

DIRECT CASH INCENTIVE GRANT AGREEMENT

This DIRECT CASH INCENTIVE GRANT AGREEMENT ("Agreement") is made and entered into this _____ day of _____ 2014, by and between the City of Fort Lauderdale, a municipal corporation (the "City"), and Prolexic Technologies, Inc., a Delaware corporation authorized to do business in the state of Florida (the "Company").

WITNESSETH:

WHEREAS, it is the policy of the City to stimulate and encourage economic growth in the City, by either attracting new businesses or by expanding existing businesses within the City that would otherwise expand elsewhere; and

WHEREAS, the creation of new employment opportunities for residents of the City of Fort Lauderdale and the increased tax revenues resulting from such business expansion and retention are beneficial to the local economy; and

WHEREAS, the State of Florida has determined that municipalities may expend funds to attract and retain business enterprises, and that the use of public funds toward the achievement of such economic development goals constitutes a public purpose; and

WHEREAS, the City of Fort Lauderdale adopted an Economic Incentive Program through Ordinance No. C-07-42, in order to promote and enhance economic growth in the City of Fort Lauderdale; and

WHEREAS, the Company has relocated and expanded its corporate headquarters in the City of Fort Lauderdale and has thereby created certain new employment opportunities at a certain average salary level in accordance with the City's Economic Development Ordinance; and

WHEREAS, the City has determined that the Company is eligible to receive a Direct Cash Incentive by the City's Economic Development Department; and

WHEREAS, the City finds and declares that it is in the public's best interests to award a Direct Cash Incentive to the Company pursuant to the terms of this Agreement;

WHEREAS, the City Commission approved Resolution No. 13-126 as amended by Resolution 13-174 recommending the Company for the State of Florida's Qualified Target Industry Tax Refund Program; and

WHEREAS, the City Commission at its _____, 2014 meeting, approved execution of this Agreement, which incorporates all relevant performance standards set forth in Chapter 15, Article VIII, of the City's Code of Ordinances;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual terms, conditions, promises, covenants and agreements hereinafter set forth, the parties do agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

- 1.1 Agreement - shall mean this document, Articles 1 through 8, inclusive. Other terms and conditions are included in the documents that are expressly incorporated by reference.
- 1.2 City - shall mean the City of Fort Lauderdale, Florida.
- 1.3 Company - shall mean Prolexic Technologies, Inc., or any successor thereto by merger, reorganization or otherwise.
- 1.4 Company's facility – shall mean the facility located at 200 E. Las Olas Blvd., Fort Lauderdale, FL 33301, also referred to in this agreement as the “Company’s Fort Lauderdale facility.”
- 1.5 Contract Administrator - shall mean the City of Fort Lauderdale City Manager, or his/her designee. The primary responsibilities of the Contract Administrator are to coordinate and communicate with the Company, and to manage and supervise execution and completion of the duties and responsibilities and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator.
- 1.6 Fiscal Year – shall mean the City’s fiscal year of October 1 of any calendar year through September 30 of the next succeeding calendar year.
- 1.7 Job Creation Effective Date - shall mean June 14, 2013, which is the date of the Florida Department of Economic Opportunity’s letter to the Company regarding the preservation of inducement pursuant to Section 288.106, Florida Statutes.
- 1.8 Maximum Grant Amount – shall mean One Hundred Twenty Five Thousand Dollars (\$125,000).

- 1.9 New Job - shall mean a full-time position created by the Company at the Company's Fort Lauderdale facility that is created and filled by a New Employee during the Performance Period. A New Job shall not include any temporary construction jobs involved in the construction, replacement, or renovation of the Company's Fort Lauderdale facility, or any other temporary or part-time position.
- 1.10 New Employee - shall mean a person hired on or subsequent to the Job Creation Effective Date to fill a New Job at the Company's Fort Lauderdale facility provided that such person was not previously employed by the Company or any subsidiary or parent of the Company, in any capacity and at any location within the City of Fort Lauderdale or elsewhere, as of the date of the creation of the New Job or any time during the five (5) year period immediately preceding such date.
- 1.11 Performance Period – shall mean the period commencing on the Job Creation Effective Date and terminating thirty-six months thereafter.
- 1.12 Term of this Agreement – shall mean the period commencing on the date of this Agreement and ending on the date on which the City makes the last of the payments to the Company required hereunder, unless sooner terminated in accordance with the terms and provisions of this Agreement.

