees for the replacement system are less than those for the Hosted System, provided that the replacement system is the functional equivalent of the Hosted System.

10. RESALE. You may resell the Hosting Services, subject to the provisions of Section 18 of the General Terms and Conditions. If you resell any part of the Hosting Services that include Microsoft software then you must include the Microsoft terms posted at <http://www.rackspace.com/aboutus/legal/microsoftlicense.php> ^[1] in a written agreement with your customers.

11. MANAGED BACKUP. Rackspace's managed backup services are designed to facilitate restoration of data to the server or device from which the data originated in the event the primary data is lost or corrupted. The quality of your backup depends on how your data is organized. We recommend that you test your managed backup service promptly following the Service Commencement Date, and then periodically, to determine if it is capturing your data properly. If it is not, we will work with you to maximize the accuracy of our managed backup service for your data and/or help you identify other data backup solutions that may work better for you. In the event your primary server or device hardware fails and is replaced, we may not be able to restore your backed up data exactly as it was configured on the failed device. If this risk is not acceptable to you, then we will help you identify other data backup solutions that are more reliable in this situation. The "retention" period for your backup refers to the amount of time that we will retain the backup in a useable form for restoration to the server or device from which it originated. If you wish to preserve your backup after the time that this server or device is decommissioned, you must make arrangements with us at least seventy-two (72) hours in advance of the scheduled decommissioning of the server or device. Database duplications or "cloning" for purposes other than a restoration of lost or corrupted data as described in this paragraph are not included as part of your managed backup service, but may be arranged as a Supplementary Service for an hourly fee. We may choose to use either tape or disk to collect your data, in our discretion. Provided that we do not impair the security or reliability of your backup service, you agree that we may from time to time test our backup systems, and may use copies of your data as part of these tests. We will treat duplicate data in accordance with the same security standards applicable to your backup service.

13. HIPAA. If Rackspace is your “Business Associate” as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, then the HIPAA Business Associate Addendum published at <http://www.rackspace.com/information/legal/hipaaba.php> ^[2] as of the date that Rackspace becomes your Business Associate is part of the Agreement.

14. DATA REPLICATION. If you purchase any Services that involve data replication at a geographically diverse site, then the following applies to your use of that Service: The rate by which the data at the primary site can be transferred to the secondary site will vary depending on the amount and type of data, constraints inherent in your Hosted System, and fluctuations in bandwidth availability. Therefore, at any given time, the secondary site may not be completely up to date. In the event of a failover to the secondary site, the data that has not yet completed the transfer from the primary site will be lost. We may provide you with some guidelines on latency times based on our understanding of your data and system constraints, but these guidelines are not guaranties.

15. COLOCATION. If we host a device that you own in our datacenter, then the Colocation Addendum at <http://www.rackspace.com/information/legal/colocationaddendum.php> ^[3] as of the date you sign the order or agreement covering the colocation services is part of the Agreement.

16. VIRTUALIZATION. If you use Rackspace’s virtualization services, your virtual server(s) will be active on the Service Commencement Date. Following the Service Commencement Date you are responsible for managing the active or inactive status of your virtual servers via your MyRackspace portal. Rackspace will invoice you for your virtual service in arrears based on the number of calendar days (full or partial) in each billing period that your virtual servers are set to “active.” While your virtual servers are in an “inactive” status we will not install any software updates that we may have otherwise agreed to install. We will update your virtual servers when you return them to “active” status, but there could be a delay of up to twenty four (24) hours before the updates are fully installed.

17. DOMAIN NAME SERVICES. If you register, renew or transfer a domain name through Rackspace, Rackspace will submit the request to its domain name services provider (the “Registrar”) on your behalf. Rackspace’s sole responsibility is to submit the request to the Registrar. Rackspace is not responsible for any errors, omissions or failures of the Registrar. Your use of domain name services is subject to the applicable legal terms of the Registrar. You are responsible for closing any account with any prior reseller of or registrar for the requested domain name, and you are responsible for responding to any inquiries sent to you by the Registrar.

18. VULNERABILITY TESTING. Vulnerability testing services involve inherent risks, such as data corruption, and impaired performance of your Hosted System. If you ask Rackspace to provide vulnerability testing services, then you agree that Rackspace is not liable to you for any damages arising from the performance of the Services as agreed.

19. UNSUPPORTED CONFIGURATION ELEMENTS OR SERVICES. If you ask us to implement a configuration element (hardware or software) or hosting service in a manner that is not customary at Rackspace, or that is in “end of life” or “end of support” status, we may designate the element or service as “unsupported,” “non-standard,” “best efforts,” “reasonable endeavor,” “one-off,” “EOL,” “end of support,” or with like term in the Service Description (referred to in this Section as an “Unsupported Service”). Rackspace makes no representation or warranty whatsoever regarding any Unsupported Service, and you agree that Rackspace will not be liable

to you for any loss or damage arising from the provision of the Unsupported Service. The Deployment and Service Level Guaranties will not apply to the Unsupported Service, or any other aspect of the Hosting Services that is adversely affected by the Unsupported Service. You acknowledge that Unsupported Services may not interoperate with Rackspace's other services, such as backup or monitoring.

20. IP ADDRESSSES. The IP addresses allocated to your Hosted System during the term of the Agreement are managed by Rackspace and Rackspace will retain these IP addresses after termination of the Agreement, meaning that they may not be transfered or utilized by you after termination of the Agreement.

21. RACKSPACE API CODE SUPPORT. If you use Rackspace API Code Support, then the addendum at <http://www.rackspace.com/information/legal/apicodesupport> ^[4] is part of the Agreement.

Rackspace®, MyRackspace® and The Fanatical Support Promise® are registered trademarks of Rackspace US, Inc. in the United States and/or other countries. Microsoft is a registered trademark of Microsoft Corporation.

Source URL: <http://www.rackspace.com/information/legal/intensiveterms>

Appendix “I”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

) CASE NO: 20-34791
)
) Houston, Texas
)
) Q'max Solutions Inc.,
)
) Friday, October 9, 2020
) Debtors.
)
) 8:27 a.m. to 9:02 a.m.
)
)
) -----)

HEARING

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For U.S. Trustee: JARROD MARTIN
Chamberlain Hrdlicka White Williams
& Aughtry, PC
1200 Smith Street
Suite 1400
Houston, TX 77002

For Debtors: JOHN CORNWELL
Munsch Hardt Kopf & Harr, P.C.
700 Milam St #2700
Houston, TX 77002

For Anchor Drilling Svcs: MATTHEW HINKER
O'Melveny & Myers
Times Square Tower
New York, NY 10036

For M-I, LLC d/b/a SWACO: CARRIE HARDMAN
Winston Strawn
800 Capitol Street
Suite 2400
Houston, TX 77002-2925

1 Court Reporter: UNKNOWN

2 Courtroom Deputy: UNKNOWN

3

4 Transcribed by: Veritext Legal Solutions
5 330 Old Country Road, Suite 300
6 Mineola, NY 11501
7 Tel: 800-727-6396

6

7

8 Proceedings recorded by electronic sound recording;
9 Transcript produced by transcription service.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 HOUSTON, TEXAS; FRIDAY, OCTOBER 9, 2020; 8:27 AM

2 (Call to Order)

3 THE COURT: All right. Good morning. We're here
4 in the Q'Max Solutions, Inc. case. It's 20-34791. We have
5 an emergency motion to quash the subpoena. We've already
6 taken appearances electronically. I don't -- I see Mr.
7 Martin on the screen but not on the appearances. So, Mr.
8 Martin, I'm going to go ahead and activate your line, but
9 you'll need to make your electronic appearance when we're
10 done.

11 Tell me what we have, Mr. Martin.

12 MR. MARTIN: Sorry about that, Your Honor. I
13 forgot to make -- I'm doing that right now.

14 THE COURT: Just go ahead and tell me what we have.
15 You can do that later.

16 MR. MARTIN: Certainly, Your Honor. Again, Your
17 Honor, Jarrod Martin for Christopher Murray, the Chapter 7
18 Trustee for Q'Max America, Inc. and Anchor Drilling Fluids
19 USA, LLC. Mr. Murray is the Chapter 7 Trustee for
20 (indiscernible) the administered estates that came before
21 Judge Lopez and they're Case Numbers 20-00020 and 20-00021.

22 We're here on a motion to quash a subpoena that
23 was issued to the Trustee, I believe, on October 6th, the
24 eve of October 6th. I'm happy to provide a brief history as
25 to how Q'Max Solutions and QAI and Anchor Drilling relate to

1 each other or I can jump right into what the actual dispute
2 we have here are.

3 THE COURT: Well, I was mainly looking -- I've
4 read your motion. What is the status of negotiations with
5 the other side?

6 MR. MARTIN: Your Honor, I spoke with the other
7 side yesterday afternoon and (indiscernible) that the
8 purchaser of the assets from the Q'Max America estates would
9 not give consent to turn over documents that were dated
10 confidential under the asset purchase agreement. And they
11 advised that, therefore, we still have a dispute. And so I
12 filed the motion and have not reached an agreement in that
13 time.

14 THE COURT: Thank you.

15 Ms. Hardman, can I get you to go ahead and press
16 5* on your line, please?

17 (Pause)

18 THE COURT: Ms. Hardman, good morning.

19 MS. HARDMAN: Good morning, Your Honor. Can you
20 hear me okay?

21 THE COURT: I can hear you fine. Thank you.

22 Ms. Hardman, when I looked at the pleading and I
23 went to look at Judge Lake's docket, I had -- you're
24 certainly not required, but I had understood and encouraged
25 people to go before Judge Lake to see what his view was on

1 proceeding. It looks like that didn't occur. And, again,
2 that's not a violation of anything, but I'm trying to get a
3 better picture of why we're not keeping Judge Lake in this
4 loop, which still makes sense to me and I think I'm
5 misunderstanding some of what's going on. So can you let me
6 know about that?

7 MS. HARDMAN: Sure, Your Honor. Again, Carrie
8 Hardman from Winston Strawn on behalf of M-I, LLC d/b/a
9 SWACO. Your Honor, I have spoken with our other colleagues
10 here who represent M-I and who you have met (indiscernible)
11 at the first-day hearing for this case and have inquired
12 about the status. My understanding is that the plan is to
13 reach out to Judge Lake to confirm the proceedings with
14 respect to his preference. I believe that that just is in
15 process. It simply has not happened yet. Also, given the
16 timing of the hearing before Your Honor to further
17 (indiscernible) by proceeding with discovery here as well as
18 reaching out to Judge Lake. But my understanding is that it
19 is in process. It just may not be reflected on the docket
20 as of yet.

21 THE COURT: What's going on? And I'm going to
22 ask, you know, Mr. Cornwell this same question in a moment.
23 But what's going on in the district court proceeding before
24 Judge Lake that in your view requires some urgency? I know
25 that I've set this on an urgent basis at Mr. Cornwell's

1 request. But do you see anything going on that requires an
2 urgent resolution before Judge Lake can weigh in on what's
3 happening?

4 MS. HARDMAN: My understanding -- and I apologize
5 for not having a full complete picture of the underlying
6 litigation simply because that is not my wheelhouse. But --

7 THE COURT: It's also an emergency motion, so --

8 MS. HARDMAN: My -- yeah.

9 THE COURT: -- you weren't required to be fully
10 prepared. And I'm just trying to get a better picture.

11 MS. HARDMAN: Sure, I appreciate that, Your Honor.
12 And my understanding is that there was or has been discovery
13 that was due to be -- or, I apologize, there were deadlines
14 with respect to a certain exchange of data in advance of
15 trial that were coming due I believe last week. And those
16 exchanges either may not have occurred yet or are due to
17 occur in short order. And the exigency of proceeding was to
18 simply line that up for trial before Judge Lake and make
19 sure the deadlines are not missed so that there's no reason
20 to then extend the trial date or push it out with Judge Lake
21 so that this can be heard and addressed in short order.

22 THE COURT: So --

23 MR. CORNWELL: Your Honor?

24 THE COURT: Hold on just a moment.

25 Ms. Hardman, when I've looked at the discovery in

1 the notice that your client sent out, it looked to me like
2 it was substantive towards the dispute before Judge Lake
3 more than it related to whether the Chapter 15 order should
4 be entered. Maybe we'll take a moment and let you tell me
5 how that discovery relates to the Chapter 15 matter that's
6 coming up next week so that I can maybe get a little better
7 picture on how things might overlap.

8 MS. HARDMAN: Sure. And I think that -- you know,
9 if Your Honor would just indulge me a moment, I think I can
10 walk you through where we've narrowed from the M-I
11 perspective what we're looking for from QAI as opposed to
12 QSI and how that relates to the proceeding before Your Honor
13 coming in that Tuesday.

14 To start and clarify, I just want to make clear
15 that we are not proceeding under Rule 2004. We know better.
16 We are proceeding with respect to this being a contested
17 matter under Federal Rule 9015 (indiscernible) Rule 45. I
18 just wanted to make that clear as that's mentioned in the
19 motion.

20 As the Court is aware, M-I has very little insight
21 as to the involvement of QAI versus QSI when it sent its
22 original set of discovery requests to both entities. But we
23 met and conferred with both parties to discuss those
24 parameters, and at that meet and confer, we've explained
25 that our focus is on the movement of the (indiscernible)

1 software from QAI to QSI which we ultimately memorialized in
2 an email to their counsel yesterday morning.

3 QSI has since provided some initial responses to
4 our inquiry, which have been instructive thus far. We
5 continue to discuss with QSI the further information and
6 documentation that could help inform our understanding. And
7 we appreciate the position that the Trustee is in over QAI.
8 And if we can obtain documents and information from QSI to
9 resolve those issues, that's great. We're certainly not
10 trying to seek duplicative information here. However, it's
11 our rough understanding thus far that entry of the license
12 agreement which would (indiscernible) I think on our end to
13 understanding what happened prior -- just prior to the
14 petition date with respect to the (indiscernible) software.
15 But it's certainly not an ongoing transaction, and that the
16 document itself was signed by the same person on both sides.

17 So to that end, it's not clear to us whether or --
18 and to what extent there could be an overlap or commingling
19 with the operations such that QAI may possess the documents
20 related to the use and the movement of the (indiscernible)
21 software just prior to the petition date. And, for that
22 instance, what I would --

23 THE COURT: Just prior to the petition date in the
24 Chapter 7 case or just prior to the petition date in the
25 Chapter 15 case?

