



## **NOTICE OF ADOPTION**

### **RULE 15-02**

**1. Rule**

Arizona Computer Data Center Program (CDC Program): CDC Program Rules and Guidelines

**2. Date of Posting of Notice of Rule Making**

July 13, 2015

**3. Public Comment Period**

July 14, 2015 – August 13, 2015

**4. Hearing Date**

None

**5. Deadline for Authority to File a Notice of Adoption**

January 12, 2016

**6. Notice of Adoption Posting Date**

October 2, 2015

**7. Preamble**

**An explanation of the agency's action pertaining to the Rule**

Available upon request are: (a) a detailed explanation of the ACA's responses to the material comments received in respect to the version of the Rule set forth in the Notice of Rule Making and (b) a "blacklined" document comparing the version of the Rule set forth in the Notice of Rule Making with the version of the Rule set forth in this Notice of Adoption. Please contact Cindy Grogan, via e-mail at [CindyG@az.commerce.com](mailto:CindyG@az.commerce.com), if copies of either or both of the foregoing are sought.

**8. Amendments**

Material amendments reflected in the version of the Rule set forth in this Notice of Adoption include the following:

1. Regarding the discretion of owners or operators to remove raw land from existing CDC property descriptions, extensions in: (a) the latest certification date of CDCs eligible to elect for such removal, through August 12, 2015 (30 days following the date of the Notice of Proposed Rulemaking), and (b) the final date for notification to the Arizona Commerce Authority of any such request for removal, through the date 90 days following the date of this Notice of Adoption (i.e., through December 31, 2015).
2. Authorization of owners or operators to expand the boundaries of a CDC *following* certification of the CDC if the expansion(s) encompass raw land contiguous to existing CDC property owned or leased by the owner or operator. Accordingly, as a result, a CDC otherwise qualifying as a Sustainable Redevelopment Project (SRP) in accordance with either the “vacancy standard” or the “green standard” will *not* cease to qualify as an SRP if, before or after certification of the CDC, structural improvements *in addition to* the CDC’s original structural improvements (but not greater in size than nine times the square footage of the original structural improvements) are constructed on the same parcel of land on which the SRP is situated *or on a contiguous parcel*, irrespective of whether or not the contiguous parcel was encompassed within the original description of the CDC boundaries.
3. An expansion in the date of acquisitions qualifying for the SRP “vacancy standard.” As amended, a CDC will qualify for the SRP “vacancy standard” if either: (a) the CDC owner or operator acquired a vacant facility on or after September 1, 2007 or (b) the CDC owner or operator acquired the vacant facility before September 1, 2007 provided that (i) the initial post-acquisition commercial use of the acquired facility was as a functioning CDC and (ii) the facility was operated continuously as a CDC from that time through the date of submission of an application for certification.
4. A modification to the definition of the term “Enabling Software” removing any distinction regarding the location of the software within a CDC.

The Arizona Commerce Authority hereby gives notice that Rule 15-02, as amended, has been adopted. The effective date of the Rule is the August 31, 2013 effective date of the CDC Program. However, the Rule will not impact any certification issued prior to the date of this Notice of Adoption.



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Greg Linaman  
Chief Operating Officer/General Counsel

**Arizona Commerce Authority**

**COMPUTER DATA CENTER PROGRAM**

Program Rules and Guidelines<sup>1</sup>

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<sup>1</sup> These Program Rules and Guidelines (Rules) are issued under the authority of A.R.S. §§ 41-1005(A)(28) and 41-1510.01(G) to govern administration of the Program. 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 to 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 is a CDC that occupies an existing structure which either was at least partially vacant prior to its acquisition or is renovated to a certified “green standard.”

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 predominately 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;
- The CDC Owner, Operator and/or Qualified Colocation Tenants made or make qualifying investments at the CDC of at least the relevant amount and within the relevant time period specified in section V.<sup>2</sup> 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 during the relevant Qualification Period following presentation of the applicable Letter of Certification and other required documentation.

