

DIRECT CASH INCENTIVE GRANT AGREEMENT

This is an AGREEMENT ("Agreement") made and entered into this _____ day of _____ 2013, by and between the City of Fort Lauderdale, a municipal corporation and (the "CITY"), and Citrix Systems, Inc. ("COMPANY"), a corporation authorized to do business in the state of Florida, whose principal office is located at 851 W Cypress Creek Rd., Fort Lauderdale, Florida 33309.

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 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 found in Chapter 15, Article VIII of the City of Fort Lauderdale Code of Ordinances ("City's Economic Development Incentive Program"), in order to promote and enhance economic growth in the City of Fort Lauderdale; and

WHEREAS, the COMPANY will expand its existing business in the City of Fort Lauderdale and thereby create certain new employment opportunities at a certain average salary level in accordance with the CITY's Economic Development Ordinance; and

WHEREAS, the COMPANY has been determined eligible to receive a Direct Cash Incentive by the CITY's Economic Development Department; and

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

WHEREAS, the City Commission approved Item CR- 3 at its December 18, 2012 meeting, providing in part its intention that a direct cash incentive be made available to Company from City (referred to therein as Project Orange) in

addition to providing a portion of the local contribution through the Qualified Target Industry Tax Refund Program; and

WHEREAS, the City Commission at its_____, 2013 meeting, approved execution of this Agreement;

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 9, inclusive. Other terms and conditions are included in the documents that are expressly incorporated by reference.
- 1.2 City - shall mean the City Commission of the City of Fort Lauderdale, Florida.
- 1.3 Company - shall mean Citrix Systems, Inc.
- 1.4 Company's facility- shall mean 851 W Cypress Creek Rd., Fort Lauderdale, Florida 33309. 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 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 Effective date - shall mean the date this Agreement is executed by both parties herein.
- 1.7 Local Hire - shall mean a City of Fort Lauderdale resident hired to perform a new job or an existing job at the Fort Lauderdale facility.
- 1.8 New Job - shall mean a full-time position at COMPANY's Fort Lauderdale facility that is created during the term of this Agreement. A new job shall not include any temporary construction jobs involved in the construction,

replacement, or renovation of COMPANY'S Fort Lauderdale facility, or any other temporary or part-time position.

- 1.9 New Employee - shall mean a person not previously employed by COMPANY or any agent, subsidiary, or parent of COMPANY, in any capacity, and at any location within the City of Fort Lauderdale, whatsoever in the preceding five (5) years or a person currently employed by COMPANY, any agent, subsidiary, or parent of COMPANY, at a location outside the City of Fort Lauderdale who is hired to perform a new job at the COMPANY's facility.
- 1.10 Taxes - shall mean pursuant to, and in furtherance of the City's Economic Development Incentive Program, to include CITY's share of taxes and applicable local government fees.
- 1.11 Transfer Employee - shall mean an employee of COMPANY who is relocated to the City of Fort Lauderdale company facility from another company location outside of the City of Fort Lauderdale. Such transfer employee shall be counted as a new employee for the purpose of satisfying the requirements of this Agreement.

ARTICLE 2

THE GRANT AND CONDITIONS

- 2.1 The COMPANY as an inducement to locate and expand its facilities within the City of Fort Lauderdale is eligible for:
 - A. A Job Creation Incentive Direct Cash Grant (hereinafter a "Grant") in a maximum amount not to exceed One Hundred Thousand Dollars (\$100,000) from the City, which Grant shall be payable in accordance with the terms of this Agreement.
 - B. Subject to the provisions of Section 8.2 of this Agreement, Company shall be eligible to receive a total Direct Cash Program/Job Creation Incentive Program payment of Five Hundred Dollars (\$500.00) from CITY for each new employee hired in and/or relocated to the City of Fort Lauderdale after January 2, 2013 with an average salary equal to or greater than 200% (or \$84,678.00) of the average annual wage in Broward County for full-time employees per annum, consistent with the provisions of Section 2.2 after that employee has remained employed for twelve (12) months. Grant funds will be paid over a three (3) year period, except that no funds shall be paid prior to Company's creation of jobs in accord with Article 2 of this Agreement. All payments due under this Agreement shall be made in accord with Section 4.2 of this Agreement. Payments shall be made at the rate of \$500.00 per

qualified job, but shall not exceed \$25,000.00 for each of the first two years payment is requested and shall not exceed \$100,000 for the entire term of this Agreement.