1 MS. HARDMAN: Fair question, Your Honor. Just
2 prior to the petition date for QAI --

3 THE COURT: The Chapter 7?

4 MS. HARDMAN: -- which to our mind -- correct.
5 The Chapter 7 case to our mind was the start of the process
6 that led to the QSI filing before Your Honor today. So to
7 our mind, (indiscernible) and once we are able to discern
8 differently from the discovery that was taken by the
9 entities prior to the petition date and not the Chapter 7
10 Trustee to effectively evade M-I's litigation and evade the
11 claims of M-I and either hinder and delay us from proceeding
12 on it. So we're just trying to understand what happened
13 with respect to that license agreement.

14 And I think the one thing that we have outstanding
15 from our end with respect to AI is communications between
16 those two entities regarding (indiscernible) of the license
17 agreement to the extent they even exist. QSI, I believe,
18 says they're not aware of any, but (indiscernible). But to
19 the extent that QAI is the full custodian of any of those
20 documents or information related to that very specific
21 request, we just would like to pursue those documents and
22 possibly ask questions to the extent that there was anything
23 there.

24 So I'll take (indiscernible) for Your Honor. We
25 are not trying to duplicate efforts. We just were trying to

1 figure out what happened.

2 THE COURT: And do you really need to talk to Mr.
3 Murray about that or you need to talk to somebody else about
4 that?

5 MS. HARDMAN: We would love to talk with somebody
6 with knowledge of the information that may exist at QAI. My
7 understanding is that there isn't anybody else to do that.
8 I am in a position of -- that I do not wish to be in to ask
9 Mr. Murray of that information, but I don't know who else to
10 ask.

11 THE COURT: Well, with --

12 MS. HARDMAN: And it's my understanding there
13 isn't anybody else.

14 THE COURT: I hope Mr. Murray won't take this
15 offensively. He's a smart guy, but he isn't smart enough to
16 know what happened before he got on the scene in the sense
17 of being able to give testimony about personal knowledge.
18 It's one thing to want his documents, and I am getting a
19 picture for why you need the documents. It's another thing
20 to need him and I also am a bit inclined to think we need
21 Judge Lake involved.

22 Mr. Cornwell, what's your position on all this?

23 MR. CORNWELL: Thank you, Your Honor.

24 (Indiscernible) with Your Honor. I have no information
25 about what was going on in the (indiscernible). I agree.

1 (Indiscernible) before the Chapter 7 was filed and before
2 the receivership was filed, as well, although those two
3 things happened almost in tandem. They were several months
4 ago. And, frankly, the receiver (indiscernible) in this
5 case (indiscernible) but the same personal knowledge, I
6 should say, that Mr. Murray has, which is to say very little
7 other than what's on the docket. There are no employees
8 left. Directors, officers are all gone. QSI has liquidated
9 (indiscernible) and Anchor is.

10 With respect to what's going on in district court
11 and why this is an emergency, Your Honor, right after our
12 last hearing, M-I -- I'm sorry if I'm saying that wrong.
13 It's M-1 or M-I, but the plaintiff in that litigation, Your
14 Honor, filed their motion in limine. There is a response
15 deadline coming up. I apologize I don't have the date in my
16 head, but it's another week or so from our hearing on
17 Tuesday. Even after that, the parties are going to march
18 into all of the pre-trial filings which are voluminous and
19 expensive. And that's really, among other things, that is
20 (indiscernible) in Chapter 15. But with respect to that
21 litigation, that's the emergency. And Judge Lake, I've been
22 told, has announced that they're set for trial no sooner
23 than January. And we all know that trial schedules are
24 difficult right now.

25 THE COURT: So I didn't realize that there was a

1 hearing set on the motion in limine. When is that set for?

2 MR. CORNWELL: Well, (indiscernible) hearing. I
3 think it's a response deadline right now, Your Honor. If
4 there's a hearing, I'm not aware of it.

5 THE COURT: Got it. Got it. Okay. And let me
6 ask Mr. Cornwell and Mr. Martin if there is any objection to
7 Ms. Hardman's client taking depositions of principals that
8 were actually involved in the pre-filing transfers, alleged
9 transfers, whatever those are.

10 MR. CORNWELL: Your Honor, I need to consult with
11 receiver. My gut is, no, there is not so long as we're able
12 to tie it (indiscernible). I think right now
13 (indiscernible) discovery. Let me take a quick step back.
14 The discovery in the litigation has been closed for many,
15 many months. And Ms. Hardman represents a client that has
16 pushed very hard in this litigation, and the (indiscernible)
17 has pushed very hard back, and it has not been the
18 friendliest litigation. And that is not a comment on
19 anybody's (indiscernible) or purposes. It's just
20 litigation, and that's how it goes sometimes.

21 So I do think there's a need for the receiver to
22 (indiscernible) not only the interest of the estate but also
23 the cost with which it will take to conclude the matter, how
24 would they even be precluded. So that wasn't very
25 articulate, but I will say that as long as we can tie it to

1 the proper scope with respect to the relief requested in a
2 Chapter 15, there's not going to be pushback from the
3 receiver.

4 THE COURT: And, Mr. Martin, is there any problem
5 from your client's point of view in making all of the -- and
6 I understand that you've got to give notice to the
7 counterparty and all that stuff -- in making the documents
8 fully available if we were to order that to occur, in other
9 words, where they are? It's not Mr. Murray's responsibility
10 to go reorganize documents in response to a deposition, but
11 it is his responsibility normally to make them available
12 where they are in the manner in which they were ordinarily
13 kept.

14 Does he have any problem doing that? I think
15 you've re-muted your line, Mr. Martin.

16 MR. MARTIN: Sorry about that. (Indiscernible) of
17 how the documents are currently organized. There's
18 approximately 1,500 boxes in a warehouse in Tulsa and a
19 Houston laboratory. The Houston lab needs to have all the
20 boxes removed by the end of the month so we can
21 (indiscernible) storage area. But there's an index, but it
22 doesn't provide (indiscernible) particularity for the
23 Trustee to be able to identify where these documents may be
24 located.

25 My understanding is that the email server for the

1 Q'Max entities is at the QSI level. So the Trustee has no
2 (indiscernible) exchanged shortly prior to the petition
3 date. But as far as (indiscernible) by the Debtor prior to
4 the petition date, I don't think the Trustee has a position
5 on that. And if they (indiscernible), I'm sure they would
6 respond by letter.

7 THE COURT: Can you tell me once again when the --
8 and I don't think this is you, Mr. Martin, but it's going to
9 be Ms. Hardman or even Mr. Cornwell -- when the responses
10 are due to the motion in limine?

11 MS. HARDMAN: Your Honor, I was able to message
12 our colleagues here to find out the answer to that. It
13 appears to be October 21st.

14 THE COURT: And I believe the statement was made
15 by Mr. Cornwell -- and if you want your colleagues to dial
16 in, that's fine, and if you want to just keep texting them,
17 that's fine. Is it your expectation that the real pre-trial
18 work will occur after the motion in limine is determined by
19 Judge Lake? Given the extensive opinions that he's written
20 in this and he's dealt in this heavily, I'm trying to figure
21 out where he is on things without asking him, which I think
22 I can just do. But I don't know that's appropriate for
23 where we are.

24 MS. HARDMAN: Your Honor, I unfortunately don't
25 know. I am personally (indiscernible). But I will inquire

1 and see if my colleague (indiscernible) may be able to join
2 us for a moment in this call or if she can help understand
3 the question.

4 THE COURT: Mr. Martin?

5 MR. MARTIN: Thank you, Your Honor.

6 THE COURT: With respect to the counterparty to
7 the agreement where you're concerned about honoring the
8 confidentiality provisions and giving them adequate notice,
9 can you identify that party and then we're going to see if
10 they're on the line and ask them to press 5*.

11 MR. MARTIN: Yes. That party would be Anchor
12 Drilling Services and the attorney representing them would
13 be Matthew Hinker from O'Melveny.

14 THE COURT: All right. If there's anyone from
15 that entity represented by counsel on the phone, if you -- I
16 see Mr. Gottlieb. You said Mr. Gottlieb, right?

17 MR. MARTIN: I said Mr. Hinker --

18 THE COURT: Oh, okay.

19 MR. MARTIN: -- from O'Melveny & Myers.

20 THE COURT: If there's anyone from that firm on
21 the phone, please press 5*.

22 Good morning. Who do we have on the phone there
23 from 703 area code?

24 MR. HINKER: Good morning, Your Honor. It's
25 Matthew Hinker from O'Melveny & Myers. We were here just to

1 monitor the hearing. So I (indiscernible).

2 THE COURT: Mr. Hinker, thank you for clicking in.
3 How long do you need to formulate a response as to whether
4 we should order the disclosure of those documents given the
5 confidentiality agreement?

6 MR. HINKER: (Indiscernible). We just became
7 aware of this within, you know, the last day or two. Mr.
8 Martin reached out. You know, our understanding is
9 (indiscernible). (Indiscernible) Chapter 7 that Judge Lopez
10 oversaw on Anchor back in early June. So, you know, we can
11 go back and (indiscernible).

12 THE COURT: I didn't hear that very last sentence.
13 I just didn't understand it.

14 MR. HINKER: We believe, Your Honor, that we're
15 going to need a little bit of time that we (indiscernible)
16 documents or been asked to do anything other than, you know,
17 a couple of conversations with Mr. Martin. So
18 (indiscernible) and be able to meet and confer with
19 (indiscernible).

20 THE COURT: Okay.

21 MR. CORNWELL: Your Honor, I think I can help with
22 this. I'm sorry to interrupt.

23 THE COURT: No, go ahead.

24 MR. CORNWELL: (Indiscernible). And I don't mean
25 to put words in Ms. Hardman's mouth. I'm sure she'll

1 correct me if I'm saying it incorrect. But the thing that
2 M-I is understandably (indiscernible) for them is the
3 **exclusive license agreement** that relates to (indiscernible)
4 intellectual property that was on the purchase schedule to
5 the purchaser in the Chapter 7 (indiscernible).

6 Understandably because of the confidentiality
7 provision (indiscernible) Chapter 7 Trustee has indicated in
8 the pleadings here that they were unable to give that
9 document to M-I. **But QSI was the counterparty and the**
10 **licensor under that document. We provided it last night,**
11 **Your Honor.** We also provided some correspondence from the
12 receiver who came on board after that exclusive license
13 agreement was granted indicating that **there's an agreement**
14 **between us and the purchaser cancelling that license**
15 **agreement.**

16 I don't know that there is (indiscernible) if it
17 goes down this path, but again, I do not mean to put words
18 in Ms. Hardman's mouth.

19 THE COURT: I'm learning more every few minutes.
20 Thank you, Mr. Cornwell.

21 MR. CORNWELL: I just wanted to (indiscernible).

22 THE COURT: Let me make a suggestion for how we
23 ought to proceed on this, and this is at this stage merely a
24 **suggestion.** And I want people to tell me if this does not
25 work well. That is to **cancel the hearing that is scheduled**

1 for the 13th, to order that the parties jointly seek an
2 emergency discovery conference with Judge Lake, that a
3 response be filed -- which may be it's moot which is fine
4 with me -- by the counterparty not later than October 16th.
5 And then we will hold our hearing on October 20th at 1:30 in
6 the afternoon on whether to grant the relief.

7 It sounds like there's a lot of moving parts and
8 that people need an opportunity to confer and that in the
9 meantime, the only thing that I would order to be produced
10 in response to the subpoena is that the Trustee, especially
11 because he might be vacating and moving documents by the end
12 of the month, make documents available where they are. I
13 think -- and I don't remember -- I think somewhere in in
14 Oklahoma, somewhere in Houston, but wherever they are, to
15 Ms. Hardman's client to go review in the manner in which
16 they're currently kept.

17 That doesn't preclude further discovery down the
18 road. It doesn't allow further discovery down the road, but
19 it allows Judge Lake to play what I think is the appropriate
20 role in this case to help understand whether he wants to
21 defer to the bankruptcy court and to vindicate Ms. Hardman's
22 client's -- and she's being careful with her words -- but
23 implicit allegations that the commencement of the Chapter 15
24 case, not the receiver's role in the Chapter 15 case but the
25 commencement of the Chapter 15 case in Canada was part of an

1 effort that is linked back to the litigation before Judge
2 Lake inappropriately.

3 And I would much rather have Judge Lake play a
4 role in that than me interfering with what he does. And so
5 instead of making optional -- it's optional with Judge Lake
6 but make it required that the parties immediately seek an
7 emergency hearing before him. Does that work for everybody?

8 MR. MARTIN: Your Honor, Jarrod Martin for the
9 Trustee. I don't care one way or another. Just to clarify,
10 QAI was dismissed from that litigation, and so I just wanted
11 to clarify that the Trustee has (indiscernible) obligation
12 (indiscernible) discovery conference or if we can rely on
13 counsel for QSI who also represents QAI pre-petition.

14 THE COURT: Well, I thought that Mr. Murray had
15 control of the documents and that's all that I'm requiring
16 right now --

17 MR. MARTIN: Okay.

18 THE COURT: -- that he do. It's the other party
19 -- y'all are a third-party witness. Third-party witnesses
20 --

21 MR. MARTIN: That's correct.

22 THE COURT: -- don't have to produce documents but
23 just produce them in the ordinary course is what I'm
24 contemplating. I want to hear if that doesn't make sense to
25 people. That gives your counterparty enough time to answer.

1 The answer may be it's moot because, you know, Mr.
2 Cornwell's client's already disclosed the information. It
3 may be that they still want some protection, and I really
4 don't want to put Mr. Hinker on the spot today where he was
5 courteous enough to listen in and then get thrown into the
6 mix. But he's told me he can respond in a week, so I'm
7 giving him the week. Anybody have any problem with that?

8 MS. HARDMAN: Your Honor, Carrie Hardman --

9 THE COURT: Yeah, go ahead, Ms. Hardman.

10 MS. HARDMAN: -- on behalf of M-I. Thank you,
11 Your Honor. This is the first time (indiscernible) email
12 traffic, we might (indiscernible). So I think we're all
13 learning a little bit as we go. That actually is quite
14 helpful for us. So to my mind, I don't actually have an
15 issue with the proposal you set forward and appreciate your
16 thoughts on it.

17 THE COURT: Thank you. Mr. Cornwell, are you okay
18 with that?

19 MR. CORNWELL: Your Honor, the timing works just
20 fine for me. I will confirm with KPMG (indiscernible) that
21 she's available on the 20th. And if that's not the case and
22 we can't make it work, then we'll certainly immediately
23 correspond with the Court.