ARTICLE 2

THE GRANT AND CONDITIONS

- 2.1 The City as an inducement to the Company to locate and expand its facilities within the City of Fort Lauderdale, has offered a Job Creation Incentive Direct Cash Grant (hereinafter a "Grant") to the Company in an amount not to exceed the Maximum Grant Amount, which Grant shall be subject to and payable in accordance with the terms of this Agreement.
- 2.2 Subject to the provisions of Section 8.1 and Section 2.3 of this Agreement, the Company shall be eligible to receive, and the City shall pay to the Company in accordance with Article 4 of this Agreement, a Grant payment of One Thousand Fifty Nine Dollars and Thirty Two Cents (\$1,059.32) from the City for each New Job provided that the following conditions are satisfied:
- 2.2.1 No less than 118 New Jobs shall be created during the Performance Period in accordance with the following schedule: (i) no less than 38 New Jobs for the period commencing on the Job Creation Effective Date and ending on the first anniversary thereof (the period during which such 38 New Jobs are created in hereinafter referred to as "Phase 1"); (ii) no less than 40 New Jobs,

in addition to the New Jobs created during Phase 1, by no later than the second anniversary of the Job Creation Effective Date (the period during which such 40 New Jobs are created in hereinafter referred to as "Phase 2"); and (iii) no less than 40 New Jobs, in addition to those created during Phase 1 and Phase 2, by no later than the third anniversary of the Job Creation Effective Date (the period during which such 40 New Jobs are created in hereinafter referred to as "Phase 3").

- 2.2.2 The New Jobs shall have an average annual salary equal to no less than the lesser of (i) \$95,000 or (ii) 220% of the average annual wage in Broward County, as determined by the Florida Department of Labor.
- 2.2.3 Each New Job shall remain active and filled with a New Employee for twelve (12) months after the date on which it is initially created and filled.
- 2.2.4 No funds shall be paid to Company prior to the creation of 78 New Jobs.
- 2.2.5 The Company shall have relocated its corporate headquarters business operations to the Company's Fort Lauderdale facility. The City hereby agrees that such condition has been satisfied.
- 2.2.6 No Event of Default shall have occurred and be continuing.

ARTICLE 3

GRANT PAYMENTS

- 3.1 The Company may apply for payment of Grant funds in accordance with the following:
 - 3.1.1 The Company may submit applications for payment of Grant funds (each such application is hereinafter referred to as an "Application for Payment") no more frequently than once in any Fiscal Year and only after the conditions and requirements set forth in Section 2.2 have been satisfied. The Company's final application for payment of Grant funds must be submitted no later than sixty (60) days after expiration of the Performance Period.
 - 3.1.2 Each Application for Payment shall include the following: (i) written certification signed by the Company's chief financial officer of the number of New Jobs created in the current Phase for which the application is being submitted, (ii) the average annual salary of

such New Jobs, (iii) a certification that each such New Job has been active and filled with a New Employee for twelve (12) months after the date on which it was initially created and filled, (iv) a copy of the application for the Company's tax refund claim (the "Tax Refund Form") under that certain Qualified Target Industry Tax Refund Agreement (the "Tax Refund Agreement") between the Company and the Division of Strategic Business Development of the Florida Department of Economic Opportunity ("DSBD") most recently submitted to DSBD, and copies of all previously submitted Tax Refund Forms not theretofore delivered to the City, all certified by the Company's chief financial officer; and (v) written confirmation by DSBD of its approval of the Company's most recently submitted Tax Refund Form. The Company shall also provide any other information pertaining to such New Jobs as the Contract Administrator may reasonably request.

- 3.2 The City shall pay Grant funds to the Company in accordance with each properly prepared Application for Payment within thirty (30) calendar days after the date of the Company's submission thereof to the City, provided that the payment of Grant funds shall in no event exceed (a) \$41,667.67 in any Fiscal Year or (b) the Maximum Grant Amount over the entire term of this Agreement.
- 3.3 The City shall have the right to audit, or cause to be audited, the books and records of the Company that are specifically related to any Application for Payment or payment of Grant funds pursuant thereto. The Company shall keep complete and accurate records and accounts related to all Grant payments. The Company shall preserve and make available, upon no less than fifteen (15) days' written notice, for examination and audit by the City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a period of three (3) years after expiration or sooner termination of this Agreement or, if any audit has been initiated and audit findings have not been resolved at the end of the three (3) years, the books and records shall be retained until resolution of the audit findings. If the Florida Public Records Act (Chapter 119, Fla. Stat.) is determined by the City Attorney to be applicable to the Company's records, the Company shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by the Company. Incomplete or incorrect entries in such books and records shall be a basis for the City's disallowance of any payment based on such entries.
- 3.4 The City shall have no obligation to make any payments of Grant funds subsequent to a termination of this Agreement pursuant to Section 6.2. Furthermore, the City may withhold, in whole or in part, payment of Grant funds pursuant to any Application for Payment during the pendency of an

audit pursuant to Section 6.3 or after the City has given written notice of a breach pursuant to Section 6.1.3. Any payment of Grant funds withheld due to the pendency of an audit or a breach under Section 6.1.3 shall be paid within thirty (30) days after completion of the audit, provided that the audit reveals no improprieties that affect the payment of Grant funds or within thirty (30) days after the cure of any breach pursuant to Section 6.1.3. If any payment is withheld or delayed in accordance with this Section 4.3, such amount shall not be subject to payment of interest by the City.

ARTICLE 4

TIME OF PERFORMANCE

- 4.1 The respective duties, obligations, and responsibilities of the Company and the City required by this Agreement shall be completed within the time periods stated herein. Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.
- 4.2 If the Company fulfills its obligations pursuant to this Agreement, then the term of this Agreement shall expire upon the City's completion of its payment obligations unless sooner terminated in accordance with the terms of this Agreement.

