



February 8, 2019

Steve McLean, Systems Analyst
Information Technology Division
City of Aurora
44 E. Downer Place
Aurora, IL 60507

Re: City of Aurora - BenTek® Master Software as a Service Agreement (SaaS), Business Associate Agreement (BAA) & Professional Services Agreement (PSA)

Dear Steve:

On behalf of Kurt Gehring, thank you for choosing BenTek® for the City of Aurora's online benefits enrollment and administration needs. We are confident that the City of Aurora will be very satisfied with the BenTek® solution. The enclosed BenTek client engagement package consists of three BenTek documents which serve as a master agreement for our business and consulting relationship and is briefly explained below.

The first agreement, the Software as a Service Agreement (SaaS), defines the terms of use for the BenTek® software solution. BenTek saves the City the time and expense of reviewing terms and conditions each time the City subscribes to use the BenTek® software platform (the City only signs the SaaS agreement once). Each time the City adds subscriptions, there is only a one-page schedule which needs to be signed by the City (the "Order Form") which describes the specific software components, user profiles, and subscription length and fees.

The second agreement, the Business Associate Agreement (BAA), governs BenTek's use of Personal Health Information (PHI) under the relevant Federal regulations. This agreement remains in force for the duration of the subscription term defined in the SaaS agreement.

The third agreement, the Professional Services Agreement (PSA), defines the terms under which we provide the City with installation, training, and other services related to the City's use of the BenTek® software solution. Each time the City engages BenTek in a consulting project, the pricing and deliverables will be defined in a concise Statement of Work (SOW) which references the terms of the PSA. The PSA is signed once, and a SOW will be signed for each separate consulting project.

Please review and sign the agreements where indicated and return fully executed copies to us by email at contracts@mybentek.com. Thank you for your business, and if you have any questions please do not hesitate to call.

Very truly yours,

BENITEK, INC.


By: Kurt N. Gehring
President

Enclosures

Cc: Kurt N. Gehring, President - BenTek
Julie Fink, VP of Client Development & Success - BenTek

BENTEK® MASTER SOFTWARE AS A SERVICE AGREEMENT FOR END USERS

This Master Software as a Service Agreement for End Users ("Agreement") dated _____, 2019 ("Effective Date") by and between BenTek, Inc., a Florida corporation with a principal place of business at 11505 Fairchild Gardens Avenue, Suite 102, Palm Beach Gardens, FL 33410 ("BenTek") and City of Aurora, an Illinois municipal corporation with a principal place of business located at 44 E. Downer Place, Aurora, IL 60507 ("Customer").

WHEREAS:

1. BenTek is in the business of developing, licensing, supporting and hosting software applications for employee benefits enrollment and administration, the SaaS Solution (as defined below).
2. BenTek agrees to provide to the Customer and the Customer agrees to accept a license to use for its own internal business purposes only the SaaS Solution (as defined below) from BenTek as specified in Exhibit A-1 which is attached to this Agreement and incorporated herein.

NOW THEREFORE, in consideration of the premises and the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. Definitions.

(a) "Customer Data" means all electronic data or information submitted by Customer to the SaaS Solution.

(b) "End Users" means individuals who are authorized by Customer to use the SaaS Solution, for whom subscriptions to the SaaS Solution have been purchased and who have been supplied user identifications and passwords by Customer (or by BenTek at Customer's request) and who may only access and use the SaaS Solution so long as they receive employee benefits coverage through programs provided by the Customer.

(c) "Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

(d) "Order Form" means the ordering documents for purchases of subscriptions hereunder, in the form of attached Exhibit A-1, including addenda thereto, that are entered into between Customer and BenTek from time to time. Order Forms shall be deemed incorporated herein by reference.

(e) "Professional Services" means the services provided by BenTek under the terms of the BenTek Professional Services Agreement ("PSA") which are subject to a fee and which include assisting the Customer in populating the SaaS Solution with Customer Data.

(f) "SaaS Solution" means the online, Web-based applications and platform provided by BenTek via <http://www.mybentek.com> and/or other designated websites as described in the User Documentation, that are ordered by Customer under an Order Form, including associated offline components.

(g) "Tools" is defined as the scripts, software, and utilities which BenTek may use to monitor and administer the SaaS Solution and to help resolve support requests.

(h) "User Documentation" means the online user guide for the Services, accessible via <http://www.mybentek.com> and/or other designated websites as described in the User Documentation as updated from time to time.

