STATE OF NEBRASKA
NEBRASKA DEPARTMENT OF REVENUE

NEBRASKA ADVANTAGE ACT PROJECT AGREEMENT

«Company_Name»
«Address_Line_1»
«City», «State» «ZIP_Code»

Nebraska Identification Number 24-«SID»
Project Number «Project_Number»

This Agreement is entered into pursuant to the Nebraska Advantage Act, as defined in Section 77-5701, Nebraska Revised Statutes, (Act), between «Company_Name», referred to as Applicant, and the State of Nebraska, by and through the Tax Commissioner. This Agreement is for a Nebraska Advantage Tier 2 Large Data Center (Tier 2LDC) project.

It is agreed between Applicant and the State that:

**The Plan**

1. The application and related documents detailed in subparagraph (a) of this paragraph satisfy the requirements of an application as contained in the Act and this Agreement. The date of application is «AppDate», the date the application was considered complete.

   (a) The Application includes the original application submitted «Org_Date»; supplemental pages dated «Supp_Date»; addendum(a) dated «Add_Date»; and all supporting documentation.

   (b) The Applicant includes the entities identified in the Application as being part of the taxpayer, as defined in the Act. Entities may be added to the plan only if they were not in existence between the date of application and the signing of the Agreement, or if they were not qualified to be included as part of the taxpayer at the time the Agreement was signed.

   (c) The plan includes only the locations identified in the Application. Locations may be added to the plan only if they were not used by the taxpayer between the date of application and the signing of the Agreement, or if they were not used for qualified activities at the time the Agreement was signed.

2. The Tax Commissioner is reasonably satisfied that the relevant portions of the plan in the Application define a project consistent with the purposes stated in the Act.

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**The Commitments**

3. Applicant agrees to complete the project before the end of the attainment period, and to comply with the following requirements:

   (a) File a Nebraska Advantage Act Incentive Computation, Form 312N, showing investment and employment for the year during which the Application was filed and for each following year through the end of the carryover period;

   (b) Substantiate any claimed credits or refunds by providing to the Nebraska Department of Revenue, referred to as Department, the supporting documentation required in paragraphs 6 or 13 of this Agreement;

   (c) Use credits or request other benefits under the Act only after receiving a notice of qualification issued by the Department;

   (d) Pay all sales and use taxes when they are due even if the tax is eligible for refund;

   (e) Maintain the records required in paragraph 6 of this Agreement for the base year and all intervening years through three years after the end of the entitlement period, until extensions of the statute of limitations expire for any period including the base year, the attainment period, the entitlement period, or until any pending protest or court case concerning this Agreement is resolved;

   (f) Timely make reports as required in this Agreement; and

   (g) Confirm work eligibility of all newly hired Nebraska employees.

      (i) Maintain an active registration with E-Verify, the federal electronic verification program, or a successor program (E-Verify).

      (ii) Use E-Verify to timely evaluate the work eligibility status of all employees hired in Nebraska after the date of application.

      (iii) For purposes of calculating any tax incentive under the Act, exclude hours worked and compensation paid to an employee that is not eligible to work in Nebraska according to E-Verify.

4. The Tax Commissioner, on behalf of the State, designates the approved plan of Applicant as a project and, in consideration of Applicant's agreement and commitments contained in

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paragraph 3 of this Agreement, the State agrees to recognize Applicant's entitlement to the credits and other benefits set forth in this Agreement, under the conditions specified.

5. This project is a Nebraska Advantage Tier 2LDC project.

   (a) The minimum levels of employment and investment shall be the hiring of at least 30 new equivalent employees in Nebraska at an annual rate of pay at or above $22,961, and the investment in qualified property in Nebraska of at least $200 million.

   (b) If the project includes other qualified business activities in addition to the large data center, the minimum levels of employment and investment shall be the minimum levels in subparagraph 5(a) for the entire project and in addition, the hiring of at least 30 new equivalent employees in Nebraska at an annual rate of pay at or above $22,961 and the investment in qualified property in Nebraska of at least $200 million counting only investment and employment at the web portal or data center.

   (c) The attainment period ends the last day of the sixth year after the year the Application was filed, «TYE__6», or the beginning of the year the required minimum levels were met, whichever occurs first.

