



NOTICE OF RULE MAKING

Arizona Commerce Authority

Rule No. 16-01

1. Rule.

Computer Data Center Program (the Program): Program Rules and Guidelines (the Rule)

2. Preamble.

A. Reference to the specific statutory authority for the Rule.

A.R.S. § 41-1519

B. An explanation of the Rule, including the agency's reasons for initiating the rule making.

The rule making noticed hereunder is intended to modify Rule 15-02 to reflect amendments to A.R.S. § 41-1519 made by H.B. 2584 (Fifty-second Legislature, Second Regular Session 2016). Except where otherwise indicated, the effective date of the Rule is August 6, 2016 which corresponds to the effective date of H.B. 2584.

Pursuant to A.R.S. § 41-1519(H), the Arizona Commerce Authority and the Arizona Department of Revenue are mandated to adopt and maintain rules and procedures necessary to administer the Program.

3. The exact wording of the Rule.

See attached.

4. The name and contact information of agency personnel with whom persons may communicate regarding the Rule.

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333. N. Central Ave., Suite 1900 | Phoenix, AZ 85004

5. Where written submissions on the proposed Rule may be inspected (by appointment only).

333. N. Central Ave., Suite 1900, Phoenix, AZ 85004.



6. The time during which written submissions regarding the Rule may be made and the time and place, if scheduled, where oral comments regarding the Rule may be made.

Written submissions regarding the Rule may be made during the period between July 25, 2016 and August 24, 2016. Written submissions should be directed to:

Attention: CDC Program Rule
Arizona Commerce Authority
333 North Central, Suite 1900
Phoenix, Arizona 85004

Submissions also may be transmitted electronically within the same time period by directing the submission to:

Attention: CDC Program Rule
cindyg@azcommerce.com

No hearing at which oral comments may be made has been scheduled as of this time.

7. Any known timetable for agency decisions or other action in the proceeding.

To be determined.

8. The date of posting the Notice of Rule Making.

July 25, 2016.

9. The deadline for the Authority to file a notice of adoption of the Rule.

No later than 180 days from July 25, 2016.



Arizona Commerce Authority

COMPUTER DATA CENTER PROGRAM

Program Rules and Guidelines¹

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¹ These Program Rules and Guidelines (Rules), issued under the authority of A.R.S. §§ 41-1005(A)(28) and 41-1510.01(G) to govern administration of the Program, are effective August 6, 2016 except as otherwise noted. In the case of any conflict between these Rules and the governing statutes, the statutes will prevail. Section XI of these Rules provides a glossary of capitalized terms used in more than one section of these Rules.



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Section I. Overview.

The Computer Data Center Program (Program), authorized by A.R.S. § 41-1519, was enacted in 2013 for the purpose of encouraging computer data center (CDC) operation and expansion in Arizona.

The Program provides benefits, consisting of exemptions from transaction privilege tax and use tax at the state, county and local levels, in connection with purchases of qualifying equipment by owners, operators and colocation tenants of CDCs certified by the Arizona Commerce Authority (Commerce).

In general, benefits in accordance with the Program are available for up to 10 calendar years following the calendar year in which a CDC is certified. However, benefits may extend for up to 20 calendar years following the year in which a CDC is certified if the CDC qualifies as a sustainable redevelopment project. As more specifically described herein, a sustainable redevelopment project includes a CDC that occupies an existing building which either was at least partially vacant prior to its acquisition or is renovated to a certified “green standard.” A sustainable redevelopment project also includes a newly-constructed CDC not occupying a previously existing building that is certified pursuant to a “green standard” if the investment in the CDC is at least \$200 million.

In seeking certification, an owner or operator may elect to *separate* a qualifying facility into one or more distinct CDCs each of which may receive a CDC certification and qualify for Program benefits if the distinct CDC independently satisfies all Program requirements. Alternatively, an owner or operator may elect to *aggregate* qualifying facilities into a single CDC and qualify for Program benefits if the combined facilities satisfy all Program requirements.

Commerce is authorized to certify CDCs through December 31, 2023.

Section II. Requirements for Program Benefits.

Subject to all additional requirements set forth in these Rules, benefits in accordance with the Program are authorized if:

- The Facility is predominantly used to house working servers and, therefore, the Facility qualifies as a CDC;
- The CDC does not generate electricity for resale purposes or generate, provide or sell electricity outside of the CDC;
- The CDC is certified by Commerce after submission by the CDC Owner or Operator of a complete and correct application for certification;

- Qualifying investments of at least the relevant amount and within the relevant time period specified in section V.² are made by qualifying persons or entities at the CDC and
- Qualifying purchases of CDC equipment delivered to and installed at the CDC are made by the CDC Owner, Operator and/or Qualified Colocation Tenants within the respective Qualification Period following presentation to the equipment vendor of documentation supportive of the exemption.

Section III. Applications for CDC Certification, Review, Disposition and Related Matters.

A. Qualification of Applicants, Application Form, Number of Applications, General Rule Limiting Duplication of any Facility as a Certified CDC.

1. Qualifications of Applicant.

a. General. Subject to the additional considerations set forth in subsections III.A.1.a.i. and ii. below, only an Owner or Operator is authorized to submit an application for CDC certification of a Facility (each, an Applicant):

i. Ownership of Less Than 100 Percent of Facility. An Owner of less than 100 percent of the ownership interests in the Facility for which certification is sought may be an Applicant if the Owner obtains the written consent of all other holders of ownership interests in the Facility.³

Example I-1: Owner-A owns an undivided 75 percent interest in Facility-X. Owner-B owns an undivided 25 percent interest in Facility-X. Owner-A will qualify as an Applicant in respect to the certification of Facility-X as a CDC if Owner-B consents in writing to the submission of the CDC Application by Owner-A.⁴

ii. Operation of Less than 100 Percent of Facility. An Operator that operates a CDC encompassing less than 100 percent of the tenantable area comprising a Facility may be the Applicant in respect to the portion of the Facility comprising the CDC if the Operator obtains the written consent of the Owner of the Facility to both (x) the status of the Operator as the Applicant and (y) the separation of the Facility in accordance with A.R.S. § 41-1519(D).

2. Application Form, Method for Submitting Applications. An Applicant seeking CDC certification of a Facility must submit an "Application for CDC Certification" (a CDC Application) through Commerce's Electronic Application System (EASY).

3. Number of Applications. A single CDC Application is required for each CDC sought to be certified regardless of whether the CDC consists of one Facility or of aggregated Facilities. Multiple CDC Applications are required only if the Applicant seeks certification for two or more distinct (i.e., non-aggregated) Facilities.

4. No Duplication of Facilities. Generally, a Facility may be certified as a CDC only one time during the Program's duration. Accordingly, in general, a Facility (or portion thereof) that was

² Except where otherwise indicated, all references herein to sections and subsections are to the corresponding sections and subsections of these Rules.

³ Alternatively, multiple Owners are authorized to join in a *single* Application if they collectively own 100 percent of the Facility.

⁴ Alternatively Owner-A and Owner-B may collectively submit the CDC Application.



previously certified by Commerce (including certifications issued before August 6, 2016) may not be the subject of another CDC Application. An exception to the general rule precluding multiple CDC Applications in respect to the same Facility (or portion thereof) applies if Commerce revokes the prior CDC certification of the Facility in accordance with A.R.S. § 41-1519(G)(1) and the Department of Revenue (Revenue) certifies that all benefits associated with the revoked certification attained by the Owner, Operator and, in respect to revocations of CDC certifications issued on or after August 31, 2016, by all Contributing Qualified Colocation Tenants, have been recaptured. In such case, the previously certified Facility may be certified as a CDC again if a new CDC Application is submitted and all Program requirements are satisfied in respect to such new CDC Application.

