

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. NUSF-100/
Public Service Commission, on) PI-193
its own Motion to consider)
revisions to the Universal) SUPPLEMENTAL PROTECTIVE ORDER
Service Fund Contribution) FOR ACCESS TO THE COSTQUEST
Methodology.) STATE BROADBAND COST MODEL
)
)
) Entered: December 8, 2015

BY THE COMMISSION:

In Docket No. NUSF-102, the Commission found it appropriate to enter into a licensing agreement with CostQuest Associates, Inc. ("CostQuest") for access to the State Broadband Cost Model ("SBCM") which may be used in this proceeding as well as NUSF-99. The Commission staff executed a licensing agreement on October 22, 2015. The Commission enters this Supplemental Protective Order for the purpose of allowing interested parties to obtain access to the SBCM and to ensure that proprietary aspects of the SBCM are given adequate protection in this proceeding. Interested parties seeking access must execute the agreements attached to this Order. They must file the executed agreements with CostQuest at NE-SBCM@costquest.com. Once reviewed, CostQuest will release the SBCM directly to the interested party or parties.

The Commission entered its traditional Protective Order on October 27, 2015, which governs the treatment of confidential filings in general. This Supplemental Protective Order relates to the provision of access to the SBCM. However, this Protective Order will also cover confidential information and materials submitted during the course of this proceeding as it relates to the discussion of SBCM data. Accordingly, in order to obtain access to that confidential information, parties must execute agreements attached to this Order. Parties not seeking access to the SBCM or information related to the cost model will have no need to execute the agreements attached to this Order.

The following Supplemental Protective Order is hereby entered with respect to the confidential information related to SBCM access or related to data obtained thereby filed by any of the parties in any proceedings in this docket or produced in discovery.

1. Confidential Information: All documents and information (including confidential information in computer storage media or devices of every type or description) filed with or released by the Commission or furnished to other parties as part of testimony or briefs

or pursuant to any requests for information, subpoenas, depositions or other modes of discovery, formal or informal, (hereinafter referred to as confidential information) shall be so marked by the party so claiming, by stamping the same with a designation indicating its trade secret, proprietary or confidential in nature. Access to and review of confidential information shall be strictly controlled by the terms of this Order.

2. Nondisclosure and Licensing Agreements: No access to the SBCM shall be authorized under the terms of this Order to any person until the person desiring access to such information signs a Nondisclosure Agreement in the form that is attached hereto and incorporated herein as Attachment "A" and the Licensing Agreement that is attached hereto and incorporated herein as Attachment "B". The Nondisclosure Agreement (Attachment A) shall require the person to whom disclosure is to be made, to certify in writing that he or she has read this order and agrees to be bound by its terms and conditions. Attachments "A" and "B" shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreements shall be filed with CostQuest Associates Inc., and with the Commission.

3. Availability to the Commission and Parties: Confidential information shall be accessible to the Commission, Commission counsel, and Commission staff members and shall not be used or disclosed except for the purpose of conducting, issuing orders in, and otherwise participating in, this proceeding.

Confidential information shall be disclosed to a party's counsel, witnesses, or experts only as follows:

- (A) Except as set forth in paragraph 3(F), confidential information may not be disclosed to any individual who has marketing, pricing, product development, market analysis, market entry, or strategic planning responsibilities for any party to this proceeding or to any person who will have those responsibilities in the foreseeable future. Any such witness or expert may be an employee of a party provided that such employee's duties are dedicated to regulatory activities on behalf of the party and his or her duties are not related to marketing, pricing, product development, market analysis, market entry, or strategic planning for the party.
- (B) Prior to receipt of confidential information, the individual seeking disclosure shall provide to the disclosing party an executed Nondisclosure Agreement including 1) his or her name, employer, title, job description and experience and are

of expertise; 2) a statement that he or she does not have responsibility for marketing, pricing, product development, market analysis, market entry, or strategic planning for any party to the proceeding, nor does he or she anticipate having those responsibilities in the foreseeable future.