   (d) The entitlement period is the year the minimum levels were met and the next six years.

   (e) The carryover period is from the end of the entitlement period through the fourteenth year after the year the application was filed «TYE__14».

**Required Documentation**

6. Applicant shall present documentation, at the Department's offices or within Nebraska, sufficient to establish its attainment or maintenance of the levels of employment and investment or to establish its entitlement to any benefit, credit, or refund. The Department may require electronic copies of any records maintained by the taxpayer in digital or electronic format for purposes of this audit.

   (a) For purposes of paragraph 11 of this Agreement to determine the number of full-time or full-time equivalent Nebraska employees and the amount of compensation at the project, the required documentation shall show the hours worked, rate of pay, and the total amount received and may include, but not necessarily be limited to: payroll register, payroll tax filings, or copies of payroll summaries prepared by Applicant showing the amounts of payroll subject to

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Nebraska income tax withholding, and case verification number and system reports from E-Verify.

(i) If the employees are leased from a qualified leasing company, the employee leasing company must provide all of the required payroll records.

(b) For purposes of paragraph 12 of this Agreement to determine the amount of investment, the required documentation shall show the amounts capitalized, the dates of purchase, the dates annexed or placed in service, and the tax paid and may include, but not necessarily be limited to: tax depreciation schedules, copies of construction contracts accompanied by proof of payment, statements of tax paid by contractors, statement of tangible personal property included and tax paid for annexed property contracts, copies of qualified property purchase contracts or invoices accompanied by proof of payment, or copies of lease/rental contracts accompanied by proof of payment.

(c) The documentation required in subparagraphs (a) and (b) above will be made available for the base year, and any subsequent year through the end of the entitlement period.

(d) If Applicant acquires a business, Applicant agrees to provide documentation regarding the levels of investment and employment for the acquired business for the twelve months prior to the acquisition.

(e) The Department reserves the right to make inspections of the physical project and will audit the normal books and records of Applicant to determine the project's compliance and the accuracy of all amounts claimed.

(f) When, based upon the Department's review of the documentation required under subparagraphs 6(a) and (b) of this Agreement, the Department has determined the employment and investment at the project and is satisfied that Applicant has met the minimum employment and investment levels required in the Act, the Department will issue a notice of qualification to Applicant acknowledging its attainment of the minimum levels.

**Determination of New Equivalent Employees**

7. For purposes of computing the number of new equivalent employees:

(a) Equivalent employees shall be determined by dividing the total hours paid at the project during Applicant's year by the product of forty (40) times the number of weeks in that year. Salaried employees are deemed to work a forty-hour week,

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provided, non-salaried employees are regularly paid for a forty-hour week. If Applicant's normal work week is different than forty hours, the number of hours worked by salaried employees must be adjusted accordingly.

(i) The hours worked by any person considered an independent contractor or the employee of another taxpayer shall not be used in the computation under this paragraph. Exception: If all employees are leased from a qualified employee leasing company, then the leased employees will be considered the employees of the taxpayer.

(ii) The hours worked by a teleworker working in his or her home on tasks interdependent with the project and who is paid based on hours or who is salaried are included in the hours worked at the project.

(iii) The hours worked by an employee at a military installation in Nebraska on tasks interdependent with the project are included in the hours worked at the project.

(b) Number of equivalent base-year employees shall mean the number of equivalent employees employed at the project during the base year. The base year is the year before the application date. The number of equivalent base-year employees at the project will increase during the term of this Agreement if Applicant transfers employees who were employed in Nebraska by the taxpayer during the base year from other Nebraska locations into the project or upon the acquisition of a business. The number of base-year employees shall not decrease, provided that an employee will not be considered a base-year employee for two or more projects of the taxpayer with the same base year. The employee will be counted as a base-year employee for the project where he or she is currently working, or the last project at which he or she worked.

(c) Rate of pay is the amount of compensation received by an employee divided by the number of hours worked. The rate of pay will be multiplied by the number of hours in a regular work week for the employer and then multiplied by 52.

(i) Compensation means wages and other payments subject to Medicare tax.

(ii) If the employees are leased from a qualified leasing company, the rate of pay and compensation amounts will be determined by the amounts paid to the employees by the leasing company and not the amount paid to the leasing company by Applicant.