2. License to the SaaS Solution.

(a) **Grant and Scope of License.** BenTek grants to Customer and Customer accepts a personal, non-transferable, limited, non-exclusive, worldwide, license, to access and use the SaaS Solution for its internal business purposes only during the term of this Agreement. This license automatically terminates upon Customer's breach of section 2(a) or 2(e).

(b) **License Fees.** Customer agrees to pay the license fees as specified in attached Exhibit A-1 on the terms and conditions contained in this Agreement.

(c) **Subscriptions for End Users.** Licenses for use of the SaaS Solution are purchased as subscriptions for specific End Users. Subscriptions for End Users are for designated End Users and cannot be shared or used by more than one End User but may be reassigned to new End Users replacing former End Users who no longer access the Services, so long as Customer (i) provides prior written notice to BenTek and (ii) Customer is current in all of its payment obligations.

(d) **Provision of SaaS Solution.** BenTek shall: (i) provide to Customer basic support for the SaaS Solution at no additional charge, and/or upgraded support if purchased separately, (ii) use reasonable commercial efforts to make the Services available 24 hours a day, 7 days a week, except for: (1) planned downtime, in which event BenTek shall give at least 8 hours' notice via the Services and which BenTek shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Eastern time Friday to 6:00 a.m. Eastern time Monday, or (2) any unavailability caused by circumstances beyond BenTek'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, or Internet service provider failures or delays, and (iii) provide the Services only in accordance with applicable laws and government regulations.

(e) **Customer's Use of SaaS Solution.** Customer shall (i) be responsible for all End Users' compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and non-infringement of Customer Data and the means by which Customer acquired Customer Data, (iii) use reasonable commercial efforts to prevent unauthorized access to or use of the SaaS Solution, and notify BenTek promptly of any such unauthorized access or use, and (iv) use the SaaS Solution only in accordance with the terms of this Agreement, the User Documentation and applicable laws and government regulations. Customer shall not (1) make the SaaS Solution available to anyone other than End Users, (2) modify, adopt, translate, reproduce, enhance, copy, or use the SaaS Solution in a manner that is illegal or violates the terms of this Agreement, (3) use the SaaS Solution to store or transmit material which is infringing, libelous, defamatory, tortious, unlawful, or violates privacy rights or data security regulations, (4) use the SaaS Solution to store or transmit Malicious Code, (5) interfere with or disrupt the integrity or performance of the SaaS Solution or third-party data contained therein, (6) gain or attempt to gain unauthorized access to the SaaS Solution or their related systems or networks, (7) intentionally cause excessive or unwanted traffic or resource consumption on the related systems or network, access data not intended for the Customer, log into a server or account that the Customer is not authorized to access, attempt to probe, scan or test the vulnerability of the SaaS Solution, any system or the network or to breach the security or authentication measures, or (8) decompile, reverse engineer or otherwise obtain the source code of the SaaS Solution (each of the enumerated subparagraphs of this section 2(e) a "Prohibited Act").

3. **License to Customer Data.** Customer hereby grants to, and BenTek hereby accepts a world-wide, royalty-free, and non-exclusive, license to use the Customer Data to perform its obligations during the term of this Agreement.

4. Fees and Taxes.

(a) **Fees.** As consideration for the providing the SaaS Solution under this Agreement, the Customer agrees to pay to BenTek the various fees (collectively, the "Fees") set out in an order form (Exhibit A-1 hereto) and in accordance with the terms and conditions set out therein. The Customer's access to the SaaS Solution is contingent upon the Customer's performance of its obligations under this Agreement including, without limitation, the payment of all Fees. If any amount owing by Customer under this or any other Agreement is 30 days or more days overdue, BenTek may, without limiting its other rights and remedies, suspend Customer's access to the SaaS Solution until such amounts are paid in full; provided however that BenTek shall not exercise its rights of suspension if the Customer has reasonably and in good faith disputed such charges and is cooperating diligently and in good faith to resolve the dispute.

(b) **Taxes.** The Customer shall be responsible for all sales, use, value added, or other taxes or duties, as applicable, payable with respect to the SaaS Solution, Professional Services, or otherwise arising out of or in connection with this Agreement, other than BenTek's income taxes. If BenTek pays such taxes on the Customer's behalf, the Customer agrees to reimburse BenTek for such payment immediately upon demand. If any tax in the nature of withholding tax is payable on any sums payable to BenTek under this Agreement, the Customer shall pay BenTek such amount as is necessary to ensure that the net amount received by BenTek after such withholding shall be equal to the amount originally due.

5. Professional Services.

BenTek's provision of Professional Services are governed by the terms of the PSA.