- 2.2 As a condition precedent to the COMPANY receiving any Grant funds whatsoever from CITY under the Direct Cash Program/Job Creation Incentive Program:

A. COMPANY shall expand its existing business operations in the City of Fort Lauderdale at the Company's facility; and

B. COMPANY shall create or relocate to the City of Fort Lauderdale at least 200 new full-time jobs with an average salary equal to or greater than \$84,678 for full-time employees per annum, and shall maintain each new job for a period of not less than twelve (12) months; however, in the event COMPANY's new hires average less than \$84,678 full payment shall be made for any job in which the salary is at least 200% of the average annual wage in Broward County as determined by the Florida Department of Labor and retained for a period of not less than twelve (12) months. Jobs will be created by Company during each 12 month period commencing on January 2, 2013 as follows: Phase 1- at least 50 jobs; Phase 2- at least 50 jobs; Phase 3- at least 100 jobs or remainder of jobs until 200 are created. All 200 new jobs shall be created within a period of thirty-six (36) months from January 2, 2013.

C. Company shall comply with the provisions of the City's Economic Development Incentive Program.

ARTICLE 3

TIME OF PERFORMANCE

- 3.1 All duties, obligations, and responsibilities of COMPANY 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. Notwithstanding the period for creation of 200 new jobs as provided in Sections 2.2 and 3.2, COMPANY may request a one (1) year extension of the performance period of the first two phases. COMPANY must make any such request for extension no later than thirty (30) days prior to the expiration of the performance period. In requesting the extension, COMPANY shall state its reasons for seeking the extension. The Contract Administrator may grant the extension request if he or she determines that such an extension will serve the best interest of the City of Fort Lauderdale.
- 3.2 Grant funds will be paid over a three (3) year period, except that no funds

shall be paid prior to COMPANY's fulfillment of the specified job creation for each phase of the project in accord with Article 2 of this Agreement and retention for at least twelve (12) months. If COMPANY fulfills its obligations pursuant to this Agreement, then the term of this Agreement shall expire upon completion of payment by CITY, unless otherwise terminated. If COMPANY does not fulfill the obligation to create at least 200 new jobs within a period of thirty-six (36) months from January 2, 2013, then this Agreement shall expire on January 1, 2016.

- 3.3 Notwithstanding any other provision, if the term of this Agreement extends beyond a single fiscal year of the CITY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the availability of funds from the CITY. In the event sufficient funds are unavailable to continue this Agreement, the Contract Administrator shall terminate the Agreement for convenience in accordance with Article 7.

ARTICLE 4

COMPENSATION

4.1 PAYMENT

4.1.1 CITY agrees to pay COMPANY, in the manner specified in Section 4.2, an amount not to exceed One Hundred Thousand Dollars (\$100,000) for performance completed pursuant to this Agreement. It is acknowledged and agreed by COMPANY that this amount is the maximum payable and constitutes a limitation upon CITY's obligation to compensate COMPANY for its performances related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon COMPANY's obligation to perform all items of work required by or which can be reasonably inferred from the Grant Conditions. The CITY's obligation to pay under this Agreement is contingent upon annual appropriation for its purpose by the CITY.

4.1.2 The payment of any funds under this Agreement is specifically subject to the provisions of Section 8.2 of this Agreement; and further subject to City's Economic Development Incentive Program requirements pursuant to which an analysis shall be made as to whether the tax revenue generated to the City of Fort Lauderdale from the new or expanded business will cover the amount of any actual incentive award granted to an applicant within a period not to exceed six (6) years from the date of such award,

and that the CITY will receive a net positive return on its investment of at least ten (10%) percent.

