**MEMORANDUM OF UNDERSTANDING**

**DATA CENTER RETAIL SALES & USE TAX EXEMPTION**

**ENTERPRISE**

 This **MEMORANDUM OF UNDERSTANDING** (the “MOU”) made and entered into as of this first day of \_\_\_\_\_\_\_\_, 20\_\_, by and between the **VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY** (“VEDP”), a political subdivision of the Commonwealth of Virginia (the “Commonwealth”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a [state of incorporation/organization] [corporation/limited liability company/etc.] [authorized to transact business in the Commonwealth], and its Affiliates, as hereinafter defined, listed on Exhibit A (collectively, jointly and severally, the “Company”).

WITNESSETH:

WHEREAS, the Company is or will be operating one or more data center facilities (collectively, the “Project”) in the [City/County] of \_\_\_\_\_\_\_\_, Virginia (the “Locality”) and expecting to make Capital Investments of at least [$70,000,000/$150,000,000] and will create at least [10/50] New Jobs paying at least one and one-half times the prevailing average annual wage in the Locality, as such capitalized terms are hereinafter defined;

WHEREAS, between the date of this MOU and the Performance Date, the Company expects to invest at least $\_\_\_\_\_\_\_\_\_ in the purchase or lease of certain Computer Equipment for use at the Project, as such capitalized terms are hereinafter defined;

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs constitutes a valid public purpose for the use of public funds and is the animating purpose for the retail sales and use tax exemption for the Computer Equipment (the “Tax Exemption”) provided by Section 58.1-609.3 (18) of the Code of Virginia of 1950, as amended (the “Virginia Code”):

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this MOU, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

**Section 1. Definitions.**

 For the purposes of this MOU, the following terms will have the following meanings:

 “Affiliates” means any subsidiary or other entity that operates at one or more Project facilities, and that would be considered affiliated for purposes of filing a consolidated or combined corporate income tax return with the Company in the Commonwealth, treating all such entities as if they were corporations and the ownership interests therein were stock. The names, taxpayer identification numbers and contact information for the Affiliates will be listed on Exhibit A. The Company may amend Exhibit A at any time and from time-to-time by providing an updated Exhibit A to VEDP and to TAX.

“Capital Investment” means a capital expenditure by or on behalf of the Company on or after January 1, 2009 by purchase or lease, in real property, tangible personal property, or both, at the Project in the Locality. Capital Investment includes the cost to the developer/lessor of real property at the Project leased to the Company under a capital lease, but does not include the cost of such property leased under an operating lease, nor portions of any lease costs representing allocated or direct operating costs, such as electricity, security, and building maintenance. Capital expenditures, such as sales and/or use taxes paid, installation, freight charges, and other capital expenditures associated with the purchase or lease of the assets qualifying for the Capital Investment also will be included in determining the amount of the Capital Investment.

“Computer Equipment” means equipment or enabling software for the processing, storage, retrieval or communication of data, including but not limited to servers, routers, connections and other enabling hardware, including chillers and backup generators used or to be used in the operation of such equipment. Computer Equipment includes such property purchased or leased in connection with the original establishment or expansion of the Project, and any such property purchased or leased to upgrade, supplement or replace Computer Equipment purchased or leased in the initial investment. Computer Equipment does not include any computer software otherwise taxable under Chapter 6 of Title 58.1 of the Virginia Code that is sold or leased separately from the Computer Equipment, nor does it apply to general building improvements or fixtures. The Ruling of the Tax Commissioner, PD 10-121 (June 29, 2010), as such ruling may be amended or superseded (“PD 10-121”), sets forth the application of the Tax Exemption. No provision of this MOU will be construed to limit the authority of TAX to further define “Computer Equipment” consistent with Section 58.1-609.3 (18) of the Virginia Code.

“Distressed Locality” means a Locality that had (1) an annual unemployment rate for 20  that was greater than the statewide average annual unemployment rate for 20  of   %, and (2) a poverty rate for calendar year 20 that exceeded the state average poverty rate for 20 of  %. With a 20    average annual unemployment rate of \_\_\_% and a 20  poverty rate of \_\_\_\_\_%, the Locality is [not] a Distressed Locality.

[“Enterprise Data Center Capital Investment” means a capital expenditure by or on behalf

of the Company on or after July 1, 2015, whether by purchase or lease, in real property, tangible

personal property, or both, in its Enterprise Data Center Operations. Capital Investment includes

the cost to the developer/lessor of real property for the Enterprise Data Center Operations leased

to the Company under a capital lease, but does not include the cost of such property leased under

an operating lease, nor portions of any lease costs representing allocated or direct operating costs, such as electricity, security, and building maintenance. Capital expenditures, such as sales and/or use taxes paid, installation, freight charges, and other capital expenditures associated with the purchase or lease of the assets qualifying for the Enterprise Data Center Capital Investment also will be included in determining the amount of the Enterprise Data Center Capital Investment.]

