

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 3 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 in the future only if they were:
 - (i) not in existence between the date of application and the signing of the Agreement;
 - (ii) not qualified to be included as part of the taxpayer at the time the Agreement was signed; or
 - (iii) not performing a qualified activity at the project 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 in the future only if they were:
 - (i) not used by the Applicant between the date of application and the signing of the Agreement; or
 - (ii) 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 employment for the year during which the Application was filed and for each following year through the end of the carryover period with the income tax return for the taxable year which includes December 31 of the year;
 - (b) Substantiate any claimed credits or refunds by providing to the Nebraska Department of Revenue, referred to as the Department, the supporting documentation required in paragraphs 6 or 13 of this Agreement;
 - (c) Use credits 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 any 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, agrees to recognize Applicant's entitlement to the credits and refunds set forth in this Agreement, under the conditions specified.
- 5. This project is a Nebraska Advantage Tier 3 project.
 - (a) The minimum level of employment shall be the hiring of at least thirty new equivalent employees in Nebraska at an annual rate of pay at or above \$26,895.
 - (b) The attainment period ends the last day of the fourth year after the year the Application was filed, December 31, 2023, or the beginning of the year the required minimum level was met, whichever occurs first.
 - (c) The entitlement period is the year the minimum level was met and the next six years or the end of the ninth year after the year the Application was filed, whichever is earlier.
 - (d) The carryover period is from the end of the entitlement period through the ninth year after the year the application was filed, December 31, 2028.

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 employment or to establish its entitlement to any credit, or refund. The Department may require electronic copies of any records relating to the project maintained by the taxpayer in electronic format for purposes of this audit.
 - (a) For purposes of paragraph 10 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 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) The documentation required in subparagraph (a) above will be made available for the base year, and any subsequent year through the end of the entitlement period.
- (c) If Applicant acquires a business, Applicant agrees to provide documentation regarding the level of employment for the acquired business for the twelve months prior to the acquisition.
- (d) 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.
- (e) When, based upon the Department's review of the documentation required under subparagraph 6(a) of this Agreement, the Department has determined the employment at the project and is satisfied that Applicant has met the minimum employment level required in the Act, the Department will issue a notice of qualification to Applicant acknowledging its attainment of the minimum level.

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 the year by the product of 40 times the number of weeks in that year. Salaried employees are deemed to have been paid 40 hours per week.
 - (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 Applicant.

- (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 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.
 - (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 base year or was transferred by the taxpayer into Nebraska from outside the state after the base year.
- 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.

The Credits

- 9. When the minimum level of employment specified in subparagraph 5(a) of this Agreement is met before the end of the attainment period, Applicant shall be entitled to the credits in paragraph 10 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 employment in any year during the entitlement period that the minimum level was not met or exceeded.
 - (a) All credits are considered earned on the last day of the year the wages were paid, except no credits will be considered earned prior to the last day of the year the minimum level was attained.
- 10. **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 2019 applicant is shown below:
 - (i) The percentage is zero if the average wage of the new employees is less than \$26,895.
 - (ii) The percentage is three percent if the average wage of the new employees is at least \$26,895, but less than \$33,618.

- (iii) The percentage is four percent if the average wage of the new employees is at least \$33,618, but less than \$44,824.
- (iv) The percentage is five percent if the average wage of the new employees is at least \$44,824, but less than \$56,030.
- (v) The percentage is six percent if the average wage of the new employees is at or above \$56,030.

Sales Tax Refunds

11. When the minimum level of employment specified in subparagraph 5(a) of this Agreement is met before the end of the attainment period, Applicant may use the credits specified in paragraph 10 of this Agreement to obtain refunds of certain sales and use taxes paid. 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 credits may only be used for a refund of the following sales and use taxes paid. The refunds can only be for purchases made on or after the year the minimum level was met or after the end of the year the credits were earned, whichever is later, through the end of the carryover period.
 - (i) The sales or use tax paid by Applicant on any purchase or lease for use at the project that is subject to sales and use tax.
 - (ii) 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.
 - (iii) 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.
- (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 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.
- (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, 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.
- (vi) 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)(ii) through (a)(v), above. Any contractor must be appointed as agent for the purchasing of tangible personal property and provide the required certification.
- (b) Credits may not be used for a refund of any sales or use tax paid on the following:
- (i) Tangible personal property incorporated into the improvement being built for use at the project if the improvement is not owned by the Applicant or a related person during the period of construction.
 - (ii) Any aircraft or 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.

- (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 Applicant.
 - (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 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 year if the claim was filed on or after June 16.
- (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

- 12. The credits specified in paragraph 10 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 taxable year that includes December 31 of the year the minimum level was attained, or the taxable year that includes 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 taxable year that ended prior to December 31 of the year the credits were earned regardless of when the return or liability for such earlier year is determined.
- 13. The compensation credit specified in paragraph 10 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.
 - (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 10 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.

Reporting

14. Applicant will report or provide each year with the Form 312N the following:
- (a) 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;
 - (b) An annual update to the sales tax refund schedule that was included with the Application;
 - (c) The average compensation paid to all employees in the state in the year of application and paid for the new jobs at the project; and

- (d) 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% for any entity.

15. 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

16. Any credits 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 (IRC) §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 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 unused credits can be transferred. Refunds that could have been claimed by the transferor prior to the transfer of the project cannot be transferred.
- (d) The Department may disclose to the transferee, information about the project and prior benefits that is reasonably necessary to determine the future incentives and liabilities of the project.
- (e) The transferee is liable for all recapture that becomes due after the date of transfer.

17. 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 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 and used until 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 tax 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

18. 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 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

19. If Applicant fails either to meet the minimum level of employment for the project by the end of the attainment period, or to utilize such project in a qualified business at the minimum level of employment 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 16 of this Agreement, the amount of employment at the project will be zero and Applicant remains liable for any recapture.
 - (b) The minimum level is the level required in subparagraph 5(a) of this Agreement 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 was not maintained or utilized in a qualified business.

Amendment of Agreement

20. 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.
21. This Tier 3 Agreement cannot be amended to a different tier.
22. This Agreement may be withdrawn by Applicant at any time. Once withdrawn, the Agreement may not be reinstated. All refunds received under this Agreement are immediately due and payable upon the withdrawal of the Agreement.

General Provisions

23. As used in this Agreement, "year" means the calendar year.
- (a) The base year is the year before the date of application, except as provided in paragraph 23(a)(i).
 - (i) If the Applicant has a prior incentive project with an entitlement period that ends within the year that includes the date of application in paragraph 1 of this Agreement, the Applicant elects to use the 12 months prior to the end of the entitlement period of the prior project as the base year for the project described in this Agreement.
 - (b) If the Applicant has a prior incentive project and paragraph 23(a)(i) applies, then the year of application begins on the first day after the end of the entitlement period for the prior incentive project and ends on the first December 31 on or after the date of application.

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- (c) A 52/53 week tax year ending on or about December 31 is considered to be the same as December 31, which will be used for determining years that tax credits may be used.
24. Interest shall not be paid or otherwise allowed to Applicant on any credits or refunds available under the Act.
25. 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 _____ 2019.

By _____

Title _____

«Company_Name»

Signed this _____ day of _____ 2019.

By _____

Tony Fulton
Tax Commissioner
State of Nebraska