B. CDC Application Content.

1. General. An Applicant must provide all information and all supporting documents required by the CDC Application form and as otherwise requested by Commerce, including without limitation the information and supporting documents specified below.

2. CDC Description.

a. General. The CDC Application must provide a detailed description of the CDC and include an aerial photo or depiction that unambiguously evidences the specific land and structures which are intended to encompass the CDC for which certification is sought in the CDC Application.

b. Separated Facilities. If the CDC represents a portion of a larger Facility that is intended to be *separated* in accordance with A.R.S. § 41-1519(D), the CDC Application must include a detailed description of the entire Facility as well as the distinct portion thereof for which CDC certification is sought. If the portion of a building or other structure of a separated Facility cannot clearly be identified in the aerial photo or depiction required by the immediately preceding subsection, the CDC Application must include a diagram of the building or other structure that clearly delineates the portion of the building or other structure for which certification as a CDC is sought.

c. Aggregated Facilities. If the CDC represents multiple Facilities that are intended to be *aggregated* in accordance with A.R.S. § 41-1519(D), the CDC Application must include a detailed description of all of the aggregated Facilities with sufficient clarity as to properly reflect all locations at which benefits for purchases of CDC Equipment may be authorized by reason of the aggregated CDC's certification.

3. Evidence of Property Ownership or Authorized Occupancy, Inclusion of Applicable Consents.

a. Owner. If the Applicant is an Owner, the CDC Application must include evidence of ownership by the Owner of the real property (including structures) for which certification is sought, including copies of property deeds or property tax statements. Further, if the Owner-Applicant owns less than 100 percent of the ownership interests in the Facility, the CDC Application must, consistent with subsection III.A.1.a.i., include copies of written consents to the Application from all other Owners of the Facility.

b. Operator. If the Applicant is an Operator, the CDC Application must include evidence of the authorized occupancy or use by the Applicant of the Facility (or portion thereof) for which certification is sought, including copies of lease agreements or other contracts with the owner thereof authorizing the use and/or occupancy of the Facility (or portion thereof). Further, if the Operator-Applicant is authorized to occupy less than 100 percent of the Facility in which the CDC is located, the CDC Application must, consistent with subsection III.A.1.a.ii., include a copy of the written consent of the Owner of the Facility.

4. Qualified Investment Matters.

a. E-1 CDC. If the Facility for which certification is sought is an E-1 CDC, the Applicant must certify that the CDC Owner, Operator and, if applicable, one or more designated Contributing Qualified Colocation Tenants, intend to satisfy the applicable Qualified Investment Threshold specified in subsections V.A.2. and V.A.3. (either \$25 million or \$50 million) within the period beginning 30 days before the CDC Certification Effective Date and ending on the five-year anniversary of the CDC Certification Effective Date.

b. E-2 CDC. If the Facility for which certification is sought is an E-2 CDC, the Applicant must demonstrate that the applicable Qualified Investment Threshold specified in subsection V.A.1. (\$250 million) was satisfied in a timely manner by furnishing documentation of the kind described in subsection V.D.

c. Greenfield SRP. If the Facility for which certification is sought is a Greenfield SRP, the Applicant must certify that the CDC Owner, Operator and, if applicable, one or more designated Contributing Qualified Colocation Tenants, intend to satisfy the Qualified Investment Threshold specified in subsection V.A.4. (\$200 million) within the period beginning 30 days before the CDC Certification Effective Date and ending on the five-year anniversary of the CDC Certification Effective Date.

5. No Impermissible Electricity Generation. The Applicant must certify that the CDC will not violate A.R.S. § 41-1519(M) (pertaining to impermissible electricity generation). For this purpose, the transfer to a utility of power generated from a renewable energy resource by a renewable energy facility operated by the owner or operator of an international operations center (or the lessee of either of the foregoing) will not violate the proscription of A.R.S. § 41-1519(M). For purposes of the preceding sentence, (i) the terms “renewable energy resource” and “renewable energy facility” have the meanings ascribed to such terms by A.R.S. § 43-1083.04 and A.R.S. § 43-1164.05 and (ii) the term “international operations center” has the meaning ascribed to such term by A.R.S. § 41-1520(K)(1).

6. Qualified Colocation Tenant Matters. If one or more Qualified Colocation Tenants occupy the CDC on the date of submission of the CDC Application, the CDC Application must, in accordance with A.R.S. § 41-1519(J), include a list reflecting: (a) the identity of each Qualified Colocation Tenant and (b) the commencement and expiration dates of each Qualified Colocation Tenant’s agreement with the CDC Owner or Operator to use or occupy all or part of the CDC. Failure to include a complete list will not, in and of itself, preclude the CDC from being certified on a timely basis but may preclude unlisted Qualified Colocation Tenants from maintaining Program benefits.⁵

7. Sustainable Redevelopment Project Matters.

a. Vacant Facilities. The CDC Application must include the qualifying documentation described at subsection VII.B.5. if certification of the CDC as a Sustainable Redevelopment Project is sought in accordance with the Vacancy Standard.

b. Green Facilities. If certification of the CDC as a Sustainable

⁵ See, e.g., A.R.S. § 42-5009(D).



Redevelopment Project is sought in accordance with the Green Standard (including either a Sustainable Redevelopment Project occupying an Existing Building that is renovated to a certified “green standard” or a Greenfield SRP) and the Facility’s Green Certification has yet to be achieved as of the date of the CDC Application, the Applicant must certify that the CDC intends to achieve the Green Certification within the five-year period beginning on the CDC Certification Effective Date. If the Green Certification has been achieved as of the date of the Application, the Application must include the qualifying documentation set forth at subsection VII.C.2 or VII.D.2 (as the case may be).

8. Proof of Enrollment in Federal E-Verify Program. The Applicant must, as part of the CDC Application, submit proof of its enrollment in the Federal E-verify program as well as proof of enrollment in the Federal E-verify program by any additional Owner or Operator listed in the CDC Application.

C. Processing CDC Applications, Dispositions.

1. Substantially Complete Applications. Commerce processes only Substantially Complete CDC Applications. A CDC Application that is not Substantially Complete is not treated as submitted. If notified by Commerce that its CDC Application is not Substantially Complete at the time of submittal, the Applicant is required to submit a new CDC Application if it intends to continue to seek the CDC certification.

2. Additional Information, Site Visits. In its review of a CDC Application, Commerce may discuss the CDC Application with the Applicant, request additional information and/or conduct a site visit. If the Applicant does not satisfy a request for additional information or permit the site visit within the allotted timeframe (generally a maximum of 14 or 28 calendar days pursuant to the definition of “Substantially Complete” set forth in section XI.), the CDC Application will be considered “withdrawn” and no action will be taken in respect thereof.

3. Time for Review. Commerce will attempt to make a determination regarding the CDC’s qualification with respect to a Substantially Complete CDC Application within 60 calendar days after receipt of any or all information requested by Commerce in order for the CDC Application to be rendered complete or, in the absence of a request for additional information, within 60 calendar days of the Application’s submission. If Commerce does not respond within the requisite timeframe, then, consistent with A.R.S. § 41-1519(C), the CDC Application will be deemed approved and confirmation thereof will be issued to the Applicant within 14 calendar days following expiration of the 60-day period.