[“Enterprise Data Center Capital Investment Target” means Enterprise Data Center Capital Investments of at least $150,000,000.]

[“Enterprise Data Center Operations” means operations anywhere in the Commonwealth

that (i) physically house information technology equipment such as servers, switches, routers, data storage devices, or related equipment; (ii) manage and process digital data and information to provide application services or management for data processing, such as web hosting, Internet,

intranet, telecommunication, and information technology; (iii) are developed and owned by the

Company; and (iv) are operated by the Company or any of its Affiliates substantially for their own use. A facility in the Commonwealth that is actively developing a data center that will meet the foregoing four-part test in a reasonable time (e.g., in the process of building and outfitting and/or seeking employees) shall be deemed to be “operational” and conducting “operations.”

“Exemption Certificate” means the certificate issued by TAX evidencing the Company’s qualification to use the Tax Exemption.

“Failure to File” means (1) a failure of the Company to file a complete final Performance Report in a timely manner, as described in Section 5(b), or (2) a failure of the Company to file a complete Post-Performance Report in a timely manner, as described in Section 5(c).

“Locality” means the [County/City] of \_\_\_\_\_\_\_\_\_\_, Virginia.

“Maintain” means that the New Jobs created pursuant to this MOU will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company’s employment levels (so long as there is active recruitment for open positions), (ii) strikes, and (iii) other temporary work stoppages.

“MOU” means this Memorandum of Understanding, as it may be amended or supplemented from time to time.

 “New Job” means full-time employment of an indefinite duration at the Project associated with the operation or maintenance of the Project for which the standard fringe benefits are paid by the Company for the employee, and for which the Company pays an annual wage of at least one and one-half times the prevailing average annual wage in the Locality, as last reported by the Virginia Employment Commission before the date of this MOU. For purposes of this MOU, the prevailing average annual wage was $ , so one and one-half times the prevailing average annual wage is $ . Each New Job must pay at least such average annual wage. Average annual wage means taxable earnings of a type included in Form W-2 or Form 1099 compensation. Each New Job must require a minimum of either (i) 35 hours of an employee’s time per week for the entire normal year of the operations of the Company, which “normal year” must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions and positions with construction contractors, customers of the Company, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. Positions relocated from an existing data center location in the Commonwealth to the Project will qualify as New Jobs only if such positions are: (i) net new jobs in the Commonwealth since July 1, 2009, and (ii) are not being counted or have not been counted by a different data center for purposes of that data center meeting the statutory minimum requirements for its qualification for the Tax Exemption. Net new jobs in the Commonwealth for contractors or employees of contractors who are located at the Project and provide dedicated full-time service to the Company (such as security or maintenance personnel) may count as New Jobs, even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this definition of New Job have been satisfied. The New Jobs must be in addition to the full-time employees of the Company at the Project or elsewhere in the Commonwealth as of July 1, 2009.

 “Performance Date” means June 30, 20\_\_.

“Performance Report” means the annual Performance Reports due from the Company to VEDP by October 1 of each year, reflecting the Company’s progress on the Targets through the prior June 30, as described in Sections 5(a) and (b).

“Performance Targets” are the Operations, Capital Investment and New Jobs Targets set forth in Section 2.

“Post-Performance Report” means the annual Post-Performance Report due from the Company to VEDP by October 1 of each year, reflecting the Company’s Capital Investments and Project Jobs through the prior June 30, starting with the June 30 following the Performance Date, and ending when the Company no longer avails itself of the Tax Exemption.

“Project” means all data center facilities located in the Locality that are under common ownership with the Company. The Company will notify VEDP of the location of each such data center facility, as described in Section 2(b), which information will be shared by VEDP with TAX.

“Project Jobs” means New Jobs, plus all other forms of employment at the Project sites not defined as a New Job, including those that are part-time, of definite duration, and seasonal or temporary positions. The Project Jobs may be expressed as FTEs.

“Sunset Date” means the date though which the Tax Exemption may be available to the Company under Section 58.1-609.3 (18) of the Virginia Code. As of the date of this MOU, the Sunset Date is June 30, 2025.

“TAX” means the Virginia Department of Taxation.

“Tax Benefit” means the value of sales and use tax exemption provided by Virginia Code § 58.1-609.3 (18) and this MOU and received by the Company or its real property contractors, as the case may be, with respect to the Project.

**Section 2. Required Memorandum of Understanding; Performance Targets.**

(a) *Required Memorandum*:VEDP and the Company intend that this MOU serve as the memorandum of understanding required by Section 58.1- 609.3 (18) of the Virginia Code.

 (b) *Operations Target*: The Company will establish or expand, and operate the Project in the Locality through the Performance Date. The Project is located at the data center facility site or sites in the Locality identified, by address, through documentation separately provided by the Company to VEDP and to TAX. The Company may amend this identifying documentation at any time and from time-to-time by providing updated identifying documentation to VEDP and to TAX. Further, the Company shall provide such identifying documentation at such other times as VEDP or TAX require.

