

BASICGOV Agreement

BASICGOV™ SUBSCRIPTION AGREEMENT

This Subscription Agreement effective the Effective Date indicated below is made by and between CloudBench Applications, Inc. of Vancouver, British Columbia, Canada (“CBA”) and the Customer identified below (the “Customer”) (collectively the “Parties” and each a “Party”). For valuable consideration, the receipt and sufficiency of which each of the Parties acknowledges, THE PARTIES HEREBY COVENANT AND AGREE AS FOLLOWS:

1. INTRODUCTION

1.1. BasicGov™ (“BASICGOV”) is CBA’s proprietary, modular, web-based software solution for municipalities, accessible through the Apex Platform™ online platform (the “Apex Platform”) operated by Salesforce.com Inc. (“Salesforce.com”).

1.2. The details of Customer’s access to and use of BASICGOV, including the number of authorized Users (defined in paragraph 4.1), will be specified in written order forms signed by the Parties from time to time (each an “Order”), which are governed by and form part of this Agreement.

1.3. Customer’s access to and use of BASICGOV and the Apex Platform are governed by this Agreement and separate agreements between Customer and Salesforce.com (collectively the “SFDC Agreements”), including the Salesforce.com End User Subscription Agreement attached as Exhibit “A” to this Agreement. By signing this Agreement, Customer acknowledges and signifies to CBA and Salesforce.com that Customer has understood, and agreed to the Salesforce.com End User Subscription Agreement. If there is any inconsistency or conflict between this Agreement and the SFDC Agreements, then this Agreement will take priority and govern regarding Customer’s access to and use of BASICGOV and the relationship between Customer and CBA, and the SFDC Agreements will take priority and govern regarding Customer’s access to and use of the Apex Platform and the relationship between Customer and Salesforce.com.

2. TERM AND SERVICES

2.1. **Term of Agreement and Orders:** The initial term of this Agreement is for the period set forth in the initial Order commencing on the Effective Date (the “Initial Term”), unless terminated earlier by either Party pursuant to this Agreement. Unless expressly stated otherwise in an Order, this Agreement will automatically renew for additional one-year periods (each a “Renewal Term”), unless terminated earlier pursuant to this Agreement or unless either Party gives notice of non-renewal to the other Party by no later than ninety (90) days before the end of the Initial Term or the then-current Renewal Term. For purposes of this Agreement, the Initial Term and all Renewal Terms are referred to collectively as the “Term”. The term of each Order will commence on the effective date specified on the Order and expire on the expiration date specified in the Order, unless terminated earlier pursuant to this Agreement or the terms of the Order. Each Order will automatically renew for additional one-year periods, unless: (a) the Order is terminated earlier pursuant to this Agreement; (b) either Party gives notice of non-renewal to the other Party by no later than ninety (90) days before the end of the then-current term of the Order; or (c) the Order expressly states that it will not automatically renew.

2.2. **BASICGOV Services:** Subject to the provisions of this Agreement and the SFDC Agreements, CBA hereby grants to Customer a non-exclusive, non-transferable, limited license during the Term to access and use through the Apex Platform: (a) the BASICGOV modules specified in valid and subsisting Orders; and (b) online training and technical support materials for those BASICGOV modules (collectively, the “BASICGOV Services”).

2.3. **Optional Services:** CBA will provide optional services to or for the benefit of Customer (the “Optional Services”), as specified in applicable Orders. Unless otherwise agreed in writing by the Parties, Optional Services will be provided only during the Term and subject to this Agreement and such additional terms and conditions (including payment of additional fees) as agreed in writing by the Parties.

2.4. **Orders:** Each time Customer wishes to request BASICGOV Services and Optional Services (collectively, the “Services”) from CBA, Customer will sign and deliver to CBA a completed Order in the form prescribed by CBA. An Order submitted by Customer will not be binding on CBA unless and until CBA accepts the Order in writing. CBA may in its discretion refuse to accept any Order.

2.5. **Technical Support.** Customer will ensure that all requests for technical support regarding the Services and the Apex Platform are

directed to BASICGOV only, and not to Salesforce.com. ANY REQUEST FOR TECHNICAL SUPPORT MADE BY CUSTOMER OR ANY USERS TO SALESFORCE.COM WILL BE SUBJECT TO AN ADDITIONAL FEE PAYABLE BY CUSTOMER.

3. CUSTOMER DATA

3.1. **Ownership of Customer Data:** CBA will not acquire any right, title to interest in, to or associated with the data provided by Customer or created by Customer using the Services (collectively, the “Customer Data”).