4. Approval.

a. General. Subject to payment of the requisite processing fee in respect to the Application), Commerce will, upon approval of a CDC Application (or following deemed approval of a CDC Application in accordance with subsection III.C.3.), issue a CDC Letter of Certification certifying the CDC. Among other matters, the CDC Letter of Certification will identify the name of the Applicant (and of any *other* Owner or Operator identified in the Application) and the Qualification Period of the Applicant (and of any *other* Owner or Operator identified in the Application). If a Substantially Complete Application is submitted, the effective date of the CDC certification (the “CDC Certification Effective Date”) as well as the commencement date of the Qualification Period of the CDC Owner or Operator will be the date on which the Application was submitted. If an Application was not Substantially Complete upon submission, the CDC Certification Effective Date (as well as the commencement date of the Qualification Period of the CDC Owner or Operator) will be the date on which a Substantially Complete Application is submitted.

b. Qualified Colocation Tenants. If the CDC Application included the list



referred to in subsection III.B.6. (pertaining to one or more Qualified Colocation Tenants occupying the CDC as of the date of the Application submission), Commerce will, *if requested* by the tenant or the Applicant, attempt to make a determination with respect to the status of such tenant as a Qualified Colocation Tenant and, if such tenant qualifies as a Qualified Colocation Tenant, set forth the tenant's respective Qualification Period in a QLCT Letter of Certification issued to the tenant within 60 calendar days of any such request; provided, however, that Commerce (i) is otherwise provided with all additional relevant information relating to the tenant including (w) the tenant's Federal tax identification number, (x) verification that the tenant is enrolled in the Federal E-Verify Program, (y) the number of kilowatts per month (not fewer than 500 per month) authorized for use by tenant in its agreement with the Owner or Operator for occupancy at the CDC and (z) a copy of the lease or other contract between the tenant and the Owner/Operator-Applicant governing use or occupancy of all or part of the CDC by the tenant and (ii) is paid the requisite processing fee.

5. Denial of Approval. If Commerce denies approval of a CDC Application, the Applicant may appeal the decision in accordance with the provisions of A.R.S. Title 41, Chapter 6, Article 10. The denial prohibits the relevant parties from receiving Program benefits unless or until the appeal is successful.

D. Effect of Letter of Certification. A CDC Letter of Certification or QCLT Letter of Certification does not guarantee the receipt of Program benefits. The absence of any such guarantee is attributable to, among other things, the fact that the Letter of Certification or QCLT Letter of Certification may be issued in respect to an E-1 CDC before compliance with its Qualifying Investment Threshold is demonstrated (and accordingly Program benefits achieved by certain parties may be recaptured if such compliance is not achieved in a timely manner) and the fact that Program benefits are contingent upon the vendor of the CDC Equipment purchased actually waiving collection of the applicable tax on the purchase. See subsection VIII.C.

E. Confidentiality, Exceptions. Proprietary business information contained in a CDC Application and any annual report is regarded as confidential and may not be disclosed to the public. However, Commerce and Revenue are authorized to disclose the name of a certified CDC and to share all information necessary to administer the Program.

Section IV. Following CDC Certification.

A. Program Benefits. A CDC Owner, Operator or Qualified Colocation Tenant may claim exemptions from transaction privilege tax and use tax in connection with qualifying purchases of CDC Equipment delivered to and installed at the CDC within the respective purchaser's Qualification Period by providing the vendor documentation supportive of the exemption. See section VIII.

B. Written Notifications to Commerce and Revenue. If any one or more of the following notifications is required following certification of a CDC, the CDC Owner or Operator that submitted the CDC Application (or its successor) must furnish the applicable notification to Commerce and/or Revenue, as applicable, in a timely manner.

1. E-1 CDC Qualifying Investment. On or before the fifth anniversary of the CDC Certification Effective Date of an E-1 CDC, the CDC Owner or Operator must notify Commerce whether or not the CDC satisfied the applicable Qualified Investment Threshold and, if applicable, provide the documentation set forth in subsection V.D. to demonstrate that the applicable Qualified Investment Threshold was satisfied in a timely manner. If the Qualified Investment Threshold is not satisfied in a timely manner, Commerce is required, pursuant to A.R.S. § 41-1519(G)(1), to revoke the CDC's certification and, in doing so, may not consider any extraordinary hardship that may have been due to

factors beyond the control of the Owner or Operator. If the CDC's certification is revoked, the Qualification Period of the CDC Owner, Operator and all Qualified Colocation Tenants automatically terminates. Further, if the CDC's certification is revoked, Revenue is authorized to recapture the tax benefits obtained at the CDC by the CDC Owner, Operator and, in respect to revocations of CDC certifications issued on or after August 31, 2016, by any Contributing Qualified Colocation Tenants. An Owner or Operator may appeal any such revocation in accordance with the provisions of A.R.S. Title 41, Chapter 6, Article 10.

2. Greenfield SRP Qualifying Investment. On or before the fifth anniversary of the CDC Certification Effective Date of a Greenfield SRP, the CDC Owner or Operator must notify Commerce whether or not the CDC satisfied the applicable Qualified Investment Threshold and, if applicable, provide the documentation set forth in subsection V.D. to demonstrate that the applicable Qualified Investment Threshold was satisfied in a timely manner. If the Qualified Investment Threshold is not satisfied in a timely manner, Commerce will terminate the certification of the CDC as a Sustainable Redevelopment Project.⁶

3. Changes in Identify of Qualified Colocation Tenants.

a. General. In accordance with A.R.S. § 41-1519(J), the CDC Owner or Operator must notify Commerce and Revenue of any change in the CDC's Qualified Colocation Tenants within 30 calendar days of such change. Changes for which such notification is required include, without limitation, (i) the addition of a new Qualified Colocation Tenant resulting from a post-CDC certification agreement for use or occupancy of the CDC entered into between such entity and the CDC Owner or Operator or another Qualified Colocation Tenant or (ii) a post-CDC certification extension, termination or material modification of an agreement between a previously identified Qualified Colocation Tenant and the CDC Owner, Operator or other Qualified Colocation Tenant which alters the Qualified Colocation Tenant's Qualification Period. The notification must include the then resulting commencement and expiration dates of the tenant's agreement with the CDC Owner or Operator or other Qualified Colocation Tenant. The failure by the CDC owner or Operator to provide such information in a timely manner is not grounds for termination of a CDC's certification; however, any such failure may prevent applicable Qualified Colocation Tenants from maintaining Program benefits.⁷

b. New QCLT Letters of Certification. If Commerce is requested to issue one or more post-certification QCLT Letters of Certification to Qualified Colocation Tenants reflecting any changes in the identity of the Qualified Colocation Tenants occupying the CDC subsequent to the date of the CDC Application (or their respective Qualification Period), each such tenant must (i) provide Commerce the information set forth in subsection III.C.4.b. and (ii) pay the requisite processing fee. Commerce will attempt to make a determination with respect to the status of any such tenant as a Qualified Colocation Tenants within 60 calendar days following the receipt of all required information from the tenant.