(c) *Capital Investment Target*: The Company will make Capital Investments at the Project of at least [$70,000,000/$150,000,000] from January 1, 2009, through the Performance Date. [The threshold of $70,000,000 in Capital Investments is warranted because the Locality is a Distressed Locality.]

(d) *New Jobs Target*: The Company will create and Maintain at least [10/50] New Jobs at the Project from July 1, 2009, through the Performance Date. [The threshold of 10 New Jobs is warranted because the Locality is a Distressed Locality.]

**Section 3. Records; No Double-Counting.**

(a) *Records*: From the date of this MOU through the Sunset Date, the Company will keep complete and accurate records of its Capital Investments and creation and Maintenance of New Jobs at the Project. The Company also will keep complete and accurate records of its purchase or lease of Computer Equipment for use at the Project and the value of Tax Benefit.

If the Company wishes to include contractors and employees of contractors as New Jobs, to the extent permitted in the definition of New Jobs in Section 1 above, the Company is responsible for assembling and verifying the documentation necessary to verify the creation and Maintenance of such New Jobs, including whether such jobs are net New Jobs in the Commonwealth.

As of July 1, 2009, the Company had \_\_\_ full-time employees at the Project and \_\_\_ full-time employees at other facilities in the Commonwealth.

(b) *No Double-Counting of Capital Investment and New Jobs:* The Capital Investments made and the New Jobs created and Maintained at the Project may only be taken into account once for purposes of satisfaction of the statutory minimum eligibility requirements for the Tax Exemption.

After being counted as capital expenditures or new jobs under a separate memorandum of understanding between the Company or a different data center and VEDP, capital expenditures and new jobs moved to the Project will not be considered Capital Investments and New Jobs under this MOU.

After being counted as Capital Investments and New Jobs at the Project as of the Performance Date, Capital Investments and New Jobs moved from the Project will not be considered new capital expenditures and new jobs under a separate memorandum of understanding between the Company or a different data center and VEDP.

**Section 4. Sales and Use Tax Exemption.**

The Company or its real property contractor may use the Tax Exemption for all Computer Equipment purchased or leased for use at the Project. The Tax Exemption will be available from the date of this MOU through the Sunset Date.

Upon execution and delivery of this MOU to VEDP, VEDP will cause TAX to provide an Exemption Certificate to the Company to be used by the Company and its Affiliates to evidence its or their ability to use the Tax Exemption. Real property contractors for the Project may use such Exemption Certificate by executing a form ST-11A and presenting it to its vendors as provided in PD 10-121.

If an Affiliate is to be added to the Exemption Certificate after the original date of this MOU, the Company will amend Exhibit A and provide such updated Exhibit A to VEDP and VEDP will provide a copy to TAX. VEDP will have TAX provide an amended Exemption Certificate to the Company permitting the additional Affiliate to use the Tax Exemption.

It is expected that the Company or its real property contractor will use the Tax Exemption set forth in Section 58.1-609.3 (18) of the Virginia Code at the time that such tax would otherwise be due. In rare cases, the Company or its real property contractor may not be able to avail themselves of the Tax Exemption at the time that the tax is due and may seek a refund. Any refund that may be due is generally subject to a three-year statute of limitations.

**Section 5.** **Reporting and Verification.**

(a) *Performance Reports*: The Company shall provide, at the Company’s expense, in the form attached hereto as Exhibit B, detailed verification reasonably satisfactory to VEDP and TAX of the Company’s progress on the Targets. Each such progress report should include Capital Investments broken down by major category of investment including land, land improvements, new construction and/or building improvements, furniture, fixtures and equipment, Computer Equipment and other major items of expenditure, as well as a listing of New Jobs, the average annual wage for each such New Job, and the cumulative value of the Tax Benefit received. The Performance Reports will be provided annually, starting at October 1, 20\_\_, and covering the period through the prior June 30, through the Performance Date. Further, the Company shall provide such progress reports at such other times as VEDP or TAX may reasonably require.

(b) *Final Performance Report:* Within 90 days after the Performance Date, the Company shall provide, at the Company’s expense, in the form attached hereto as Exhibit C, detailed verification reasonably satisfactory to VEDP and TAX of the Company’s achievement of the Targets as of the Performance Date. Such report should include Capital Investments broken down by major category of investment including land, land improvements, new construction and/or building improvements, furniture, fixtures and equipment, Computer Equipment and other major items of expenditure, as well as a listing of New Jobs, the average annual wage for each such New Job, and the cumulative value of the Tax Benefit received. If the final report demonstrates that the Company failed to achieve the Performance Targets by the Performance Date, the Company shall cease using the Tax Exemption.