24 As far as discovery is concerned, the second
25 hearing where there's been some suggestion that Chapter 15

1 was filed for an unlawful or fraudulent purpose, I don't
2 understand where that's coming from. And I just want to do
3 whatever I can to clear the record. That's absolutely not
4 the case. There was a summary judgment ruling. There was a
5 misunderstanding or a surprise on our side, but it didn't
6 more or less dispose of the litigation. And for
7 (indiscernible) reasons and because of the process, the sale
8 process in Canada, that is the reason we filed our Chapter
9 15.

10 THE COURT: Yeah.

11 MR. CORNWELL: (Indiscernible). We're doing
12 whatever we can to coordinate and help, frankly, Ms. Hardman
13 and her client to get information. I just want to make sure
14 the record is clear.

15 THE COURT: I appreciate your statement, and I --
16 to some extent, I put words in Ms. Hardman's mouth that may
17 have gone beyond what she said. I just -- I'm really
18 sensitive when you have the litigation going on before Judge
19 Lake and he's already issued two lengthy memorandum opinions
20 and now people are effectively dealing in that before me.

21 As I said at the last hearing, and I mean it, it's
22 entirely possible that Judge Lake says, no, the
23 interrelationship of this proceeding and the Canadian
24 proceeding is something that, you know, the bankruptcy judge
25 ought to look at in the first place. I'm quite happy with

1 that. He may say that he wants to make that decision. I
2 just think it's the appropriate thing to do right now,
3 especially because I'm going in and I'm opening up some
4 discovery, postponing the hearing. There's enough time to
5 get there.

6 If Judge Lake decides not to hold that emergency
7 conference, then, you know, I do need to deal with it. But
8 I want to give him that opportunity. So since no one --

9 MR. HINKER: Your Honor?

10 THE COURT: Yeah, since no one has any objection
11 then to that suggestion, I'm going to now make that the
12 ruling. We're cancel --

13 MR. HINKER: Your Honor?

14 THE COURT: Yes, sir. Go ahead. I apologize.

15 MR. HINKER: I'm sorry. (Indiscernible). I
16 didn't mean to interrupt.

17 THE COURT: I'm sorry. Hold on. You're breaking
18 up and I can't understand you.

19 MR. HINKER: I'm sorry. Is that better, Your
20 Honor?

21 THE COURT: A little bit.

22 MR. HINKER: Let me try one thing. Okay.
23 Hopefully that's better, Your Honor.

24 THE COURT: It is. Who's speaking, please?

25 MR. HINKER: This is Matthew Hinker from

1 O'Melveny.

2 THE COURT: Mr. Hinker, thank you. Go ahead.

3 MR. HINKER: And I'm sorry to chime in, Your
4 Honor. But just, you know, I think Mr. Cornwell provided
5 some good comment earlier and just to -- you know,
6 (indiscernible) was the purchaser under a 353 approved by
7 Judge Lopez that Mr. Cornwell (indiscernible). So I mean we
8 will respond to the discovery, but (indiscernible) Chapter 7
9 receivership were filed back -- Ms. Hardman and Mr. Cornwell
10 can correct me -- in I think early May. There was a
11 (indiscernible) run in Chapter 7 for the U.S. purchase of
12 (indiscernible).

13 To the extent (indiscernible) buyer is any type of
14 (indiscernible) type software, well, the asset purchase
15 agreement contemplated a transfer of that. All of the
16 parties worked through a transition service agreement where
17 Paradigm, the buyer, used (indiscernible) software for a
18 limited period following the (indiscernible). We have since
19 terminated that license agreement, and the transition
20 service agreement has also terminated by its terms. So
21 Paradigm as a buyer, you know, we don't have any copies of
22 the (indiscernible) software. We don't run the
23 (indiscernible) software. We are (indiscernible) -- you
24 know, we'll do whatever is required of us. But we're, you
25 know, a good-faith purchaser under the 363 sale order and

1 (indiscernible).

2 THE COURT: Yeah. I am not requiring your client
3 to participate in any discovery at all this stage. All I'm
4 asking is if y'all want to object to the discovery requested
5 of others, I want to give you an opportunity to make that
6 objection. You may have no objection to it.

7 MR. HINKER: Your Honor, I'm sorry.

8 THE COURT: And it sounds --

9 MR. HINKER: I misunderstood. I think I'll just
10 --

11 THE COURT: I'm sorry.

12 MR. HINKER: I misunderstood. When you said all
13 of the parties, I took you to mean us as well. But
14 (indiscernible).

15 THE COURT: Yeah, I don't think you're a party at
16 all. It's just I've got Mr. Murray saying I don't want to
17 breach my confidentiality agreement with Hinker's client.
18 And, you know, that means I think you need -- since I may
19 order Mr. Murray to produce it, notwithstanding the
20 confidentiality agreement, you get notice and I want you to
21 have an opportunity to pitch in and assert your rights or
22 waive them, whatever you want to do. But I'm not requiring
23 you to do anything. If you do nothing, that's fine. And
24 then I'll just have the hearing without your participation.
25 But I want to be sure you had adequate notice to be able to

1 object. That's all I'm doing.

2 MR. HINKER: Thank you, Your Honor.

3 (Indiscernible).

4 THE COURT: All right. We're all learning and

5 live. Okay. So the hearing scheduled for the 13th is

6 cancelled. The hearing will be rescheduled for the 20th.

7 And if there's a conflict with -- once people talk to their
8 clients, if the 20th doesn't work, get on the phone on a
9 joint call with Ms. Do. I'm authorizing her to move it to,
10 you know, another date that week that works. I proposed a
11 time just so people could have something to work with.

12 The documents will be produced where they are.

13 Mr. Murray will not be deposed right now. And the parties
14 are ordered to seek -- jointly ordered to seek an emergency
15 hearing before Judge Lake to see what role he believes the
16 district court should play in this.

17 Thank you all. This is heard, and I appreciate
18 everybody trying to bring me up to speed and educating me.
19 We'll see what happens. Thank you. I'm going to move ahead
20 to my 9:00 docket.

21 MR. MARTIN: Thank you, Your Honor.

22 MS. HARDMAN: Thank you, Your Honor.

23 (Proceedings adjourned at 9:02 a.m.)

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Sonya Ledanski Hyde

Veritext Legal Solutions
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: October 12, 2020

Appendix “J”

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

M-I L.L.C. D/B/A M-I SWACO,)
)
 Plaintiff,)
) Case No. 4:18-cv-01099
 v.)
)
 Q'MAX SOLUTIONS, INC. AND SANJIT)
 ROY,)
)
 Defendants.)

**Q'MAX SOLUTIONS, INC. POSITION STATEMENT
IN ADVANCE OF OCTOBER 16, 2020 STATUS CONFERENCE**

Q'Max Solutions, Inc. ("QSI"), by and through KPMG Inc., solely in its capacity as court-appointed receiver and manager ("Receiver") of QSI, files this position statement in accordance with the Court's *Order* [Dkt. No. 159] granting the parties' *Joint Emergency Request for a Status Conference* (the "Status Conference Request") [Dkt. No. 158], and would respectfully show the Court as follows:

General Background

On September 30, 2020, the Receiver directed the filing of a chapter 15 bankruptcy petition on behalf of QSI in this District (the "Chapter 15 Proceeding"), principally seeking recognition of the *Consent Receivership Order* dated May 28, 2020 (the "Receivership Order") entered by the Court of Queen's Bench of Alberta in Judicial Centre of Calgary, Alberta, Canada, Court File No. 2001-06722 (the "Canadian Court") in the Canadian receivership proceeding pending under Canada's Bankruptcy and Insolvency Act ("BIA") (the "Canadian Proceeding"). Therein, the Receiver filed, in relevant part, QSI's verified petition for recognition of the Canadian Proceeding as a foreign main proceeding (the "Verified Petition") and a request for ex parte provisional relief

pursuant to section 1519 of the Bankruptcy Code (the “Provisional Relief Motion”). *See* Bankr. No. 20-34791, at Dkt. Nos. 3 and 4.

As explained more fully therein, the Receiver initiated the Chapter 15 Proceeding in order to effectuate in the United States the powers and authorities set forth in the Receivership Order and/or to utilize corollary powers afforded to “foreign representatives” pursuant to chapter 15 of the Bankruptcy Code. Among the relief requested, both provisionally and on a final basis, is recognition of the stay of all proceedings against the Receiver, QSI, and/or assets of the QSI estate in order to facilitate the fair and economical liquidation of QSI in the Canadian Proceeding.¹

The Receiver has been transparent through its filings in the Chapter 15 Proceeding and through presentation to the Bankruptcy Court that it seeks to stay this proceeding—not for purposes of delay or in bad faith—but in carrying out its duties as court-appointed fiduciary for all creditors of the QSI estate as ordered by the Canadian Court. It is the opinion of the Receiver that future dollars spent by the Receiver in defending against the claims of M-I L.L.C. (“M-I”), however baseless, are wasted dollars that may not be used to satisfy QSI’s rightful creditors.

To be clear, QSI is in the middle of liquidation process, with the Receiver’s duties being akin to a chapter 7 bankruptcy trustee’s duties in the United States. QSI is not operating; no longer has any officers, directors, or employees (other than third-party professionals retained by the Receiver); and exists as of this writing solely for the purpose of selling its equity interests in certain international operating companies located in Mexico, Colombia, the Middle East, and Africa. Moreover and importantly, the QSI estate—like so many oil and gas businesses in the current

¹ The Consent Receivership Order expressly imposes a stay of initiation or continuation of proceedings against the Receiver, the QSI, and/or the other Canadian debtors and their respective estates. *See* Receivership Order ¶¶ 7-11, attached hereto as **Exhibit A**.

economic and global environment—including woefully insufficient market value to provide any distribution to unsecured creditors, including any future judgment creditor.

Further, in light of the Court’s *Memorandum Opinion and Order* granting, in part, QSI and the other Defendants’ motion for summary judgment, M-I has no basis to seek injunctive relief against QSI. Instead, M-I stands to gain nothing more than a paper judgment if successful in pursuit of its remaining claims against QSI (which, QSI contends, it would not be) because the Court disposed of M-I’s request for injunctive relief. *See* Dkt. 146, p. 26 (citing M-I’s MSJ Response, in which M-I stated: “In this case, where Q’Max used a different programming language for the MAXSITE product and thus did not copy the entire code line-for-line, ***M-I seeks only injunctive relief on the copyright claim, and seeks damages for the trade secret, conversion, and breach claims.*** *See* Dkt #132, p. 5, n. 2 (emphasis added)).

Yet, despite requests from the undersigned and bankruptcy counsel, and representations made and uncontroverted evidence admitted in the Chapter 15 Proceeding, M-I continues its litigious ways.² Accordingly, the Receiver seeks chapter 15 relief and a stay of this proceeding to preserve value for the QSI liquidating estate.

The Chapter 15 Bankruptcy

The parties filed the Status Conference Request at the request of Judge Isgur after the Bankruptcy Court received two short non-evidentiary presentations from M-I’s counsel at the October 2 hearing (on the Provisional Relief Motion) and the October 9 hearing (on an emergency

² By comparison, on September 17, 2020, a suit was filed against QSI by landlord Atlas Energy Tower LLC (“Atlas”) based on a Guaranty Agreement executed by QSI relating to a lease of property by Q’Max America, Inc. (dismissed defendant in this action and current chapter 7 bankruptcy debtor). Based on the representations made in the Verified Petition, counsel for Atlas has represented that the guarantor action will be non-suited. *See* Cause No. 2020-57316 (127th Dist. Ct., Harris County).

motion to quash M-I's subpoena issued to Q'Max America Inc.'s ("QAI") chapter 7 trustee)³. During those hearings, M-I's counsel recited allegations that underlie its Complaint before this Court, which caused the Bankruptcy Court—in light of the pre-trial status of this action and the emergent relief request in the Chapter 15 Proceeding—to delay its ruling on the Provisional Relief Motion and set both the Verified Petition and Provisional Relief Motion for hearing on October 20, 2020. On information and belief, out of announced respect and candor for this Court, Judge Isgur was reluctant to grant emergency relief (albeit typically granted in similar chapter 15 proceedings) under the circumstances and in light of serious inferences from M-I's counsel relating to the timing of the chapter 15 filing.

The Status Conference Request was thus jointly filed to allow this Court to make any statements or issue any orders which the Court deems appropriate prior to the Bankruptcy Court making a ruling recognizing the Canadian Proceeding staying this proceeding.

QSI, by and through the Receiver, appreciates the opportunity to address the Court and answer any questions it may have with respect to the Canadian Proceeding or the Chapter 15 Proceeding. Although it is not entirely clear what role this Court can and/or should play in the foreign proceeding recognition process, nor is it clear what relationship the remaining relief requested by M-I in this action has, if any at all, to the Receiver's requests in the Chapter 15 Proceeding, the following topics may be raised by M-I in its simultaneously filed statement and are thus summarized by the Receiver:

- (a) QSI is, and at all relevant times has been, the owner of MAXSITE. While QSI's counsel believe discovery responses in this case were consistent with that position or,

³ Christopher R. Murray is the chapter 7 trustee (the "Chapter 7 Trustee") for the QAI and Anchor Drilling USA, LLC bankruptcy estates. *See* Case Nos. 20-60030, 20-60031 (Bankr. S.D. Tex. 2020). The Chapter 7 Trustee's administration of the U.S. bankruptcy estates is entirely separate from the Receiver's administration of the QSI and other Canadian debtors' liquidating estates.

- at most, were inconclusive as a result of the parties colloquially referring to both QAI and QSI as “Q’Max,” those responses were made prior to the Receiver’s (and the Chapter 7 Trustee’s) appointment. The Receiver’s investigations and the actions of prior management leading up to the bankruptcy and receivership filings all indicated that QSI owns MAXSITE, which is stored on third-party servers under the control of the Receiver.
- (b) Prior to the Canadian Proceeding and the QAI chapter 7 bankruptcy being initiated, incumbent QSI management caused an “exclusive license” of MAXSITE to be granted to QAI and certain other international operating companies in the Q’Max family. Despite the “exclusive” nomenclature, the license grants were exclusive only within a demarcated geographical region in which each Q’Max entity then-operated. On information and belief, these license agreements were created to preserve each entities’ ability to operate as going-concern businesses (just as they had historically operated) as QSI entered its receivership proceeding.
- (c) The Chapter 7 Trustee initiated and completed a sale of certain North Eastern U.S. assets of QAI and/or Anchor Drilling USA, LLC. Those assets were sold pursuant to section 363 of the Bankruptcy Code “free and clear” of all claims in the U.S. bankruptcy cases. The sale expressly included the license of MAXSITE. M-I received notice of the sale from the trustee, but did not object to the sale. Despite entry of a final sale order, M-I issued a subpoena to the buyer’s CEO (who is also the former CEO of QSI and former President of QAI), in his capacity as CEO of the new owner, seeking to take his deposition in connection with the Chapter 15 Proceeding on topics undescribed in the subpoena.