3.2. **Storage/Return of Customer Data:** Customer Data is stored by Salesforce.com in the Apex Platform, and is subject to the Salesforce.com End User Subscription Agreement. At any time upon request by Customer during the Term and within thirty (30) days after the end of the Term, CBA will request that Salesforce.com return all Customer Data in the Apex Platform to Customer in accordance with the Salesforce.com End User Subscription Agreement. Salesforce.com is not responsible for the privacy, security or integrity of Customer Data that is transmitted outside the Apex Platform.

3.3. **Consent and License re Customer Data:** Certain Services may require that CBA and Salesforce.com access, use, process and transmit Customer Data, and certain BASICGOV modules or additional functionalities (including data integration with Customer’s systems) may result in Customer Data being transmitted from the Apex Platform to other computer systems. Customer authorizes and consents to such use of Customer Data by CBA and Salesforce.com, and hereby grants to CBA and Salesforce.com a non-exclusive, royalty free, world-wide right and license during the Term to access, copy, process and otherwise use Customer Data as may be required to provide the Services and perform CBA’s obligations under this Agreement.

3.4. **Disclaimer:** USE OF CUSTOMER DATA IS AT CUSTOMER’S OWN RISK. CUSTOMER IS SOLELY RESPONSIBLE FOR, AND BEARS ALL RISKS AND LIABILITIES ASSOCIATED WITH, ALL CUSTOMER DATA. CBA DOES NOT HAVE ANY CONTROL OVER CUSTOMER DATA, AND IS NOT RESPONSIBLE OR LIABLE FOR SALESFORCE.COM’S STORAGE OF CUSTOMER DATA OR THE DELETION, CORRECTION, DESTRUCTION, DAMAGE, LOSS OF OR FAILURE TO STORE ANY CUSTOMER DATA. CBA MAKES NO REPRESENTATION, WARRANTY, CONDITION OR GUARANTEE OF ANY NATURE OR KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, OR ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, REGARDING CUSTOMER DATA, AND DISCLAIMS ANY AND ALL RESPONSIBILITY AND LIABILITY FOR CUSTOMER DATA TO THE FULLEST EXTENT PERMITTED BY LAW.

4. AUTHORIZED USERS

4.1. **Users:** Customer will access and use the Services only through Customer’s authorized representatives (each a “User”) with a valid and subsisting account (each an “Account”) and username and password issued by or on behalf of CBA (collectively, “Codes”). Customer will appoint and authorize one or more Users (each an “Administrator”) to appoint other Users and administer Customer’s use of the Services. Customer will not authorize more Users than the number of Users specified in valid and subsisting Orders. A User whose employment has been terminated by Customer or who will otherwise no longer use the Service may be replaced with a new User. Customer is fully responsible and liable for, and bears all risks relating to, all use of the Services by Users and all acts or omissions by Users, and will ensure that all Users comply with the terms of this Agreement and the SFDC Agreements.

4.2. **Registration/Changes:** CBA may refuse to register any individual as a User, and may, acting reasonably, restrict, suspend or terminate (in whole or in part) the permission granted to any User to access and use the Services. A User’s permission to access or use the Services will automatically be terminated if Salesforce.com suspends or terminates the User’s permission to access or use the Apex Platform.

4.3. **Accounts/Codes:** Accounts and Codes are specific to the User for whom they are issued, and may not be shared with any other person. Customer will ensure that all Users keep their Codes secure and

Initials: _____

confidential at all times and not permit any other person to use their Account or Codes, and immediately notify CBA if they know or suspect that any Account or Code has become known to or used by any unauthorized person. Customer is fully responsible and liable for the security of all Codes and all use and misuse of Codes and Accounts. If CBA, in its discretion, considers a Code to be insecure or to have been used inappropriately, then CBA may immediately cancel the Code without any notice to Customer, the affected User, or any other person.

4.4. **Disclaimer:** CODES MAY NOT PREVENT UNAUTHORIZED ACCESS TO CUSTOMER DATA OR OTHER INFORMATION CUSTOMER OR USERS MAY USE IN CONNECTION WITH THE SERVICES. CBA IS UNDER NO OBLIGATION TO VERIFY THE ACTUAL IDENTITY OR AUTHORITY OF THE USER OF ANY CODES, ACCOUNTS OR THE SERVICES, AND IS NOT RESPONSIBLE OR LIABLE FOR UNAUTHORIZED ACCESS TO THE SERVICES OR ANY UNAUTHORIZED OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER DATA THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD.