Should the Company be unable to file the final Performance Report within the 90-day timeframe, the Company may request a 60-day delay in filing the final Performance Report. VEDP will require a $3,000 fee, payable to VEDP, to process the request for the filing delay. Should the Company not file the final Performance Report within the 90-day window nor request a filing delay (including payment of the required fee), or if the Company requests a filing delay but does not file the final Performance Report prior to the new filing deadline, VEDP will determine that a Failure to File has occurred, and this MOU will automatically terminate.

(c) *Annual Post-Performance Reports:* The Company shall provide, at the Company’s expense, in the form attached hereto as Exhibit D, detailed information reasonably satisfactory to VEDP and TAX of the Company’s Capital Investments and Project Jobs through the prior June 30. Each such Post-Performance Report should include (1) Capital Investments made by the Company during the year, broken down by major category of investment, including land, land improvements, new construction and/or building improvements, furniture, fixtures and equipment, Computer Equipment and other major items of expenditure, (2) the number of Project Jobs in place during the year, (3) the average annual wage for such Project Jobs, and (4) the cumulative value of the Tax Benefit received by the Company during the year. Information collected by the Post-Performance Reports will not be used to modify, revoke, or otherwise alter the Company’s use of the Tax Exemption. If there is a Failure to File a Post-Performance Report in a timely manner, VEDP may notify the Company in accordance with Section 6(b) that the Company must cease the use of the Tax Exemption.

(d) *Verification*:The evidence set forth in the Performance Reports and the Post-Performance Reports must be in a form reasonably satisfactory to VEDP and TAX. VEDP and TAX will verify the evidence provided, as described below.

The Company hereby authorizes the Locality, including the Locality’s Commissioner of the Revenue and Treasurer, to release to VEDP the Company’s real estate tax, business personal property tax and other tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target and Post-Performance Date economic impact analysis. If the Locality, the Office of the Commissioner of the Revenue or the Office of the Treasurer should require additional documentation or consents to access such information, the Company shall promptly provide, at the Company’s expense, such additional documentation or consents as the Locality, VEDP or TAX may request. In accordance with Section 58.1-3122.3 of the Virginia Code, VEDP is entitled to receive the Company’s real estate tax, business personal property tax and other appropriate tax information from the Locality’s Commissioner of the Revenue.

If requested by VEDP, the Company will provide to VEDP copies of the Company’s FC-20 quarterly filings with the Virginia Employment Commission covering from July 1, 2009, through the Performance Date or most recent June 30, as applicable. In accordance with Section 60.2-114 of the Virginia Code, VEDP is entitled to receive the Company’s employment level and wage information from the Virginia Employment Commission.

In addition to the verification data described above, in the sole discretion of the VEDP or TAX, VEDP or TAX may each require such other documentation from the Company, including invoices, or audits as may be required to properly verify the Targets and Post-Performance Date economic analysis.

**Section 6**. **Inability or Failure to Comply.**

 (a) *Self-Reporting of Inability to Comply*: If (i) the Company abandons or substantially abandons operations at the Project and if such abandonment is likely to lead to the inability of the Company to meet its Performance Targets by the Performance Date, or (ii) the Company otherwise determines at any time before the Performance Date that the Company will be unable to meet the Performance Targets by the Performance Date, the Company will (A) give prompt written notice of such facts to VEDP and TAX and (B) cease using the Tax Exemption.

(b) *VEDP Determination of Inability to Comply*: If VEDP (i) independently and reasonably determines at any time prior to the Performance Date that the Company has abandoned or substantially abandoned operations at the Project and such abandonment is likely to lead to the inability of the Company to meet its Performance Targets by the Performance Date, (ii) otherwise reasonably determines at any time that the Company will be unable to meet the Performance Targets by the Performance Date, or (iii) reasonably determines that a Failure to File has occurred, VEDP will give prompt written notice of such facts to the Company and TAX. Immediately upon receipt of such notice, the Company must cease using the Tax Exemption. If the Company wishes to challenge such determination by VEDP, it shall do so in accordance with the Dispute Resolution procedures set forth in Section 9 within 30 days of the receipt of such notice.

**Section 7. Repayment Obligations.**

(a) *Failure to Report Achievement of Performance Targets*: If the Company is unable or unwilling to provide reasonable evidence of the achievement of the Performance Targets as of the Performance Date, as required by Section 5(b), the Company must repay to the Commonwealth the Tax Benefit that the Company has received in accordance with this MOU. After audit by TAX, the repayment will be made to the Treasurer of Virginia, through VEDP, within 60 days after VEDP delivers a written demand notice to the Company. If the Company has not made repayment in full by the repayment date, interest shall accrue on each Tax Benefit repayment owed by the Company for each purchase of Computer Equipment at the rate provided by Virginia Code § 58.1-15 from the date of the purchase of that Computer Equipment.

(b) *Failure of Performance*: If (i) the Company abandons or substantially abandons operations at the Project and if such abandonment is likely to lead to the inability of the Company to meet its Performance Targets by the Performance Date, or (ii) the Company will otherwise be unable to meet the Performance Targets by the Performance Date, as described in Section 6(a) or 6(b), then the Company must repay the Tax Benefit that it has received in accordance with this MOU.