- (d) When the Receiver became aware (in July 2020 following the closing of the Chapter 7 Trustee's U.S. assets sale) of the license granted to QAI on the eve of the Receiver's appointment, the Receiver demanded cancellation of the license by the buyer, and the buyer assented. Neither QAI nor the buyer of its assets possess any rights to use MAXSITE or any access to MAXSITE source code.
- (e) The Receiver continues to market the operating companies owned, in whole or in significant part, by QSI. Any sale of those companies necessarily must, and will, be effectuated via a stock sale (because that is all QSI owns to sell), with notice to all parties entitled to notice in the Canadian Proceeding. M-I is among the parties that have rightfully requested notice in the Canadian Proceeding and have engaged Canadian counsel to represent them in the Canadian Proceeding.
- (f) The Receiver has received informal and formal discovery requests from M-I in connection with the Chapter 15 Proceeding. As of this filing, the parties have proceeded consensually through informal document production and written responses. The Receiver is diligently working to fulfill its fiduciary obligation to maximize value to the QSI estate, which includes economically complying with M-I's requests as they hypothetically relate to chapter 15 recognition. However, the Receiver agrees with Judge Isgur's statements (in connection with the Chapter 7 Trustee's motion to quash identical discovery requests) that M-I's discovery requests are related to closed discovery in this litigation, rather than any as of yet-unfiled objection to recognition of the Chapter 15 Proceeding.⁴

⁴ The Bankruptcy Court: "[W]hen I've looked at the discovery in the notice that [M-I] sent out, it looked to me like it was substantive towards the dispute before Judge Lake more than it related to whether the Chapter 15 order should be entered." Oct. 9 Hr'g Tr. at 6:25 – 7:4.

(g) The Receiver expects that the global operating companies will continue to use MAXSITE until such time as they are sold or liquidated. The Receiver does not have sufficient information to determine whether a prospective acquirer of QSI's equity interests will direct any former QSI-affiliated entity to use MAXSITE post-approval of a stock sale in the Canadian Proceeding. As of now, no sale agreement has been executed by the Receiver or any prospective purchaser and no sale hearing has been scheduled in the Canadian Proceeding.

In summary, the Receiver has been caught in the web of litigiousness of M-I and/or former management of QSI and QAI. Despite its best efforts and the Court's recent summary judgment ruling, the Receiver has been unsuccessful in negotiating an end to the litigation, and thus chose to pursue chapter 15 bankruptcy relief to recognize a stay of litigation that was ordered by the Canadian Court many months ago. The Receiver's motivation in so moving is singular – to stay the wastefulness of proceeding with litigation that, no matter how this Court rules, will provide no realizable value to any party.

DATED: October 15, 2020

Respectfully Submitted,

By: /s/ Chris Hanslik

Chris Hanslik
Attorney-in-Charge
Texas Bar No. 00793895
Federal ID No. 19249
chanslik@boyarmiller.com
2925 Richmond Avenue, 14th Floor
Houston, Texas 77027
Telephone: (713) 850-7766
Facsimile: (713) 552-1758

OF COUNSEL:

Andrew Pearce
Federal ID No. 91900
State Bar No. 24060400
apearce@boyarmiller.com
Lauren Black
Texas Bar No. 24097767
Federal ID No. 3039945
lblack@boyarmiller.com
Kirby Grove
2925 Richmond Avenue, 14th Floor
Houston, Texas 77027
Telephone: (713) 850-7766
Facsimile: (713) 552-1758

COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record in accordance with the Federal Rules of Civil Procedure via electronic filing or facsimile on this the 15th day of October, 2020, as follows:

John R. Keville
Michelle C. Replogle
Sheryl Falk
Michael C. Krill
James Winn
jkeville@winston.com
mreplogle@winston.com
sfalk@winston.com
mkrill@winston.com
jwinn@winston.com
WINSTON & STRAWN, LLP
1111 Louisiana, 25th Floor
Houston, Texas 77002

/s/ Andrew Pearce _____

Andrew Pearce

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

M-I L.L.C. D/B/A M-I SWACO,	§	
	§	
PLAINTIFF,	§	Case No. 4:18-cv-01099
	§	
V.	§	
	§	JURY TRIAL DEMANDED
Q'MAX SOLUTIONS INC. AND SANJIT ROY,	§	
	§	
DEFENDANTS.	§	

**PLAINTIFF M-I'S POSITION STATEMENT IN ADVANCE
OF THE STATUS CONFERENCE**

Pursuant to this Court's October 14, 2020 Order, Plaintiff M-I hereby submits a brief statement of its position in advance of the Status Conference to be held on October 16, 2020.

I. ARGUMENT

A. M-I's Concern That The Bankruptcy Process May Have Been Inappropriately Used As A Vehicle To Transfer The MAXSITE Software Outside The Reach Of This Court and Litigation

This litigation began over two-and-a-half years ago, and has always been about the MAXSITE software and M-I's recognition that Defendants created and developed that software using M-I's misappropriated trade secrets and wrongfully copied property. *See* Dkt. 1 at ¶¶20-23, Counts II, III, and V; Dkt. 21. Should M-I prevail at trial, M-I would seek all equitable relief, including an injunction, a seizure order, and/or destruction of the MAXSITE software.

Throughout the course of this litigation, M-I propounded numerous discovery requests against Q'Max Solutions Inc. ("QSI") and Q'Max America, Inc.¹ ("QAI"), including requests to

¹ While the Court correctly recognized that "[a] petition filed under 11 U.S.C. § 301, *et. seq.*, operates as a stay of the continuation of a judicial proceeding against the debtor that was

produce any license (or other form of permission to sell or use) related to the MAXSITE software; both Q'Max entities responded "None." See Exhibit A, QSI RFP Response 11; Exhibit B, QAI RFP Response 11. Through the bankruptcy proceeding, M-I knows now that an Exclusive License Agreement from QSI to QAI, exists, and there are apparently others. Dkt. 158, Ex. E; Exhibit H (#2, #14). When asked for documents on all aspects related to the MAXSITE software, including the *source code* for that software, QSI referred M-I to QAI's responses, and subject to that response, stated "none." Exhibit A, QSI RFP Responses 4-8. Indeed, M-I also served interrogatories seeking information related to the creation and control of the MAXSITE Software. Exhibit C, QSI Responses 7, 11, and 14; Exhibit D, QAI Responses 7, 11, and 14. The verified responses suggested it was QAI; no reasonable interpretation of QSI's responses would indicate that QSI created, much less owned, the MAXSITE software. Compare Exhibit C to Exhibit D. Yet, the Receiver for QSI now asserts that is exactly the case. See Exhibit E, QSI Verified Petition for Recognition, ¶32 (this case centers on "QSI's creation and ownership of a product named MAXSITE Hydraulics."). The Federal Rules require QSI and QAI to update discovery throughout the course of litigation—they have never done so. Fed. R. Civ. P. 26(e). M-I had to uncover these events (and more) through bankruptcy proceedings and what even QSI's receiver suggests was improper conduct. See Dkt. 158, Ex. F. Unfortunately, this discovery comes at a time when QAI has already been dismissed from this case, and after the Receiver for QSI has commenced proceedings to stay this litigation (on the eve of trial) and proceed with a sale of shares in QSI and/or its affiliates.

commenced before the initiation of the bankruptcy proceeding," Dkt. 146, at 35 (emphasis added), the Court then dismissed without prejudice Q'Max America, Inc. from this action.

During a conference between the Parties on August 31, 2020, M-I was told that (1) Canadian entity QSI now owns the MAXSITE software and its associated intellectual property, all at issue in this case; (2) an exclusive license agreement to the MAXSITE software had been granted to QAI by QSI on May 22, 2020—just *two days* before QAI filed for bankruptcy, and; (3) pursuant to a July 1, 2020, order in the bankruptcy case, that license was then sold to an entity named Drilling Services, LLC, an entity purportedly “owned by the equity partners” of QSI and QAI. *See* Dkt. 150; Dkt. 158. All of those actions, including the sale to an insider entity, occurred *prior* to QAI notifying M-I and this Court of the existence of QAI’s bankruptcy case. Dkt. 145.

So far, as to the actions taken by QAI and QSI before their respective bankruptcy cases, we know that Mr. Diaz-Granados executed the May 22, 2020 Exclusive License as both President & CEO of QSI and as President of QAI. Dkt. 158, Ex. E. Two days later, Mr. Diaz-Granados granted written consent as the sole director of QAI to the Voluntary Petition for Bankruptcy. Exhibit F, QAI Petition at Page 10 of 80. In that same May 24 filing, QAI planned to sell the Exclusive License as part of the proposed Asset Purchase Agreement “free and clear of all Liens.” Exhibit F at Pages 20, 26 of 80; *see also id.* at Pages 66-70, at 69. At least as of August 31, 2020, Mr. Diaz-Granados held the position of CEO of Paragon Integrated Services Group LLC f/k/a Drilling Services, LLC, (Dkt. 158, Ex. G)—the same entity that received those exclusive rights to the MAXSITE software “free and clear of all Liens, Claims, encumbrances, and interests of any nature.” Exhibit G, July 1, 2020 Order Approving Asset Purchase Agreement at 1–2.

The above timing, the disregard of the discovery rules (which would have timely apprised M-I of the Exclusive License and the intent to sell such license via the Asset Purchase Agreement), and the fact that at least one principal of both Defendant QSI and QAI received the exclusive rights to the MAXSITE software free and clear of any liabilities of this litigation, provide strong evidence

of inappropriate prepetition (pre-bankruptcy) actions and an improper use of the United States Bankruptcy Code for the benefit of one or more principals in this case.²

B. M-I's Suggestion On How The District Court Case Should Proceed

Judge Isgur has expressly deferred to this Court to decide whether to examine if the commencement of the Canadian proceeding and the Chapter 15 case were “part of an effort that is linked back to the litigation before [this Court] inappropriately” and to “make that decision” of how to proceed with further discovery and presumably trial. Dkt. 158 at 3. As such, M-I respectfully suggests that this Court review this evidence, allow or order further discovery, and if the Court agrees with M-I's concerns, inform Judge Isgur that no stay should be afforded to Defendant QSI and that this Court intends to proceed to trial. M-I anticipates that Judge Isgur would either cancel or table the October 20 recognition hearing, or carve out this suit from any stay imposed by recognizing the Canadian proceeding under Chapter 15 of the Bankruptcy Code.

C. M-I's Expectations As To How The Bankruptcy Case Will Proceed

This request parallels the current proceedings before Judge Isgur. Given that Judge Isgur deferred to this Court, M-I expects that if this Court determines that a stay of this litigation as to Defendant QSI would be inappropriate and decides to continue to trial, Judge Isgur would carve out this suit from any stay imposed by recognizing the Canadian proceeding under Chapter 15 of the Bankruptcy Code.

Should, however, this Court decide that the bankruptcy court should make this determination in the first instance, M-I will contest the Chapter 15 recognition of QSI's Canadian Receivership proceedings on the basis that (1) recognizing those proceedings would sanction QSI's apparently fraudulent prepetition conduct; (2) it would not be in the interest of justice; and

² QSI's August 31, 2020 termination (Dkt. 158, Ex. G) of the rights conferred by the license agreement has no bearing on this situation because it is QSI's prepetition behavior that is at issue.

(3) it would be against good public policy grounds under 11 U.S.C. § 1506 to do so because U.S. entity M-I's interests were transferred from former U.S. entity Defendant QAI to the Canadian Defendant QSI and then to Drilling Services, LLC (all owned and/or operated by at least one same individual), using U.S. and Canadian bankruptcy to improperly shield the transfer of M-I's property just before trial. That bankruptcy hearing is currently scheduled on October 20. Then, even if the Bankruptcy Court must recognize the Chapter 15 filings, M-I will immediately file a motion to lift the automatic stay, and has a well-founded belief that motion will be granted, and at that time M-I will inform this Court and request that a trial date be promptly scheduled.

II. CONCLUSION

Plaintiff M-I respectfully requests that because a stay as to QSI would not be appropriate that this Court allow this case to proceed to trial.

DATED: October 15, 2020

Respectfully Submitted,

By: /s/ John R. Keville

John R. Keville

Attorney-in-Charge

Texas State Bar No. 00794085

Southern District of Texas ID No. 20922

Email: jkeville@winston.com

Michelle C. Replogle

Texas State Bar No. 24034648

Southern District of Texas ID No. 34908

Email: mreplogle@winston.com

Sheryl Falk

Texas State Bar No. 06795350

Southern District of Texas ID No. 17499

Email: sfalk@winston.com

Michael C. Krill

Texas State Bar No. 24097954

Southern District of Texas ID No. 2782784

Email: mkrill@winston.com

WINSTON & STRAWN, LLP
800 Capitol Street, 24th Floor
Houston, Texas 77002
Telephone: (713) 651-2600
Facsimile:(713) 651-2700

**COUNSEL FOR PLAINTIFF
M-I L.L.C.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above document has been served on October 15, 2020 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per the Local Rules.

/s/ John R. Keville
John R. Keville

Appendix “K”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

M-I, LLC) NO. 4:18-CV-1099
)
)
VS.) Houston, Texas
) 2:28 p.m.
)
Q-MAX SOLUTIONS, INC., ET AL) OCTOBER 16, 2020

**TELEPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE SIM LAKE
UNITED STATES DISTRICT JUDGE
VOLUME 1 OF 1**

TELEPHONIC APPEARANCES:

FOR THE PLAINTIFF:

Ms. Michelle Cherry Replogle
Winston & Strawn
800 Capitol Street
Suite 2400
Houston, Texas 77002
Tel: 713-651-2607
Email: Mreplogle@winston.com

Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted transcription.

1 FOR THE DEFENDANTS:

2 Mr. Christopher Paul Hanslik
3 Mr. Andrew Pearce
4 BoyarMiller
5 One Grove Place
6 2925 Richmond Avenue
7 14th Floor
8 Houston, Texas 77098
9 Tel: 713-850-7766
10 Email: Chanslik@boyarmiller.com

11 ALSO PRESENT:

12 Mr. John D. Cornwell
13 Munsch Hardt
14 700 Milam Street
15 Suite 2700
16 Houston, TX 77002-2806
17 Tel: 713-222-4066
18 Email: Jcornwell@munsch.com

19 Mr. Randal Van de Mosselear
20 Osler, Hoskin & Harcourt LLP
21 450 1st St. SW, Suite 2500
22 Calgary, AB T2P 5H1
23 Tel: 403-260-7000
24 E-mail: Rvandemosselaer@osler.com

25 COURT REPORTER:

Ms. Kathleen K. Miller, CSR, RMR, CRR
515 Rusk, Room 8004
Houston, Texas 77002
Tel: 713-250-5087

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

OCTOBER 16, 2020

* * * * *

02:28:29

THE COURT: Good afternoon. This is Judge Lake. Whom do I have on the line?

