

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 5 Web Portal or Data Center (Tier 5WP/DC) 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 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 plan in the Application defines a project consistent with the purposes stated in the Act.

### **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 entitlement period;
  - (b) Substantiate any claimed refunds by providing to the Nebraska Department of Revenue, referred to as Department, the supporting documentation required in paragraphs 6 or 9 of this Agreement;
  - (c) Request 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 who 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 paragraph 3 of this Agreement, the State agrees to recognize Applicant's entitlement to the benefits set forth in this Agreement, under the conditions specified.

5. This project is a Nebraska Advantage Tier 5WP/DC project.
  - (a) The minimum level of investment for all purposes except the personal property exemption shall be the investment in qualified property in Nebraska of at least \$37,000,000. There is no minimum level of employment to receive benefits, however failure to maintain an average level of employment for the entire entitlement period that is at or above the base year level of employment will result in recapture.
  - (b) The minimum level of investment for the personal property exemption shall be the minimum level in subparagraph 5(a) for the entire project and in addition, the investment in qualified property in Nebraska of at least \$37,000,000 counting only investment 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 level was met, whichever occurs first.
  - (d) The entitlement period is the year the minimum level was met and the next six years.

### **Required Documentation**

6. Applicant shall present documentation, at the Department's offices or within Nebraska, sufficient to establish its attainment or maintenance of the level of investment or to establish its entitlement to any 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 7 of this Agreement to determine the number of full-time equivalent Nebraska employees, the required documentation shall show the hours worked, and the total amount received and may include, but not necessarily be limited to: payroll register, payroll tax filings, copies of payroll summaries prepared by Applicant, 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 8 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 investment at the project and is satisfied that Applicant has met the minimum investment level required in the Act, the Department will issue a notice of qualification to Applicant acknowledging its attainment of the minimum level.

### **Determination of Equivalent Employees**

7. For purposes of computing the number of 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, 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.

### **Determination of Investment**

8. 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 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 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 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.
- (d) For purposes of computing the investment for the personal property tax exemption, subparagraphs 8(a) through 8(c) will be applied as though the web portal or data center was a separate project.

### **Sales Tax Refunds**

- 9. When the minimum level of investment specified in subparagraph 5(a) of this Agreement is 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 for use at the project. 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. 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 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 level was not met or exceeded.
    - (i) The sales or use tax paid by Applicant on tangible personal property that qualifies as investment under paragraph 8 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.
    - (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.
  - (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 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) 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.
- (c) 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.

### **Personal Property Tax Exemption**

10. Applicant shall be entitled to an exemption from property tax on computer systems purchased or leased for use at the project upon meeting the minimum level of investment specified in both subparagraphs 5(a) and 5(b) of this Agreement before the end of the attainment period. Computer systems 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 end of the year during which the minimum levels were met, through the ninth December 31 after the first year any property qualifies for exemption.

- (a) 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;
- (b) 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 schedule 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 the same manner as provided by statute for all other personal property and this valuation shall be used as the basis for recapture.
- (c) The Tax Commissioner shall determine whether the property claimed as exempt by the taxpayer are computer systems exempted under the Act.
- (d) 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.
- (e) 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

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

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

- (a) Every other year, the Tax Commissioner will report the 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**

13. Any 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 after the date of the notification of the transfer. The transferor is entitled only 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 claim.
- (c) Only future benefits can be transferred. 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.

### **Changes in Taxpayer or Business**

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

## Recapture

15. If Applicant fails either to meet the minimum level investment for the project by the end of the attainment period, or to utilize such project in a qualified business at the minimum level of 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 12 of this Agreement, the amounts of investment at the project will be zero and Applicant remains liable for any recapture.
  - (b) For the property tax benefits, the minimum level is the level in both subparagraphs 5(a) and (5)(b) of this Agreement and the entitlement period will be determined based on the meeting of the minimum level in subparagraph 5(b). For all other benefits, the minimum level is the level in subparagraph (5)(a) and the entitlement period will be determined based on the meeting of that level.
  - (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 level were not maintained or utilized in a qualified business.
16. If the Applicant fails to maintain the base-year level of employment, all or a portion of the benefits received and any interest and penalties applicable thereto, shall be recaptured or disallowed as set forth in the Act.
  - (a) The Applicant has failed to maintain the base-year level of employment if the average number of equivalent employees for the entitlement period is less than the number of base-year employees.

- (b) The average number of equivalent employees for the entitlement period is the total of the number of equivalent employees for each year of the entitlement period divided by seven.
17. The recapture provisions of paragraphs 15 and 16 of this Agreement are separately computed and both provisions may apply. The total recapture under both paragraphs, before the addition of interest and penalty, will not exceed the amount of benefits received.

### **Amendment of Agreement**

18. 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 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.
19. This Tier 5WP/DC Agreement may be amended to a Tier 5 Agreement. Once the Agreement is amended, it may not be amended back to a Tier 5WP/DC 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.
20. 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.

**General Provisions**

- 21. 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.
- 22. Interest shall not be paid or otherwise allowed to Applicant on any refunds available under the Act.
- 23. 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