- (C) If the disclosing party believes in good faith that disclosure should not be made to any person seeking confidential information pursuant to paragraph 4, the disclosing party may respond to the notice by filing a written objection. If the parties cannot resolve the dispute informally, the matter shall be submitted to the Commission by motion. No confidential information need be disclosed pending resolution by the Commission.
- (D) If any party believes that, due to the highly sensitive nature of any information to be disclosed in this proceeding, the provisions of this protective order do not provide sufficient protection, the disclosing party may apply to the Commission for extraordinary protection.
- (E) While in the custody of the Commission, the original and all copies of material containing information claimed under this order to be confidential, shall be kept in a sealed envelope or box, which envelope or box is marked "CONFIDENTIAL--SUBJECT TO THE SUPPLEMENTAL PROTECTIVE ORDER IN APPLICATION NO. NUSF-100/PI-193."
- (F) Any individual who has marketing, pricing, product development, market analysis, market entry, or strategic planning responsibilities for any party to this proceeding shall be entitled to review confidential information subject to signing the Nondisclosure Agreement and will be strictly limited to use of such information solely in this proceeding, or for preparation of and conduct of any appeals.

4. Segregation of Files: The materials containing the confidential information and proceedings and orders of the Commission with regard thereto will be sealed and marked as provided in this order of the Commission, segregated in the files of the Commission and withheld from inspection by any person except under the conditions established in this order, unless such confidential information is released from the restrictions of this order either through agreement of the parties or, after notice to the parties and hearing, pursuant to the order of the Commission and/or final order of a court having jurisdiction.

5. Preservation of Confidentiality: No persons who are afforded access to any confidential information by reason of this order shall use or disclose the confidential information for purposes of business or competition, or any other purpose other than the purpose of preparation of and conduct of this proceeding, or for preparation of and conduct of any appeals. Persons afforded access to confidential information shall use such information solely as contemplated herein, and shall take all reasonable precautions to keep the confidential information secure as trade secret, confidential or proprietary information and in accordance with the purposes and intent of this order. No person may copy, microfilm, microfiche or otherwise reproduce the information without the written consent of the party claiming protection except for his or her own use, or the use of persons permitted access to the information and who have signed a Nondisclosure Agreement.

6. Use of Confidential Material: In the event any party intends to use or uses information obtained pursuant to the Nondisclosure Agreement under this protective order in testimony, exhibits, discovery or discovery responses, cross-examination, briefs or any other pleading or document to be filed in this proceeding, the following shall apply:

- (A) Testimony, briefs or other pleadings containing the information claimed to be confidential shall be filed under seal with the Commission by the party preparing and using the same in sealed envelopes or other appropriate containers, which shall be prominently marked with the legend "CONFIDENTIAL--SUBJECT TO THE SUPPLEMENTAL PROTECTIVE ORDER IN APPLICATION NO. NUSF-100/PI-193." A copy thereof shall be served on the parties who have signed nondisclosure and licensing agreements. The complete document containing the protected material shall not be filed in the public record.
- (B) The pages of the documents referred to in paragraph 6(A) above which contain information claimed to be confidential shall be clearly marked.
- (C) Any party who has not executed a Nondisclosure Agreement or the licensing agreement shall receive a copy of the documents referred to in paragraph 6(A) above from which information claimed to be protected has been omitted.
- (D) Testimony, exhibits and discovery responses containing the information claimed to be confidential shall be filed under seal with the Commission by the party preparing and using the same in sealed envelopes or other appropriate containers, which shall be prominently marked with the legend, "CONFIDENTIAL--SUBJECT TO THE SUPPLEMENTAL

PROTECTIVE ORDER IN APPLICATION NO. NUSF-100/PI-193." A copy thereof shall be served on the parties who have signed nondisclosure and licensing agreements. The complete document containing the protected material shall not be filed in the public record. Any party who has not executed the Nondisclosure Agreement and the licensing agreement shall receive a copy from which information claimed to be protected has been omitted.

- (E) In the course of this proceeding, any hearings during which documents or information obtained pursuant to the terms of this order are likely to be disclosed shall be conducted in camera, attended only by persons authorized to have access to such information under this order, provided that there has been no prior Commission determination that the documents or information in question are not confidential. The transcript of such in camera proceedings shall be kept under seal.