If such repayment is to be made pursuant to a notification from the Company described in Section 6(a), the repayment will be made after audit by TAX to the Treasurer of Virginia, through VEDP, no later than 120 days from the date of notification.

If such repayment is to be made pursuant to a notification from VEDP described in Section 6(b), the repayment will be made based on the later of (i) the Company’s written agreement with VEDP’s determination as set forth in the notification or (ii) a final determination pursuant to the Dispute Resolution process set forth in Section 9, and after audit by TAX. The repayment will be made through the Treasurer of Virginia, through VEDP, no later than 120 days from the later of the Company’s written agreement with VEDP’s determination or the final determination pursuant to the Dispute Resolution process.

In addition, if the Company has not made repayment in full by the applicable repayment date, interest shall accrue on each Tax Benefit repayment owed by the Company for each purchase of Computer Equipment at the rate provided by Virginia Code § 58.1-15 from the date of the purchase of that Computer Equipment.

No such repayment will be due for a Failure to File a Post-Performance Report.

**Section 8. Notices.**

Formal notices and communications between the Parties will be given by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery, or (iv) delivery by electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service will be deemed effective upon receipt. Notices and communications mailed will be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by email will be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications will be addressed to:

if to the Company, to:

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention:

if to VEDP, to: with a copy to:

|  |  |
| --- | --- |
| Virginia Economic Development PartnershipOne James Center, Suite 900901 East Cary StreetRichmond, Virginia 23219Email: SEarl@vedp.orgAttention: Director, Financial Analysis | Virginia Economic Development PartnershipOne James Center, Suite 900901 East Cary StreetRichmond, Virginia 23219Email: LWallmeyer@vedp.orgAttention: General Counsel |

if to TAX:

Virginia Department of Taxation

Post Office Box 27185

Richmond, Virginia 23261-7185

Attention: Division of Policy Development

Each party may change the address for service of notice upon it by a notice in writing to other parties hereto.

**Section 9. Dispute Resolution***.*

 In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with this MOU (including disputes as to the creation, validity, or interpretation of this MOU) (a “Dispute”), then upon the written request of either party, each of the parties will appoint a designated senior executive whose task it will be to meet for the purpose of endeavoring to resolve the Dispute. The designated executives will meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such executives will discuss the Dispute and will negotiate in good faith in an effort to resolve the Dispute without the necessity of any formal proceeding relating thereto. The specific format for such discussions will be left to the discretion of the designated executives but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the resolution of the Dispute may be commenced until the earlier to occur of (a) a good faith mutual conclusion by the designated executives that amicable resolution through continued negotiation of the matter in issue does not appear likely or (b) the 30th day after the initial request to negotiate the Dispute. Such formal proceedings may include, as applicable, the right to appeal all matters pertaining to the assessment to the Tax Commissioner of the Commonwealth pursuant to Section 58.1-1821 of the Virginia Code, or directly to a Circuit Court, as described in Section 10(b) below.

**Section 10. Miscellaneous.**

 (a) *Entire Agreement; Amendments*: This MOU constitutes the entire agreement between the parties as to the subject matter contained herein. With the exception of Exhibit A, this MOU may not be amended or modified, except in writing, signed by each of the parties. This MOU will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this MOU without the prior written consent of VEDP, except that the consent of VEDP will not be required if the assignment is to an Affiliate, or any entity that is the survivor of a merger with the Company.

 The Tax Exemption described in this MOU reflects the provisions of the Virginia Code as of the date of this Agreement. Changes made by the General Assembly in the applicable provisions of the Virginia Code, including any change to the Sunset Date of the exemption, will be read into, and will be deemed to amend, this MOU. VEDP will provide the Company with written confirmation of any such change upon request.

 (b) *Governing Law; Venue*: This MOU is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this MOU shall lie in the Circuit Court of the City of Richmond, and such litigation shall be brought only in such court.

 (c) *Counterparts*: This MOU may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

 (d) *Severability*: If any provision of this MOU is determined to be unenforceable, invalid, or illegal, then the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties hereto have executed this Memorandum of Understanding as of the date first written above.

**VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY**

By

Name:

 Title: Vice President, Incentives

 Date of Execution: \_\_\_\_\_\_\_\_, 20\_\_

**[Legal Name of the Company]**

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

 Title:

Date of Execution: \_\_\_\_\_\_\_\_\_\_, 20\_\_

Exhibit A: List of Affiliates

Exhibit B: Annual Performance Report

Exhibit C: Final Performance Report

Exhibit D: Annual Post-Performance Report

**MEMORANDUM OF UNDERSTANDING**

**DATA CENTER RETAIL SALES & USE TAX EXEMPTION**

**ENTERPRISE**

**EXHIBIT A**

**LIST OF AFFILIATES AS OF ,20**

Name: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Taxpayer ID#: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Address: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contact Person: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contact Telephone: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contact Email: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Name: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Taxpayer ID#: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Address: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contact Person: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contact Telephone: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contact Email: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Name: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Taxpayer ID#: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Address: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contact Person: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contact Telephone: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contact Email: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Name: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Taxpayer ID#: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Address: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contact Person: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contact Telephone: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Contact Email: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**ANNUAL PERFORMANCE REPORT**

**MEMORANDUM OF UNDERSTANDING**

**DATA CENTER RETAIL SALES & USE TAX EXEMPTION**

**ENTERPRISE**

**EXHIBIT B**

**PROJECT SUMMARY**

|  |  |
| --- | --- |
| **Project** |  |
| **Locality (City or County)** |  |
| **Performance Reporting Period** | Through June 30, 20\_\_ |
| **Performance Date** | June 30, 20\_\_ |

**PROJECT PERFORMANCE: CAPITAL INVESTMENT**

|  |  |  |  |
| --- | --- | --- | --- |
| **Performance Measurement** | **Target** | **As of \_\_\_\_\_\_\_** | **% Complete** |
| **Capital Investment1** |  |  | % |
| Confidence level capital investment target will be reached by Performance Date (check one) | [ ]  High  | [ ]  Moderate  | [ ]  Low  |

1 Total cumulative capital investment made to the Data Center by the company for the MOU, as of the Reporting Date. Total should include any investments reported in previous Annual Reports.

|  |  |
| --- | --- |
| **Capital Investment Breakdown2** | **Amount** |
| Land/Building Acquisition |  |
| Site Improvements |  |
| Real Property/Building Improvements |  |
| Taxable Tangible Property |  |
| Exempt Equipment or Software3 |  |
| Other |  |
| **Total Capital Investment for Period** | **$**  |

2 Total cumulative capital investments made in each category by the company for the MOU, as of the Reporting Date. Totals should include all investments in each category reported in previous Annual Reports. If the company did not invest in a particular category, please enter $0.

3 The Commissioner of the Virginia Department of Taxation (TAX) has approved a list of equipment and software that qualifies for the DCRSUTE Exemption. The complete list of the qualified equipment can be found on page 2 of the DCRSUT Exemption Information Packet.

|  |  |
| --- | --- |
| **Cumulative Tax Benefit Received by the Company during Reporting Period** | **$** |

**PROJECT PERFORMANCE: JOB CREATION**

|  |  |  |  |
| --- | --- | --- | --- |
| **Performance Measurement** | **Target** | **As of \_\_\_\_\_\_\_** | **% Complete** |
| **Qualifying New Jobs4**  |  |  | % |
| Confidence level job creation target will be reached by Performance Date (check one) | [ ]  High  | [ ]  Moderate  | [ ]  Low  |
| **Average Annual Wage for Qualifying New Jobs5** |  |  |  |
| Confidence level annual wage target will be reached by Performance Date (check one) | [ ]  High  | [ ]  Moderate  | [ ]  Low  |
| **Standard Fringe Benefits Offered**  | [ ]  Yes  | [ ]  No  |  |

4Total New Jobs, defined as full-time employment of an indefinite duration, created by the Company as of the Reporting Date, each earning at least 150% of the Locality's Prevailing Average Wage as outlined in the MOU. Qualifying New Jobs should be in addition to the applicable baseline employment of \_\_\_\_ as established in the MOU. Qualifying New Jobs may include vendor jobs providing dedicated, full-time service to the Data Center. Jobs are not required to be physically located at the Data Center. Qualifying New Jobs may be aggregated across the Data Center's facilities within a locality but not across localities.

5Utilize the provided Excel template to calculate the Average Annual Wage for Qualifying New Jobs, based on the annualized salaries for those jobs. Annual Wage calculations should be exclusive of the value of fringe benefits.

|  |  |  |  |
| --- | --- | --- | --- |
| **Additional Job Creation** | **Total Jobs** | **Actual****Payroll** | **Annualized****Payroll** |
| Other New Full-Time Jobs6 |  |  |  |
| Other New Full-Time Equivalents7 |  |  |  |

6 Total Other New Full-Time Jobs, defined as full-time employment of an indefinite duration as of the Reporting Date, earning below 150% of the Locality's Prevailing Average Wage as outlined in the MOU. Utilize the provided Excel template to calculate the Average Annual Wage for Other New Full-Time Jobs, based on the annualized salaries for those jobs. Jobs are not required to be physically located at the Data Center. Other New Jobs may be aggregated across the Data Center's facilities within a locality but not across localities. Other New Full-Time Jobs may include vendor jobs providing dedicated, full-time service to the Data Center.