**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.<sup>3</sup>

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

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

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

if Owner-B consents in writing to the submission of the CDC Application by Owner-A.<sup>4</sup>

**ii. Operation of Less than 100 Percent of Facility.**

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 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 previously certified by Commerce 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 the Department of Revenue (Revenue) revokes the prior CDC certification of the Facility in accordance with A.R.S. § 41-1519(G) and certifies that all benefits associated with the revoked certification 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. Further, see subsection IV.B.6. pertaining to an exception to the general rule precluding multiple CDC Applications in respect to the same Facility in the situation in which raw land reflected in the description of an existing CDC Facility in a CDC Application submitted on or before August 13, 2013 is removed from such description pursuant to a notification to Commerce on or before December 31, 2015 (the date 90 calendar days following the effective date of these Rules).

**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

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<sup>4</sup> Alternatively Owner-A and Owner-B may collectively submit the CDC Application.

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 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 five-year period commencing on the date of the CDC certification.

**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.

**5. Qualified Colocation Tenant Matters.**

**a. Information Includible in CDC Application.** If one or more Qualified Colocation Tenants occupy the CDC on the date of submission of the CDC Application, the CDC Application must include a list reflecting: (a) the identity of each such entity and (b) the commencement and expiration dates of each such entity's contract with the Owner or Operator of the CDC to use or occupy the CDC.

**b. Information That May be Deferred Until 45 Calendar Days Following Submission of the CDC Application.** The Applicant may take up to 45 calendar days following the date of submission of the CDC Application to provide the following information in respect to each Qualified Colocation Tenant occupying the CDC as of the date of submission of the CDC Application: (i) the tenant entity's Federal tax identification number, (ii) verification that such entity is enrolled in the Federal E-Verify Program, (iii) the number of kilowatts per month (not fewer than 500 per month) authorized for use by such entity in its contract with the Owner or Operator and (iv) a copy of the lease or other contract between such entity and the Owner/Operator-Applicant. The failure to provide in a timely manner (i.e., within 45 calendar days following the date of submission of CDC Application) any of the items of information specified in the preceding clauses (i) through (iv) of this subsection (b) will not delay the time period specified in subsection III.C.3.a. within which Commerce must approve or deny the CDC Application. However, deferring transmittal of all of the information specified in this subsection (b) in respect to all of the Qualified Colocation Tenants occupying the CDC as of the date of submission of the CDC Application beyond 45 calendar days following the submittal date will result in imposition of the processing fee described in clause (b) of the third sentence of subsection III.C .5, which will otherwise be waived by Commerce if all of the specified information in respect to all Qualified Colocation Tenants occupying the CDC as of the date of submission of the CDC application is transmitted in a timely manner.

**6. 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 Redevelopment Project is sought in accordance with the Green Standard 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 commencing on the date of the CDC certification. 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.

7. **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. Additionally, see subsections III.B.5.b. and IV.B.2., pertaining to required proof of enrollment in Federal E-Verify Program by Qualified Colocation Tenants.

**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 Rules Section XI.), the CDC Application will be considered "withdrawn" and no action will be taken in respect thereof.

**3. Time for Review.**

a. **CDC Certifications.** Commerce will attempt to make a determination 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.

b. **Qualified Colocation Tenant Certifications.** In respect to tenants occupying the CDC as of the date of the CDC Application submission, Commerce will attempt to make a determination with respect to the status of such tenants as Qualified Colocation Tenants within 60 calendar days following the CDC Application submission; provided, however, that all of the information specified in paragraphs (a) and (b) of subsection III.B.5. is included in the CDC Application. If all of the information specified in paragraphs (a) and (b) of subsection III.B.5. is not included in the CDC Application, Commerce will attempt to make a determination with respect to the status of any such tenant as a Qualified Colocation Tenant within 60 calendar days following the date the Applicant furnishes Commerce with all required information with respect to the tenant; provided, however, that if such information is not furnished by the Applicant to Commerce y within 45 calendar days following the date of the CDC Application submission, Commerce may take as much as 120 calendar days following the receipt of the required information with respect to a tenant to make a determination as to the status of that tenant as a Qualified Colocation Tenant.