7. Access to Record:

- (A) General: Access to sealed testimony, records and information shall be limited to the Commission and persons who have signed the agreements set forth in Attachments "A" and "B", unless such information is released from the restrictions of this order either through agreement of the parties or after notice to the parties and hearing, pursuant to the order of the Commission or the final order of the final order of a court having final jurisdiction.
- (B) Appeal: Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal, but under seal as designated herein for the information and use of the court. If a portion of the record is forwarded to a court under seal for the purposes of an appeal, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal.
- (C) Continuation of Protection: Unless otherwise ordered, confidential information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal and shall continue to be subject to the protective requirements of this order after final settlement or conclusion of this matter, including administrative or judicial relief thereof.

8. Challenge to Confidentiality: This protective order esta-

blishes a procedure for the expeditious handling of information that a party claims is confidential; it shall not be construed as an agreement or ruling on the confidentiality of any document. In the event that any party challenges a claim for protection under this protective order, the party objecting to the removal of the confidential designation bears the burden of demonstrating the harm that would result from public disclosure of the material for which protection is sought. Any party may challenge the characterization of any document or specific information claimed by the providing party to be confidential in the following manner:

- (A) A party challenging the confidentiality of any materials pursuant to this order shall first contact counsel for the providing party and attempt to resolve any differences informally.
- (B) If the parties cannot resolve the disagreement informally, the party challenging the claim for protection shall do so by filing a motion with the Commission, which identifies with specificity, the material challenged and requests a ruling whether a document or information is confidential.
- (C) Within three business days of service of a motion for determination of confidentiality, the party claiming confidentiality shall deliver under seal all of the relevant documents and information to the Commission for an in camera inspection by the Commission or its designated hearing officer.
- (D) A ruling on the confidentiality of the challenged document or specific information shall be made by the Commission after an in camera hearing which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. Such hearing shall be held as expeditiously as is practicable following delivery of the relevant documents and information to the Commission.
- (E) The record of said in camera hearing shall be marked "CONFIDENTIAL--SUBJECT TO THE SUPPLEMENTAL PROTECTIVE ORDER IN APPLICATION NO. NUSF-100/PI-193." Court reporter notes of such hearing shall be separately bound, segregated, sealed and withheld from inspection by any person who has not executed a Nondisclosure Agreement in accordance with this order.
- (F) If the Commission rules that any document or specific inform-

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ation should be removed from the restrictions imposed by this order, no party shall disclose such document or specific information, or use it in the public record for five business days unless authorized by the providing party to do so. The provisions of this subparagraph are entered to enable the party claiming protection to seek a stay or other relief from the Commission's order denying that party such protection.

9. Return of Documents: Upon request by the disclosing party, confidential information provided pursuant to this protective order shall be returned to the disclosing party within 30 days of the conclusion of the proceeding, or any appeal taken therefrom.

10. Responses to Subpoena or Order: If any person receiving confidential information receives a subpoena or order for production of confidential information produced under the terms of this order, that person shall promptly notify the effected party's counsel after receiving the subpoena or order and before the documents are produced, identifying the date and location of the ordered or requested production.

11. Damages: Any person who violates this protective order by reason of unauthorized use, or disclosure or failure to keep the information confidential, may be liable for damages and penalties as provided by law.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the terms and conditions of the Supplemental Protective Order for Application No. NUSF-100/PI-193 be, and hereby are, as set forth herein.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 8th day of December, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram
Crystal Knodes
D. Hansen

Chairman *Gerald F. Day*

ATTEST: *Scott L. Puley*

Executive Director

ATTACHMENT "A"

Acknowledgement of Confidentiality-NUSF-100/PI-193 and Concurrent Related or Subsequent Related Administrative or Judicial Proceedings

I hereby acknowledge that I have received and read a copy of the foregoing Supplemental Protective Order in the above-captioned proceeding. I agree to limit my use of the SBCM Licensed Materials solely for the preparation for and conduct in the Commission's NUSF-100/PI-193 proceeding, and any concurrent related or subsequent related administrative or judicial proceedings and, except as provided herein, shall not use such Licensed Materials for any other purpose, including without limitation business, educational, research, governmental, or commercial purposes, or in any other administrative, regulatory or judicial proceedings. The undersigned further agrees not to disassemble, decompile, reverse engineer, or otherwise recreate the Licensed Materials, or allow any other person to do so. Should the Registered Proceeding rely upon or otherwise make reference to the Licensed Materials in it a legal or regulatory decision, it shall do so by redacting any proprietary information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Licensed Materials under this Agreement.