7Other Full-Time Equivalents (FTEs) include the total hours worked by part-time employees of the company during the Reporting Period, divided by 2080 hours (40 hours at 52 weeks per year). Utilize the provided Excel template to calculate the Actual Payroll for Other New FTEs. Jobs are not required to be physically located at the Data Center. Other New FTEs may be aggregated across the Data Center's facilities within a locality, but not across localities.

**COMMENTS:**

Discuss project status, including progress toward targets, changes, or likely changes to the nature of the project that may impact the achievement of targets and other information relevant to project performance. If the project is not on track to meet targets or you have reported low confidence with any metrics on the first page of this report, please explain.

**TO BE CERTIFIED BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY:**

I certify that I have examined this report, and to the best of my knowledge and belief, it is true, correct, and complete.

Company:

By:

Name:

Title:

Date:

**Please return to:** Sam Earl, Incentives Division, 804.545.5723, SEarl@vedp.org

**FINAL PERFORMANCE REPORT**

**MEMORANDUM OF UNDERSTANDING**

**DATA CENTER RETAIL SALES & USE TAX EXEMPTION**

**ENTERPRISE**

**EXHIBIT C**

**PROJECT SUMMARY**

|  |  |
| --- | --- |
| **Project** |  |
| **Locality (City or County)** |  |
| **Performance Reporting Period** | Through June 30, 20\_\_ |
| **Performance Date** | June 30, 20\_\_ |

*Final performance for Data Center MOUs will be reported on VEDP's public incentive reporting website. Where possible, data will be reported in ranges or in aggregate.*

**PROJECT PERFORMANCE: CAPITAL INVESTMENT**

|  |  |  |  |
| --- | --- | --- | --- |
| **Performance Measurement** | **Target** | **As of \_\_\_\_\_\_\_** | **% Complete** |
| **Capital Investment1** |  |  | % |

1 Total cumulative capital investment made to the Data Center by the company for the MOU, as of the Performance Date. Total should include any investments reported in previous Annual Reports. Data will be verified using records from the Commissioner of the Revenue and, if requested, invoices.

|  |  |
| --- | --- |
| **Capital Investment Breakdown2** | **Amount** |
| Land/Building Acquisition |  |
| Site Improvements |  |
| Real Property/Building Improvements |  |
| Taxable Tangible Property |  |
| Exempt Equipment or Software3 |  |
| Other |  |
| **Total Capital Investment for Period** | **$**  |

2 Total cumulative capital investments made in each category by the company for the MOU, as of the Performance Date. Totals should include all investments in each category reported in previous Annual Reports. If the company did not invest in a particular category, please enter $0.

3 The Commissioner of the Virginia Department of Taxation (TAX) has approved a list of equipment and software that qualifies for the DCRSUTE Exemption. The complete list of the qualified equipment can be found on page 2 of the DCRSUT Exemption Information Packet.

|  |  |
| --- | --- |
| **Cumulative Tax Benefit Received by the Company during Reporting Period** | **$** |

**PROJECT PERFORMANCE: JOB CREATION**

|  |  |  |  |
| --- | --- | --- | --- |
| **Performance Measurement** | **Target** | **As of \_\_\_\_\_\_\_** | **% Complete** |
| **Qualifying New Jobs4**  |  |  | % |
| **Average Annual Wage for Qualifying New Jobs5** |  |  |  |
| **Standard Fringe Benefits Offered**  | [ ]  Yes  | [ ]  No  |  |

4 Total New Jobs, defined as full-time employment of an indefinite duration, created by the Group as of the Reporting Date, each earning at least 150% of the Locality's Prevailing Average Wage as outlined in the MOU. Qualifying New Jobs should be in addition to the applicable baseline employment of \_\_\_\_ as established in the MOU. Qualifying New Jobs may include vendor jobs providing dedicated, full-time service to the Data Center. Jobs are not required to be physically located at the Data Center. Qualifying New Jobs may be aggregated across the Data Center's facilities within a locality but not across localities. Attach the company's four most recent Quarterly Tax Reports (Form FC-20) filed with the Virginia Employment Commission.

5Utilize the provided Excel template to calculate the Average Annual Wage for Qualifying New Jobs, based on the annualized salaries for those jobs. Annual Wage calculations should be exclusive of the value of fringe benefits.

|  |  |  |  |
| --- | --- | --- | --- |
| **Additional Job Creation** | **Total Jobs** | **Actual****Payroll** | **Annualized****Payroll** |
| Other New Full-Time Jobs6 |  |  |  |
| Other New Full-Time Equivalents7 |  |  |  |

6 Total Other New Full-Time Jobs, defined as full-time employment of an indefinite duration as of the Reporting Date, earning below 150% of the Locality's Prevailing Average Wage as outlined in the MOU. Jobs are not required to be physically located at the Data Center. Other New Jobs may be aggregated across the Data Center's facilities within a locality but not across localities. Other New Full-Time Jobs may include vendor jobs providing dedicated, full-time service to the Data Center. Utilize the provided Excel template to calculate the Average Annual Wage for Other New Full-Time Jobs, based on the annualized salaries for those jobs. Actual payroll should be exclusive of the value of fringe benefits.