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(d) A new employee is an employee who was not employed in Nebraska by the taxpayer at any time during the base year and who was either hired after the beginning of the year the Application was filed or was transferred by the taxpayer into Nebraska from outside the state after the beginning of the year the Application was filed.

8. The number of new equivalent employees is the smaller of:

(a) The difference in the number of equivalent employees at the project in a year over the number of equivalent employees in the base year; or

(b) The number of equivalent employees computed using only the hours worked by new employees at the project whose rate of pay was at or above the required rate of pay specified in subparagraph 5(a) of this Agreement.

**Determination of Investment**

9. The basis upon which the amount of investment in this state is calculated is all tangible personal property used or available for use at the project which is placed in service after the date of application, or the portion of tangible personal property which is incorporated into real estate after the date of application. Only investment in improvements to real estate and tangible personal property that are depreciated under relevant provisions of the Internal Revenue Code, or expensed under section 179 of the Internal Revenue Code, shall be considered, including any property owned by the taxpayer that is located in the home of a teleworker whose hours are included in the hours worked at the project. Property eligible as investment shall not include: aircraft, barges, motor vehicles, railroad rolling stock, watercraft, any other property that is expensed, or that is rented or leased by Applicant to another person.

(a) The basis upon which the investment credit is calculated for property owned by the taxpayer shall be the total cost required to be capitalized under relevant provisions of the Internal Revenue Code.

(b) The basis upon which the investment credit is calculated for property rented or leased by the taxpayer shall be the annual rent required to be paid times the number of years for which the taxpayer is originally bound under the lease, not to exceed ten years. The annual rent required to be paid includes the amounts for the space, taxes, and insurance. The annual rent required to be paid does not include management fees, common area maintenance, or other services.

(c) When a construction contract is in process prior to the date of application, a "certificate of percentage completion" must be obtained from the prime contractor

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stating the percentage of the contract completed as of the date of application. The portion of the construction contract already completed shall not be investment under the Act.

**The Credits**

10. When the minimum levels of employment and investment specified in subparagraphs 5(a) and 5(b) of this Agreement are met before the end of the attainment period, Applicant shall be entitled to the credits in paragraphs 11 or 12 of this Agreement. No credits will be allowed until after Applicant's compliance with the project verification steps contained in paragraph 6 of this Agreement and receipt of the Department's notice of qualification. No credits will be earned for investment and employment in any year during the entitlement period that the minimum levels were not met or exceeded.

    (a) All credits are considered earned on the last day of the year the investment occurred or the wages were paid, except no credits will be considered earned prior to the last day of the year the minimum levels were attained.

11. **Compensation Credit.** The compensation credit is equal to a percentage of the average wage of new employees times the number of new equivalent employees determined under paragraph 8 of this Agreement. The appropriate percentage is determined by comparing the average wage for new employees to the Nebraska average annual wage for the year of application.

    (a) Average wage of new employees means the compensation paid to new employees at the project for hours worked, or received during pay periods, when the rate of pay was at or above the required rate of pay divided by the number of new equivalent employees as determined under subparagraph (8)(b) of this Agreement.

    (b) Compensation means wages and other payments subject to Medicare tax. Compensation shall not include any amount in excess of one million dollars paid to any one employee during the year.

    (c) The applicable percentage for a 2013 applicant is shown below:

        (i) The percentage is zero if the average wage of the new employees is less than $22,961.

        (ii) The percentage is three percent if the average wage of the new employees is at least $22,961, but less than $28,702.

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(iii) The percentage is four percent if the average wage of the new employees is at least $28,702, but less than $38,269.

(iv) The percentage is five percent if the average wage of the new employees is at least $38,269, but less than $47,836.

(v) The percentage is six percent if the average wage of the new employees is at or above $47,836.

12. **Investment Credit.** The investment credit is equal to ten percent of the amount of investment in qualified property, as determined in paragraph 9 of this Agreement that will be located and used at the project.