#### 4. **Approval.**

a. **General.** Subject to subsection III.C.5. (regarding payment of the requisite processing fee), following approval of a CDC Application (or following deemed approval of a CDC Application in accordance with the subsection III.C.3.a), Commerce will issue a Letter of Certification certifying the CDC. Among other matters, the 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).

b. **Qualified Colocation Tenants.** If the CDC Application includes a list of one or more Qualified Colocation Tenants then occupying the CDC and incorporates all requisite supporting documentation required by subsections III.B.5.a. and III.B.5.b, Commerce, following approval of the CDC Application, also will, subject to the approval periods set forth in subsection III.C.3.b., issue Letters of Certification certifying the identity of each then Qualified Colocation Tenant at the CDC. Among other matters, Letters of Certification relating to Qualified Colocation Tenants will identify the name of each Qualified Colocation Tenant and its respective Qualification Period.

5. **Processing Fees.** Approval of a CDC Application is subject to payment of all requisite processing fees. If an Applicant is notified that its CDC Application will be approved pending payment of the processing fee, the Applicant must remit the processing fee in the form of a check by the date specified in the notification. The processing fee payable by the Applicant will equal the sum of (a) the fee imposed for certifying the CDC plus (b) if applicable, an amount equal to the product of (i) the number of Qualified Colocation Tenants occupying the CDC as of the date of submission of the CDC Application (as reflected in the list described in subsection III.B.5.a.) *multiplied by* (ii) the applicable per-tenant fee imposed for certifying Qualified Colocation Tenants. However, payment of the amount specified in clause (b) of the

preceding sentence will be waived by Commerce if all of the information required by subsection III.B.5.b (pertaining to *all* Qualified Location Tenants occupying the CDC as of the date of submission of the CDC Application) is provided not later than 45 calendar days following the date of submission of the CDC Application. To expedite the foregoing, Commerce may request payment of the processing fee in two separate checks (i.e. one check for the amount specified in clause (a) of the third sentence of this subsection and a second check for the amount specified in clause (b) of the third sentence of this subsection), one of which may be returned to the Applicant if applicable. The specific amounts of the processing fees imposed from time to time for certification of a CDC and for certification of Qualified Colocation Tenants will be set forth at Commerce's website, [www.azcommerce.com](http://www.azcommerce.com), commencing within 10 days following adoption of these Rules.

**6. 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 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 may be issued in respect to an E-1 CDC before compliance with its Qualifying Investment Threshold is demonstrated (and accordingly Program benefits 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 subsections IV.B.1. and 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.** Following certification of a CDC, the CDC Owner, Operator and Qualified Colocation Tenants 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. 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 certification of an E-1 CDC, the CDC Owner or Operator must notify Commerce and Revenue 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, Revenue is authorized by A.R.S. § 41-1519(G) to revoke the CDC's certification and to recapture the tax benefits obtained at the CDC.

**2. Changes in Identify of Qualified Colocation Tenants.**

**a. General.** 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 (ii) a post-CDC certification extension, termination or material modification of an agreement between a previously identified Qualified Colocation Tenant and the CDC Owner or Operator which alters the Qualified Colocation Tenant's Qualification Period. The notification must include the information set forth in subsection III.B.5.a. pertaining to each such Qualified Colocation Tenant.

**b. New Letters of Certification.** In order for Commerce to properly issue one or more post-certification 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 to Commerce the information set forth in subsection III.B.5.b. and (ii) pay the requisite processing fee required for issuance of a Qualification Colocation Tenant Letter of Certification. 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.

**3. 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, the CDC Owner or Operator must, on or before the fifth anniversary of the CDC's certification, notify Commerce and Revenue whether or not the Green Certification was achieved and, if applicable, provide the documentation specified in subsection VII.C.2. demonstrating achievement of the Green Certification in a timely manner.

**4. Impermissible Electricity Generation.** If the CDC violates the provisions of A.R.S. § 41-1519(L) (pertaining to impermissible electricity generation), the CDC Owner or Operator must notify Commerce and Revenue of the details of such

violation within 30 calendar days of the occurrence of such violation. In the event of any such violation, Revenue is authorized by A.R.S. § 41-1519(G) to revoke the CDC's certification and recapture the tax benefits obtained thereat. 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(L). 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).