4. Green Certification Update. If the CDC was certified as a Sustainable Redevelopment Project in accordance with the Green Standard based on the certified intent to achieve the Green Certification within the five-year anniversary of the CDC Certification Effective Date (including either a Sustainable Redevelopment Project occupying an Existing Building that is renovated to a

⁶ In any such case, as long as the E-1 Qualifying Investment Threshold is satisfied, the Facility will retain its CDC certification.

⁷ See, e.g., A.R.S. § 42-5009(D).



certified Green Standard or a Greenfield SRP), the CDC Owner or Operator must, on or before the fifth anniversary of the CDC Certification Effective Date, notify Commerce whether or not the Green Certification was achieved and, if applicable, provide the documentation specified in subsection VII.C.2. or subsection VII.D.2 (as the case may be) demonstrating achievement of the Green Certification in a timely manner.

5. Impermissible Electricity Generation. If the CDC violates the provisions of A.R.S. § 41-1519(M) (pertaining to impermissible electricity generation), the CDC Owner or Operator must notify Commerce of the details of such violation within 30 calendar days of the occurrence of such violation. In the event of any such violation, Commerce is required by A.R.S. § 41-1519(G)(2) to revoke the CDC's certification. If the CDC's certification is revoked, the Qualification Periods of the CDC Owner, Operator and all Qualified Colocation Tenants of the CDC automatically terminate. An Owner or Operator may appeal any such revocation in accordance with the provisions of A.R.S. Title 41, Chapter 6, Article 10.

6. Transfer, Sale or Disposition of CDC. If a transfer, sale, or other disposition of the assets of or the interests in a CDC occurs following the CDC's certification, notice thereof, including disclosure of the name and address of the *successor* Owner or Operator, must be furnished to Commerce within 30 calendar days of the transaction. Consistent with A.R.S. § 41-1519(K), the transfer, sale or disposition of the assets or the interests in a CDC, whether directly or indirectly, in and of itself will have no impact on any outstanding CDC certification. Further, the expiration date of the Qualification Period of any successor Owner or Operator will be consistent with that of the original Owner or Operator.

C. Annual Report. Through the conclusion of the Qualification Period of the CDC Owner or Operator, the CDC Owner or Operator that submitted the CDC Application (or its successor) is requested to complete and submit to Commerce, as of each June 30, an annual report in a form developed by Commerce that is intended to reflect, among other information requested by Commerce, (1) the then number of full-time employees at the CDC and such employees' then average wage, (2) the then cumulative capital investment at the CDC since the date of the CDC's certification, (3) the estimated Program TPT and use tax exemptions achieved at the CDC within the then preceding 12-month period by the CDC Owner, Operator and Qualified Colocation Tenants and (4) the estimated cumulative TPT and use tax exemptions achieved at the CDC by the Owner, Operator and Qualified Colocation Tenants since the date of the CDC's certification.

D. Additions of Contiguous Raw Land.

1. **General.** A CDC Owner or Operator is authorized to add raw land to a CDC following the CDC's certification; provided, however, that such raw land is (a) contiguous with the boundaries of the CDC at the time of adding the raw land and (b) owned or leased by the CDC Owner or Operator.

2. **Procedure.** To add raw land to a CDC following the CDC's certification, pending adoption by Commerce of any special form that may be developed for such purpose, the CDC Owner or Operator must submit a new CDC Application and complete all sections thereof that are relevant for this purpose, including, without limitation, the portions of the CDC Application demonstrating compliance with subsections III.B.2.a., III.B.3 and III.C. 5 of these Rules (pertaining to the requisite description of the land, the requisite demonstration of ownership of the land and payment of the



applicable processing fee imposed to revise the CDC description in Commerce's records). As may be applicable, Commerce will issue a revised Letter of Certification following compliance with the procedures described in this subsection IV.D.

3. Other Provisions.

a. **Impact of Construction on Raw Land - General.** The fact that improvements are constructed on the raw land *following* its addition to the CDC will not impact the propriety of the addition.

b. **Impact of Construction on Raw Land – Impact on Qualification of CDC as Sustainable Redevelopment Project.** Consistent with subsection VII.E, the construction of improvements on the raw land *following* its addition to the CDC in accordance with this subsection IV.D. will not impact the qualification of the CDC as a Sustainable Redevelopment Project.

c. **Impact on Qualification Periods.** The addition of raw land to a CDC in accordance with this subsection IV.D. will have no impact on the existing Qualification Period of any Owner, Operator or Qualification Colocation Tenant of the CDC. For this purpose, if the CDC has been certified as a Sustainable Redevelopment Project, then consistent with subsection VI.D., a Sustainable Redevelopment Project and one or more parcels of raw land added to the CDC in accordance with this subsection IV.D. will be treated, for purposes of subsection VI.D, as a single Sustainable Redevelopment Project.

Section V. Required Qualifying Investment.

A. **Amount, Timing.** Qualification for Program tax benefits requires that the Owner, Operator and Contributing Qualified Colocation Tenants (or all Qualified Colocation Tenants in the case of (1) below):

1. To have made Qualifying Investments of at least \$250 million at the CDC during the period between September 1, 2007 and August 31, 2013; *or*

2. To make Qualifying Investments of at least \$50 million at the CDC within the period beginning 30 days before the CDC Certification Effective Date and ending on the five-year anniversary of the CDC Certification Effective Date if the CDC is located in Maricopa County or Pima County and is not a Greenfield SRP; *or*

3. Subject to subsection VI.D.1., to make Qualifying Investments of at least \$25 million at the CDC within the period beginning 30 days before the CDC Certification Effective Date and ending on the five-year anniversary of the CDC Certification Effective Date if the CDC is located in an Arizona county other than Maricopa County and Pima County and is not a Greenfield SRP; *or*

4. To make Qualifying Investments of at least \$200 million at the CDC within the period beginning 30 days before the CDC Certification Effective Date and ending on the five year anniversary of the CDC Certification Effective Date if the CDC is a Greenfield SRP.

(The investment requirements set forth in this subsection V.A. are hereafter collectively referred to as the "Qualifying Investment Thresholds.")

B. **No Duplication of Qualifying Investment.** The same Qualifying Investment may *not* be

counted more than once in determining whether any applicable Qualifying Investment Threshold is satisfied.

Example V-1: Following certification of CDC-X, the Owner, Operator and Colocation Tenants make Qualifying Investments at CDC-X which include \$10 million for purchases of various Modular Data Centers. That same \$10 million cost cannot be treated as a Qualifying Investment at CDC-Y if the Modular Data Centers are later moved to CDC-Y.

C. Qualifying Investments by CDC Tenants. Qualifying costs incurred by a CDC tenant are treated as Qualifying Investment in respect to E-1 CDCs and Greenfield SRPs only if the tenant constitutes a Contributing Qualified Colocation Tenant.

D. Demonstration of Qualifying Investment. In addition to other documentation approved at the discretion of Commerce, copies of the following forms of documentation, corroborating Qualifying Investments at the CDC made by the CDC's Owner, Operator and/or Qualified Colocation Tenants within the relevant time period, may be used to demonstrate satisfaction of the relevant Qualifying Investment Threshold: (a) "Arizona Business Property Statements" filed with the relevant County Assessor, (b) "Affidavits of Property Value" filed with the relevant County Recorder, (c) real estate settlement sheets, (d) paid invoices with the associated cancelled checks or other proofs of payment and (e) IRS Forms 4562 filed with Federal income tax returns, together with all supporting schedules that identify, at a minimum, the items of property acquired, the dates acquired and the costs thereof.