5. FEES

5.1. **Fees - General:** Customer will pay to CBA the applicable fees (the "Fees") for the Services as specified in Orders or as otherwise set forth in this Agreement. If the Fees are not specified in an Order or this Agreement, they will be based upon the rates in the current schedule of fees available on CBA's websites (the "Fee Schedule"), which may be changed by CBA in its discretion from time to time. User-based Fees will be based upon the total number of Users specified in applicable Orders, whether or not the corresponding Accounts are actively used during the billing period. Unless otherwise expressly set forth in an Order, Users added during a billing period will be subject to payment of Fees for the entire billing period. All pricing terms are confidential to CBA, and Customer will not disclose that information to any other person.

5.2. **Fees – Data Storage:** The Services include an amount of data storage calculated on a per User basis, as specified in the applicable Order. If the amount of data storage used by Customer during a billing period exceeds those limits, Customer will be charged additional Fees based upon the then current Fee Schedule.

5.3. **Taxes:** Fees are exclusive of all applicable federal, state, provincial, county, municipal and other sales, use, value-added, property, excise, import, foreign, withholding and other governmental taxes, duties, charges, levies, fees, excises, tariffs and assessments, of any nature whatsoever now or hereafter imposed (collectively, "Taxes"). Customer is solely responsible and liable for, and will pay to CBA, all Taxes (other than corporate income taxes payable by CBA) associated with, based on or due as a result of the Fees, and all related interest, penalties and expenses.

5.4. **Payments:** For each Order, CBA will prepare and deliver an invoice to Customer setting out the applicable Fees and Taxes payable to CBA. Each invoice will be due and payable in accordance with the payment terms and method set forth in the Order or otherwise agreed to in writing by the Parties. CBA may deliver invoices to Customer by email. CBA may require advance payment of an invoice before providing related Services. Payment obligations are not cancellable, and advance payments are non-refundable, under any circumstances.

6. APEX PLATFORM

6.1. **Access to Platform:** Customer's access to and use of the Services will depend upon the access to and use of the Apex Platform, which is operated and controlled solely by Salesforce.com, and is subject to the Salesforce.com End User Subscription Agreement.

6.2. **Disclaimer:** CBA HAS NO CONTROL OVER SALESFORCE.COM OR THE APEX PLATFORM, AND IS NOT RESPONSIBLE OR LIABLE FOR THE APEX PLATFORM OR ANY RELATED MATTERS OR ANY ACT OR OMISSION BY SALESFORCE.COM OR ANY OF ITS PERSONNEL OR REPRESENTATIVES.

7. RESTRICTIONS RE SERVICES

7.1. **Restrictions:** Customer will use the Services only as expressly authorized by this Agreement and only for Customer's own internal business purposes, and not for any other purpose whatsoever. Without limiting the generality of the foregoing, Customer will not directly or indirectly: (a) use, disclose, or provide or permit access to or use of, the Services except as expressly authorized by this Agreement; (b) copy the online training and technical support materials except as necessary for their use as expressly set forth in this Agreement; (c) assign, authorize, license, sublicense, grant, sell, resell, share, lend, lease, loan, transfer, publish, transmit, publicly display or perform, distribute, rent, create any interest in, or otherwise give or make available or permit the use of or commercially exploit the Services or their functionality or performance, by or for the benefit of any other person, with or without charge; (d) modify or create derivative works from or based on the Services; (e) create links to or

frame or mirror the Services; (f) alter, attempt to circumvent, destroy, obscure, or remove any notices, proprietary marks or codes, means of identification, or digital rights management tools or information, security or control measures (including license keys), or agreements (including end user agreements) on, in or in relation to the Services; (g) reverse engineer or access the Services or the Apex Platform in order to: (i) create a competitive product or service, or a product or service using similar ideas, features, functions or graphics; or (ii) copy any ideas, features, functions or graphics of the Service; or (h) permit, assist or encourage any other person to do any of the foregoing.

7.2. **Prohibited Users/Uses:** Customer may not access or use the Services or the Apex Platform if Customer is a direct competitor of Salesforce.com or CBA, or for the purpose of monitoring availability, performance, or functionality, or for any other benchmarking or competitive purposes. Customer will not, and will ensure that its Users do not, use the Services: (a) for any unlawful or immoral purpose; (b) to send spam or otherwise duplicative or unsolicited messages prohibited by applicable law; (c) to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or in violation of third party privacy rights; (d) to send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (e) to interfere with or disrupt the integrity or performance of the Services or the Apex Platform or the data contained therein; or (f) to attempt to gain unauthorized access to the Services or the Apex Platform or related systems or networks. Customer will not, and will ensure that its Users do not, develop applications for internal use with the Apex Platform or the Services without the expressly prior written consent of CBA and Salesforce.com. Customer will use commercially reasonable efforts to prevent unauthorized access to or use of the Services or the Apex Platform, and will promptly notify BASICGOV of any unauthorized access to or use of the Services or the Apex Platform.