I also acknowledge that I have received and read a copy of the attached License (the "Licensing Agreement"), and I understand it.

I agree that I am bound by the Commission's Protective Order and by the Licensing Agreement and/or Non-Disclosure Agreement and that I shall not disclose or use Licensed Materials except as allowed by the Protective Order, the Licensing Agreement and/or Non-Disclosure Agreement.

I acknowledge that a violation of the Protective Order is a violation of an order of the Commission.

I acknowledge specifically that my access to any information obtained as a result of the Protective Order and the Licensing Agreement and/or Non-Disclosure Agreement is due solely to my capacity as a party or representative of a party to this proceeding or as a person described in paragraph 3. of the Supplemental Protective Order and agree that I shall not use such information in any other capacity.

I acknowledge that it is my obligation to ensure that Licensed Materials are not accessed or used except as specifically permitted by the terms of the Protective Order and the Licensing Agreement and/or Non-Disclosure Agreement, as appropriate.

I certify that I have verified that there are in place procedures at my firm or office to prevent unauthorized access to or disclosure of Licensed Materials.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Supplemental Protective Order.

_____, 2015. Signed and Agreed to this ____ day of

By: _____

Printed Name

Company Name

Address

Address

Telephone Number

ATTACHMENT "B"

CostQuest Associates, Inc. Restricted SBCM License Limited to Use Solely for Review and Evaluation for Purposes of the proceeding in NUSF-100/PI-193.

THIS LIMITED LICENSE ("Agreement") is made effective as of _____ of _____, 2015, between CostQuest Associates, Inc. ("Licensor") and the _____ ("Licensee") with respect to (i) Licensor's proprietary State Broadband Cost Model software application ("SBCM"), to which Licensee may gain online access if, and only if, it is provided for and agreed to in a separate statement of work (ii) the output of SBCM ("SBCM Output") and (iii) the output of Licensor's CostPro software ("CostPro Output"), which supports and is used in SBCM and is therefore indirectly accessed by Licensee (collectively, the "Licensed Materials").

Licensor hereby grants to Licensee, and Licensee hereby accepts, a non-exclusive, non-transferable, limited license to use the Licensed Materials, upon the following terms and restrictions:

1. License Grants and Restrictions

1.1. Licensee will utilize the Licensed Materials only in accordance with this Agreement and the Statement of Work ("SOW") dated October 15, 2015 between Licensor and Licensee in providing State broadband costing for use in registered¹ State Universal Broadband Service Funding Proceedings and/or Workshops ("Registered Proceeding") for which the Licensee has been authorized to participate in (collectively the "Project"). Licensee will not resell, sublicense or use the Licensed Materials for any other purpose or in any other manner, including, without limitation, for an application service, consulting business or service bureau of any sort.

1.2. Licensee shall use the Licensed Materials solely for the preparation for and conduct of the Registered Proceeding and any concurrent related or subsequent related administrative or judicial proceedings and, except as provided herein, shall not use such Licensed Materials for any other purpose, including without limitation business, educational, research, governmental, or commercial purposes, or in any other administrative, regulatory or judicial proceedings. Licensee also shall not disassemble, decompile, reverse engineer, or otherwise recreate the Licensed Materials, or allow any other person to do so. Should the Registered Proceeding rely upon or otherwise make reference to the

¹ State groups may elect to create a registered State Universal Service Funding Proceeding and/or Workshops. State group will indicate the members of the group who may participate in the effort.

Licensed Materials in it a legal or regulatory decision, it shall do so by redacting any proprietary information from the public version of the decision and by making the unredacted version of the decision available only to a court and to those persons entitled to access to Licensed Materials under this Agreement.

1.3. Licensee shall have the obligation to ensure that access to and use of Licensed Materials is strictly limited as prescribed in this Agreement and that Licensed Materials are retained in a secure place of limited access.

1.4. Upon termination of access to Licensed Materials, as defined in the SOW, Licensee shall at the option of Licensor, either return to Licensor or destroy all copies of Licensed Materials, and cease all further use of Licensed Materials for any purpose, other than Licensed Materials that have been filed in Registered Proceedings for which Licensee is authorized to participate in and output completed by Licensee prior to conclusion of the Project that may be used in future filings to a proceeding in regard to Registered Proceedings for which Licensee is authorized to participate in.