Section VI. Separation and Aggregation of Facilities.

A. General.

1. Separation of Facilities. Subject to the conditions set forth in subsection VI.B., an Applicant may elect in accordance with A.R.S. § 41-1519(D) to *separate* a Facility into one or more CDCs. Any such separated CDC must independently satisfy all Program requirements, including the applicable Qualifying Investment Threshold.

Example VI-1: Facility is a two-story building. The first floor of the Facility may be certified as a CDC, provided that the applicable Qualifying Investment Threshold was or is satisfied *exclusively* in respect to Qualifying Investments made at or in respect to the building's first floor. In that case, benefits in accordance with the Program will be available only for purchases of CDC Equipment installed at the building's first floor during the Owner's or Operator's Qualification Period for the first floor CDC. At a later date, the second floor of the Facility may be certified as a CDC, provided that the applicable Qualified Investment Threshold is satisfied *exclusively* in respect to Qualified Investments made at or in respect to the building's second floor. In that case, benefits in accordance with the Program will also be available for purchases of CDC Equipment installed at the building's second floor during the Owner's or Operator's relevant Qualification Period for the second floor CDC.

2. Aggregation of Facilities. Subject to the limitations set forth in subsection VI.C., an Applicant may elect in accordance with A.R.S. § 41-1519(D) to *aggregate* Facilities into a single CDC. In the case of a certified CDC that is comprised of multiple Facilities, all Program requirements, including the Qualified Investment Threshold, may be satisfied on a combined basis.

Example VI-2: Facility-1 and Facility-2 are noncontiguous parcels owned by Applicant, each of which has a building situated thereon. Applicant elects

to treat Facility-1 and Facility-2 as a single CDC. Provided that the applicable Qualifying Investment Threshold is satisfied by means of Qualified Investments made at either or both of Facility-1 and Facility-2, benefits in accordance with the Program will be available for purchases of CDC Equipment installed at both Facility 1 and Facility 2 during the relevant Qualification Periods.

B. Limitations on Separating Facilities.

1. In general, an Applicant may elect to separate a Facility into one or more CDCs only if the Applicant is the Owner or Operator of 100 percent of the entire Facility at the time of the CDC Application's submission. However, an Owner of less than a 100 percent interest of the Facility for which certification is sought may elect to separate the Facility if the Owner obtains the written consent of all other Owners with ownership interests in the Facility. Further, consistent with subsection III.A.1.a.ii., an Operator that operates a CDC encompassing less than 100 percent of the Structural Improvements at a Facility in which the CDC is located may be the Applicant for the separated portion of the Facility encompassed by the CDC if the Operator obtains the written consent of the Owner of the Facility.

2. Subject to subsection III.A.4., a portion of a Facility cannot be part of more than one certified CDC at any time during the Program's duration.

C. Limitations on Aggregating Facilities.

1. In general, an Applicant may aggregate Facilities into a single CDC only if the Applicant is the Owner or Operator in respect to 100 percent of the interests in *each* aggregated Facility. However, an Owner of less than a 100 percent interest in each Facility for which aggregation is sought may elect to aggregate the Facilities if the Owner obtains receives the written consent of all other holders of ownership interests in *each* applicable Facility. Further, if an Operator operates Facilities for which aggregation is sought that encompass less than 100 percent of each Facility, aggregation of such Facilities is authorized if the Operator obtains the written consent of the Owner of each applicable Facility.

2. Subject to subsection III.A.4., a Facility cannot be part of more than one CDC at any time during the Program's duration.

D. Special Rules Governing Aggregated Facilities.

1. **Facilities in Different Counties.** If aggregated Facilities include one or more Facilities described in A.R.S. § 1519(E)(1)(a) (i.e., Facilities located in rural counties) *and* one or more Facilities described in A.R.S. § 1519(E)(1)(b) (i.e., Facilities located in urban counties), the aggregated CDC must satisfy the Qualified Investment Threshold set forth in A.R.S. § 41-1519(E)(1)(b) (i.e., the greater of the two thresholds).

Example VI-3: Applicant elects to aggregate into a single CDC: (i) Facility-1 which is located in Coconino County (a Facility described in A.R.S. § 1519(E)(1)(a)) and (ii) Facility-2 which is located in Maricopa County (a Facility described in A.R.S. § 1519(E)(1)(b)). In order to satisfy the Qualified Investment Threshold, the Owner, Operator and Qualified Colocation Tenants of the CDC must make Qualified Investments at the combined Facilities of at least \$50 million within the period beginning 30 days before the CDC Certification Effective Date and ending on the five-year anniversary of the CDC Certification Effective Date.

2. **Facilities Fewer than All of Which Constitute Sustainable Redevelopment Projects.** If aggregated Facilities include one or more Facilities that qualify as a Sustainable

Redevelopment Project and one or more Facilities that do *not* qualify as a Sustainable Redevelopment Project, the applicable Qualification Period of the Owner or Operator of the aggregated CDC will be 10 years – i.e., the aggregated CDC will not be deemed a Sustainable Redevelopment Project. For this purpose, aggregated Facilities comprised of a Sustainable Redevelopment Project and one or more parcels of raw land *contiguous* to the parcel on which the Sustainable Redevelopment Project is situated and which may be contemplated for additional development will be treated for purposes of this subsection VI.D, as a single Sustainable Redevelopment Project.

Section VII. Qualification of a CDC as a Sustainable Redevelopment Project.

A. General. A CDC will qualify as a Sustainable Redevelopment Project if either (1) the CDC occupies one or more Existing Buildings and satisfies *either*: (i) the standard set forth in A.R.S. § 41-1519(O)(13)(b)(i) (the Vacancy Standard) or (ii) the standard set forth in A.R.S. 41-1519(O)(13)(b)(ii) (the Green Standard) or (2) the CDC is a Greenfield CDC.

B. Vacancy Standard.

1. Qualification. A Facility will satisfy the Vacancy Standard if (a) *either* (i) the CDC Owner or Operator acquires the Facility on or after September 1, 2007 or (ii) the following three conditions are satisfied: (x) the CDC Owner or Operator acquired the Facility before September 1, 2007, (y) the initial exclusive commercial use of the Facility following the date of its acquisition by the Owner or Operator was as a CDC and (z) the Facility has been used continuously as a CDC through the date of submittal of the CDC Application; (b) the Existing Building or all Existing Buildings comprising the Facility at the time of the acquisition were at least 50 percent vacant for six of the 12 months immediately preceding the date of the acquisition and (c) except in the context of a permitted demolition described in subsection VII.F., the CDC occupies or will occupy such Existing Building or Buildings.

2. Vacancy Threshold. The Existing Building or all Buildings encompassing a Facility will be treated as at least 50 percent vacant for six of the 12 months immediately preceding the date of the acquisition of the Facility if at least 50 percent of the square footage of the aggregate tenantable areas (i.e., areas exclusive of common areas, areas housing building equipment, etc.) within the Existing Building or Buildings comprising the Facility were untenanted or otherwise unoccupied for such period. The Existing Building or all Existing Buildings encompassing a Facility also may be treated as 50 percent vacant for the requisite time period if it is demonstrated in accordance with some other commercially reasonable measure for quantifying the extent of operational commercial property that the Existing Building or Buildings (as the case may be) were at least 50 percent untenanted or otherwise unoccupied for six of the 12 consecutive months immediately preceding acquisition by the CDC Owner or Operator. Any vacancy for purposes of the Vacancy Standard described in these Rules must be bona fide and, accordingly, must have been attributable to market or economic conditions as contrasted with having been engineered for the purpose of demonstrating technical compliance with the Vacancy Standard.