7.3. **Changes:** Customer acknowledges and agrees that CBA may in its discretion change the Services from time to time without any notice or liability to Customer or any other person.

8. PROPRIETARY RIGHTS

8.1. **General:** CBA and its licensors will at all times own and retain all right, title and interest (including all intellectual property rights) in, to and associated with the Services and all related content, software and technologies. Salesforce.com will at all times own and retain all right, title and interest (including all intellectual property rights) in, to and associated with the Apex Platform and all related content, software and technologies. Customer will not acquire any right, title or interest in, to or associated with the Services or the Apex Platform or any related software or technologies, except for the limited license set forth in paragraph 2.2.

8.2. **CBA Marks:** BasicGov™, Cloudbench Applications Inc,™ and related logos and marks are the trademarks of CBA. Customer will not acquire any license to use, or any right, title or interest in, to or associated with, any of those trademarks.

8.3. **Disclosure of Customer Information to Salesforce.com:** CBA will disclose information regarding Customer and Orders (including contact information regarding Customer's representatives) to Salesforce.com. CBA has no control over, or any responsibility or liability for, Salesforce.com's collection, use, or disclosure of that information.

8.4. **Reservation:** All rights not expressly granted under this Agreement are reserved to the Parties.

9. REPRESENTATIONS / DISCLAIMERS / LIABILITY LIMITATIONS

9.1. **Representations/Warranties of Customer:** Customer represents and warrants to CBA that now and at all times during the Term: (a) Customer has the right, power, capacity and authority to enter into and perform its obligations under this Agreement and to grant the licenses, authorizations and permissions set forth in this Agreement (including regarding access to and use of Customer Data); (b) all information provided by Customer to CBA in an Order or otherwise is true, accurate, current and complete; and (c) Customer's use of the Services complies with all applicable local, state, national and foreign laws, treaties and regulations, including those related to data privacy, international communications and the transmission of technical or personal data, and does not and will not violate or infringe the rights of any person.

9.2. **Representations/Warranties of CBA:** CBA represents and warrants to Customer that CBA has the corporate power, capacity and authority to enter into this Agreement.

9.3. **No OTHER REPRESENTATIONS/WARRANTIES:** THE REPRESENTATIONS AND WARRANTIES SET FORTH IN PARAGRAPH 9.2 ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS AND

Initials: _____

GUARANTEES FROM CBA. THE SERVICES ARE PROVIDED "AS IS AND WITH ALL FAULTS", AND WITHOUT ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF ANY NATURE OR KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, OR ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, INCLUDING ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF OR RELATING TO: ACCURACY; CAPACITY; COMPLETENESS; DELAYS; DURABILITY; ERRORS; FITNESS FOR A PARTICULAR PURPOSE; LACK OF NEGLIGENCE, VIRUSES OR OTHER HARMFUL COMPONENT, ERRORS, OR INTERRUPTED SERVICE; MERCHANTABILITY; NON-INFRINGEMENT; PERFORMANCE; QUALITY; RESULTS; SUITABILITY; TIMELINESS; TITLE; OR WORKMANLIKE EFFORT; ALL OF WHICH ARE HEREBY DISCLAIMED BY CBA TO THE FULLEST EXTENT PERMITTED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CBA DOES NOT REPRESENT, WARRANT, OR GUARANTEE THAT: (A) THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, OR WILL COMPLY WITH APPLICABLE LAWS OR BE FREE FROM ERRORS OR UNINTERRUPTED SERVICE; (B) ERRORS OR DEFECTS WILL BE CORRECTED, OR (C) THE SERVICES AND RELATED SOFTWARE AND SYSTEMS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

9.4. **General Disclaimer:** USE OF THE SERVICES AND THE APEX PLATFORM IS AT CUSTOMER'S OWN RISK. THE SERVICES AND THE APEX PLATFORM MAY BE AFFECTED BY NUMEROUS FACTORS BEYOND CBA'S CONTROL, AND MAY NOT BE CONTINUOUS OR UNINTERRUPTED OR SECURE. SECURITY AND PRIVACY RISKS CANNOT BE ELIMINATED. CUSTOMER IS SOLELY RESPONSIBLE FOR CUSTOMER'S AND USERS' USE OF THE SERVICES AND THE APEX PLATFORM. CUSTOMER HEREBY ACKNOWLEDGES THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND CBA IS NOT RESPONSIBLE OR LIABLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

9.5. **Sole Remedy:** IF CUSTOMER IS NOT SATISFIED WITH THE SERVICES, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IS TO CEASE USING THE SERVICES.