**5. 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 the existing 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.

**6. Request for Removal of Property from CDC Description.** An Applicant that identified raw land in the description of a CDC in a CDC Application submitted to Commerce on or before August 13, 2015 *and* that seeks to remove all or part of the raw land from inclusion in the description of the certified CDC may do so by making such a request in a written notification to Commerce transmitted on or before December 31, 2015 (the date 90 calendar days following the date of adoption of these Rules). If the purchase price of or other qualifying expense associated with the raw land was included as a part of the Qualifying Investment Threshold of the CDC, the Applicant is required to certify, if accurate, that removal of the parcel(s) and the attendant investment associated therewith does not impact the CDC's original certification. If Commerce authorizes the removal of raw land from the description of the CDC in accordance with this subsection, then, for purposes of subsection III.A.4., the raw land that is removed will be treated as not having been identified in any prior CDC Application and, accordingly, the land may be subject of a subsequent CDC Application.

**7. Additional Construction at CDC Qualifying as a Sustainable Redevelopment Project.** If additional construction at a CDC causes the status of the CDC as a Sustainable Redevelopment Project to terminate in accordance with subsection VII.D. (i.e., if the square footage of the CDC's Original Existing Structural Improvements ceases to constitute at least 10 percent of the then square footage of all of the CDC's Structural Improvements) or subsection VII.E., the Owner or Operator (or successor Owner or Operator) must notify Commerce and Revenue regarding the details of such termination within 60 calendar days of the completion of such construction. In the event of any such termination of Sustainable Redevelopment Project status,

Program benefits to the relevant parties will not extend beyond the later of (a) the conclusion of the Qualification Period that would apply if the CDC were not a Sustainable Redevelopment Project or (b) the date of termination of the CDC's Sustainable Redevelopment Project status.

**C. Annual Report.** On each anniversary of a CDC's certification 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, on or before the date 30 calendar days following the respective anniversary of the CDC's certification, an annual report in a form developed by Commerce that is intended to reflect, among other information requested by Commerce, (a) the then number of full-time employees at the CDC and such employees' then average wage and (b) the estimated Program TPT and use tax exemptions achieved at the CDC within the preceding 12-month period by the CDC Owner, Operator and Qualified Colocation Tenants as well as an estimate of the *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. Proprietary business information contained in any annual report is regarded as confidential and may not be disclosed to the public. The content of the annual report form from time to time will be available online on Commerce's website (as identified in subsection III.C.5.) within ten calendar days following the date of adoption of these Rules. Any *changes* to the content of an annual report form posted on Commerce's website will not be effective for at least 90 calendar days following such posting.

**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 (i) contiguous with the boundaries of the CDC at the time of adding the raw land (as such boundaries may have been adjusted pursuant to subsection IV.B.6. in respect to any prior authorized *removal* of raw land from the CDC) and (ii) 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. **Relation to Qualifying Investment.** Anything in these Rules to the contrary notwithstanding, in the case of an E-1 CDC, the cost of the raw land that is added to the description of a CDC following the CDC's certification in accordance with this subsection IV.D. does not constitute Qualifying Investment.

b. **Impact of Construction on Raw Land - General.** The fact that Structural Improvements are constructed on the raw land *following* its addition to the CDC will not impact the propriety of the addition if otherwise consistent with this subsection 4.D.

c. **Impact of Construction on Raw Land – Impact on Qualification of CDC as Sustainable Redevelopment Project.** Consistent with subsection VII.D, the construction of Structural 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 in accordance with either the Vacancy Standard or the Green Standard provided that the square footage of the CDC's Original Existing Structural Improvements continues to represent at least 10 percent of the square footage of all Structural Improvements constructed at the CDC, expressly including those constructed on the same parcel of land on which the Sustainable Redevelopment Project is situated *and* on the raw land added to the CDC in accordance with this subsection IV.D.

d. **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/or or Qualified Colocation Tenants of the CDC:

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 five-year period commencing on the date of the CDC certification if the CDC is located in Maricopa County or Pima County; *or*

3. Subject to subsection VI.D.1., to make Qualifying Investments of at least \$25 million at the CDC within the five-year period commencing on the date of

the CDC certification if the CDC is located in an Arizona county other than Maricopa County and Pima County.