3. Acquisition Defined. An acquisition for purposes of the Vacancy Standard means either: (a) the acquisition of fee ownership of the entire Facility (including the Existing Building or all Existing Buildings by a CDC Owner or Operator or (b) the acquisition by a CDC Operator of an interest as lessee in respect to the entire Facility (including the vacant Existing Building or Buildings); provided, however, that the lessee-Operator and the CDC Owner are not Affiliates.

4. Limitation on Separation of Vacant Facility. An Owner or Operator of a Facility may not elect, in accordance with A.R.S. § 41-1519(D), to separate an Existing Building or all Existing Buildings comprising a single Facility that was *less than* 50 percent vacant for six of the 12 consecutive months immediately preceding the acquisition of the Facility for the purpose of qualifying a *portion* of the Facility as a Sustainable Redevelopment Project in accordance with the Vacancy Standard.

Accordingly, an Applicant may not elect to treat a *portion* of an Existing Building or portions of Existing Buildings as being at least 50 percent vacant for the requisite time period and disregard the balance of the Existing Building or Buildings for which vacancy was *less than* 50 percent for the requisite time period). Similarly, an Applicant may not elect to treat a *portion* of a Facility's Existing Building or Buildings on a particular parcel of land or a contiguous parcel) as being at least 50 percent vacant for the requisite time period and disregard the balance of the Facility's Existing Building or Buildings on the same parcel of land or a contiguous parcel of land) for which the aggregate vacancy was *less than* 50 percent for the requisite time period).

5. Documentation. In addition to documentation confirming the date of acquisition of the Facility by the CDC Owner or Operator (as well as operation of the Facility as a CDC for the requisite time period if applicable in accordance with clause (a)(ii) of subsection VII.B.1.) and describing the Existing Building or Buildings that existed as of such date, a CDC Application seeking status of the CDC as a Sustainable Redevelopment Development in accordance with the Vacancy Standard must include documentation demonstrating the extent of the vacancy in the Existing Building or Buildings acquired for the requisite time period preceding the acquisition. Documentation for this latter purpose may, in addition to other forms authorized by Commerce in its discretion, include copies of rent rolls from the Facility, an affidavit attesting to the extent of the vacancy for the requisite period of time from either the seller of the Facility (in the case of an acquisition in the form of a purchase), the owner of the Facility (in the case of an acquisition in the form of a lease), or a third party real estate broker engaged either by a party to the acquisition at the time of the acquisition, or such other documentation determined acceptable to Commerce. If relevant, the documentation must address any pre-certification demolition described in subsection VII.F.

C. Green Standard.

1. Qualification. A Facility (other than a Greenfield SRP) will satisfy the Green Standard if (a) the Owner or Operator on or after September 1, 2013 causes renovations to the then Existing Building or all then Existing Buildings comprising the Facility that result in an *original* Green Certification in respect to all of such Existing Building or Buildings, (b) the Existing Building or Buildings were originally constructed before September 1, 2013 and (c) except in the context of a permitted demolition described in subsection VII.F., the CDC occupies or will occupy such Existing Building or Buildings. If the Green Certification is not achieved by the date of submission of the CDC Application, qualification of the CDC as a Sustainable Redevelopment Project in accordance with the Green Standard is authorized provided that the Green Certification is obtained not later than the five-year anniversary of the CDC Certification Effective Date.

2. Documentation. A CDC seeking status as a Sustainable Redevelopment Development in accordance with the Green Standard (other than a Greenfield SRP) must furnish Commerce with documentation (a) describing the post-August 31, 2013 renovations to the existing Structural Improvements, (b) confirming achievement of the original Green Certification in respect to the renovated Structural Improvements and (c) establishing proof of the original construction of the Structural Improvements before September 1, 2013. If relevant, the documentation must address any pre-certification demolition described in subsection VII.F.

D. Greenfield CDC.

1. Qualification. A CDC will qualify as a Greenfield SRP if the CDC (a) is newly-constructed CDC (i.e., if there were no Existing Building or Buildings at the time of acquisition), (b) attains a Green Certification for the first time and (c) the Qualifying Investment at the Facility within the period beginning 30 days before the CDC Certification Effective Date and ending on the five (5)-year anniversary

of the CDC Certification Effective Date is least \$200 million.

2. Documentation. A CDC seeking status as a Sustainable Redevelopment Project as a Greenfield CDC must furnish Commerce with documentation (a) describing the new construction, (b) confirming achievement of the original Green Certification and (c) establishing proof of the Qualifying Investment of at least \$200 million.

E. Impact of Additional Construction. A CDC otherwise qualifying as a Sustainable Redevelopment Project will not cease to qualify as a Sustainable Redevelopment Project if, following certification of the CDC, the size of one or more Existing Buildings within the Sustainable Redevelopment Project is increased and/or new structures are constructed on the same parcel of land or a contiguous parcel if encompassed within the description of the CDC Facility (including an amended description of the CDC Facility resulting from a post-certification addition of raw land to the CDC Facility occurring pursuant to subsection 4.D.).⁸

F. Impact of Demolition. A Facility otherwise qualifying as a Sustainable Redevelopment Project will not cease to qualify as a Sustainable Redevelopment Project if, following the CDC certification, all or a portion of one or more Existing Buildings are demolished to the extent reasonably necessary to accommodate future CDC use. Pursuant to A.R.S. § 41-1519(L)(1), an Existing Building that has been substantially demolished before certification is not eligible to qualify as a Sustainable Redevelopment Project.

Section VIII. Nature of Program Benefits, Qualifying for Program Benefits.

A. General. Benefits pursuant to the Program encompass exemptions, for the relevant Qualification Period, from all state, county and local (i) transaction privilege taxes (TPT) under the retail classification of A.R.S. § 42-5061 and (ii) use taxes on qualifying purchases of CDC equipment by a certified CDC Owner, Operator or Qualified Colocation Tenant.

B. Prime Contractors. In respect to CDC Equipment that will be incorporated into the real property or structures of a certified CDC, the prime contractor, in computing TPT under the prime contracting classification of A.R.S. § 42-5075, may deduct the income attributable to the purchase of the CDC Equipment during the relevant Qualification Period if the CDC Equipment is incorporated at the CDC. The amount of the deduction is limited to the purchase price of the CDC Equipment.

C. Qualification for Exemptions. To qualify for the TPT and use exemptions during the purchaser's respective Qualification Period, the purchaser of CDC Equipment, if an Owner, Operator or Qualified Colocation Tenant of the CDC, must, at the time of purchase, present to the vendor or prime contractor (as the case may be) *either*: (i) a properly completed Revenue Form 5000 ("Transaction

⁸ In respect to expansions, a technical correction to the the definition of the term Existing Building set forth in A.R.S. 41-1519(O)(4) may be required in the context of a Sustainable Redevelopment Project maintained by an Operator. Compare A.R.S. § 41-1519(L)(2) which references expansions of Existing Buildings by an Owner or Operator with A.R.S. 41-1519(O) which refers solely to an Owner in the context of the definition of the term Existing Building.