9.6. **EXCLUSION/LIMITATION OF LIABILITY:** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:

(a) **EXCLUSIONS:** IN NO EVENT AND UNDER NO CIRCUMSTANCES WILL CBA BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY DAMAGES WHATSOEVER (INCLUDING DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY LOSS OR DAMAGE), ARISING FROM, CONNECTED WITH, OR RELATING TO THE SERVICES, THE APEX PLATFORM, THIS AGREEMENT, THE SUBJECT MATTER OF THIS AGREEMENT, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, INFORMATION, BUSINESS, MARKETS, SAVINGS, INCOME, PROFITS, USE, PRODUCTION, OR GOODWILL, ANTICIPATED OR OTHERWISE (INCLUDING BY REASON OF ANY EXPENDITURES, INVESTMENTS, LEASES OR COMMITMENTS MADE IN ANTICIPATION OF THE CONTINUANCE OR PERFORMANCE OF THIS AGREEMENT), OR ECONOMIC LOSS, UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY OR LAW OR EQUITY);

(b) **LIMITATIONS:** IF, NOTWITHSTANDING PARAGRAPH 9.6(A), CBA IS FOUND LIABLE FOR DAMAGES TO CUSTOMER, THEN IN NO EVENT AND UNDER NO CIRCUMSTANCES WILL CBA'S TOTAL AGGREGATE LIABILITY TO CUSTOMER AND ANY OTHER PERSON ARISING FROM, CONNECTED WITH, OR RELATING TO THE SERVICES, THE APEX PLATFORM, THIS AGREEMENT, THE SUBJECT MATTER OF THIS AGREEMENT, OR OTHERWISE, UNDER THIS AGREEMENT OR ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY OR LAW OR EQUITY), EXCEED THE LESSER OF: (I) THE FEES PAID BY CUSTOMER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY; OR (II) \$10,000; AND

(c) **GENERAL/DEFINITION:** THIS PARAGRAPH 9.6 APPLIES REGARDLESS OF ANY NEGLIGENCE OR OTHER FAULT OR WRONGDOING (INCLUDING FUNDAMENTAL BREACH OR GROSS NEGLIGENCE) BY CBA OR SALESFORCE.COM, AND EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF THE LOSS OR DAMAGE BEING INCURRED; AND IN THIS PARAGRAPH 9.6, REFERENCES TO "CBA" AND "SALESFORCE.COM" INCLUDES THEIR RESPECTIVE PAST, PRESENT AND FUTURE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SERVICE PROVIDERS, SUBCONTRACTORS, SUPPLIERS, LICENSORS, LICENSEES, AND EACH OF THEM, JOINTLY AND SEVERALLY.

9.7. **FAIR ALLOCATION OF LIABILITY:** CUSTOMER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT PRESENTS A FAIR ALLOCATION OF RISK AND LIABILITY, WHICH IS REFLECTED IN THE FEES TO BE PAID BY CUSTOMER.

10. INDEMNITY

10.1. **Indemnity:** Customer will defend, indemnify, and save and hold harmless CBA and its personnel and representatives from and against all Claims and Proceedings directly or indirectly arising from, connected with, or relating to Customer's use of the Services and the Apex Platform, or any actual or alleged negligence, misconduct or breach of this Agreement or the SFDC Agreements by Customer or any other person for whom Customer is under this Agreement or in law responsible. CBA will have sole control over the defence of and settlement negotiations with third parties relating to all third party Claims and third party Proceedings. Customer will assist and co-operate as fully as reasonably required by CBA in the defence of all third party Claims and third party Proceedings. In this Agreement: (a) "**Claims**" means claims, counterclaims, complaints, demands, causes of action, liabilities, obligations, damages, losses, legal fees, costs, expenses and disbursements (including reasonable attorneys' fees and court costs) of any nature or kind, whatsoever and howsoever arising, whether known or unknown, whether in law or in equity or pursuant to contract or statute, and whether in any court of law or equity or before any arbitrator or other body, board or tribunal; and (b) "**Proceedings**" means actions, suits, proceedings and hearings of any nature and kind in any court of law or equity or before any arbitrator or other body, board or tribunal.

