

APPENDIX C

Non-Disclosure Agreement for CostQuest CACM Source Code for Use in the FCC Proceeding in WC Docket No. 10-90 and Concurrent Related or Subsequent Related Administrative or Judicial Proceedings

THIS NON-DISCLOSURE AGREEMENT (“Non-Disclosure Agreement for Source Code”) is accepted and made effective as of the 15 day of January, 2013 (“Effective Date”), between CostQuest Associates, Inc. (“CostQuest”) and Edit Kraviner (“Viewer”) with respect to CostQuest’s proprietary and confidential source code for its Connect America Phase II forward-looking cost model software application (the Connect America Cost Model or “CACM”). The source code means (i) a system evaluator version of the CACM along with any sample CACM databases, which may be used to test the operation of the CACM (“System Evaluator package”) and which contains CACM source code, (ii) a digital rights management protected PDF file or files containing the processing source code for the network topology application and CACM, as appropriate (collectively, the “Source Code Materials”). Viewer and CostQuest will be referred to collectively as the “Parties.”

1. General Terms and Restrictions

- 1.1. CostQuest shall provide the Source Code Materials, including the relevant digital rights management protected PDF file or files containing the processing source code for the network topology application and CACM, as appropriate, to Viewer, without fees, charges, or costs to Viewer. The PDF file or files shall be viewable on a Windows-based personal computer and may require the use of a free PDF viewer.
- 1.2. Viewer shall hold Source Code Materials in strict confidence, and use at least the same degree of care as it uses to safeguard its own most confidential information, including trade secret information, so as to ensure that no unauthorized person has access to the Source Code Materials. Viewer shall access and use the Source Code Materials only for official purposes pertaining to providing comments and other filings to the Federal Communication Commission (“FCC”) for use in the FCC proceeding in WC Docket No. 10-90, and in concurrent related or subsequent related administrative and judicial proceedings (the “Project”).
- 1.3. Viewer shall not transfer, sell, rent, disclose, make available or otherwise communicate, resell, sublicense or use the Source Code Materials for any other purpose or in any other manner.
- 1.4. Viewer shall not copy or reproduce the Source Code Materials in any manner except to reproduce limited excerpts in filings with the FCC consistent with the terms of the Third Supplemental Protective Order.
- 1.5. Viewer shall at all times maintain the confidentiality of the Source Code Materials, handling the Source Code Materials in compliance with the Third Supplemental Protective Order. In the event that any portion of the Source Code Materials should come into the possession of unauthorized third parties as a result of a breach by Viewer of this Non-Disclosure Agreement for Source Code, Viewer shall, at its expense and without limiting any other rights available to CostQuest, immediately notify CostQuest and use all commercially reasonable efforts to retrieve such materials and shall reimburse CostQuest for all reasonable expenses incurred by CostQuest in attempting to retrieve such materials.

- 1.6. Viewer shall not, and shall not permit any third party to, disassemble, decompile, reverse engineer, or otherwise recreate the Source Code Materials.
2. Disclaimer of Warranties
 - 2.1. VIEWER ACKNOWLEDGES AND AGREES THAT (A) COSTQUEST HAS NOT MADE ANY EXPRESS OR IMPLIED WARRANTIES TO VIEWER REGARDING THE SOURCE CODE MATERIALS AND (B) THE SOURCE CODE MATERIALS ARE BEING PROVIDED TO VIEWER "AS IS," WITHOUT WARRANTIES OF ANY KIND. COSTQUEST DOES NOT WARRANT THAT THE SOURCE CODE MATERIALS ARE FREE FROM DEFECTS. COSTQUEST EXPRESSLY EXCLUDES AND DISCLAIMS ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.
3. Term and Termination
 - 3.1. This Agreement shall terminate automatically upon the termination of the above-captioned proceeding and concurrent related or subsequent related administrative or judicial proceedings.
 - 3.2. Notwithstanding section 3.1, if Viewer agrees that Viewer does not continue to require the Source Code Materials, CostQuest may terminate this Agreement.
 - 3.3. If CostQuest believes that Viewer is in violation of the Third Supplemental Protective Order or this Non-Disclosure Agreement for Source Code, CostQuest shall so notify the FCC. If the FCC determines that Viewer is in violation of the Third Supplemental Protective Order or this Non-Disclosure Agreement for Source Code and so orders, CostQuest may terminate this Non-Disclosure Agreement for Source Code.
 - 3.4. As part of the digital rights management process, access to the Source Code Materials may terminate on a periodic basis. Should the Viewer need to maintain access to the document, CostQuest, upon the reasonable request of Viewer, shall renew the Viewer's access rights.
4. Limitation of Liability
 - 4.1. IN NO EVENT SHALL COSTQUEST HAVE ANY LIABILITY FOR DAMAGES SUSTAINED BY THE VIEWER IN CONNECTION WITH THIS AGREEMENT, THE PROJECT OR THE POSSESSION OR USE OF THE SOURCE CODE MATERIALS, INCLUDING, WITHOUT LIMITATION, ANY LOST REVENUES OR PROFITS, OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF COSTQUEST HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
5. Ownership of Intellectual Property
 - 5.1. Viewer acknowledges that the Source Code Materials, including without limitation all output and derivatives of, as well as all modifications and customizations to the Source Code Materials, are proprietary to CostQuest and that CostQuest retains exclusive ownership of the Source Code Materials and all proprietary rights associated therewith. Viewer shall, at the direction of CostQuest, take all commercially reasonable measures to protect CostQuest's rights in the Source Code Materials.