**Sales Tax Refunds**

13. When the minimum levels of employment and investment specified in subparagraphs 5(a) and 5(b) of this Agreement are met before the end of the attainment period, Applicant shall be entitled to a refund of the sales and use taxes paid on purchases or leases. No claims will be filed prior to Applicant's compliance with the project verification steps contained in paragraph 6 of this Agreement and receipt of the Department's notice of qualification. Claims for refund under subparagraph (a); claims for refund under subparagraph (b) on purchases or leases for use at the project; and claims for refund under subparagraph (b) on purchases and leases for use in this state outside the project must be filed separately. If Applicant fails to maintain an updated schedule of sales tax refunds, all sales tax refunds may be suspended until the updated schedule is provided.

(a) The following refunds of sales or use tax are for purchases or leases for use **at the project** made on and after the date of application, and through the end of the entitlement period, without the use of credits (direct refunds). No direct refunds will be allowed for any year during the entitlement period that the minimum levels were not met or exceeded.

(i) The sales or use tax paid by Applicant on tangible personal property that qualifies as investment under paragraph 9 of this Agreement.

(ii) The sales or use tax paid by Applicant on aircraft and any other property, except motor vehicles, trailers, or semitrailers, based in this state and used in this and other states in connection with the project. Any claim for refund must clearly connect the purchase and use of the property to the project as described in the Application. No refund will be allowed under this subparagraph for any aircraft or other property that is used for fundraising for, or for the transportation of, any elected official.

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(iii) The sales or use tax paid by Applicant on tangible personal property incorporated into an improvement to real estate that will be a part of the project.

(iv) The sales or use tax paid by a contractor after the contractor has been appointed as an agent by Applicant to purchase tangible personal property that the contractor **will incorporate into an improvement to real estate** that will be a part of the project**.** The refund will be based on 50% of the contract price as the cost of tangible personal property with tax. The contract price will exclude any amount for the purchase of land.

(A) Except as set forth in subparagraph (a)(vii) of this paragraph, the refund will only be paid to Applicant.

(B) The contractor shall certify to Applicant the percentage of the tangible personal property incorporated into real estate on which Nebraska and local sales or use tax was paid. If the sales or use tax has been properly paid to a state other than Nebraska, such tax does not qualify for refund. The amount of the refund will be reduced proportionally if tax was not paid or if it was paid to another state.

(C) The sales or use tax must have been paid to Nebraska on all tangible personal property purchased for use at the project. If the sales or use tax has not been paid, the Applicant and contractor are jointly liable for the tax, interest, and penalties on these purchases.

(v) The sales or use tax paid by a contractor after the contractor has been appointed as an agent by Applicant to purchase tangible personal property that the contractor **will annex to, but not incorporate into, real estate** that will be a part of the project. The refund will be based on the cost of tangible personal property subject to the sales or use tax, that was annexed to real estate.

(A) The refund will only be paid to Applicant.

(B) The contractor shall certify to Applicant the percentage of the contract price that represents the cost of tangible personal property annexed to the real estate at the project. The cost of tangible personal property does not include the cost of items that are not annexed to real estate, for example, crane rental and meals.

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(C) The contractor shall certify to Applicant the percentage of the tangible personal property annexed to real estate on which Nebraska and local sales or use tax was paid. If the sales or use tax has been properly paid to a state other than Nebraska, such tax does not qualify for refund. The amount of the refund will be reduced proportionally if tax was not paid or if it was paid to another state.

(D) The sales or use tax must have been paid to Nebraska on all tangible personal property purchased for use at the project. If the sales or use tax has not been paid, the Applicant and contractor are jointly liable for the tax, interest, and penalties on these purchases.

(vi) The sales or use tax paid by a contractor after the contractor has been appointed as an agent by Applicant to purchase tangible personal property that the contractor will, under a single contract: **(a) incorporate tangible personal property into an improvement to; and also (b) annex tangible personal property to, but not incorporate it into; real estate that will become a part of the project.** The refund will be based on 50% of the contract price as the cost of tangible personal property with tax. The contract price will exclude any amount for the purchase of land.

(A) The refund will only be paid to Applicant.

(B) The contractor shall certify to Applicant the percentage of the tangible personal property incorporated into, or annexed to, real estate on which Nebraska and local sales or use tax was paid. If the sales or use tax has been properly paid to a state other than Nebraska, such tax does not qualify for refund. The amount of the refund will be reduced proportionally if tax was not paid or if it was paid to another state.