1.5. Derivative² output of the Licensed Material for a Registered Proceeding can only be shared as part of the Registered Proceeding with non-licensed individuals so long as that output is not a simple summary of the licensed model outputs and is summarized at a level at or above a company or study area level. A specific example of an appropriate derivative use within the Registered Proceeding would be taking the SBCM outputs and providing a table of supported locations and total support by company or by Study Area Code to distribute to others involved in the Registered Proceeding. (b) Except as specified in 1.3 (a) above, Licensee shall not, without the prior written consent of Licensor, make any copies of the Licensed Materials for distribution, access or use by parties who are not licensed users within the Registered Proceeding. On any copy of the Licensed Materials that Licensee is permitted to make or distribute, Licensee shall reproduce all copyright notices and any other proprietary legends of Licensor.

1.6. Except with the prior written consent of Licensor, or as provided under this Agreement, no Licensed Materials may be disclosed further.

1.7. If any person requests disclosure of Licensed Materials outside the terms of this Agreement, requests will be made to

² In this case the derivative is assumed to be a support model wherein only Census Block Groups with average cost greater than or equal to the FCC benchmark (currently \$52.50) or an equivalent Registered Proceeding value are displayed in the public disclosure. Should the support benchmark be less than \$35, please contact CostQuest prior to publication.

Licensors.

- 1.8. Licensee shall at all times maintain the confidentiality of the Licensed Materials, handling the Licensed Materials in compliance with all applicable confidentiality or conflict of interest policies of Licensors, and may not sublicense, transfer, sell, rent, disclose, make available or otherwise communicate the Licensed Materials to any third party not an authorized participant in the Project, or use the Licensed Materials except as expressly authorized under this Agreement. Licensee is authorized to use the Licensed Materials only as expressly set forth in this Agreement and shall not use such output in any other manner including, without limitation, usage in Federal Communications Commission ("FCC") WC Docket No. 10-90, or in any manner in conflict with such FCC proceeding.
- 1.9. Should a Licensee violate any of the terms of this Agreement, such Licensee shall immediately convey that fact to Licensors. In the event that any portion of the Licensed Materials should come into the possession of unauthorized parties as a result of a breach by Licensee of this Agreement, Licensee will, at its expense and without limiting any other rights available to Licensors, immediately notify Licensors and use all commercially reasonable efforts to retrieve such materials and will reimburse Licensors for all reasonable expenses incurred by Licensors in attempting to retrieve such Licensed Materials. Nothing in this Agreement shall limit any other rights and remedies available to Licensors at law or in equity against any person using Licensed Materials in a manner not authorized by this Agreement.
- 1.10. Licensee will limit its internal use of, and access to, the Licensed Materials to those employees or contractors of Licensee who are directly involved in the use and operation of the Licensed Materials for purposes of the Project and who have executed this Agreement where indicated below, agreeing to comply with the confidentiality and other obligations set forth in this Agreement ("Authorized Signatories"). Licensee may obtain access to the Licensed Materials for only such additional persons or entities as are specified on a written addendum ("Addendum") to this Agreement fully executed by Licensee, Licensors and such additional persons or entities. Licensee shall notify Licensors immediately in writing if an Authorized Signatory leaves the employ of Licensee or otherwise ceases to meet any of the forgoing criteria. Licensee further shall notify all Authorized Signatories that Licensors may at any time disclose the names of all Authorized Signatories.
- 1.11. The Licensed Materials, including all output generated thereby and all copies and derivatives thereof, shall at all times remain the sole and exclusive property of Licensors.