- 4.1.3 The COMPANY shall be entitled to a payment from the Direct Cash/Job Creation Incentive Program after the Contract Administrator accepts the documentation verifying satisfactory completion of performance. The total amount payable to COMPANY shall not exceed a total of One Hundred Thousand Dollars (\$100,000). Grant funds will be paid over a three (3) year period, except that no funds shall be paid prior to Company's creation of at least the total number of jobs for each of the three (3) subsequent one (1) year phasing periods and retention of each job for at least twelve (12) months in accord with Article 2 of this Agreement.

4.2 METHOD OF BILLING AND PAYMENT

- 4.2.1 As a condition precedent to obtaining any Grant funds from the CITY, the COMPANY shall provide written, certified verification satisfactory to CITY, of compliance by COMPANY with all agreed-upon performance standards as set forth in ARTICLE 2. The COMPANY shall also provide a copy of the State of Florida QTI Tax Refund Form certified by the COMPANY'S Chief Financial Officer. Disbursement of CITY funds will not be approved prior to verification of approval by the State of Florida of the QTI refund application.
- 4.2.2 COMPANY may submit invoices for payment no more than once annually. Invoices shall be submitted only after the services for which the invoices are submitted have been completed. The final invoice must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed, the number of new employees hired or transferred by COMPANY pursuant to the terms of this Agreement, the expenses incurred, and any other information requested by the Contract Administrator. Invoice for payment shall be accompanied by a verified performance audit covering those performances in the invoice.
- 4.2.3 CITY shall pay COMPANY within thirty (30) calendar days of receipt of COMPANY's proper invoice and verification. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and shall include the information prescribed by Contract Administrator.

- 4.2.4 Pursuant to the provisions of Section 4.1.2, the CITY shall structure payment of grant funds or tax refunds over a period of three (3) years, based on the Company's eligibility to receive such payments in accordance with Sections 2.2 and 2.3. Payments shall be made at the rate of \$500.00 per qualified job, but shall not exceed \$25,000.00 for any of the first two payment years under this Agreement and shall not exceed \$100,000 in total.
- 4.3 Notwithstanding any other provision in the Agreement to the contrary, CITY may withhold, in whole or in part, payment for failure of COMPANY to comply with a term, condition or requirement of this Agreement, or to the extent necessary to protect itself from loss on account of fraud, misrepresentation or unsatisfactory or inadequate record keeping which has not been resolved to the satisfaction of the Contract Administrator. Except where the failure to comply involves fraud or misrepresentation by the COMPANY, CITY agrees to provide COMPANY with written notice of the failure to comply with a term, condition, or requirement of this Agreement. COMPANY will have forty five (45) days from receipt of said notice to cure any identified non-compliance with the terms, conditions or requirements of this Agreement. If any amount is withheld, such amount shall not be subject to payment of interest by the CITY.

ARTICLE 5

INDEMNIFICATION

- 5.1 COMPANY shall, at all times hereafter, indemnify, hold harmless and, at City Attorney's option, defend or pay for an attorney selected by City Attorney to defend CITY, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney's fees, court costs, and expenses, caused by negligent act or omission of COMPANY, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and City Attorney, any sums due COMPANY under this Agreement may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by CITY.