(C) The sales or use tax must have been paid to Nebraska on all tangible personal property purchased for use at the project. If the sales or use tax has not been paid, the Applicant and contractor are jointly liable for the tax, interest, and penalties on these purchases.

(vii) If any improvement to real estate being built for use at the project is not owned by Applicant or a related party, the owner of the improvement during the period of its construction may receive a refund of the sales or use taxes paid on tangible personal property incorporated into the improvement on and after the date of application. The owner will be considered the same as Applicant for purposes of subparagraphs (a)(iii) and (a)(iv), above. Any

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contractor must be appointed as agent for the purchasing of tangible personal property and provide the required certification.

(viii) If any improvement to real estate being built for use at the project is not owned by Applicant but is owned by a related party during the period of its construction, Applicant may receive a refund of the sales or use taxes paid on tangible personal property incorporated into the improvement on and after the date of application to the same extent that the related person would be eligible for a refund if the related person was considered the Applicant for purposes of subparagraphs (a)(iii) through (a)(vi), above. Any contractor must be appointed as agent for the purchasing of tangible personal property and provide the required certification.

(b) The credits specified in paragraphs 11 and 12 of this Agreement may also be used to obtain the following refunds of sales or use taxes paid on any purchase or lease for use **in this state**. Credits may not be used for a refund of the tax paid on any aircraft or other purchase as specified in subparagraph (a)(ii) above. The credits may only be used for a refund of the tax paid on purchases after the end of the year the minimum levels were met or after the end of the year the credits were earned, whichever is later, through the end of the carryover period.

(i) Any property that would otherwise qualify for a direct refund.

(ii) Any purchase or lease for use at the project for property that does not qualify as investment, or on any other purchase for use at the project that is subject to sales and use tax.

(iii) Any tangible personal property incorporated into the improvement to real estate owned by a related person during the period of construction.

(c) A claim for refund of the state sales and use taxes paid may be filed quarterly, or when the amount claimed exceeds $25,000 after the Department's notice of qualification has been received by the taxpayer.

(i) Any local option sales tax refund that exceeds $25,000 will not be refunded when the claim is approved. The local option amount claimed and approved will be refunded after November 15 of the same calendar year if the claim was filed on or before June 15. The local option amount claimed and approved will be refunded after November 15 of the following calendar year if the claim was filed on or after June 16.

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(d) For purposes of this paragraph, the required documentation for a sales tax refund claim shall include, but not necessarily be limited to: any documentation required under paragraph 6 of this Agreement, receiving reports, use tax returns, copies of licensing agreements, and copies of maintenance or service agreements.

(i) The Department in its discretion may allow Applicant to submit refund claims without documentation for all of the items claimed, but may require the documentation to be provided based on a sample, a stratification on invoice amounts, or by account or vendor.

(ii) The Department may require any records that are maintained in a digital or electronic format to be provided electronically.

**Other Credit Usage**

14. The credits specified in paragraphs 11 and 12 of this Agreement may be used to reduce Applicant's income tax liability imposed by sections 77-2714 to 77-27,135 of the Nebraska Revised Statutes. The credits may be used for the year the minimum levels were attained, or for the year the credits are allowed, whichever is later. Unused credits may be carried over and used in subsequent years before the end of the carryover period. Credits may not be used to reduce the tax liability or to obtain a refund of tax paid for a year prior to the year the credits were earned regardless of when the return or liability for such earlier year is determined.

15. The compensation credit specified in paragraph 11 of this Agreement may be used by Applicant to retain a portion of the income tax withheld from employees.

(a) The amount of the withholding retained will not have any impact on the amount of withholding reported to employees for use as a credit against their individual income tax liability.

(b) Credits cannot be used to retain any amount of withholding due prior to receipt of the Department's notice of qualification referred to in this Agreement, or that is due prior to the end of the year for which the credits were allowed. Credits may be used to obtain a refund of withholding due after the end of the year the credits were earned, but prior to the reporting of the credits or the receipt of the notice of qualification.

(c) The portion of any payment of withholding that may be retained by use of the credits is the amount of withholding included in that payment that is attributable to the number of new employees determined for the project.

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(i) The portion of the withholding that is attributable to the number of new employees at the project is a percentage determined by dividing the compensation that is eligible for the compensation credit as determined in paragraph 11 by the total amount of compensation paid to all employees reported on the withholding return that includes the project.