- 1.12. If Licensee sells, makes available to a third party, or otherwise disposes of Licensee-owned media on which the Licensed Materials are or were resident, that media must be erased and scrubbed before such sale or disposal.
- 1.13. Disclosure of Licensed Materials as provided herein by any person shall not be deemed a waiver by Licensor of any privilege, trade secret claim or entitlement to confidential treatment of such Licensed Materials. Licensee, by accessing Licensed Materials, agree: (1) not to assert any such waiver; (2) not to use Licensed Materials to seek disclosure in any other proceeding; and (3) that accidental disclosure of Licensed Materials by Licensor shall not be deemed a waiver of any privilege, trade secret claim or entitlement as long as Licensor takes prompt remedial action.
- 1.14. If a court or a federal or state department or agency issues a subpoena for or orders the production of Licensed Materials that a party has obtained under terms of this Agreement, such party shall promptly notify Licensor of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that Licensor has a full opportunity to oppose such production prior to the production or disclosure of any Licensed Materials.
- 1.15. In accessing or using the Licensed Materials, Licensee will not, by any action or inaction, violate laws or regulations promulgated by any governmental or quasi-governmental authorities or cause Licensor or any other participant in the Project, or their affiliates to violate any such laws or regulations.
- 1.16. Licensee accepts responsibility for (a) the selection of the Licensed Materials to achieve the result desired by Licensee; (b) limitation of access to the Licensed Materials; (c) the use of the Licensed Materials; and (d) the results obtained from the Licensed Materials.
- 1.17. Upon reasonable notice to Licensee, Licensor's auditors shall have the right to inspect Licensee's records relating to the Project as necessary for Licensor to verify Licensee's compliance with the SOW and the terms of this Agreement. Audits shall be conducted at Licensee's premises during normal business hours and in a manner that does not unreasonably interfere with Licensee's operations.

2. Disclaimer of Warranties

LICENSEE ACKNOWLEDGES AND AGREES THAT (A) LICENSOR HAS NOT MADE ANY EXPRESS OR IMPLIED WARRANTIES TO LICENSEE REGARDING THE LICENSED MATERIALS AND (B) THE LICENSED MATERIALS ARE BEING PROVIDED TO LICENSEE "AS IS," WITHOUT WARRANTIES OF ANY KIND. LICENSOR DOES NOT WARRANT THAT THE LICENSED MATERIALS ARE FREE FROM DEFECTS. LICENSOR EXPRESSLY

EXCLUDES AND DISCLAIMS ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. UNDER NO CIRCUMSTANCES SHALL LICENSOR BE RESPONSIBLE FOR ANY WARRANTIES MADE BY LICENSEE OR FOR ANY AGREEMENTS MADE BY LICENSEE WITH RESPECT TO THE PROJECT.

3. Term and Termination

- 3.1. This Agreement shall have an initial term of one year from the effective date of this agreement and may be for additional one year terms by mutual written agreement between the parties.
- 3.2. This Agreement may be terminated by Licensor upon three (3) days written notice to Licensee in the event Licensee breaches this Agreement in any manner or fails to act in accordance with the SOW.
- 3.3. Licensor may terminate this Agreement immediately without notice in the event of non-payment of fees, and/or all the Registered Proceedings for which Licensee has been authorized to participate in have been terminated. Licensor in its sole discretion may permit reinstatement of this Agreement, if all outstanding invoices for fees are paid along with any associated late payment fees, or any of the Registered Proceedings for which Licensee is authorized to participate in has been re-activated. Licensor reserves the right to charge an additional fee for reinstatement.

4. Limitation of Liability

- 4.1. IN NO EVENT SHALL LICENSOR HAVE ANY LIABILITY FOR DAMAGES SUSTAINED BY LICENSEE IN CONNECTION WITH THIS AGREEMENT, THE PROJECT OR THE POSSESSION OR USE OF LICENSED MATERIALS, INCLUDING, WITHOUT LIMITATION, ANY LOST REVENUES OR PROFITS, OR ANY DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. Ownership of Intellectual Property

- 5.1. Licensee acknowledges that the Licensed Materials, including without limitation all output and derivatives of, as well as all modifications and customizations to the Licensed Materials, are proprietary to Licensor and that Licensor retains exclusive ownership of all such Licensed Materials and all proprietary rights associated therewith. Licensee shall, at the direction of Licensor, take all commercially reasonable measures to protect Licensor's rights in the Licensed Materials.
- 5.2. Except as expressly provided herein, Licensee is not granted any other rights or license to patents, copyrights, trade secrets, data or trademarks with respect to Licensed Materials. Licensee shall promptly notify Licensor in writing upon its discovery of any unauthorized use or infringement of the Licensed Materials.