Privilege Tax Exemption Certificate”⁹ or (ii) a copy of the applicable Letter of Certification¹⁰

Section IX. Qualification Period

A. Qualification Period of Owners or Operators. In general, the Qualification Period of a CDC Owner or Operator begins on the CDC Certification Effective Date and ends at the end of the 10th calendar year following the calendar year in which the CDC Certification Effective Date occurred. However, if the CDC qualifies as a Sustainable Redevelopment Project, the Qualification Period of a CDC Owner or Operator begins on the CDC Certification Effective Date and ends at the end of the 20th calendar year following the calendar year in which the the CDC Certification Effective Date occurred.

Example IX-1: CDC-X, which does not qualify as a Sustainable Redevelopment Project, is certified by Commerce on May 1, 2017 following submission of a Substantially Complete CDC Application on April 1, 2017. The Qualification Period of CDC-X’s Owner and/or Operator begins on April 1, 2017 and ends on December 31, 2027. If CDC-X qualified as a Sustainable Redevelopment Project, the Qualification Period of CDC-X’s Owner or Operator would extend through December 31, 2037.

B. Qualification Period of Qualified Colocation Tenants. The Qualification Period of a CDC Qualified Colocation Tenant begins on the *later* of (i) the CDC Certification Effective Date or (ii) the date the Qualified Colocation Tenant’s Qualified CDC Lease commenced). The Qualification Period of a CDC Qualified Colocation Tenant ends on the *earlier* of (i) the expiration of the term of the Qualified Colocation Tenant’s Qualified CDC Lease or (ii) the end of the 10th calendar year following the calendar

⁹ Note that a vendor or prime contractor may choose to disregard presentation of a Form 5000 if the vendor or prime contractor has reason to believe that the information contained in the Form is not accurate or complete, in which case the vendor or prime contractor may request a copy of the CDC Letter of Certification or QCLT Letter of Certification. See A.R.S. § 42-5009(A)(2). Further, see A.R.S. § 42-5009(D) pertaining to the discretion of Revenue to require a purchaser furnishing a Form 5000 to establish the accuracy and and completeness of the information provided in the Form).

¹⁰ Presentation of an applicable Letter of Certification (i.e., a CDC Letter of Certification in respect to the Owner or Operator and a QCLT Letter of Certification in the case of a Qualified Colocation Tenant) should, in respect to the vendor or prime contractor, constitute compliance with A.R.S. § 42-5009(B). Note that Commerce will issue a QCLT Letter of Certification only upon the request of the tenant or CDC Owner/Operator and only if Commerce: (i) has been provided by the CDC Owner or Operator with the list or amended list of tenants described in A.R.S. § 41-1519(J), (ii) is in receipt of all of the information specified in subsection III.C.4. and (iii) is in receipt of the requisite processing fee.

Owners, Operators of Qualified Colocation Tenants that purchased CDC Equipment during their respective Qualification Period prior to August 6, 2016 but that failed to furnish their vendor or prime contractor with a Letter of Certification at the time of purchase (with the result that their purchase price included the TPT) may be capable of obtaining redress if the vendor or prime contractor claims a refund pursuant to A.R.S. § 42-4118. Only a vendor or prime contractor may request a refund of TPT paid. See Arizona Transaction Privilege Tax Procedure 13-1. Further, note that vendor or prime contractor claims for refund are subject to A.R.S. § 42-1106 (time limitations for refund claims and AR.S. § 42-1104 (statutes of limitation).



year in which the CDC Effective Date occurred (or the end of the 20th calendar year following the calendar year in which the CDC Effective Date occurred if the CDC is certified as a Sustainable Redevelopment Project). Accordingly, the Qualification Period of any Qualified Colocation Tenant cannot extend beyond the duration of the Qualification Period of the CDC's Owner and/or Operator.

Example IX-2: CDC-X, is certified by Commerce effective May 1, 2017 and Qualified Colocation Tenant-Y enters into a Qualifying CDC Lease for a term that begins September 1, 2017 and ends August 31, 2020. Tenant-Y is certified as a Qualified Colocation Tenant of CDC-X on October 10, 2017. The Qualification Period of Tenant-Y begins September 1, 2017 and ends August 31, 2020.

Example IX-3: CDC-Y, which does not qualify as a Sustainable Redevelopment Project, is certified by Commerce effective May 1, 2017 and Qualified Colocation Tenant-Z enters into a Qualifying CDC Lease for a term that begins September 1, 2023 and ends August 31, 2028. Tenant-Z is certified as a Qualified Colocation Tenant of CDC-X on October 10, 2023. The Qualification Period of Tenant-Z begins September 1, 2023 and ends December 31, 2027. (December 31, 2027 in this case represents the last day of the Qualification Period of CDC-Y's Owner and/or Operator which commenced May 1, 2017.)

Section X. Qualified Colocation Tenants.

A. Status as a Qualified Colocation Tenant. The following provisions apply in determining whether a tenant at a certified CDC constitutes a Qualified Colocation Tenant.

1. Lease Term.

a. Lease Term Determined Without Discretionary Extensions. The term of a lease for occupancy of all or a portion of a CDC is determined without regard to any discretionary lease extensions. Accordingly, if a tenant contracts with a CDC Owner, Operator or other Qualified Colocation Tenant for occupancy of all or a portion of the CDC for a one-year period and the contract authorizes extensions of the lease at the discretion of the tenant, the lease is treated as a lease for a term of only one year.

b. Impact of Lease Extension. If an existing Qualified Colocation Tenant at a certified CDC contracts with the CDC Owner, Operator or other Qualified Colocation Tenant to extend the tenant's existing lease with such party for use of at least 500 kilowatts per month during the extension period, the tenant will continue to constitute a Qualified Colocation Tenant.

c. Lease Term Includes Pre-Certification Occupancy. The term of a lease includes any period of occupancy preceding the date of a CDC certification provided that the contract provided for at least 500 kilowatt monthly usage during the pre-occupancy period subject, however, to subsection X.A.1.d. Thus, assuming that (i) a tenant contracts with a CDC Owner for use or occupancy for at least 500 kilowatts per month at a CDC for a three-year term commencing on July 1, 2017 and (ii) Commerce certifies the CDC effective January 1, 2019, the lease will be considered to have a three-year term irrespective of the fact that the lease has a *remaining* term of only 18 months as of the effective date of Commerce's certification of the CDC. In such case, the tenant will be authorized to claim Program benefits for the remaining 18-month lease term.

d. Failure of Original Lease Contract to Reflect Authorized Kilowatt Usage.

Amendment of a lease authorizing the tenant's use of at least 500 kilowatt hours for the then remaining term of the lease will be treated as a Qualifying CDC Lease for the duration of the lease if the duration of the lease term (including both the pre- and post-amendment periods) is at least 24 months and all other requirements incident to characterization of the tenant entity as a Qualified Colocation Tenant are satisfied.

2. Subleases. If a Qualified Colocation Tenant at a certified CDC sublets occupancy at the CDC, the subtenant will constitute a Qualified Colocation Tenant *provided that* (i) the CDC Owner or Operator acknowledges the sublease by providing Commerce and Revenue with the an updated list contemplated by A.R.S. § 41-1519 within 30 days of the effective date of the sublease (ii) the term of the sublease is a period of at least two years and (iii) the kilowatt usage under the sublease is at least 500 kilowatts per month. In such case, if the sublessor was a Qualified Colocation Tenant, the sublessor will cease to constitute a Qualified Colocation Tenant upon commencement of the sublease if the sublessor ceases to use at least 500 kilowatt hours for the then remaining term of its lease. Despite

Section XI. Definitions of Program Terms.