MS. REPLOGLE: Yes, Your Honor. This is Michelle Replogle on behalf of plaintiff, M-I, L.L.C.

02:28:49

MR. HANSLIK: Good afternoon, Your Honor. Chris Hanslik and Andrew Pearce on behalf of Q'Max Solutions and Sanjit Roy.

THE COURT: Thank you. We're here --

MR. HANSLIK: Judge Lake, we have one more attorney here on the Q'Max side.

02:28:59

MR. CORNWELL: Good afternoon, Your Honor. This is John Cornwell. I am the U.S. bankruptcy attorney to the receiver on behalf of Q'Max Solutions, Inc.

THE COURT: Thank you. We're here in Civil Action H-18-1099. M-I, L.L.C. vs. Q'Max Solutions, Inc., et al. Pursuant to --

02:29:22

MR. VAN DE MOSSELEAR: Your Honor -- sorry to interrupt, Your Honor. I wanted to let you know that I was on the line as well. My name is Randal Van de Mosselear. I am a lawyer in Canada acting for the receiver of Q'Max Solutions, Inc. I am here just to listen in.

02:29:35

THE COURT: All right. I'll wait a few

1 minutes. Is there anybody else who wishes to identify
2 themselves?

3 All right. We're here on the joint
4 emergency request for a status conference which was filed
02:29:52 5 the day before yesterday. It's Docket Entry Number 158.

6 As I understand the background is as
7 follows: In the Q'Max Solutions, Inc., Chapter 15
8 bankruptcy case, 20-34791, KPMG as receiver for Q'Max, Inc.
9 seeks an emergency stay of execution of the debtor's assets
02:30:31 10 until the bankruptcy court can consider the debtor's
11 Chapter 7 petition to recognize the Canadian receivership
12 proceeding, and included within that motion is a request to
13 stay the pending civil action against the debtor.

14 From looking at the transcript before
02:30:56 15 Judge Isgur, and reading the file in the bankruptcy case,
16 the Chapter 15 bankruptcy case, it appears that discovery
17 is ongoing in the Chapter 15 case regarding the ownership
18 and licensing of the MAXSITE Software.

19 It appears that at the October 9 hearing,
02:31:25 20 Judge Isgur asked this Court's view on which court should
21 first address the issues of whether to stay this action,
22 and the issues of which court should proceed to investigate
23 facts regarding the ownership and transfer of the MAXSITE
24 Software.

02:31:50 25 Have I correctly described the background

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

1 and the issue before me today?

2 MS. REPLOGLE: Yes, Your Honor. This is
3 Michelle Replogle on behalf of plaintiff, M-I.

02:32:03

4 I believe that that was certainly a fair
5 and accurate recitation of the general reason why we are
6 here today.

7 MR. CORNWELL: Your Honor, this is John
8 Cornwell, again, on behalf of the receiver for QSI.

02:32:17

9 I agree that the substance of what Your
10 Honor just recited is accurate. I will say that there is a
11 difference between the Chapter 7 bankruptcy proceeding for
12 QAI, which is a former defendant in this action, and the
13 Chapter 15 proceeding for QSI.

02:32:32

14 Aside from that, Your Honor, you correctly
15 noted that we are heading towards a recognition proceeding
16 of the Canadian receivership, which is set for hearing this
17 coming Tuesday before Judge Isgur. The parties have
18 engaged in informal discovery with respect to QSI and the
19 receiver, and I believe there's been some formal discovery
20 as well as a motion to quash that was heard last week from
21 Judge Isgur, which really emanated the filing of the joint
22 status conference.

02:32:52

23 And that is how the Chapter 7 and Chapter
24 15 are related, because of that discovery. Otherwise, they
25 are two separate proceedings.

02:33:07

KATHY MILLER, RMR, CRR - kathy@millers-reporting.com

1 And, Your Honor, I'll stop there, but if
2 you have any questions, I am most happy to answer them.

3 THE COURT: I have read the file, and I have
4 read the submissions, and I have read the transcript of the
02:33:18 5 hearing before Judge Isgur, and I am aware that there are
6 two different bankruptcy proceedings.

7 I have read the parties' position
8 statements which were filed yesterday, and I appreciate
9 them.

02:33:35 10 Unless anyone wishes to say something
11 that's not contained in their written filing yesterday, I
12 am prepared to answer Judge Isgur's questions.

13 All right.

14 First of all, it is this Court's view that
02:33:54 15 Judge Isgur should decide the Chapter 15 petition to
16 recognize the Canadian receivership, and as a part of his
17 review should decide whether to enter a stay order that
18 would include staying of this action.

19 I make that -- I reached that conclusion
02:34:19 20 for the following reasons:

21 One, the issues regarding the ownership
22 and licensing of the MAXSITE Software should be resolved by
23 Judge Isgur, including but not limited to the existence of
24 any badges of fraud concerning the transfer of ownership.

02:34:41 25 These issues are before the bankruptcy court and discovery

1 is proceeding on them.

2 Second, this Court cannot proceed against
3 defendant Q'Max America, Inc., until the stay is
4 discontinued by the Chapter 7 bankruptcy court.

02:34:59

5 Three, it would be a waste of judicial
6 resources and of the parties' resources to proceed to trial
7 against fewer than all three defendants.

02:35:21

8 I am, therefore, vacating the Court's
9 current scheduling order, Docket Entry 147, cancelling the
10 remaining filing deadlines, and cancelling the November
11 13th docket call.

12 Are there any questions about the Court's
13 views or the Court's ruling?

02:35:36

14 MS. REPLOGLE: Your Honor, this is Michelle
15 Replogle on behalf of M-I.

16 I don't have a question specifically, of
17 course, with respect to your ruling. And, of course, we
18 will respect that ruling.

02:35:50

19 I do -- I do want to raise the issue about
20 the timing of being able to get back on the Court's docket,
21 given the pendency of over two-and-a-half years of
22 expensive litigation, multiple depositions, and filing of
23 motions. When Your Honor states that it is just vacated,
24 my concern would be how long will it take to get back onto
25 this Court's docket to have this pretrial order filed, and

02:36:09

KATHY MILLER, RMR, CRR - kathy@miller-reporting.com

1 to have a trial date set.

2 As we indicated in M-I's position
3 statement, Your Honor, should the bankruptcy court
4 recognize the Chapter 15 proceedings on Tuesday, we will
02:36:28 5 immediately file that motion to lift the stay.

6 I don't presume to know how long it will
7 take Judge Isgur to rule on that motion; however, I would
8 not think it would take an undue amount of time.

9 With respect to Q'Max America, given that
02:36:45 10 Your Honor dismissed instead of stayed Q'Max America, I
11 understand it will take a few steps in the bankruptcy
12 proceeding to get them re-instituted as a defendant.

13 Therefore, I would suggest and M-I would
14 be -- it would be acceptable for M-I to proceed as to Q'Max
02:37:09 15 Solutions, Inc., and the defendant Sanjit Roy as soon as
16 reasonably possible with Your Honor's docket.

17 So I just raise those concerns, Your
18 Honor.

19 THE COURT: Those are concerns. They don't
02:37:21 20 require a ruling. And I can't predict when you would be on
21 the docket because I don't know what Judge Isgur will
22 decide, nor do I know what will happen in the Chapter 7
23 proceeding.

24 I don't intend to try a case against
02:37:37 25 Mr. Roy or against Mr. Roy and one of the two remaining

1 corporate defendants.

2 Do the parties -- do the other parties
3 wish to respond to her request for clarification?

02:37:58

4 MR. HANSLIK: Your Honor, this is Chris Hanslik
5 on behalf of Q'Max Solutions and Mr. Roy, and we have no
6 questions or concerns over Your Honor's rulings.

02:38:17

7 THE COURT: One thing I might point out, that
8 if Judge Isgur makes a finding either agreeing to or
9 disagreeing with the bona fides of the transfer that's at
10 issue before him, it could be -- have collateral estoppel
11 or other preclusive effect in any subsequent trial by this
12 Court.

02:38:34

13 Two judges don't need to address that
14 issue. Judge Isgur can address it first; and once it's a
15 final ruling, I can recognize it.

16 MR. HANSLIK: Understood, Your Honor.

17 MS. REPLOGLE: Your Honor, may I just, please,
18 ask one more -- one more concern on behalf of plaintiff
19 M-I, please?

02:38:48

20 THE COURT: Sure.

02:39:04

21 MS. REPLOGLE: Okay. There is another issue.
22 With respect to the defendant Sanjit Roy, Your Honor, has
23 already held that he breached the confidentiality
24 agreement. We would -- there is an issue with respect to
25 the location, and where is M-I's confidential information.

1 That may well be in the custody of BoyarMiller and their
2 experts, and we would just want to seek confirmation of
3 that.

4 Perhaps this is something we can do
02:39:19 5 without your Court's intervention, but that is certainly a
6 concern of ours, just with respect to the vacation -- the
7 vacating, excuse me, of this particular litigation, as to
8 the possession and custody and control over the M-I
9 confidential information that was taken by Sanjit Roy and
02:39:36 10 is in that location of Q'Max Solutions.

11 THE COURT: Does BoyarMiller wish to respond to
12 her request?

13 MR. HANSLIK: Your Honor, this is Chris Hanslik
14 again.

02:39:47 15 Counsel for M-I knows where that
16 information is. It's all been disclosed through forensic
17 experts. It is not in the possession of Mr. Roy. Devices
18 were turned over. Images were provided. They know full
19 well it's not in his possession, and it is in the custody
02:40:01 20 and control of a forensic expert. So there is no harm.
21 There is no risk of harm. It's not a valid concern, in my
22 opinion.

23 THE COURT: You can discuss that -- just a
24 second.

02:40:11 25 This is not on the Court's docket. I

1 haven't received any filings, or motions, and I am not
2 prepared to discuss it. You can address it between
3 yourselves. If you need my ruling, you know where I am and
4 how to file a motion.

02:40:26

5 MS. REPLOGLE: Yes, Your Honor.

6 MR. HANSLIK: Yes, Your Honor.

7 THE COURT: Thank you. You're excused.

8 (Concluded at 2:40 p.m.)

9 COURT REPORTER'S CERTIFICATE

10

11 I, Kathleen K. Miller, certify that the foregoing is a
12 correct transcript from the record of proceedings in the
13 above-entitled matter.

14

15 DATE: OCT. 16, 2020

/s/ Kathleen K Miller

16

Kathleen K Miller, RPR, RMR, CRR

17

18

19

20

21

22

23

24

25

Appendix “L”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

) CASE NO: 20-34791
)
) Houston, Texas
)
) Debtor. Tuesday, October 20, 2020
)
) 4:02 p.m. - 4:46 p.m.
)
) -----)

HEARING

BEFORE THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For KPMG: JOHN DAVID CORNWELL (TELEPHONIC)
Munsch Hardt Kopf & Harr PC
700 Milam Street, Suite 2700
Houston, TX 77002

For M-I, LLC d/b/a SWACO: CARRIE HARDMAN
Winston Strawn
800 Capitol Street
Suite 2400
Houston, TX 77002-2925

For U.S. Trustee: JARROD MARTIN
Chamberlain Hrdlicka White Williams
& Aughtry, PC
1200 Smith Street
Suite 1400
Houston, TX 77002

For HSBC: LOUIS STRUBECK
Norton Rose Fulbright
1301 McKinney Street
Houston, TX 77010

Court Reporter: UNKNOWN

Courtroom Deputy: UNKNOWN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Transcribed by: Veritext Legal Solutions
330 Old Country Road, Suite 300
Mineola, NY 11501
Tel: 800-727-6396

Proceedings recorded by electronic sound recording;
Transcript produced by transcription service.

1 HOUSTON, TEXAS; TUESDAY, OCTOBER 20, 2020; 4:02 PM

2 (Call to Order)

3 THE COURT: And on the 4:00 matter we have Chapter
4 15 filing in Case Number 20-34791, Q'Max Solutions, Inc.
5 Folks, good afternoon. My name is Judge Jones. As you
6 probably have figured out, I am not Judge Isgur. He sends
7 his apologies for having to burden you with your second
8 choice of complex judge. I'll try to fill his shoes which I
9 know will be difficult. Let me first start with
10 appearances.

11 Howard, does Judge Isgur have the electronic
12 appearance set up for Chapter 15 filings?

13 CLERK: Yes, Judge; he does.

14 THE COURT: All right. Then thank you folks.
15 Then I would ask you please make sure that you make your
16 electronic appearance by going to Judge Isgur's website.
17 It'll take you less than 20 seconds. The first time that
18 you speak this afternoon, I would ask that you state your
19 name and who you represent so that we make sure we get a
20 good voice print. And as you heard we are recording these
21 in CourtSpeak. The audio will be on the docket shortly
22 after the conclusion of this afternoon's hearing.

23 Mr. Cornwell, do you want to take just a moment.
24 I have only known I was going to do this for probably now an
25 hour or so. I very quickly read everything that has been

1 filed on the docket, so I think I have a good sense,
2 although probably not as complete as I would like to have,
3 idea of what's occurring. I am aware of the district
4 court's directives to Judge Isgur. Where do we stand today?

5 MR. CORNWELL: Your Honor, thank you very much.
6 John Cornwell on behalf of KPMG for the receiver for the
7 Chapter 15 proposed Debtor Q'Max Solutions, Inc.

8 Your Honor, this is an extraordinarily simple case
9 with extraordinarily complicated background. And if you've
10 known it for an hour, then I'll be happy to give you the
11 30,000-foot view rather than repeat things that Your Honor
12 might have read and most happy to answer all questions
13 because the relief that we're seeking today and I think the
14 pleadings that have been filed really are relatively simple
15 but the corporate history of how we got here much less so.

16 Your Honor, pending right now are three matters on
17 the docket, the provisional relief request which I have
18 styled probably inartfully because the TRO and provisional
19 relief, there's only a provisional relief under docket 1519.
20 And lesson learned on that for next time. That is reset
21 from our initial hearing on October 2nd to today, Your
22 Honor. Also, originally set as status conference and now
23 set for evidentiary hearing is Docket Number 4 -- in fact,
24 let me go backwards. The verified petition, which in
25 essence is the request for recognition, Your Honor, as well

1 as Docket Number 28, which is a continued hearing on a
2 motion for protective order filed by the Q'AI, a subsidiary
3 of the Q'Max Solutions Group that has separate Chapter 7
4 proceedings pending before Judge Lopez.