6. Confidentiality

- 6.1. It may be desirable and necessary for Licensor to disclose certain confidential and/or proprietary information ("Information") to Licensee. Such Information shall be clearly and conspicuously marked as Confidential. For purposes of this Agreement, the Licensed Materials are deemed Information. Licensor provides Information solely to facilitate the Project as described in the SOW and this Agreement. Licensee agrees (a) not to use any Information for any purpose except as stated in this Agreement; and (b) to limit disclosure of Information to Authorized Signatories. Licensee shall treat Information with at least the same standard of care and protection that it applies to its own proprietary and confidential information and trade secrets and in no event less than a reasonable standard of care.
- 6.2. The Information does not include any information that has been (a) received by Licensee from a third party having the right to disclose such, and without limitations on use or disclosure; (b) independently developed by or for Licensee by personnel or agents having no access to the Information; or (c) disclosed by Licensor to a third party without restrictions on disclosure or use.
- 6.3. Subject to Section 6.4 below, the Licensed Materials generated using data input supplied by Licensee shall be deemed confidential and/or proprietary information of Licensee ("Licensee Output Information"). Licensee provides the data input used to generate the Licensee Output Information solely to facilitate the Project as described in the SOW and this Agreement. Licensor agrees (a) not to use any Licensee Output Information for any purpose except as stated in this Agreement without the consent of Licensee; and (b) to limit disclosure of Licensee Output Information to those employees of Licensee who have a need to know and who have agreed in writing to protect Licensee Output Information from unauthorized disclosure or improper use. Licensee shall treat Licensee Output Information with at least the same standard of care and protection that it applies to its own proprietary and confidential information and trade secrets and in no event less than a reasonable standard of care.
- 6.4. The Licensee Output Information does not include any Licensed Material generated using data input that has been (a) received by Licensor from a third party having the right to disclose such, and without limitations on use or disclosure; (b) independently developed or generated by or for Licensor by personnel or agents having no access to the Licensee Output Information; (c) disclosed by Licensee to a third party without restrictions on disclosure or use; or (d) shared with any third party pursuant to Licensee's request

- 6.5. In the event that Licensor desires to use Licensee Output Information for any purpose other than the Project, Licensor shall notify Licensee's designated Project representative in writing, stating with reasonable specificity the intended usage. Licensor shall not use Licensee Output for any purpose other than the Project without the written consent of Licensee.

7. Additional Terms

- 7.1. **Compliance with State Requirements and Other Laws.** This Agreement is expressly made subject to any United States and State 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 Agreement, Licensee will 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 law, including, without limitation, State policies and regulations.
- 7.2. **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 will impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants, conditions or agreements to be performed by the other party will not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. Except as otherwise expressly provided herein, all remedies provided for in this Agreement will be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.
- 7.3. **Assignments.** This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and assigns. Licensee shall not assign this Agreement or sublicense or transfer any rights granted hereunder, in whole or in part, without obtaining the prior written consent of Licensor, and any attempted assignment or transfer in violation of this provision is void.
- 7.4. **Severability and Survival of Obligations.** If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and each remaining provision of this Agreement will be valid and enforceable to the extent permitted by law. Sections 1, 2, 4, 5, 6, and 7 shall survive any expiration or termination of this Agreement.

- 7.5. **Publicity.** All media releases, public announcements and public disclosures by Licensee relating to this Agreement or its subject matter (including but not limited to promotional or marketing material, but not including any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of Licensee) will be subject to prior review and written approval by Licensor.
- 7.6. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Nebraska.
- 7.7. **Entire Agreement.** This Agreement, the SOW and any Addenda, Project Attachments or Supplemental Work Orders (as defined in the SOW) 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. This Agreement may not be modified, amended, canceled or waived, in whole or in part, except by a written instrument signed by the parties hereto.
- 7.8. IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives effective as of the date first set forth above.

LICENSOR:

LICENSEE:

CostQuest Associates, Inc.

By: _____
(Signature)
Jim Stegeman, President

By: _____
(Signature)

[Print name and title]

The undersigned employees or independent contractors of Licensee hereby enter into the forgoing Agreement for the purpose of acknowledging and agreeing to the terms thereof, including, without limitation, the confidentiality provisions of Section 6 thereof.

[Attach additional page(s) if necessary to include additional names and signatures.]

(Signature)
Print name: _____

Date: _____

(Signature)

Date: _____

Print name: _____

(Signature)

Print name: _____

Date: _____

(Signature)

Print name: _____

Date: _____

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Date: _____

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