(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 a CDC Tenants.** Qualifying costs incurred by a CDC tenant are treated as Qualifying Investments in respect of the relevant CDC only if the tenant constitutes a Qualified Colocation Tenant at the CDC at the time such costs are incurred.

**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 subsections III.A.4. and IV.B.6., 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. and subsection IV.B.6., 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 five-year period beginning on the date of the CDC certification.

**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 for 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 of the type described in subsections VII.D and E. will be treated solely 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 the CDC satisfies *either* the standard set forth in A.R.S. § 41-1519(N)(9)(a) (the Vacancy Standard) or the standard set forth in A.R.S. 41-1519(N)(9)(b) (the Green Standard).

### **B. Vacancy Standard for Acquisitions of Vacant Facilities.**

**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 Structural Improvements encompassing 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 demolition described in subsection VII.E., the CDC occupies or will occupy such Structural Improvements.

**2. Vacancy Threshold.** The Structural Improvements 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 Structural Improvements were untenanted or otherwise unoccupied for such period. Structural Improvements 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 Structural Improvements were at least 50 percent untenanted or otherwise unoccupied for six of the 12 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 vacant Structural Improvements) 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 Structural Improvements); 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 the Structural Improvements comprising a single building or a single Facility that was *less than* 50 percent vacant for six of the 12 months immediately preceding the acquisition of the Facility for the purpose of qualifying a *portion* of the building's (or the Facility's Structural Improvements) as a Sustainable Redevelopment Project in accordance with the Vacancy Standard. Accordingly, an Applicant may not elect to treat a *portion* of a building as being at least 50 percent vacant for the requisite time period and disregard the balance of the building 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 Structural Improvements (including one building on a particular parcel of land) as being at least 50 percent vacant for the requisite time period and disregard the balance of the Facility's Structural Improvements (one or more other buildings on the same 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 Structural Improvements 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 Structural Improvements 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 the impact of any pre-certification demolition described in subsection VII.D. and any pre-certification additional construction described in subsections VII.D and E.

**C. Green Standard.**

**1. Qualification.** A Facility will satisfy the Green Standard if (a) the Owner or Operator on or after September 1, 2013 causes renovations to the then-existing Structural Improvements encompassed within the Facility that result in an *original* Green Certification in respect to all of such Structural Improvements, (b) the Structural Improvements were originally constructed before September 1, 2013 and (c)

except in the context of a demolition described in subsection VII.E., the CDC occupies or will occupy such Structural Improvements. 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 certification of the CDC.

**2. Documentation.** A CDC seeking status as a Sustainable Redevelopment Development in accordance with the Green Standard 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 the impact of any pre-certification demolition described in subsection VII.D. and any pre-certification additional construction described in subsections VII.D and E.

**D. Impact of Additional Construction.**

**1. General.** A CDC otherwise qualifying as a Sustainable Redevelopment Project in accordance with either the Vacancy Standard or the Green Standard will not cease to qualify as a Sustainable Redevelopment Project if, before or after certification of the CDC, Structural Improvements *in addition to* the CDC's Original Existing Structural Improvements 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.) *provided that* the square footage of the CDC's Original Existing Structural Improvements at all times throughout the Qualification Period of the CDC Owner or Operator represents at least 10 percent of the square footage of all Structural Improvements at the CDC.<sup>5</sup>

**2. Examples.**

Example VII-1: On January 1, 2014, Owner-X acquires Facility-1, which is comprised of Parcel-A and the Structural Improvements situated thereon, consisting of a single 50,000 square foot vacant building. In 2015, Facility-1 is certified as both a CDC and a Sustainable Redevelopment Project. As part of the further redevelopment of Facility-1,

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<sup>5</sup> A.R.S. § 41-1519(N)(9) provides that a CDC seeking status as a Sustainable Redevelopment Project must occupy the structural improvements at an "existing facility." Subsection VII.D. is designed to ensure that occupancy by the CDC of the originally existing structural improvements remains more than *de minimis* in the context of any and all further redevelopment occurring at the Facility site.