11. TERMINATION AND SUSPENSION

11.1. **Termination:** CBA may in its discretion terminate this Agreement for cause effective immediately upon delivery of notice of termination to Customer if Customer breaches this Agreement or the SFDC Agreements (including any non-payment or any unauthorized use of the Services), or if CBA's participation in the Apex Platform Program expires or is terminated. This Agreement will automatically and immediately terminate if Customer's access to and use of the Apex Platform is prohibited by Salesforce.com. If this Agreement is terminated, Customer will promptly pay all outstanding fees and charges. Each Order will automatically and immediately terminate upon the expiration or termination of this Agreement.

11.2. **Suspension of Services by CBA:** Notwithstanding any other provision of this Agreement, if Customer fails to make a required payment under this Agreement, CBA may immediately suspend the provision of all or any portion of the Services without any notice to Customer or any other person. No such suspension will be a breach of this Agreement by CBA, entitle Customer to a refund or suspension of fees, or give rise to any liability by CBA to Customer or any other person.

11.3. **Survival:** Notwithstanding any other provision of this Agreement, Sections 5, 8, 9, 10, and 12 and paragraphs 6.2, 3.1, 3.2, 3.3, 3.4, 4.4, 7.1 and 11.3 of this Agreement, and all other provisions necessary to their interpretation or enforcement, will survive indefinitely after the termination of this Agreement and will remain in full force and effect and be binding upon the Parties as applicable.

12. GENERAL

12.1. **Notices:** CBA may deliver Orders, Invoices and other notices to Customer by email, facsimile, or delivery to the addresses on record in CBA's Customer file. Customer will give all notices to CBA under this Agreement in writing delivered by courier or by facsimile transmission to CBA's current address for delivery specified on CBA's websites.

12.2. **Publicity.** CBA may reference Customer in CBA's advertising and promotional activities and materials (including CBA websites) and may list Customer in any listing or directory of CBA customers. Upon request by CBA, Customer will provide CBA with Customer's trademark or logos for use in such promotional materials, lists and directories.

12.3. **Relationship of Parties:** The Parties are non-exclusive independent contractors, and nothing in this Agreement or done pursuant to this Agreement will create or be construed to create a partnership, joint venture, agency, employment, or other similar relationship between the Parties.

12.4. **Force Majeure:** Notwithstanding any other provision of this Agreement, CBA will not be liable to Customer or any other person for any delay in performing or failure to perform any of its obligations under this Agreement to the extent performance is delayed or prevented due to any cause or causes that are beyond CBA's reasonable control. Any delay or failure of this kind will not be deemed to be a breach of this Agreement by CBA, and the time for CBA's performance of the affected obligation will be extended by a period that is reasonable in the circumstances.

12.5. **Miscellaneous:** If any provision of this Agreement is held to be invalid or unenforceable for any reason, then the provision will be deemed to be severed from this Agreement and the remaining provisions will

Initials: _____

continue in full force and effect without being impaired or invalidated in any way, unless as a result of any such severance this Agreement would fail in its essential purpose. No consent or waiver by a Party to or of any breach by the other Party in its performance of its obligations under this Agreement will be: (a) deemed or construed to be a consent to or waiver of a continuing breach or any other breach of those or any other obligations of that Party; or (b) effective unless in writing and signed by both Parties. Except as expressly set forth in this Agreement, the Parties' respective rights and remedies under this Agreement are cumulative and not exclusive of any other rights or remedies to which the Parties may be lawfully entitled under this Agreement or at law or equity, and the Parties will be entitled to pursue all of their respective rights and remedies concurrently, consecutively and alternatively. In this Agreement: (a) a reference to "this Agreement" and other similar terms refers to this Subscription Agreement and all Orders, each of which is incorporated herein by reference, as a whole and not just to the particular provision in which those words appear; (b) headings in this Agreement are for reference only and do not define, limit or enlarge the scope or meaning of this Agreement or any of its provisions; (c) words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, societies and corporations; (d) words importing the singular number only include the plural and vice versa; (e) words importing either gender include both genders; (f) "including" means including without limitation; (g) references to a day, month, or year, mean a calendar day, month, or year, unless expressly indicated otherwise; and (h) references to currency are to the currency of the United States of America, unless expressly indicated otherwise.

12.6. **Enurement and Assignment:** The provisions of this Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Customer may not assign this Agreement without CBA's prior written consent, which consent may be withheld in CBA's discretion. CBA may assign or license all or any portion of its rights and interests under the Agreement as it sees fit in its discretion. Users are not parties to or beneficiaries of this Agreement.