(ii) Applicant will compute the percentage in subparagraph (c)(i) above for a year and will use that percentage for required payments during the following year. For each payment of withholding that is due, Applicant will multiply the amount withheld that would otherwise have to be remitted to the State by the percentage determined in subparagraph (c)(i) above to calculate the amount of withholding that may be retained. This calculation will be made for each payment during the following year, or until there is no remaining compensation credit.

16. The credits specified in paragraphs 11 and 12 of this Agreement may be used to receive a reimbursement for property tax paid on real property that is included in the project that was acquired after the date of application and before the end of the carryover period.

(a) The credits may only be used for a reimbursement of the real property taxes due after the year the application was filed and due on or before the end of the carryover period.

(b) The credits may be used for reimbursement of the real property taxes on either owned or leased property that were paid by the applicant directly to the county.

(c) No reimbursements will be paid until after receipt of the notice of qualification.

(d) No reimbursements will be paid for real property taxes due on any real property for which the taxes are divided under Neb. Rev. Stat. §§ 18-2147 or 58-507.

**Personal Property Tax Exemption**

17. Applicant shall be entitled to an exemption from property tax on certain personal property purchased or leased for use at the project.

(a) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for, or for the transportation of, an elected official, which is acquired by Applicant, whether by lease or purchase, after «AppDate», shall be exempt from the tax on personal property from the first January 1 following the date of acquisition through the date determined under subparagraph (b) of this paragraph.

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(b) Personal property, as described below, which is acquired by Applicant, whether by lease or purchase, after «AppDate», shall be exempt from the property taxes on personal property through the ninth December 31 after the first year any property in subparagraph 17(b) qualifies for exemption. Personal property will qualify for exemption from the first year for which the Applicant files a claim for exemption, or the first January 1 following the end of the year during which the minimum levels of employment and investment specified in subparagraphs 5(a) and 5(b) of this Agreement, whichever is earlier. The following classes of property qualify for exemption.

(i) Computer systems, made up of equipment that is interconnected in order to enable the acquisition, storage, manipulation, management, movement, control, display, transmission, or reception of data involving computer software and hardware, used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user. A computer system includes peripheral components which require environmental controls of temperature and power connected to such computer systems. Peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, data switches, and communication controllers;

(ii) Depreciable personal property used for a distribution facility including, but not limited to, storage racks, conveyor mechanisms, forklifts, and other property used to store or move products;

(iii) Personal property which is business equipment located in a single project if the business equipment is involved directly in the manufacture or processing of agricultural products; and

(iv) Any other personal property located at the project.

(c) To receive the property tax exemptions, the taxpayer shall annually file a claim for exemption with the Tax Commissioner and with the county assessor in each county in which the taxpayer is requesting exemption on or before May 1.

(i) A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt.

(ii) The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought. The valuation of the listed personal property shall be determined in

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the same manner as provided by statute for all other personal property and this valuation shall be used as the basis for recapture.

(d) The Tax Commissioner shall determine whether the property claimed as exempt by the taxpayer falls within the classes of property exempted under the Act.

(e) The determination of whether a taxpayer is eligible to obtain exemption for personal property based on meeting or maintaining the minimum levels of investment and employment is the responsibility of the Tax Commissioner.

(f) For purposes of this paragraph, "acquired" shall mean: For items purchased by Applicant, the date upon which title to the item transfers to Applicant or the date Applicant takes possession of the item, whichever is earlier. For items leased by Applicant, the date Applicant takes possession of the item.

**Reporting**

18. Applicant will report or provide each year with the Form 312N the following:

(a) Statewide employment of the taxpayer at the end of the year. The first report will include statewide employment of the taxpayer on the last day of the quarter before the Application was filed and the average compensation for the year of application;

(b) Wage levels and number of jobs within each wage level for all jobs created at the project, whether or not the wage is above the minimum wage level;

(c) An annual update to the sales tax refund schedule that was included with the Application;

(d) The average compensation paid to employees in the state in the year of application and paid for the new jobs at the project; and

(e) Any changes in the structure of the taxpayer, or any significant changes in ownership in the entities that comprise the taxpayer.