The Customer shall be responsible for furnishing BenTek with all information determined by BenTek to be necessary for the performance of the Support and Professional Services to be provided by BenTek as specified in this Agreement and the PSA.

6. Ownership.

(a) Subject to the provisions of Section 7 hereof, BenTek owns all intellectual property rights, including without limitation, copyrights, patents, trade secrets, moral rights, in and to the support, Tools, and SaaS Solution, including all modifications, changes, enhancements, or additions thereto. The Customer agrees that, except for the purchase of subscriptions for End Users to access the SaaS Solution in this Agreement, nothing in this Agreement gives the Customer any right, title or interest in, to or under any of the software, network, systems, or any intellectual property rights therein. To the extent of any such interest accruing to the Customer and/or its End Users notwithstanding the provisions hereof may constitute "work for hire", the Customer hereby agrees to assign (and shall cause its End Users to assign) and, upon its creation, does hereby assign to BenTek the ownership of such intellectual property absolutely, and all patent and intellectual property rights therein.

(b) BenTek shall own all right, title and interest (including patent rights, copyrights, trade secret rights, mask work rights, trademark rights and all other intellectual property rights throughout the world relating to any and all suggestions, enhancement requests, recommendations, or feedback provided by Customer and End Users relating to or arising out of the Tools, SaaS Solution, and support. Customer for itself hereby makes, and shall cause End Users to make, all assignments necessary to accomplish the foregoing ownership. Customer shall itself, and shall cause End Users, to further assist BenTek, at BenTek's expense, to further evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce, and defend any rights assigned. Customer hereby irrevocably designates and appoints BenTek as its agents and attorneys-in-fact to act for and in Customer's and its End Users' behalf to execute and file any document and to do all other lawfully permitted

acts to further the foregoing with the same legal force and effect as if executed by Customer and End User.

7. **Customer Data.**

(a) **Protection of Customer Information.** BenTek acknowledges and agrees that any Customer Information, in whatever form, stored and/or processed on the network or systems hosting the SaaS Solution, is and shall remain the sole property of the Customer. BenTek agrees that it will not use any Customer Data for any purpose other than to perform its obligations under this Agreement. BenTek agrees that either (i) upon request of and as directed by the Customer, or (ii) upon the termination of this Agreement, BenTek shall either destroy or return such Customer Data to the Customer in a standard file format as BenTek may reasonably determine. BenTek shall take or cause to be taken the same efforts it exercises in protecting the security of its information, but in no event, shall BenTek exercise less than commercially reasonable precautions to protect the security of Customer Data.

(b) **Regulation of Customer Data.** The Customer acknowledges and agrees that the Customer and its End Users or its agents will be solely and exclusively responsible for the collection and provision of all Customer Data including, without limitation, identifiable personal data regarding the Customer's employees, End Users, or other individuals. The Customer shall not permit its End Users or agents to provide BenTek with Customer Data or other data that constitutes a Prohibited Act hereunder. The Customer acknowledges and agrees that BenTek is under no obligation to review Customer Data to ensure either its accuracy or its compliance with the terms and conditions of this subsection.

(c) **Unauthorized Access.** BenTek shall in no way be held liable for any loss of data or other claims to the extent the same arise from unauthorized access to the systems, network, or SaaS Solution by obtaining a user name or password caused by a negligent or willful act of the Customer, its End Users, or its agents.

(d) **Business Associate Agreement.** If Customer or a Third Party authorized by Customer provides health information to BenTek to perform any services pursuant to this Agreement, and to the extent that such health information constitutes Personal Health Information ("PHI") as that term is defined in the Business Associate Agreement attached hereto and incorporated herein as Exhibit B ("BAA"), then the terms of the BAA shall also apply with respect to such PHI.

8. **Confidentiality.**

(a) **Definition.** For purposes of this Agreement, "Confidential Information" shall include, but is not limited to, the following: any documentation and other tangible or intangible discoveries, ideas, concepts, software, designs, drawings, specifications, source code, object code, diagrams, flow charts, procedures and "know-how" comprising all or any portion of a computer program, strategic and development plans or concepts, financial information, business plans, marketing plans, sales plans, marketing and sales strategies, data, business records, project records, market reports, Customer Data, employee lists and business manuals, policies and procedures, information relating to products, processes, technologies or theory and all other information which may be disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party"), or to which the Receiving Party may be provided access by a Disclosing Party, or others, in accordance with this Agreement, or which is generated by the Disclosing Party as a result of or in connection with bona fide business purposes of the Disclosing Party, which is not generally available to the public.