The following capitalized terms, which are used in more than one section of these Rules, have the meanings provided below.

"Affiliate" means, in respect to an Owner or Operator, one or more entities that join with the Owner or Operator in the filing of a consolidated or combined income tax return for Federal or Arizona state income tax purposes; provided, however, that for purposes of subsection III.A.1.a.i., the term "Affiliate" means either an entity that owns 100 percent of the ownership interests in the Owner or Operator or an entity 100 percent of the ownership interests of which are owned by the Owner or Operator and, provided, further, however, that for purposes of subsection VII.B.3, the term "Affiliate" means, in respect to an Operator, an Owner that owns any ownership interest in the Operator or an Owner if any ownership interest in the Owner is owned by the Operator.

"Applicant" means as defined in subsection III.A.1.

"CDC Application" means as defined in subsection III.A.2.

"CDC Certification Effective Date" means as defined in subsection III.C.4.a.

"CDC Equipment" means, in respect to a CDC, without duplication, the following equipment if used to outfit, operate or benefit the CDC as well as component parts, refreshments, replacements and upgrades to such equipment regardless of whether affixed to or incorporated into real property:

(a) Equipment necessary for the transformation, generation, distribution or management of electricity that is required to operate computer server equipment, including generators, uninterruptible energy, supplies, conduit, gaseous fuel piping, cabling, duct banks, switches, switchboards, batteries and testing equipment.



(b) Equipment necessary to cool and maintain a controlled environment for the operation of the computer server and other components of the computer data center, including mechanical equipment, refrigerant piping, gaseous fuel piping, adiabatic and free cooling systems, cooling towers, water softeners, air handling units, indoor direct exchange units, fans, ducting and filters.

(c) Water conservation systems, including facilities or mechanisms that are designed to collect, conserve and reuse water.

(d) Enabling Software, computer server equipment, chassis, networking equipment, switches, racks, cabling, trays and conduits.

(e) Monitoring equipment and security systems.

(f) Modular Data Centers and preassembled components of any item described in this definition, including components used in the manufacturing of Modular Data Centers.

(g) Other tangible personal property essential to the operations of a CDC.

“CDC Letter of Certification” means, in respect to a CDC, the written correspondence from Commerce indicating that the CDC has been certified by the CDC and that the Owner and/or Operator is eligible to receive Program benefits in connection with purchases of CDC Equipment during the Qualification Period set forth therein that are delivered to and installed at the CDC.

“Commerce” means as defined in section I.

“Computer Data Center” or “CDC” means all or part of a Facility that may be composed of multiple businesses or owners, that is or will be predominantly used to house working servers and that may have uninterruptible energy supply or generator backup power, or both, cooling systems, towers and other temperature control infrastructure.

“Contributing Qualified Colocation Tenant” means a Qualified Colocation Tenant designated by the Applicant in a CDC Application as intending in whole or in part to satisfy the Qualified Investment Threshold specified in subsection V.A.2 or V.A.3. (either \$25 million or \$50 million) or V.A.4. (\$200 million in the context of a Greenfield SRP) in respect to the CDC within the period beginning 30 days before the CDC Certification Effective Date and ending on the five-year anniversary of the CDC Certification Effective Date).

“E-1 CDC” means the same as the term “new computer data center” as defined by A.R.S. § 41-1519(O)(9).

“E-2 CDC” means the same as the term “existing computer data center” as defined by A.R.S. § 41-1519(O)(5).



“Enabling Software” means software that is integral to operation of the CDC as a data center. Without limitation, the term “Enabling Software” excludes common office computer software and software of any kind not required exclusively for data center operations.

“Existing Building” means an existing building improvement located at a Facility used for commercial purposes at the time of its acquisition by an Owner or Operator by purchase or lease excluding, however, single family residential structures, barns or other agricultural structures; provided, however, that for purposes of section VII. pertaining to demolitions, the term “Existing Building” means an existing building improvement located at a Facility used for commercial purposes at the time of its acquisition by an Owner by purchase excluding, however, single family residential structures, barns or other agricultural structures.

“Facility” means one or more parcels of land in Arizona and any structures and personal property contained on the land.

“Green Certification” means certification under the Energy Star or Green Globes standard, the leadership in energy and environmental design green building rating standard developed by the United States Green Building Council or an equivalent green building standard.

“Green Standard” means as defined in subsection VII.A.

“Modular Data Center” means a portable system of information technology, climate control, energy supply and energy distribution machinery, equipment and related tangible personal property contained in an intermodal freight container or similar structure.

“Operator” means an individual or entity, other than an Owner or Qualified Colocation Tenant, operating a CDC pursuant to a lease or other contract with the Facility Owner or a lessor. The term “Operator” includes a licensed property management company, a property lessor or any other individual or entity responsible for the control, oversight or maintenance of a Facility. The term “Operator” also includes an Affiliate of the Operator.

“Owner” means an individual or entity holding fee title to a Facility. The term “Owner” also includes an Affiliate of the Owner.

“Program” means the Computer Data Center Program.

“Qualification Period” means the period of time in which a CDC Owner, Operator or a Qualified Colocation Tenant is eligible for Program benefits and means specifically (a) in respect to a CDC Owner or Operator, as defined in subsection IX.A. and (b) in respect to a CDC Qualified Colocation Tenant, as defined in subsection IX.B.

“Qualified Colocation Tenant” means an entity that contracts with the Owner, Operator or another Qualified Colocation Tenant of a CDC that is certified pursuant to A.R.S. § 41-1519 to use or occupy all or part of the CDC for at least five hundred kilowatts per month for a period of two or more years.



“QCLT Letter of Certification” means, in respect to a particular Qualified Colocation Tenant, if applicable, the written correspondence from Commerce indicating that the Qualified Colocation Tenant is eligible to receive Program benefits for the Qualification Period set forth therein in connection with purchases of CDC Equipment delivered to and installed at the certified CDC whereat the Qualified Colocation Tenant is a tenant.

“Qualifying CDC Lease” means a contract or other agreement between a Qualified Colocation Tenant and a CDC Owner, Operator, or other Qualified Colocation Tenant to use or occupy all or part of the CDC for at least five hundred kilowatts per month for a period of two or more years.

“Qualifying Investments” means, in respect to a CDC for a specified period of time, the aggregate non-duplicative monies expended during such specified period of time to acquire, construct or expand a CDC, including costs of land, buildings, improvements, modular data centers and CDC Equipment installed thereat, whether owned or leased or paid for pursuant to a right to use agreement.

“Qualifying Investment Thresholds” means as defined in subsection V.A.

“Revenue” means as defined in section I.

“Substantially Complete” means, in respect to an Application, that all matters are fully addressed by the Application and that any and all supplemental documents required by Commerce are attached or can be supplied within 14 calendar days after receipt of notification by Commerce of any deficiencies (or within an additional 14 calendar day period if requested by the Applicant and granted by the Program’s manager).

“Sustainable Redevelopment Project” means a CDC that either (i) occupies an Existing Building or Buildings and that satisfies either the Vacancy Standard or the Green Standard or (ii) a Greenfield SRP.

“TPT” means as defined in section VIII.

“Vacancy Standard” means as defined in subsection VII.A.