Owner-X (a) in 2017 expands the original building by constructing a new wing that provides 50,000 square feet of additional space within the building and (b) in 2019 constructs a second building on Parcel-A containing 100,000 square feet of space. All of the Structural Improvements are occupied by the CDC. Because the square footage of the Original Existing Structural Improvements in this case represents 25 percent of the aggregate square footage of all of the Structural Improvements at the CDC as of 2019, the additional construction occurring in 2017 and 2019 does not impact the status of Facility-1 as a Sustainable Redevelopment Project. For this purpose, it is immaterial whether or not the new wing of the original building or the second building are Green Certified.

Example VII-2: Assume the same facts as in Example VII-1 except that Facility-1 is not certified as a CDC and as a Sustainable Redevelopment Project until 2018 (i.e., after construction of the building's new wing). The result is the same as in Example VII-1; therefore, the construction of the Structural Improvements in 2017 and 2019 in this case does not impact the status of the CDC as a Sustainable Redevelopment Project.

Example VII-3: In January, 2011, Owner-Y acquires Parcel-A and the Structural Improvements situated thereon, consisting of a single 50,000 square foot building which had not been previously Green Certified. In 2014, Owner-X causes the building to be Green Certified. In 2015, In Owner-Y seeks and obtains CDC and Sustainable Redevelopment Project status in respect to (a) Parcel-A, (b) the Structural Improvements situated thereon, and (c) Parcel-B, a parcel of raw land contiguous with Parcel-A. In 2016, as part of further redevelopment of the site of Parcel-A and Parcel-B, Owner-X constructs a building on Parcel-B containing 500,000 square feet of additional space. All of the Structural Improvements are occupied by the CDC. Because the square footage of the Original Existing Structural Improvements in this case represents less than 10 percent of the then aggregate square footage of all of the Structural Improvements existing as of 2016, the 2016 construction causes the status of the CDC as a Sustainable Redevelopment Project to terminate.

Example VII-4: Assume the same facts as in Example VII-3 except that the building constructed on Parcel B in 2016 contains 400,000 square feet of additional space. Because the square footage of the Original Existing Structural Improvements in this case continues to represent at least 10 percent of the then aggregate square footage of all of the Structural Improvements at the CDC, the additional construction at the CDC through 2016 does not impact the status of the CDC as a Sustainable Redevelopment Project. For this purpose, it is immaterial whether or not the building constructed on Parcel-B is Green Certified.

**E. Impact of Demolition.**

**1. Vacancy Standard.** A Facility otherwise qualifying as a Sustainable Redevelopment Project in accordance with the Vacancy Standard will not cease to qualify as a Sustainable Redevelopment Project if, before or after the CDC certification, (a) all or a portion of the originally acquired vacant Structural Improvements are demolished, (b) new Structural Improvements (which are or will be occupied by the CDC) are constructed on the same parcel of land (or a contiguous parcel if encompassed within the description of the CDC Facility) and (c) the square footage of the aggregate Structural Improvements (including both the non-demolished (if any) *and* the newly-constructed Structural Improvements) does not exceed 10 times the square footage of the Original Structural Improvements.

Example VII-5. On January 1, 2014, Owner-Z acquires Facility-2, which is comprised of Parcel-C and the Structural Improvements situated thereon, consisting of a 20,000 square foot vacant building. In 2015, Facility-2 is certified as both a CDC and a Sustainable Redevelopment Project. As part of the further redevelopment of Facility-2, Owner-Z (a) in 2017 demolishes all of the Original Structural Improvements and (b) in 2018 constructs a new building on Parcel-C containing 150,000 square feet of space. Because the square footage of the new Structural Improvements in this case represents less than 10 times the square footage of the Original Structural Improvements, the demolition and additional construction occurring in 2017 and 2018 do not impact the status of Facility-2 as a Sustainable Redevelopment Project. For this purpose, it is immaterial whether or not the new Structural Improvements are Green Certified.