5 Further, there is only one objection to any of the
6 pending proceedings on file right now, and it is litigant M-
7 I SWACO, if I'm pronouncing it correctly. They are the
8 plaintiff in a 2018 litigation filed here before Judge Lake
9 in the proceedings that you referenced a moment ago. It's
10 an intellectual property case, to give it the most short
11 (indiscernible). It was pending or has been pending since
12 2018. There was summary judgment rulings in August of this
13 year. And then they are among the other relief requests.
14 There's an implication -- or an implementation, excuse me,
15 of a stay that is at issue in their objection, Your Honor.

16 I will point out, again, just at a 30,000-foot
17 view, that while they have filed an objection to
18 recognition, their objection is rather limited to their
19 litigation and implementation of the stay. And that's
20 probably enough detail for this. I will say for history
21 purposes, Your Honor, there were several exhibits admitted
22 in our first-day hearing all by agreement. Those were
23 (indiscernible) carried forward to this proceeding and,
24 also, the receiver and M-I SWACO has agreed to some
25 additional exhibits (indiscernible). Clearly, Your Honor is

1 ready. We'd be happy to make that evidentiary record so we
2 can put that behind us and focus on the relief requested.

3 THE COURT: Ms. Hardman, do you want to take a
4 couple of minutes and -- how long do you think we stand
5 today?

6 (No response)

7 Ms. Hardman, (indiscernible), are you getting --
8 first of all, can you hear me? Can you give me a thumbs up?
9 All right. So this is probably one of the biggest
10 differences between Judge Isgur and I. I never start out
11 with everybody muted. I hate that (indiscernible), so
12 everybody's live. You'd be amazed at what I get to hear
13 just by -- you know, just by being silent. So you
14 (indiscernible) and so, please, tell me sort of where you
15 think we are.

16 MS. HARDMAN: I can only imagine what you hear,
17 Your Honor. Thank you. Again, Carrier Hardman from Winston
18 Strawn on behalf of M-I L.L.C. d/b/a M-I SWACO. Where we
19 are right now, I think, is practically speaking, Mr.
20 Cornwell made a pretty decent recitation as a very high
21 level of where we are. And I will give you a bit of a sort
22 of down the (indiscernible) as to where we are in this case.
23 if you're looking for some detail with respect to the prior
24 action, my colleague Mr. (indiscernible) who's also on the
25 line is able to do that. That's (indiscernible). So I will

1 stay in my lane and kind of give you the most practical
2 background here to where we are today in the bankruptcy
3 case.

4 Starting from the last hearing and the hearing
5 prior, the first-day hearing before Judge Isgur, he had
6 mentioned an interest in understanding where Judge Lake who
7 is presiding over our district-court litigation stands on
8 all of this. And we had a conference before him last week.
9 And from his perspective, he deferred to this Court to
10 determine, as I understand it, two things: one, whether
11 recognition of the (indiscernible) proceeding is appropriate
12 and, two, to decide facts and I quote, "decide facts
13 regarding the ownership and transfer of the MAXSITE
14 software.

15 I believe that he is referring to the pre-petition
16 possible transfer of the MAXSITE software either from QAI to
17 QSI or some memorialization of whoever owned that software.
18 That software is (indiscernible) of course in our district-
19 court litigation. In turn, it effectively stayed that case
20 pending this Court's determination of those two issues.
21 From my perspective, it's more of a gaiting practical
22 consideration that we ask Your Honor to consider today.

23 Despite the (indiscernible) efforts on M-I's
24 behalf pursuant to Judge Isgur's directive, we're also
25 (indiscernible) discovery we need related to these issues,

1 particularly the pre-petition movement of the software, and
2 continued willingness on QSI's part here, particularly, Mr.
3 Cornwell's willingness to provide answers to any of our
4 questions and continued to follow up, we have not yet
5 completed the discovery we believe we fully need to
6 understand whether and to what extent recognition is
7 appropriate with respect to our action.

8 From our perspective relating to recognition, our
9 asking discovery to my mind is actually quite relatively
10 finite. The two item I see right now that are still
11 outstanding are communications of QSI which still require a
12 bit of follow-up on our end and our continued back-and-forth
13 with the receiver for QSI will continue. But, more
14 importantly, we have been seeking the deposition of Mr. Dave
15 Granada -- forgive me for the mispronunciation if that's the
16 case. And we may have read from our pleadings Mr. Diaz
17 Granada is a signatory to the exclusive license agreement
18 that was purported to transfer the MAXSITE software just two
19 days before the petition date for the Chapter 7 QAI entity.

20 We've reached out to Paragon who is the successful
21 purchaser of QAI's assets who now employees Mr. Dave Granada
22 to see if they would assist in seeking his deposition, and
23 they were unable to do so. So we've resorted to serving Mr.
24 Dave Granada directly. I believe that's in process. And so
25 his depositions is certainly from our perspective the key to

1 figuring out what happened here. He was the actual
2 signatory and is conveniently now executive of the purchaser
3 of QAI which at the time when he made that purchase included
4 its exclusive license.

5 We can envision the testimony will help clear up
6 what happened and whether and to what extent that maybe
7 narrow the request to QSI for follow-up. But we understand
8 from QSI and QAI, they hold all of the email traffic at
9 these respective entities. The Chapter 7 trustee of QAI and
10 the receiver for QSI do not possess the pre-petition
11 knowledge, nor do we expect them to, but nor do they have
12 anyone there at the entity that would maybe have that
13 information. So it's down to Mr. David Granada.

14 We're already at a significant disadvantage here
15 because of the way that this process played out, and that's
16 through no fault of the receiver or the Trustee. We just
17 simply ask the Court consider an adjournment of this hearing
18 to be provided the reasonable opportunity to complete that
19 very limited discovery that we still seek. And,
20 furthermore, to our mind, there's no harm to QSI for us to
21 pursue this discovery. The litigation before Judge Lake is
22 stayed. We understand from other public filings from QSI
23 that the other litigation that remains in (indiscernible)
24 here is about to be nonsuited or may have already been
25 nonsuited. So there's nothing stopping the QSI receiver

1 from proceeding in the Canadian proceeding of this sale
2 process which we understand has been completed. There's
3 nothing proceeding in the litigation in the U.S. So we,
4 accordingly, ask for some additional time here to depose Mr.
5 David Granada and ask a few follow-up questions of the QSI
6 receiver.

7 THE COURT: So let me tell you again, again, I try
8 to be as transparent as I possibly can be. When I read
9 everything and one of the options that I talked to Judge
10 Isgur about was simply me taking the case, and I don't want
11 to do that. And so if I were to hear the recognition
12 proceeding, then it probably makes sense for me to take the
13 case because that is the crux of everything that happens
14 going forward. And so here's going to be my suggestion
15 because what we don't know is what else is out there. And,
16 frankly, this is as protective for you as it is for the
17 receiver.

18 And so what I was going to propose was that I
19 grant provisional relief by imposing the stay under 1519.
20 That's only subject to a request by anybody to come back and
21 modify it and terminate it for sufficient cause, give you a
22 reset date for the recognition hearing because I agree there
23 are a lot of -- I think Mr. Cornwell is right, it's a
24 relatively simple case, but it's kind of really not a policy
25 issue for me. And, likewise, (indiscernible). And it seems

1 to me if we do that, and then I have some comments -- if you
2 haven't already worked things out with the Trustee, I do
3 have some comments about that.

4 But this seems to me with respect to this what we
5 do for recognition, what do we do with the request for 1519
6 relief is that under 1519, I grant or I impose a stay which
7 I don't think there's any dispute that I can do; that we
8 then get you a reset date on whatever reasonable terms are
9 for the recognition hearing; and then we just proceed along.
10 Judge Isgur's for the background. And while he and I -- for
11 those of you who don't know, Judge Isgur and I have been
12 together for on and off for about 31 years. I was his first
13 -- I was his associate back then. I carried his briefcase
14 and then I figured out how to beat him so he carried mine.
15 No, he never carried mine.

16 And then he, obviously, came to the bench long
17 before I did. And so I have rejoined him. That was a long
18 way of telling you that ideologically, we end up in the same
19 place, although if you look at it on the spectrum, he is the
20 (indiscernible) on his left, I am left and the right. And
21 so we generally almost always end up in the same place. And
22 I'll give you a good example. Whereas -- and I've listened
23 to the hearing, he really beat on Mr. Cornwell from using
24 the term "temporary restraining order injunction." I
25 understand why he -- and he yells at me, too. Where I

1 specifically look past it because I really didn't care about
2 the title when I signed on the case. I looked at what it
3 did, which was just the imposition of a stay.

4 (Indiscernible) the process is a little different.
5 And since you (indiscernible), it's my belief that you ought
6 to get the benefit of having that experience. I think by
7 granting the relief, I don't change that process and I give
8 you the time to try and get the discovery that you want and
9 get ready for a real (indiscernible). That's my thought.

10 MS. HARDMAN: Your Honor, if I may ask a couple of
11 follow-up questions?

12 THE COURT: Of course you can.

13 MS. HARDMAN: Okay. With respect to this, for
14 clarification purposes and for the record, when it comes to
15 the automatic stay that is going to be implicated here and
16 will affect the district court litigation that we referenced
17 in our pleadings, that does not mean that the parties are
18 dismissed from the case. It simply means that they can
19 (indiscernible) stay. Is that correct?

20 THE COURT: Correct. Correct.

21 MS. HARDMAN: And then my second question is --
22 and I appreciate your answer. My second question is the
23 intention then would be that we would have permission to
24 proceed with discovery with respect to the recognition
25 concerns that we've laid out, at least in part in our

1 response to the recognition motion. Is that correct?

2 THE COURT: Absolutely.

3 MS. HARDMAN: Okay.

4 THE COURT: The benefit of -- and I'll come back
5 around to you, Mr. Cornwell -- the other benefit that it
6 gets you is strategically what you are worried about is the
7 determination as to whether or not intellectual property
8 belongs to you or to (indiscernible). You're obviously
9 pretty (indiscernible) it's made down a bankruptcy court
10 where it gets made. And if I understand or I believe what's
11 going to happen or what is going to be intended to happen is
12 that it gets made in a Canadian court, one or the other.
13 Those are the concerns that you have.

14 And my view of that is that what we are ignoring,
15 what I want to make sure we don't ignore, is something that
16 we don't yet know or someone who's not yet on this
17 (indiscernible) does something that implicates the outcome
18 of that dispute, which is why the provisional relief
19 (indiscernible) doesn't apply just to you. It applies to
20 everyone. And it applies to all of the alleged and actual
21 interest asserted by the debtor in any property. And so it
22 is effectively maintaining a U.S. status quo until you can
23 figure out what the right decision is. So it actually goes
24 beyond your client.

25 MS. HARDMAN: Understood.

1 THE COURT: Does that make sense?

2 MS. HARDMAN: Understood. Thank you.

3 THE COURT: Yes, ma'am.

4 Mr. Cornwell, I didn't mean to cut you off. I
5 just wanted to finish the thought.

6 MR. CORNWELL: Not at all, Your Honor. Pardon my
7 interruption. If I could have the microphone for a second,
8 what Your Honor has said makes perfect sense. I understand
9 that you're here and Judge Isgur isn't. I certainly hope
10 that everything is okay.

11 I would like to at least take a shot at responding
12 to Your Honor's preferred course of action.

13 THE COURT: Okay.

14 MR. CORNWELL: We're now I think 20 days in, if
15 I've got my days right. We filed on the 30th, the verified
16 petition. I understand why we're here now because there
17 were some allegations underlying the litigation that Judge
18 Isgur had questions about. And we went to Judge Lake, and
19 he very clearly stated his opinion as Judge Lake only can.
20 He could not proceed not only without this Debtor but
21 without the Chapter 7 Debtor in any way in his action. And
22 all of the pending deadline and dates including trial were
23 vacated.

24 I'd also say that MI-SWACO, while we've been
25 working very well with Mr. (indiscernible) and Ms. Hardman

1 in trading information, and I appreciate the same that
2 they've made in their filings as well in this hearing about
3 the difference between project manager and the receiver. We
4 all know we're in the liquidation process here. It doesn't
5 change the fact that continued litigation when there's no
6 petition notice and there's now a very limited objection on
7 file is expensive and, frankly, these estates are running
8 out of money. The fulcrum class which is the agent and the
9 loan syndicate, the bank syndicate -- excuse me, the lending
10 syndicate, the one that initiated the receivership in
11 Canada, they're footing the bill and new money is going to
12 be required. And we've got another week to try to get
13 information, Your Honor, then certainly, we will be as
14 compliant as the funds will allow us to be and the law, of
15 course, requires us to be.

16 But moving along another week or two weeks or
17 three weeks for discovery that does not seem to be
18 implicated in the objection to recognition is expensive and,
19 I would argue, is unnecessary. The only objection to
20 recognition that's on file right now, again, after thorough
21 notice, is a public-policy objection, which sounds, Your
22 Honor, an objection to the bankruptcy process. A litigant
23 is certainly asserting its right and the receiver or QSI
24 before it has asserted opposite rights, (indiscernible)for
25 the correct ruling in that, there's --

1 THE COURT: That's not --

2 MR. CORNWELL: -- (indiscernible).

3 THE COURT: That's not the policy issue. The
4 policy issue that's going to cause the struggle is if the
5 Canadian court issues a free and clear order, which is not
6 the least of what you're going to try to get. The issue's
7 going to be is that consistent under the circumstances with
8 U.S. policy. And so I mean that's the knotting issue. The
9 rest is really all easy.

10 And, Ms. Hardman, I can make an argument that it's
11 actually in your interest to agree to the recognition if you
12 have an agreement from the receiver that the issue of --
13 that the issue regarding the status of the intellectual
14 property will then be tried and that the Canadian order will
15 not be dispositive. That's -- but, honestly, that's the
16 right trade, but I'm new to this and I'm not going to
17 convince you all that I know more about this than you all
18 do.

19 But that's the right trade, and it gets you in the
20 spot that you ultimately want to be in, it saves money, and
21 you get to the substantive issue. But I'm not expecting you
22 to agree to that today, but that's the right outcome. I
23 just don't have the ability to craft it today because I
24 haven't been the one beating on this since day one.