7 Other Full-Time Equivalents (FTEs) include the total hours worked by part-time employees of the company during the Reporting Period, divided by 2080 hours (40 hours at 52 weeks per year). Jobs are not required to be physically located at the Data Center. Other New FTEs may be aggregated across the Data Center's facilities within a locality, but not across localities. Utilize the provided Excel template to calculate the Actual Payroll for Other New FTEs. Actual payroll should be exclusive of the value of fringe benefits.

**TO BE CERTIFIED BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY:**

I certify that I have examined this report, and to the best of my knowledge and belief, it is true, correct, and complete.

Company:

By:

Name:

Title:

Date:

**Please return to:** Sam Earl, Incentives Division, 804.545.5723, SEarl@vedp.org

**ANNUAL POST-PERFORMANCE REPORT**

**MEMORANDUM OF UNDERSTANDING**

**DATA CENTER RETAIL SALES & USE TAX EXEMPTION**

**ENTERPRISE**

**EXHIBIT D**

**PROJECT SUMMARY**

|  |  |
| --- | --- |
| **Project** |  |
| **Locality (City or County)** |  |
| **Reporting Period** | July 1, 20\_\_ through June 30, 20\_\_ |
| **Date of Letter of Satisfaction** |  |

*Per the Code of Virginia § 58.1-609.3, VEDP shall publish a biennial report on the Data Center Retail Sales and Use Tax Exemption to include aggregate information on qualifying expenses claimed under this Exemption, the total value of the tax benefit, a return-on-investment analysis that includes direct and indirect jobs created by data center investment, state and local tax revenues generated to demonstrate the costs and benefits of the Exemption. The data provided in this report will be used as part of the analysis for the biennial report and other reporting to include job creation and capital investments in ranges such that the information could not be used to identify a business or individual taxpayer.*

**CAPITAL INVESTMENT DURING 12-MONTH REPORTING PERIOD**

|  |  |
| --- | --- |
| **Capital Investment Breakdown1** | **Amount** |
| Land/Building Acquisition |  |
| Site Improvements |  |
| Real Property/Building Improvements |  |
| Taxable Tangible Property |  |
| Exempt Equipment or Software2 |  |
| Other |  |
| **Total Capital Investment**  | **$**  |

1 Capital investment shall include the total capital investment made by the company in each category during the 12-month Reporting Period. Capital investment figures should exclude any investments previously reported to VEDP through Annual or Final Performance Reports or previous Post-Performance Reports. If the company did not invest in a particular category, please enter $0.

2 The Commission of the Virginia Department of Taxation (TAX) has approved a list of equipment and software that qualifies for the DCRSUTE Exemption. The complete list of the qualified equipment can be found on page 2 of the DCRSUT Exemption Information Packet.

|  |  |
| --- | --- |
| **During this 12-month Reporting Period, did any member of the company undertake either of the following activities?** | [ ]  New Construction3 [ ]  Renovation4 |

3 New Construction includes the construction of any new data center facilities or additional facilities for an existing data center.

4 Renovations are any projects wherein the interior or exterior structure is restored, repaired, retrofit, or expanded. This may include but is not limited to any construction of additional square footage, electrical and mechanical improvements, wall/floor repairs, or relocations, etc.

|  |  |
| --- | --- |
| **Cumulative Tax Benefit Received by Company during Reporting Period** | **$** |

**EMPLOYMENT DURING 12-MONTH REPORTING PERIOD**

|  |  |
| --- | --- |
| **Performance Measurement** | **Reporting Period Total** |
| **Total Employment5**  |  |
| **Total Actual Payroll6** |  |
| **Standard Fringe Benefits Offered**  | [ ]  Yes [ ]  No |

5Employment shall include all employees of the company for the Data Center during the 12-month Reporting Period. Part-Time Jobs may be aggregated into FTEs by taking the total hours worked by part-time employees of the company during the Reporting Period, divided by 2080 hours (40 hours at 52 weeks per year). Jobs may be aggregated across the Data Center's facilities within a locality but not across localities. Jobs are not required to be physically located at the data center but should be within the locality and associated with the operation and maintenance of the data center. Data Centers shall include vendor jobs that provide dedicated, full-time service to the data center.

6Total Actual Payroll shall reflect the aggregate payroll for all employees, full-time or part-time employees calculated as FTEs, included in the Total Employment Count. Total Actual Payroll should be exclusive of the value of fringe benefits.

**TO BE CERTIFIED BY AN AUTHORIZED REPRESENTATIVE OF THE COMPANY:**

I certify that I have examined this report, and to the best of my knowledge and belief, it is true, correct, and complete.

Company:

By:

Name:

Title:

Date:

**Please return to:** Sam Earl, Incentives Division, 804.545.5723, SEarl@vedp.org