(i) For a taxpayer that includes more than one entity, a significant change in ownership is any change that reduces the ownership by the rest of the taxpayer below 50 percent for any entity.

(ii) For any partnership, limited liability company, cooperative, limited cooperative association, or joint venture, a significant change in ownership includes any change affecting the ownership interests of any political

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subdivisions or organizations described in section 501(c) or (d) of the Internal Revenue Code.

19. The Tax Commissioner shall report to the Legislature as required by the Act.

    (a) Every other year, the Tax Commissioner will report the credits used and refunds received by Applicant for each project. The amount will be a single aggregated amount for each project for every two-year period.

**Transfers of the Project**

20. Any credits or other benefits allowed under the Act shall be transferable only when the project is transferred in its entirety by sale or lease, or in a sale of assets under Internal Revenue Code section 381.

    (a) The transferring person must notify the Tax Commissioner of the transfer of a project. The transferee must accept the transfer of the project.

    (b) The transferor cannot claim any benefits or use any credits after the date of the notification of the transfer. The transferor is entitled only to credits used on a return, or to a refund of sales or use taxes for a refund claim, which is filed before the date of the notification of the transfer, regardless of the period covered by the return or claim.

    (c) Only future benefits and unused credits can be transferred. Benefits or refunds that could have been claimed by the transferor prior to the transfer of the project cannot be transferred.

    (d) The transferee is liable for all recapture that becomes due after the date of transfer.

21. Credits allowed to a partnership, limited liability company, subchapter S corporation, cooperative, limited cooperative association, or estate or trust may be distributed to the partners, limited liability company members, shareholders, patrons, or beneficiaries. The credits must be distributed in the same ratio as the income of the entity is divided.

    (a) The credits may be distributed with the income tax return for the year the credits were earned or with any subsequent return for a tax year before the end of the carryover period.

        (i) An amended return can be filed to increase the amount of credits distributed within the time period allowed for requesting a refund. Any credits that

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have been distributed cannot be returned to the entity either by the recipient or by amending the amount previously distributed to a smaller amount.

(b) The credits distributed may be used by the recipient as a nonrefundable credit up to the income tax liability of the recipient for the year of distribution and may be carried over to the end of the carryover period. If the recipient has a different tax year end, the credits may be carried over through the recipient's first year end after the end of the carryover period.

(c) Any credits distributed are credits used by the entity making the distribution. For the purposes of recapture, distributed credits must be repaid by the entity in the same manner as all other credits used, whether or not fully used by the recipient.

**Changes in Taxpayer or Business**

22. If there are changes from the information contained in the Application, Applicant may no longer be eligible to receive benefits under the Act, or the benefits may be limited to those parts of the plan that continue to qualify.

(a) Some of the changes that could affect the qualification for benefits are:

(i) A change in the structure of Applicant, the type of entities included in the plan, or the ownership of the entities, whether or not as part of a tax-free reorganization, such that some or all of the entities can no longer be a part of the taxpayer.

(ii) A change in the nature of the business or portions of the business so that some activities are no longer in a qualified business.

(b) The Agreement will remain in effect.

(i) During any period the taxpayer is not in conformance with the requirements of the Act or this Agreement, Applicant cannot receive or use benefits for any period during which the nonconformance continues.

(ii) When only a part of the plan no longer qualifies, the remaining part of the plan, if still above the minimum levels when only the qualifying portion is considered for the current year, will continue to receive benefits.

(iii) Applicant will be allowed to make changes to bring the entire plan back into conformance with the requirements of the Act and this Agreement. After

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the conforming changes, future benefits would again be allowable if the applicable time periods have not expired.

**Recapture**

23. If Applicant fails either to meet the minimum levels of employment and investment for the project by the end of the attainment period, or to utilize such project in a qualified business at the minimum levels of employment and investment through the end of the entitlement period, all or a portion of all benefits received and any interest and penalties applicable thereto, shall be recaptured or disallowed as set forth in the Act.

    (a) If the project is sold or otherwise disposed of, but the project is not transferred under paragraph 20 of this Agreement, the amounts of investment and employment at the project will be zero and Applicant remains liable for any recapture.

    (b) The minimum levels are the levels in subparagraphs (5)(a) and 5(b) and the entitlement period will be determined based on the meeting of those levels.