ARTICLE 6

TERMINATION

- 6.1 This Agreement may be terminated for cause by the CITY or by COMPANY upon ten (10) days written notice, or for convenience by the CITY upon not less than thirty (30) days' written notice by the Contract Administrator. This Agreement may also be terminated by Contract Administrator upon such notice as Contract Administrator deems appropriate under the circumstances in the event Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.
- 6.2 Termination of this Agreement for cause shall include, but not be limited to, failure to suitably and timely perform the duties, responsibilities, terms and conditions of this Agreement in a manner calculated to meet or accomplish the objectives of CITY as set forth in this Agreement, or breach of any provision of this Agreement, notwithstanding whether any such breach was previously waived or cured.
- 6.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement, except that notice of termination by Contract Administrator, which Contract Administrator deems necessary to protect the public health, safety, or welfare, may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 6.4 In the event this Agreement is terminated, COMPANY shall be paid for any performance to the date the Agreement is terminated. COMPANY acknowledges and agrees that Ten Dollars (\$10) of the compensation to be paid by CITY, the adequacy of which is hereby acknowledged by COMPANY, is given as specific consideration to COMPANY for CITY's right to terminate this Agreement for convenience.

ARTICLE 7

MISCELLANEOUS

7.1 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit, or cause to be audited at COMPANY's expense, the books and records of COMPANY that are specifically related

to the grant. COMPANY shall keep such records and accounts as may be necessary in order to record complete and correct entries related to this grant. COMPANY shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a period of three (3) years after 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 City Attorney to be applicable to COMPANY's records, COMPANY shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by COMPANY. Incomplete or incorrect entries in such books and records shall be a basis for CITY's disallowance of any payment upon such entries.

ARTICLE 8

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

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

- 8.1.1 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 CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.
- 8.1.2 COMPANY's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.
- 8.1.3 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, 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.

8.1.4 COMPANY shall take affirmative action to ensure that applicants and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or disability during employment. 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.

8.1.5 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. COMPANY shall adopt affirmative steps to utilize minority and women-owned businesses as vendors, suppliers, consultants, and contractors, wherever possible.

8.2 CITY PAYMENTS SUBJECT TO AVAILABLE FUNDS

This Agreement is not a general obligation of the City of Fort Lauderdale. payment of tax refunds or any other funds are conditioned on and subject to specific annual appropriations by the City Commission of moneys sufficient to pay the amounts authorized under the City's Economic Development Incentive Program.

8.3 THIRD-PARTY BENEFICIARIES

Neither COMPANY nor 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.

8.4 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: _____
100 N. Andrews Avenue
Fort Lauderdale, Florida 33301

FOR COMPANY:

Citrix Systems, Inc.
851 W. Cypress Creek Rd.
Fort Lauderdale, Florida 33309
ATTN: _____

8.5 NON-ASSIGNMENT

COMPANY shall not assign, transfer, or encumber this Agreement or any interest herein.

8.6 CONFLICTS

COMPANY agrees to use reasonable efforts to insure that none of its employees shall, during the term of this Agreement, serve as expert, adverse or hostile witnesses against CITY in any legal or administrative proceeding, nor shall such persons give sworn testimony or issue a report or writing, as an expression of their opinion, which is adverse or prejudicial to the interests of CITY in any pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves as defendants in any action or in any administrative or legal proceeding regarding this Agreement.

8.7 CONTINGENCY FEE

COMPANY warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for COMPANY, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for COMPANY, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the making of this Agreement. For a breach or violation of this provision, City shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of the grant.

8.8 WAIVER OF BREACH AND MATERIALITY

Failure by CITY 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.

CITY and COMPANY agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

8.9 COMPLIANCE WITH LAWS

COMPANY 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.

8.10 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 unless CITY or COMPANY elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

8.11 JOINT PREPARATION

Preparation of this Agreement has been a joint effort of CITY and 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.

8.12 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, 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.

8.13 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.

8.14 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 COMPANY.

8.15 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.

8.16 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits are incorporated into and made a part of this Agreement.

8.17 COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

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[SIGNATURE PAGES FOLLOW]

AGREEMENT BETWEEN CITY AND CITRIX SYSTEMS, INC. FOR DIRECT CASH INCENTIVE.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement:

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

COMPANY

Print Name: _____
 Notary Public, State of Florida
 Commission No. _____
 My Commission Expires: _____