25 MR. CORNWELL: If I could, Your Honor --

1 MS. HARDMAN: Your Honor?

2 THE COURT: Let me -- I interrupted Mr. Cornwell.
3 Let me let him finish, and then I'll come back to Ms.
4 Hardman.

5 MR. CORNWELL: Thank you, Your Honor. And pardon
6 me, Ms. Hardman, I have just a couple of comments on what
7 Your Honor just said. And this is in our pleadings and also
8 in the declaration that are admitted into evidence. The
9 only sales that will happen in the Canadian proceeding are
10 equity interest sales if you assign those. We have made it
11 very clear, we stated in the record that the intellectual
12 property MAXSITE, which is at issue in the M-I litigation in
13 the district court here will not be sold. Now a license of
14 it could be sold.

15 We don't have purchase and sale agreements right
16 now. We don't have schedules filled out. We're hoping to
17 get that soon, and all of that sort of bears on the
18 difficult market that the receiver's trying to sell his
19 assets in. But unequivocally, nothing is going to happen
20 except license transfers potentially, but the actual
21 physical intellectual property rights will not be sold in
22 the Canadian proceeding.

23 THE COURT: Mr. Cornwell, did you agree that any
24 license would come to the bankruptcy court for approval?

25 MR. CORNWELL: Come to this Court, Your Honor?

1 No, I guess I haven't really thought that through. I always
2 envisioned that any sale order that would enter in the
3 Canadian proceeding, as we said in our pleadings, would be
4 on notice to all parties including M-I, which I understand
5 has recently retained Canadian counsel. I just received
6 notice in the case. But I always assumed any order there
7 would -- there would be a motion filed in this Court for
8 recognition of that order.

9 THE COURT: Here's where I'm going. If what
10 you're trying to do is you're trying to get to an ultimate
11 disposition is you need to give Ms. Hardman something. And
12 if you gave her the certainty is that she wouldn't have to
13 guess if the license had been issued and what would happen
14 if you confirmed that any license pending the closure of a
15 Chapter 15 would be made in the bankruptcy court.

16 Of course, I'm talking -- you know, I'm talking
17 about a U.S. license. You know, that gives her the
18 certainty of she knows, number one, she knows what's going
19 to happen and, two, she knows she's got a forum to get it
20 adjudicated if she has objection.

21 You'll -- now you get to the substance -- you get
22 to the substance of the issue without continuing to have a
23 fight on the edges, if you will. But, again, I'm just a
24 fresh pair of eyes just looking at the problem.

25 MR. CORNWELL: Your Honor, that makes perfect

1 sense. We're going to continue to trade that information.
2 My point, and I'll leave with this, is while all of that
3 makes perfect logical and maybe legal sense, it doesn't
4 sound like it has much to do with recognition, Your Honor,
5 and that's what we're here for today. But with that, I'll
6 be quiet, Your Honor.

7 THE COURT: I got it. Ms. Hardman, any --

8 MR. STRUBECK: Your Honor?

9 THE COURT: -- who's --

10 MS. HARDMAN: Yes.

11 THE COURT: Who's the gentleman that spoke?

12 MR. STRUBECK: Yes, Your Honor. It's Lou Strubeck
13 on behalf of HSBC. May I be heard just very briefly?

14 THE COURT: Of course. Let me try to see you.

15 MR. STRUBECK: Well, yeah, I'm sorry, Judge, but I
16 am unfortunately some place where my video connection didn't
17 work and so I had to dial in. I apologize for that because
18 I know you all would like to see me and, of course, I always
19 like to see you, as well. So I'm sorry for that.

20 THE COURT: They don't have video at the
21 Charleston Mansion?

22 MR. STRUBECK: Well, I'm not at Charleston
23 Mansion, but you're geographically in the right place,
24 Judge.

25 THE COURT: Okay. Of course. And always good to

1 hear from you.

2 MR. STRUBECK: Thank you, Judge. And I'll be very
3 brief. And, you know, I'll just say that I agree with what
4 Mr. Cornwell had to say. On behalf of HSBC, who was the
5 fulcrum security here, and I'm not saying that just because
6 Mr. Cornwell and I, just like you and Judge Isgur, used to
7 be colleagues, but because I think that he's set things out
8 pretty succinctly and I think he's right on point, Your
9 Honor.

10 I understand the Court's concern and you're put in
11 a kind of an (indiscernible) position here, and so I agree
12 that probably a short continuance of all this probably makes
13 sense, notwithstanding I think the fact that Mr. Cornwell is
14 right on the merits. But I just wanted the Court to know
15 that we are, HSBC is probably spectacularly undersecured
16 here. And so, you know, we're the ones that are stepping
17 out and providing additional funding for this process. And
18 so the quicker this process works, the more advantageous it
19 is and the more necessary it is for HSBC. So I'll stop
20 there, but I just wanted the Court to know that we're in
21 agreement with Mr. Cornwell. We don't take a position with
22 respect to litigation issues that in terms of moving this
23 quickly, we believe that it should.

24 THE COURT: I got it. Let me -- Ms. Hardman, have
25 I said anything that piqued your interest?

1 MS. **HARDMAN:** You have, Your Honor. If you
2 wouldn't mind bearing with me, I just had **three points** I
3 wanted to make. **One** was in response to some statements Mr.
4 Cornwell made and then reacting to your proposal here of
5 what should happen and what would work.

6 Just one, and Mr. Cornwell mentioned that we were
7 provided ample notice of the Chapter 15 filing, and that is
8 not in dispute. I think our concern here, and what we tried
9 to convey to Judge Isgur at the last hearing and as well as
10 the first hearing was that there were some issues with
11 respect to notice prior to the petition date of QAI as well
12 as notice with respect to the sale in the QAI bankruptcy.

13 We believe from the actions prior to the petition
14 date of QAI there were some actions there that essentially
15 were a snowball that resulted in this Chapter 15. And
16 that's no fault of the Chapter 7 Trustee of QAI or the
17 receiver to QSI. I just wanted to make that point
18 understood. **Our focus is the pre-petition actions here that**
19 **affect the MAXSITE software and honestly get them in front**
20 **of a Canadian proceeding where we think they probably**
21 **resided in an American entity prior to that petition date or**
22 **at least two days prior to that petition date for QAI.**

23 You mentioned that you see this as a need to
24 resolve, I think -- and I apologize if I'm putting words in
25 your mouth and please correct me if I'm wrong. But the

1 understanding would be that there needs to be a resolution
2 one way or the other as to the MAXSITE software and if
3 there's an intention to sell assets of QSI that was the
4 subject for license agreements that affect the MAXSITE
5 software that that's something that we should be able to at
6 least chime in on or should be subject to our rights,
7 whatever those are.

8 We would like to proceed and have this
9 adjudicated. We believe that the case here in the U.S. is
10 nearing its completion. It's almost ready for trial. We
11 have promises on the extent on all parties' sides here.
12 That's why we don't want this to now start over in a
13 Canadian proceeding. We think if this can be addressed and
14 adjudicated one way or the other, whether it is in our favor
15 or otherwise, then at least we have finality for all parties
16 involved. QSI can sell things left, right, and center if
17 they'd like with an understanding as to the value of what
18 they actually hold with us as a cloud hanging over them.
19 We're not trying to be that cloud. We want this resolved as
20 well.

21 So to my mind and my concern is that because the
22 assets of Q'Max MAXSITE software was transferred up to a
23 Canadian proceeding, there are contracts that are going to
24 be entered. They might be entered through the Canadian
25 entity and another foreign entity with respect to use of

1 that MAXSITE software, so that may not necessarily be
2 something that comes before Your Honor or before Judge
3 Isgur. But to our mind, they should have if they had been
4 properly residing at QAI.

5 So, again, it all goes back to our original
6 concerns with respect to the pre-petition steps that were
7 taken here that we think are important in consideration of
8 what those licenses look like going forward and how all that
9 works. And I will add one final point on this and then I am
10 completely out of my wheelhouse. But my understanding is
11 that the license agreements transfer or intended to transfer
12 use of the MAXSITE software and, Mr. Cornwell, if I misstate
13 this, please correct me. But my understanding is that the
14 source code may travel with these licenses or have in the
15 past so that it's a common understanding.

16 That would be a concern on our end because that is
17 effectively handing over the trade secrets that are used in
18 that software for use by another party. And we're talking
19 about dissemination with something that we and I believe was
20 rightfully ours were misused and created by QAI
21 inappropriately. So those are the points I wanted to make.
22 Mr. Cornwell, if I stated that inappropriately, please
23 correct me. But those are just the points I wanted to make
24 to Your Honor.

25 THE COURT: Okay. So I just want to leave you

1 with one thought because this is -- we're now getting into
2 the merits and as we started this whole discussion that I
3 wasn't going to hear them unless I was going to take the
4 entire case, is you need to be aware of the differences of
5 what's going to be tried. The issues in the Canadian
6 proceeding are very, very different than what's in front of
7 Judge Lake. And they move at a very, very different speed.
8 And what I was trying to get you was a way for it to slow
9 down and not be 150 miles an hour in a forum that you were
10 going to be more accustomed to.

11 That's all I was -- I've done this a few times,
12 and it's all I was trying to do, so -- but I'm going to let
13 you think through that and figure out what you want to do.

14 Let me look at this. So I am going to grant
15 provisional relief, and I'm going to -- Mr. Cornwell, I'll
16 look at -- I'm going to look to you to craft an order that
17 imposes the automatic stay as long as it can possibly be and
18 be consistent. This is from '19. I want you to run that by
19 Ms. Hardman to approve this before (indiscernible). And
20 I'll put on the record that by approving as to form, you're
21 not waiving any right to review or appeal that you may
22 ultimately have. You're simply confirming that the paper is
23 consistent with what I've done on the record pursuant to
24 Bankruptcy Rule 7052.

25 Mr. Cornwell, I wanted for purposes simply because

1 we've got folks involved who aren't bankruptcy lawyers, I
2 want there to be a paragraph that says any party may seek
3 relief for a modification from the stay imposed under the
4 order on a showing of sufficient cause by motion to the
5 Court after notice and opportunity for hearing. All right?

6 MR. CORNWELL: Thank you, Your Honor.

7 THE COURT: If you will get that done and to me,
8 but I do think it's in everybody's best interest to have
9 that in there yesterday. But as soon as you get that to me
10 and let me know that it's there, I will get that signed and
11 on the docket.

12 With respect to recognition hearing,
13 (indiscernible) my last contested Chapter 15 lasted a couple
14 of days, and we have this hearing set for 3:00. And I was
15 really trying to figure that out. If you had to guess, how
16 long do you think the presentation of the evidence will
17 take? And I'm not putting any spotlights on you, but I am
18 going to ask Ms. Do who's on the line to look at Isgur's
19 calendar and, you know, give the options. Is this an hour?
20 Is it two hours? Is it half a day?

21 MR. CORNWELL: Your Honor, the way we were
22 intending to start the day before Your Honor stepped in was
23 admit the evidence by agreement because it's really at the
24 end of the day this proceeding, it's a receiver and
25 (indiscernible) that's trying to determine its rights. It's

1 not the parties that have been so averse for so long. The
2 declarations of Ms. (indiscernible), excuse me and Mr.
3 (indiscernible), the receiver and her Canadian counsel, have
4 already been entered and (indiscernible) for purposes of the
5 verified petition relief, as well.

6 I don't think we need a lot of time. I expected
7 this hearing today to go about an hour and don't know why
8 the next one would be materially different unless Your Honor
9 or Judge Isgur want live testimony. Of course, that changes
10 everything.

11 THE COURT: Ms. Hardman --

12 UNIDENTIFIED SPEAKER: Your Honor?

13 THE COURT: Yes, ma'am.

14 UNIDENTIFIED SPEAKER: Yes. This is Michelle
15 (indiscernible) also for M-I LLC. And I'd just speak with
16 respect to the timing that was envisioned, also pursuant to
17 Judge Lake's order, he asked that Judge Isgur look at that
18 ownership and transfer of the MAXSITE software. So with
19 respect to the evidence that's been produced as part of an
20 informal discovery process, we envision walking through the
21 evidence as succinctly and tightly as possible. But I would
22 say maybe 20, 25 minutes or so with respect to walking
23 through that. And should you have some additional questions
24 or want live testimony, then we also have the president of
25 M-I LLC that's available to be able to give him an overview

1 of that should he wish that, should he entertain that.

2 That's our --

3 THE COURT: All right. My thought about that is,
4 and I -- you know, I was a bit puzzled by that. So, again,
5 I'm trying to knock the process in any way through that. I
6 think that the recognition issues are separate from as a
7 separate directive, if you will. And I don't -- obviously,
8 I haven't had the benefit of talking to Judge Lake. I
9 simply -- I'm still struggling with how that fits in.

10 So let me ask this. Ms. Do, can you hear me?

11 CLERK: Yes, Judge. I'm still here.

12 THE COURT: So I'm looking at Judge Isgur's
13 calendar. And I wouldn't mind if I make them miss lunch. I
14 genuinely don't. I'm just okay with that. So it's my
15 thought that I could take -- if he could start at 10:30 on
16 Monday, the 26th, and he would have three hours if he missed
17 lunch.

18 MS. HARDMAN: Your Honor, may I be heard on that
19 with respect to scheduling?

20 THE COURT: Of course.

21 MS. HARDMAN: My concern is that we're looking to
22 depose Mr. David Grenada, and we -- and (indiscernible)
23 couldn't comment on the timing of that. I think that we are
24 still trying to reach him for that deposition so we can
25 really understand. And I appreciate your position with

1 respect to separating out recognition from that issue. If
2 we were to entertain that issue per Judge Lake's request, we
3 would need some time to do that. And so I don't know if
4 we're going to be in a position to take his deposition in
5 the next three days.

6 THE COURT: (Indiscernible).

7 UNIDENTIFIED SPEAKER: May I respond just briefly,
8 just to clarify a little bit? We asked Paragon's counsel to
9 accept service of a deposition subpoena last Tuesday. We
10 had noticed it for last Friday so we could be ready for
11 today's hearing. They were not able to accept service. We
12 are -- we have located where he is at. I know that he has
13 extended his hearing right now, and we're in the process of
14 trying to be able to serve him. Unfortunately, with the
15 process server because counsel has been unable to accept
16 that service.

17 We had it noticed for next Tuesday because we were
18 trying to allow seven days by the time he was actually
19 served. But from my perspective, we would have taken it
20 last Friday if we could have.