12.7. **Governing Law:** This Agreement and all related matters will be governed by, and construed in accordance with, the laws of British

Columbia, Canada and applicable federal laws of Canada, excluding the United Nations Convention On Contracts For The International Sale Of Goods and any rules of private international law or the conflict of laws that would lead to the application of any other laws.

12.8. **Dispute Resolution:** All disputes, controversies and claims arising under, out of, in connection with, or in relation to this Agreement, the Services, or any related matters or any legal relationship associated therewith or derived therefrom (collectively "**Disputes**") will be referred to and finally resolved by binding arbitration under the International Commercial Arbitration Rules of the British Columbia International Commercial Arbitration Centre (the "**BCICAC**") by one arbitrator appointed in accordance with those rules. The arbitration will be private and confidential and will be administered by the BCICAC in accordance with its rules. If the BCICAC is not operative, the arbitration will proceed ad hoc and be governed by the *Commercial Arbitration Act (British Columbia)*. The place of arbitration will be the City of Vancouver, British Columbia and the language to be used in the arbitration will be the English language. Any awards rendered in any such arbitration are final and binding and judgment thereon may be entered in any court having jurisdiction for its enforcement. Notwithstanding the foregoing, the Parties may seek appropriate remedies from the Supreme Court of British Columbia sitting in Vancouver, British Columbia regarding all Disputes prior to or during the arbitration of Disputes, and the Parties hereby irrevocably submit and attorn to the sole and exclusive jurisdiction of that court in respect of all such matters.

12.9. **Complete Agreement:** This Agreement sets forth the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, negotiations, discussions, agreements or understandings, whether oral or written, between them with respect to the subject matter of this Agreement. Customer's issuance, and CBA's acceptance of, a purchase order or other similar document are for administrative convenience only and any terms and conditions contained in a purchase order or other document will be no force or effect and will not in any way amend or supplement this Agreement. This Agreement may be modified only by a written instrument signed by the Parties or their successors or permitted assigns.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have duly executed this Agreement.

Customer:			
Name of Customer			
By	Authorized Signatory		Date
Customer's Address	Mailing Address:		
	Fax		email

CloudBench Applications, Inc.			
By	Authorized Signatory		Date

Initials: _____

Exhibit "A"
Salesforce.com End User Subscription Agreement

This is an Agreement between Salesforce.com and the Customer, and governs the Customer's access to and use of the Apex Platform and related services provided by Salesforce.com. This Agreement exempts Salesforce.com and other persons from liability or limits their liability, and contains other important provisions that Customer should read. By signing the BasicGov™ Subscription Agreement, Customer acknowledges and signifies that it has read, understood, and agreed to this Agreement. If Customer does not accept and agree to this Agreement, Customer may not access or use the Apex Platform.

1. Definitions.

In this Agreement:

- (a) "**AppExchange**" means the online directory of on-demand applications that work with the Service, located at <http://www.appexchange.com> or at any successor websites.
- (b) "**Reseller**" means Cloudbench Applications Inc.
- (c) "**Service**" means the online, Web-based application provided by SFDC via <http://www.salesforce.com> and/or other designated websites, including associated offline components but excluding AppExchange applications.
- (d) "**Users**" means Your employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by You (or by Salesforce.com or Reseller at Your request).
- (e) "**You**" and "**Your**" means the customer entity which has contracted to purchase subscriptions to use the Service subject to the conditions of these End User Subscription Terms.
- (f) "**Your Data**" means all electronic data or information submitted by You to the Service.

2. Use of Service.

- (a) User subscriptions cannot be shared or used by more than one User (but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment with You or otherwise changed job status or function and no longer require use of the Service).
- (b) You (i) are responsible for all activities occurring under Your User accounts; (ii) are responsible for the content of all Your Data; (iii) shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and shall notify Reseller or Salesforce.com promptly of any such unauthorized use You become aware of; and (iv) shall comply with all applicable local, state, federal and foreign laws and regulations in using the Service.
- (c) You shall use the Service solely for Your internal business purposes and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than to Users or as otherwise contemplated by these End User Subscription Terms; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Service or its related systems or networks.
- (d) You shall not (i) modify, copy or create derivative works based on the Service; (ii) frame or mirror any content forming part of the Service, other than on Your own intranets or otherwise for Your own internal business purposes; (iii) reverse engineer the Service; or (iv) access the Service in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Service.