    (c) Any benefits that were received improperly, or to which Applicant was not entitled will be recaptured in full and will then be excluded from the calculation of any other recapture that is required.

    (d) Any recapture that is not paid when due may be included in a deficiency determination mailed within three years of the end of the entitlement period, the normal period for the statute of limitations, or during any period that the statute has been extended, whichever is longest.

    (e) If the project is transferred, any recapture that is due before the date of transfer must be repaid before the transfer will be allowed. Any recapture that becomes due after the date the project is transferred is the liability of the transferee. Recapture becomes due at the end of the year for which the minimum levels were not maintained or utilized in a qualified business.

**Amendment of Agreement**

24. The Applicant must request changes in the plan described in the Application either on the Form 312N filed for the year during which the change occurred, or by a letter prior to the filing of the Form 312N. The changes that must be requested include any new locations or any new entities that are desired to be added to the plan.

    (a) For each new location or new entity that is requested to be added to the plan, the same type of information that was required on the Application with respect to the

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original plan must also be submitted with the request for the new location or the new entity.

(b) Locations or entities cannot be deleted from the plan.

(c) Failure to timely request changes will result in the changes not becoming an approved part of the plan or the Agreement.

25. This Tier 2LDC Agreement may be amended to a Tier 2, Tier 2 Web Portal or Data Center, Tier 3, Tier 5, or Tier 5 Web Portal or Data Center Agreement. Once the Agreement is amended, it may not be amended back to a Tier 2LDC Agreement. Any other amendments will depend upon the terms of the Agreement for the Tier to which this Agreement was amended.

(a) Permission to amend the Agreement is dependent upon the repayment of all benefits that are not allowable under the amended Agreement, or upon payment of interest for any change in the timing of the benefits received.

(b) All time periods in this Agreement will be changed to the time periods for the appropriate Tier based on the date of application as stated in this Agreement.

(c) An amendment of this Agreement will also withdraw any application for a Tier 5 Large Data Center (Tier 5LDC) sequential to the Tier 2LDC.

26. This Agreement may be withdrawn by Applicant at any time. Once withdrawn, the Agreement may not be reinstated. All benefits received under this Agreement are immediately due and payable upon the withdrawal of the Agreement.

**Sequential Application**

27. *OPTION A:*
The Applicant may file an application for the Tier 5LDC sequential to this Tier 2LDC agreement. The application may be filed at any time before the end of the entitlement period for this Agreement, provided this Agreement has not been amended. The base year for the sequential Tier 5LDC will be the last year of the entitlement period for the Tier 2LDC. The attainment period for the Tier 5LDC will begin at the end of the entitlement period for the Tier 2LDC, and will be four years. The minimum investment level will be based on the date of application.

*OPTION B:*
The Applicant filed an application for the Tier 5LDC sequential to this Tier 2LDC agreement as part of its Tier 2LDC application. The base year for the sequential Tier 5LDC

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will be the last year of the entitlement period for the Tier 2LDC. The attainment period for the Tier 5LDC will begin at the end of the entitlement period for the Tier 2LDC, and will be four years. The minimum investment level will be based on the date of application.

**General Provisions**

28. As used in this Agreement, "year" shall mean Applicant's taxable year for federal income tax purposes. Based upon the «Tax_Return_Yr» federal income tax return filed by Applicant, its federal taxable year end is «Mo_day». Any change in the federal taxable year shall result in a corresponding change to the end of periods referenced in this Agreement.

29. Interest shall not be paid or otherwise allowed to Applicant on any credits or refunds available under the Act.

30. This Agreement contains all binding agreements between the parties. It shall be governed by the laws of the State of Nebraska. No oral or other statements, proposals, or agreements, unless set out in writing and signed by all parties, shall be binding on either party. To the extent that the other provisions in this Agreement are incomplete or directly conflict with the Act, the language of the Act shall control and is incorporated into this Agreement by this reference.

The undersigned parties accept and bind themselves to the provisions of this Agreement.

Signed this _____ day of _____2013.

By _____

Title _____
«Company_Name»

Signed this _____ day of _____2013.

By _____
Douglas A. Ewald
Tax Commissioner
State of Nebraska

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