21 MR. CORNWELL: Your Honor, if I could just --

22 UNIDENTIFIED SPEAKER: Your Honor?

23 MR. CORNWELL: -- quickly weigh in. This is John
24 Cornwell again. I'm sorry I'm cutting in front of Matt who
25 was going to say the same thing. We represent Paragon who

1 is the eventual assignee purchaser of certain assets in the
2 Chapter 7 proceeding, Your Honor. As I understand it, I've
3 seen the document. I was copied on them, the subpoenas that
4 -- M-I is seeking discovery from a former CEO of QAI who is
5 now an employee of -- I'm sorry, I don't remember the title
6 of Paragon but the purchaser of (indiscernible) assets. It
7 was raised to an exclusive, by definition only, license of
8 MAXSITE software that was part of that sale that was
9 scheduled (indiscernible) of the sale in Chapter 7.

10 As soon as the receiver in this case realized that
11 there was a license that transferred that was highly
12 exclusive, even though it may well have been by its time
13 limited geographically, the receiver's counsel's letter
14 which is in the record -- I'm sorry, which is filed, it's
15 not yet admitted into this record. And then that license
16 was terminated. None of this has much to do with the
17 recognition hearing, as Your Honor noted. Again, this is
18 why I have concerns about extending this very much.

19 THE COURT: (Indiscernible).

20 MR. CORNWELL: And to the extent (indiscernible)
21 on discovery -- pardon me.

22 THE COURT: Let me stop you there. At some point,
23 perhaps we're going to re-evaluate and as opposed to looking
24 at recognition as a bad thing, we're going to look at it as
25 an opportunity to get some answers. I'm going to set it for

1 Monday at 10:30. And, again, things can happen and we'll
2 just see -- we'll see where that goes. Again, and I'm
3 hoping the parties speak through -- you can get an awful lot
4 out of a recognition proceeding because at that point, you
5 have people. You have people before the Court that -- I'm
6 going to let that -- leave that for future discussion.

7 So I'm going to set the recognition hearing for
8 10:30 on Monday, October the 26th before Judge Isgur. You
9 don't see him when he gets cranky, but that will now be your
10 problem. Of course, I'm just joking. When you know
11 someone for 30-plus years you can do that and the
12 repercussions are slight.

13 So let me ask with respect to the Chapter 7
14 Trustee, can we work through those issues?

15 MR. MARTIN: Your Honor, Jarrod Martin on behalf
16 of Christopher Murray, the Chapter 7 Trustee for Q'Max and
17 Anchor Drilling. We received an email this morning from
18 (indiscernible) stating that the subpoena has been withdrawn
19 and document requests that they withdraw them
20 (indiscernible) they have to issue additional discovery to
21 the Trustee when it's mature and, therefore, we believe that
22 it's the motion to quash.

23 THE COURT: All right. Also, just to make a
24 suggestion, I've played this game for a long time.
25 (Indiscernible) to look out the documents, and the Trustee

1 will give you access subject to the confidentiality issues
2 that were there. As soon as (indiscernible) affordable copy
3 machine and, you know, put two of them out there and let
4 them go through those. So the Trustee will have zero
5 knowledge. The Trustee will pick up those boxes and store
6 them. No one's going to know what's in them until somebody
7 goes and looks. And, you know, if you're really trying to
8 make sure that you turn over every rock, which I appreciate
9 and was one of those people, go through them. All you got
10 to do is ask. They'll absolutely say here. You know,
11 they'll do it.

12 So you just can't put the Trustee in a position
13 of, number one, having to have knowledge and, two, expending
14 money that in this case he doesn't have. All right?

15 What else can we do today?

16 MR. CORNWELL: Nothing from the perspective of the
17 Debtor, Your Honor. Thank you.

18 THE COURT: All right. Thank you. Mr. Cornwell,
19 are you going to get me an order in short order that's been
20 signed off on as to form by Ms. Hardman and you're going to
21 let Mr. Alonzo know once that's been uploaded, I'll grab it
22 and get it back on the docket for everybody, especially for
23 our Canadian friends. The case will stay with Judge Isgur
24 pending an official order transferring the case, which I am
25 not (indiscernible). All right?

1 MR. CORNWELL: Good meeting with you. Thank you,
2 Your Honor.

3 THE COURT: Thank you everyone. Please do be
4 safe. We'll be adjourned.

5 (Whereupon these proceedings were concluded at
6 4:46 PM)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: July 21, 2020

Appendix “M”



ENTERED
10/29/2020

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: Q'MAX SOLUTIONS INC., Debtor in a Foreign Proceeding.	§ § § § § § § § § §	Chapter 15 Case No. 20-34791 (MI)
--	--	--

**ORDER GRANTING RECEIVER'S EMERGENCY VERIFIED PETITION FOR
(I) RECOGNITION OF FOREIGN MAIN PROCEEDING, (II) RECOGNITION OF
FOREIGN REPRESENTATIVE, AND (III) RELATED RELIEF
UNDER CHAPTER 15 OF THE BANKRUPTCY CODE
[Relates to Dkt. No. 3]**

KPMG Inc. ("KPMG"), solely in its capacity as court appointed receiver and manager ("Receiver" or "Foreign Representative") of Q'Max Solutions Inc. ("QSI" or the "Debtor"), and certain other related Canadian entities, pursuant to the *Consent Receivership Order* dated May 28, 2020 (the "Receivership Order"), entered by the Court of Queen's Bench of Alberta in Judicial Centre of Calgary, Alberta, Canada, Court File No. 2001-06722 (the "Canadian Court" and the "Canadian Proceeding") pending under Canada's Bankruptcy and Insolvency Act ("BIA"), and as authorized foreign representative of the above captioned Debtor, filed its *Emergency Verified Petition for (I) Recognition of Foreign Main Proceeding, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (the "Petition")¹ [Dkt. No. 3], in this chapter 15 proceeding.

¹ Capitalized terms not defined herein shall have the meaning ascribed in the Petition.

The Court finds that notice was proper, and that one objection was filed at Dkt. No. 46 and is denied except as set forth herein, for the reasons stated on the record, and that the relief requested in the Petition should be GRANTED.

This Court has considered the evidence admitted on the record, as well as all matters for which judicial notice was taken, and based on this Court's powers and discretion under sections 105, 1507, 1515, 1517, 1520, 1521, and 1524 of the Bankruptcy Code, and based on the evidence presented and arguments of counsel, and sufficient cause appearing therefor, the Court **FINDS AND CONCLUDES** as follows:

- A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
- B. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).
- C. Venue is proper pursuant to 28 U.S.C. § 1410. This Court has the authority to enter a final order consistent with Article III of the United States Constitution.
- D. The Debtor is Q'Max Solutions Inc.
- E. On May 27, 2020, HSBC Bank Canada, as administrative agent ("HSBC" or the "Agent") for certain Lenders, filed an *Application for Appointment of a Receiver* seeking the appointment of KPMG as receiver under section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c, B-3, section 13(2) of the Judicature Act, R.S.A. 2000 c J-2 (the "Judicature Act"), and 65(7) of the Personal Property Security Act, R.S.A. 2000, c P-7.
- F. On May 28, 2020, the Honorable Justice Grosse for the Canadian Court entered the Receivership Order pursuant to section 243 of the BIA and section 13(2) of the Judicature Act.
- G. The Receiver is a "person" within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed foreign representative of the Debtor within the meaning of section 101(24) of the Bankruptcy Code.
- H. This Court has constitutional authority to enter final orders in these cases under *Stern v. Marshall*, 564 U.S. 462 (2011), or, in the alternative, by consent of the parties. See *Executive Benefits Ins. Agency v. Arkinson*, 573 U.S. 25 (2014).
- I. The Canadian Proceeding is a foreign proceeding within the meaning of section 101(23) of the Bankruptcy Code.

- J. As and to the extent set forth in this Order, the Canadian Proceeding is entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.
- K. As and to the extent set forth in this Order, the Canadian Proceeding is entitled to recognition as a foreign main proceeding pursuant to section 1502(4) of the Bankruptcy Code and section 1517(b)(1) of the Bankruptcy Code with respect to the Debtor. The Debtor's center of main interests is in Canada.
- L. The Receiver is entitled to relief afforded under section 1520 of the Bankruptcy Code.
- M. The Receiver, in its role as foreign representative of the Debtor, and the Debtor, is entitled to the full protections and rights available pursuant to section 1521 of the Bankruptcy Code.
- N. As and to the extent set forth in this Order, the relief granted is necessary and appropriate, in the interest of the public and international comity, consistent with the United States public policy, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting the requested relief.
- O. Permitting the Debtor's current cash management system to continue pursuant to existing agreements between the Debtor and its existing depository and disbursement banks (collectively, the "Banks") will facilitate the continued operations of the Debtor while the Canadian Proceeding and this proceeding are ongoing.
- P. In the Receivership Order, the Canadian Court granted the Receiver a charge (the "Receiver's Charge") on all of the Canadian Debtor's current and future assets, undertakings, and properties of every nature or kind whatsoever, and wherever located, including all proceeds thereof (collectively, the "Property") to secure payment of the reasonable fees and expenses of the Receiver and its counsel, not to exceed CAD \$1,000,000 (or such greater amount as the Canadian Court may by further order authorize). The Receiver's Charge has the priority set forth in paragraph 18 of the Receivership Order.
- Q. In the Receivership Order, the Canadian Court also authorizes the Receiver to borrow, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed CAD \$8,000,000 (or such greater amount as the Canadian Court may by further order authorize) on the terms set forth in paragraph 21 of the Receivership Order. The Canadian Court granted a charge (the "Receiver's Borrowings Charge") on the Property to secure payment of the monies borrowed, together with interest and charges thereon, by the Receiver pursuant to the Receivership Order.
- R. Consistent with section 14.06(1.2) of the BIA, the Receivership Order provides that "[t]he Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities . . . , other than such amounts as the Receiver

may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act . . .*” (the “Receiver’s Protections”).

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. The Canadian Proceeding is hereby recognized as foreign main proceeding pursuant to section 1517 of the Bankruptcy Code with respect to the Debtor.

2. The Receivership Order is consistent with the public policy of the United States and is, therefore, entitled to and hereby granted comity. The terms of the Receivership Order entered in the Canadian Proceeding under the BIA on May 28, 2020, are given full force and effect in the United States.

3. The Receiver is granted all of the relief afforded under section 1520 of the Bankruptcy Code, including the following:

- A. sections 361 and 362 apply with respect to the Debtor and the property of the Debtor that is within the territorial jurisdiction of the United States;
- B. sections 363, 549, and 552 apply to a transfer of an interest of the Debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;
- C. unless the court orders otherwise, the Receiver, as foreign representative, may operate the Debtor’s business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and
- D. section 552 applies to property of the Debtor that is within the territorial jurisdiction of the United States.

4. Pursuant to section 1524 of the Bankruptcy Code, the Receiver may intervene in any proceeding in a State or Federal court in the United States in which the Debtor is a party.

5. Pursuant to section 1523(a) of the Bankruptcy Code, the Receiver has standing in a case concerning the Debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553 and 724(a) of the Bankruptcy Code.

6. The following additional relief is granted pursuant to section 1521 of the Bankruptcy Code:

- A. The commencement or continuation of any action or proceeding concerning the assets, rights, obligations or liabilities of the Debtor, including any action or proceeding against KPMG in its capacity as Receiver, to the extent not stayed under section 1520(a) of the Bankruptcy Code, is hereby stayed;
- B. Execution against the assets of the Debtor to the extent not stayed under section 1520(a) of the Bankruptcy Code is hereby stayed;
- C. The administration or realization of all or part of the assets of the Debtor within the territorial jurisdiction of the United States is hereby entrusted to the Receiver, and the terms of the Receivership Order shall apply to the Debtor, its creditors, the Receiver, and any other parties-in-interest, and the Receiver is authorized to implement the Receivership Order;
- D. The right of any person or entity, other than the Receiver, to transfer or otherwise dispose of any assets of the Debtor to the extent not suspended under section 1520(a) of the Bankruptcy Code is hereby suspended unless authorized in writing by the Receiver or by Order of this Court;
- E. The Receiver's Charge, the Receiver's Borrowing Charge, and the Receiver's Protections are granted comity and are given full force and effect in the United States on a final basis;
- F. The Receiver may undertake the examination of witnesses, the taking of evidence, the production of documents, or the delivery of information concerning the assets, affairs, rights, obligations or liabilities of the Debtor; and
- G. Notwithstanding Rule 7062 of the Bankruptcy Rules, made applicable to this case by Rule 1018 of the Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and, upon its entry, shall become final and appealable.

7. All prior relief granted in the *Order Granting Receiver's Request for Provisional Relief Pursuant to 11 U.S.C. § 1519* [Dkt. No. 52] is hereby extended on a final basis, to the extent not inconsistent with the relief granted under this Order

8. This Court shall retain exclusive jurisdiction with respect to the enforcement, amendment or modification of this Order, any request for additional relief or any adversary proceeding brought in and through this chapter 15 proceeding, and any request by an entity for

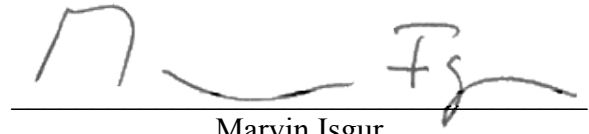
relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

9. Notwithstanding anything to the contrary herein, this Court retains exclusive jurisdiction to determine the actual ownership of MAXSITE, including whether M-I has any ownership interest in, or is entitled to any injunctive or other equitable relief with respect to, MAXSITE. For the avoidance of doubt, the Court's retention of jurisdiction is not intended to affect the Canadian Court's ability to enter all necessary and appropriate orders in connection with the Canadian Proceeding, including with respect to the disposition or sale of QSI's equity interests or other assets, licensing of MAXSITE to the extent of QSI's ownership interest therein, and granting stay relief for this Court to determine whether M-I has any interest in MAXSITE. Moreover, nothing herein is intended to foreclose communications between this Court and the Canadian Court pursuant to 11 U.S.C. § 1525 and the Court's Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters, General Order 2019-2, and reconsideration of the jurisdiction retention set forth in this paragraph to the extent that this Court determines that the Canadian Court can and should determine ownership interests in MAXSITE, consistent with applicable U.S. and Canadian law, including 11 U.S.C. § 1506.

10. The security provision provided in Rule 65(c) of the Federal Rules of Civil Procedure, made applicable through Rule 7065 of the Bankruptcy Rules, is unnecessary in these cases and is, therefore, waived.

11. This Order applies to all parties in interest in this chapter 15 proceeding and all of their agents, employees, and representatives, and all those who act in concert with them or who receive notice of this Order.

Signed: October 29, 2020

A handwritten signature in black ink, consisting of a stylized 'M' followed by a wavy line and a 'J' with a horizontal bar, all connected by a single stroke.

Marvin Isgur
United States Bankruptcy Judge