3. Services Provided. The Service will be made available to You pursuant to the terms and conditions set forth in this End User Subscription Agreement. Salesforce.com shall: (i) not use, modify, or disclose to anyone other than Users, Your Data; (ii) maintain the security and integrity of the Service and Your Data; (iii) provide basic support to Your Users, only to the extent such cases are escalated to SFDC by Reseller in Reseller's discretion; and (iv) use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which Salesforce.com shall give at least 8 hours notice via the Service and which Salesforce.com shall schedule to the extent reasonably practicable during the weekend hours from 6:00 p.m. U.S. Pacific Time Friday to 3:00 a.m. U.S. Pacific Time Monday); or (b) any unavailability caused by circumstances beyond Salesforce.com's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Salesforce.com employees), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Salesforce.com's possession or reasonable control, and denial of service attacks.

4. Third-Party Providers. Certain third-party providers, some of which may be listed on pages within Salesforce.com's website and including providers of AppExchange applications, offer products and services related to the Service, including implementation, customization and other consulting services related to customers' use of the Service and applications (both offline and online) that work in conjunction with the Service, such as by exchanging data with the Service or by offering additional functionality within the user interface of the Service through use of the Service's application programming interface. Salesforce.com does not warrant any such third-party providers or any of their products or services, whether or not such products or services are designated by Salesforce.com as "certified," "validated" or otherwise. Any exchange of data or other interaction between You and a third-party provider, and any purchase by You of any product or service offered by such third-party provider, is solely between You and such third-party provider. In addition, from time to time, certain additional functionality (not defined as part of the Service) may be offered by Salesforce.com or Reseller to You, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by You in connection with a separate purchase by You of such additional functionality. Your use of any such additional functionality shall be governed by such terms, which shall prevail in the event of any inconsistency with the terms of these End User Subscription Terms. No purchase of such third-party products or services is required to use the Service.

5. Proprietary Rights. Subject to the limited rights expressly granted hereunder, Salesforce.com reserves all rights, title and interest in and to the Service, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth in these End User

Initials: _____

Subscription Terms. The Service is deemed Salesforce.com confidential information, and You will not use it or disclose it to any third party except as permitted in these End User Subscription Terms.

6. **Your Data.** As between Salesforce.com and You, You exclusively own all rights, title and interest in and to all of Your Data. Your Data is deemed your confidential information, and Salesforce.com shall not access Your User accounts, including Your Data, except to respond to service or technical problems or at Your request. Upon request by You made within 30 days after the effective date of termination of all of your Salesforce.com User subscriptions, SFDC will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, SFDC shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in its systems or otherwise in its possession or under its control.

7. **Compelled Disclosure.** If either You or Salesforce.com is compelled by law to disclose confidential information of the other party, it shall provide the other party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.

8. **Suggestions.** You agree that Salesforce.com shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the Service.

9. **Fees.** Contracted for fees for use of the Service represent a firm commitment: i.e., an order cannot be canceled during the term of the subscriptions, and the number of User subscriptions contracted for cannot be reduced in the middle of a subscription term.

10. **Termination.** You may not cancel or terminate an executed subscription order. User subscriptions will automatically renew unless (a) either party gives the other party, or salesforce.com gives You, notice of termination at least 30 days prior to the end of the relevant subscription term, or (b) your Reseller's right to resell the Service has been terminated or expired, in which case any existing subscriptions will continue in effect until the end of their then-existing term and salesforce.com will contact You to discuss renewal directly with salesforce.com. Any automatic renewal will be at the list price in effect at the time of renewal unless otherwise prior agreed in writing by Your Reseller, or salesforce.com, as applicable. Your use of the Service may be immediately terminated and/or suspended upon notice due to a breach of the terms of this End User Subscription Agreement by You or any User, including but not limited to failure to pay any fees due.

11. **Data Storage.** You are entitled to a cumulative amount of 20 MB of storage per User subscription for no additional charge. You may purchase additional storage if necessary, and you may contact Reseller for then-current rates.

12. **No Warranty.** SALESFORCE.COM MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

13. **No Liability.** IN NO EVENT SHALL SALESFORCE.COM HAVE ANY LIABILITY TO YOU OR ANY USER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. **Further Contact.** Salesforce.com may contact you regarding new Salesforce.com service features and offerings.

15. **Google AdWords Program.** Service features that interoperate with the Google AdWords program depend on the continuing availability of the Google AdWords application programming interface ("API") and program for use with the Service. If Google Inc. ceases to make the Google AdWords API or program available on reasonable terms for the Service, Salesforce.com may cease providing such Service features without entitling You to any refund, credit, or other compensation.

Initials: _____