ARTICLE 5

INDEMNIFICATION

- 5.1 The Company shall, at all times hereafter, indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend the City, its officers, agents, servants, and employees against any and all third-party claims, including reasonable attorney's fees, court costs, and expenses of litigation, caused by the negligent acts or omissions or willful misconduct of the Company, its employees, agents, servants, or officers (collectively, the "Company Parties"), including, without limitation, any and all third-party claims, demands, or causes of action in connection with personal injury or damage to property proximately caused by the negligent acts or omissions or willful misconduct of the Company Parties. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any Grant payments due the Company may be retained by the City until all of the City's claims for indemnification pursuant to this Article 5 have been settled or otherwise

resolved; and any amount withheld shall not be subject to payment of interest by the City.

ARTICLE 6

DEFAULT AND TERMINATION

- 6.1 Each of the following shall be a “Default” hereunder:
 - 6.1.1 Any misrepresentation contained in any Application for Payment of other document submitted to the City in conjunction therewith determined by the City to be intentional and material after completion of an audit conducted in accordance with Section 3.3 (a “Material Misrepresentation”).
 - 6.1.2 The failure by the Company to create 118 New Jobs prior to the expiration of the Performance Period.
 - 6.1.3 Any other inaccuracy or misrepresentation in any Application for Payment or breach of any other duty or obligation by the Company not cured within ninety (90) days after written notice.
- 6.2 In the event of a Default, the City may terminate this Agreement upon ten (10) days written notice; provided, however, that no notice shall be required to terminate this Agreement in the event of a Default under Section 6.1.2.
- 6.3 In the event this Agreement is terminated due pursuant to Section 6.2, the City shall have no further obligation to pay any Grants funds to the Company.

ARTICLE 7

NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

- 7.1 The Company shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by the City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

- 7.2 The Company shall comply with Title I of the ADA regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or disability. In addition, the Company shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.
- 7.3 The Company shall take affirmative action to ensure that local minority and women-owned businesses are treated without regard to race, ethnicity, or gender of their owners. The Company shall adopt affirmative steps to utilize minority and women-owned businesses as vendors, suppliers, consultants, and contractors, wherever possible.

ARTICLE 8

MISCELLANEOUS

8.1 CITY PAYMENTS SUBJECT TO AVAILABLE FUNDS

This Agreement is not a general obligation of the City of Fort Lauderdale. Notwithstanding anything contained in this Agreement to the contrary, payment of Grant funds is conditioned on and subject to specific annual appropriations by the City Commission of moneys sufficient to pay all amounts to which the Company is or becomes entitled to under this Agreement.

8.2 THIRD-PARTY BENEFICIARIES

Neither the Company nor the City intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third-party beneficiaries to this Agreement, and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

8.3 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt

of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR CITY OF FORT LAUDERDALE:

City of Fort Lauderdale
ATTN: City Manager
100 N. Andrews Avenue
Fort Lauderdale, Florida 33301

FOR COMPANY:

Prolexic Technologies, Inc.
200 E. Las Olas Blvd.
Fort Lauderdale, FL 33301
ATTN: Chief Financial Officer

8.4 NON-ASSIGNMENT

The Company shall not assign, transfer, or encumber this Agreement or any interest in this Agreement. The City shall not assign or delegate any of its duties and obligations under this Agreement.

8.5 CONFLICTS

The Company shall not allow any of its employees, acting within the scope of their employment with the Company during the term of this Agreement, to serve as expert witnesses against the City in any legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves as plaintiffs or defendants in any action or in any administrative or legal proceeding or from participating in any capacity in connection with any action or any administrative or legal proceeding regarding this Agreement.

8.6 WAIVER OF BREACH AND MATERIALITY

Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

8.7 COMPLIANCE WITH LAWS

Each party shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

8.8 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective.

8.9 JOINT PREPARATION

Preparation of this Agreement has been a joint effort of the City and the Company, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

8.10 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 8 of this Agreement shall prevail and be given effect.

8.11 APPLICABLE LAW AND VENUE

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Venue for litigation concerning this Agreement shall be in Broward County, Florida.

8.12 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City and the Company.

8.13 PRIOR AGREEMENTS

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the

subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Section 8.14 above.

8.14 INCORPORATION BY REFERENCE

The truth and accuracy of each “Whereas” clause set forth above is acknowledged by the parties.

8.15 COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute the binding agreement of the parties.

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AGREEMENT BETWEEN THE CITY AND PROLEXIC TECHNOLOGIES, INC.
FOR DIRECT CASH INCENTIVE.

IN WITNESS WHEREOF, the City has made and executed this Agreement effective as of the date set forth above.

WITNESSES:

CITY OF FORT LAUDERDALE

By: _____

Mayor

Print Name

By: _____

City Manager

Print Name

(CORPORATE SEAL)

ATTEST:

City Clerk

Approved as to form:

Assistant City Attorney