5.2. Except as expressly provided herein, Viewer is not granted any other rights or license to patents, copyrights, trade secrets, data or trademarks with respect to the Source Code Materials. Viewer shall promptly notify CostQuest in writing upon its discovery of any unauthorized use or infringement of the Source Code Materials.

6. Additional Terms

- 6.1. Compliance with FCC Requirements and Other Laws. This Non-Disclosure Agreement for Source Code is expressly made subject to any United States government laws, regulations, orders or other restrictions regarding the Project or use of software, data, output or products thereof. Notwithstanding anything to the contrary in this Non-Disclosure Agreement for Source Code, Viewer shall not directly or indirectly export, or permit the transfer of, any software, data, output or products (a) to any country or destination for which the United States government or a United States governmental agency requires an export license or other approval for export without first having obtained such license or other approval; or (b) otherwise contrary to United States law, including, without limitation, FCC rules, policies and regulations.
- 6.2. No Waivers. No delay or omission by either party to exercise any right or power accruing upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any breach of the covenants, conditions or agreements to be performed or honored by the other party shall not be construed to be a waiver of any later breach thereof or of any other covenant, condition or agreement herein contained.
- 6.3. Assignments. This Non-Disclosure Agreement for Source Code is binding upon and inures to the benefit of the Parties hereto and their respective successors and assigns. Viewer shall not assign this Agreement or transfer any rights granted hereunder, in whole or in part, without obtaining the prior written consent of CostQuest, and any attempted assignment or transfer in violation of this provision is void.
- 6.4. Severability and Survival of Obligations. If any provision of this Non-Disclosure Agreement for Source Code is held invalid or unenforceable, the remainder of this Non-Disclosure Agreement for Source Code shall not be affected thereby, and each remaining provision of this Non-Disclosure Agreement for Source Code shall be valid and enforceable to the extent permitted by law. Sections 1, 2, 4, 5, and 6 shall survive any expiration or termination of this Agreement.
- 6.5. Nothing in this Non-Disclosure Agreement for Source Code gives anyone, other than the Parties, any rights or remedies under this Non-Disclosure Agreement for Source Code.
- 6.6. This Non-Disclosure Agreement for Source Code may be executed in counterparts, and each (whether an original or facsimile) is considered an original and all constitute one and the same instrument.
- 6.7. Governing Law. This Non-Disclosure Agreement for Source Code shall be governed by and construed in accordance with Federal law.
- 6.8. Entire Agreement. This Non-Disclosure Agreement for Source Code, the Licensing Agreement between CostQuest and Viewer or Viewer's employer (if executed), and the Third Supplemental Protective Order constitute the Parties' entire understanding with regard to the matters herein, and there are no other understandings, either written or unwritten, with regard to such matters.

Any terms on either Party's web site, product schedule, or contained in any "shrinkwrap" or "clickwrap" agreement shall not have force or effect if the provision conflicts with the terms of this Non-Disclosure Agreement for Source Code. This Non-Disclosure Agreement for Source Code may not be modified, amended, canceled or waived, in whole or in part, except by a written instrument signed by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Non-Disclosure Agreement for Source Code through their authorized representatives.

CostQuest Associates, Inc.

By: _____
James Stegeman, President

VIEWER:

Edit Kranner
[name]

Consultant
[position]

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