Example VII-6. Assume the same facts as in Example 7-5 except that the square footage of the new Structural

Improvements contain 210,000 square feet of space. Because the square footage of the new Structural Improvements in this case represents more than 10 times the square footage of the Original Structural Improvements, the demolition and additional construction occurring in 2017 and 2018 cause the status of the CDC as a Sustainable Redevelopment Project to terminate.

**2. Green Standard.** A Facility otherwise qualifying as a Sustainable Redevelopment Project in accordance with the Green Standard will not cease to qualify as a Sustainable Redevelopment Project if, before or after the CDC certification, (a) all or a portion of the pre-2013 constructed, non-Green Certified, Structural Improvements encompassing the Facility are demolished, (b) new Structural Improvements (which are or will be occupied by the CDC) are constructed on the same parcel of land (or a contiguous parcel if encompassed within the CDC Facility description), (c) 100 percent of the new Structural Improvements receive a Green Certification upon the completion of construction and (d) the aggregate Structural Improvements (including both the non-demolished (if any) and the newly-constructed Structural Improvements) do not exceed 10 times the square footage of the pre-demolition Original Structural Improvements.

#### **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. Accordingly, if a CDC is certified, the CDC Owner, Operator and Qualified Colocation Tenants identified in an applicable Letter of Certification are authorized to provide a Revenue Form 5000 to their respective vendor of CDC Equipment so that the vendor will not impose a charge for TPT or use tax on purchases of CDC Equipment made during the relevant Qualification Period that are delivered to and installed at the certified CDC.

**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, 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) a copy of the CDC Letter of Certification and, in the case of the TPT exemption, a properly completed Revenue Form 5000 (“Transaction

Privilege Tax Exemption Certificate”). If the purchaser is a Qualified Colocation Tenant, the purchaser must also present a copy of the Qualified Colocation Tenant’s Letter of Certification.

## **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 date the CDC is certified and ends at the end of the 10<sup>th</sup> calendar year following the calendar year in which the CDC Application is submitted. However, if the CDC qualifies as a Sustainable Redevelopment Project, the Qualification Period of a CDC Owner or Operator begins on the date the CDC is certified and ends at the end of the 20<sup>th</sup> calendar year following the calendar year in which the CDC Application is submitted.

Example IX-1: CDC-X, which does not qualify as a Sustainable Redevelopment Project, is certified by Commerce on May 1, 2015 following a CDC Application submitted on April 1, 2015. The Qualification Period of CDC-X’s Owner and/or Operator begins on May 1, 2015 and ends on December 31, 2025. If CDC-X qualified as a Sustainable Redevelopment Project, the Qualification Period of CDC-X’s Owner or Operator would extend through December 31, 2035.

**B. Qualification Period of Qualified Colocation Tenants.** The Qualification Period of a CDC Qualified Colocation Tenant begins on the *later* of (i) the date the CDC is certified, (ii) the date the Qualified Colocation Tenant’s Qualified CDC Lease commences, or (iii) the date the Qualified Colocation Tenant is certified in accordance with subsection III.B.7. or subsection IV.B.2. (as the case may be). 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 10<sup>th</sup> calendar year following the calendar year in which the CDC is certified (or the end of the 20<sup>th</sup> calendar year following the calendar year in which the CDC is certified 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 on May 1, 2015 and Qualified Colocation Tenant-Y enters into a Qualifying CDC Lease for a term that begins September 1, 2015 and ends August 31, 2020. Tenant-Y is certified as a Qualified Colocation Tenant of CDC-X on September 10, 2015. The Qualification Period of Tenant-Y begins September 10, 2015 and ends August 31, 2020.

Example IX-3: CDC-Y, which does not qualify as a Sustainable Redevelopment Project, is certified by Commerce on May 1, 2015 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 September 10, 2023. The Qualification Period of Tenant-Z begins September 10, 2023 and ends December 31, 2025. (December 31, 2025 in this case represents the last day of the Qualification Period of CDC-Y's Owner and/or Operator which commenced on May 1, 2015.)

## **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 or Operator 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 to extend the tenant's existing lease for use of at least 500 kilowatts per month during the extension period, the tenant will continue to constitute a Qualified Colocation Tenant *provided that* Commerce issues a new Letter of Certification in accordance with subsection IV.B.2.

**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, 2012 and (ii) Commerce certifies the CDC on January 1, 2014, 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 date of Commerce's certification of the CDC. In such case, if Commerce certifies the tenant as a Qualified Colocation Tenant contemporaneous with the date of the CDC certification, 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 CLT 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 authorizes or otherwise acknowledges the sublease in writing, (ii) the term of the sublease is a period of at least two years, (iii) the kilowatt usage under the sublease is at least 500 kilowatts per month, (iv) the sublease is of all of the CDC premises previously occupied by the sublessor- Qualified Colocation Tenant and (v) Commerce certifies the subtenant as a Qualified Colocation Tenant in accordance with subsections III.B.5 or IV.D.2. 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 and the Letter of Certification issued to the predecessor Qualified Colocation Tenant will be revoked.

**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, an entity that joins 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 Equipment” means, in respect to a CDC, without duplication, the following equipment if used predominately to outfit, operate or benefit the CDC as well as component parts, refreshments, replacements and upgrades to such equipment:

- (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.

“Commerce” means the Arizona Commerce Authority.

“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.

“E-1 CDC” means the same as the term “new computer data center” as defined by A.R.S. § 41-1519(N)(6).

“E-2 CDC” means the same as the term “existing computer data center” as defined by A.R.S. § 41-1519(N)(3).

“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.

“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.

“Letter of Certification” means, as the case may be, the written correspondence from Commerce indicating that the CDC has been certified by the CDC and that the Owner, Operator or Qualified Colocation Tenant is eligible to receive Program benefits for the Qualification Period set forth therein.

“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 entity, other than an Owner or Qualified Colocation Tenant, that operates a CDC under a lease or other contract with the Owner. The term “Operator” also includes an Affiliate of the Operator.

“Original Existing Structural Improvements” (a) means in the context of a Facility qualifying as a Sustainable Redevelopment Project pursuant to the Vacancy Standard, the Structural Improvements situated at the Facility as of either (i) the date of the post-August 31, 2007 acquisition or (ii) the date of an earlier acquisition if the conditions set forth in clause (a)(ii) of subsection VII.B.1 are satisfied) of the vacant or partially vacant Facility by the CDC Owner or Operator and (b) means in the context of a Facility qualifying as a Sustainable Redevelopment Project pursuant to the Green Standard, the Structural Improvements encompassing the Facility if originally constructed prior to September 1, 2013 and in existence as of the post-August 31, 2013 date of renovation by the CDC Owner or Operator that achieve a Green Certification for the first time.

“Owner” means an 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 or Operator 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.

“Qualifying CDC Lease” means a contract or other agreement between a Qualified Colocation Tenant and a CDC Owner or Operator 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 costs incurred during such specified period of time to purchase the land and buildings comprising the CDC and/or the CDC Equipment installed thereat.

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

“Revenue” means the Arizona Department of Revenue.

“Structural Improvements” means (a) in the context of a Facility achieving Sustainable Redevelopment Project status through satisfaction of the Vacancy Standard, all of the then permanent building improvements situated at the Facility as of the date of a qualifying acquisition of the vacant or partially vacant Facility by a CDC Owner or Operator that had been previously used for a commercial, non-farming purpose and non-residential purpose and means (b) in the context of a Facility achieving Sustainable Redevelopment Project status through satisfaction of the Green Standard, all of the then permanent building improvements constructed before September 1, 2013 and in existence at the Facility as of the post-August 31, 2013 renovation of such improvements. Notwithstanding the foregoing, for purposes of subsection VII.D and subsection VII.E and all other provisions of these Rules except where the context dictates otherwise, the term “Structural Improvements” means all building improvements situated at the Facility.

“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 satisfies the requirements in A.R.S. § 41-1519(E), that occupies or will occupy the Structural Improvements at an existing Facility and that satisfies either the Vacancy Standard or the Green Standard.

“TPT” means as defined in section VIII.

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