(b) **Obligation of Confidentiality.** The Receiving Party covenants and agrees to receive and hold the Confidential Information in confidence except disclosure which may be required by law. Without limiting the generality of the foregoing, the Receiving Party covenants and agrees:

- (i) to protect and safeguard the Disclosing Party's Confidential Information against unauthorized use, publication or disclosure;
- (ii) not to use any of the Disclosing Party's Confidential Information except as required for its performance under this Agreement;
- (iii) not to, directly or indirectly, in any way, reveal, report, publish, disclose, transfer or otherwise use any of the Disclosing Party's Confidential Information except as specifically authorized by the Disclosing Party in accordance with this Agreement;
- (iv) to restrict access to the Disclosing Party's Confidential Information to those of its officers, directors, agents, attorneys, consultants, employees, contractors and partners who clearly and demonstrably need such access to fulfill its obligations under this Agreement;
- (v) to advise in writing each of the persons to whom it provides access to any of the Disclosing Party's Confidential Information, that such persons are strictly prohibited from making any use, publishing or otherwise disclosing to others, or permitting others to use for their benefit or to the detriment of the Disclosing Party, any of the Disclosing Party's Confidential Information, and, upon the request of the Disclosing Party, to provide the Disclosing Party with a copy of a written agreement to that effect signed by such persons; and
- (vi) to comply with any other reasonable security measures requested in writing by the Disclosing Party.
- (c) **Exceptions to Confidentiality Provisions.** The foregoing confidentiality obligations do not apply:
- (i) to the extent that the Confidential Information is or becomes generally available to the public other than as a result of a breach of this Agreement or any other obligation of confidentiality;
- (ii) if the other party is directly ordered by a court or other governmental authority to disclose all or any part of the Confidential Information, provided, however, that the party so ordered will give prompt notice to the other of any such order, or of any legal or governmental proceeding that might result in such an order, and will not disclose any Confidential Information until the other party has been provided with a reasonable opportunity to limit or prevent such disclosure.
- (iii) disclosure by Customer may be made as required by the Illinois Freedom of Information Act (5 ILCS 140/1, *et seq.*).
- (d) **Remedies for Breach.** Each party acknowledges that any unauthorized disclosure or use of Confidential Information may cause immediate and irreparable harm to the other, for which damages may not be an adequate remedy, and as such, each party shall, in addition to any other rights or remedies it may have in law or equity under this Agreement or otherwise, be entitled to injunctive relief.
- (e) **Return of Confidential Information.** Each of the parties agrees that immediately upon request by the other, and in any event, immediately upon termination or expiration of this Agreement, it shall deliver and return to the other all copies of Confidential Information (including all copies thereof, in any form whatsoever) disclosed and/or in its possession, care or control, except to the extent Customer may be legally required to maintain such information and/or records in accordance with the Illinois Local Records Act (50 ILCS 205/1, *et seq.*)

9. WARRANTIES AND DISCLAIMERS.

(a) **LIMITED WARRANTY.** BenTek warrants that (i) the SaaS Solution and Tools shall perform substantially

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in accordance with the User Documentation; (ii) BenTek owns the SaaS Solution and Tools and/or has the express authority to license the SaaS Solution and Tools; (iii) as of the Effective Date, there are no known claims of infringement by the SaaS Solution or Tools. For any breach of the warranty in section 9(a)(ii) and/or (iii), BenTek's entire liability and Customer's sole and exclusive remedy is provided in section 15(a) and (c) below. For any breach of the warranty in section 9(a)(ii) and/or (iii), BenTek's entire liability and Customer's sole and exclusive remedy is provided in section 15(a) and (c) below. For any breach of the warranty in section 9(a)(i), BenTek's entire liability and Customer's sole and exclusive remedy is at BenTek's option, either (1) to exercise reasonable efforts to correct such non-conformity in a manner determined by BenTek, within 5 business days of receiving written notice from Customer describing the non-conformity in reasonable detail; or (2) replace the SaaS Solution or Tools containing the non-conformity, or (3) refund, pro-rata the fees received by BenTek for the SaaS Solution or Tools containing the non-conformity, in which case the specific Order Form (Exhibit A-1) which corresponds to the subscriptions for the non-conforming SaaS Solution shall automatically terminate upon the pro rata refund of fees paid for such subscriptions.

(b) **Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) it will not transmit to the other party any Malicious Code (except for Malicious Code previously transmitted to the warranting party by the other party).

(c) **Warranty Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, BENTEK DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY LAW WITH REGARD TO THE SAAS SOLUTION, SUPPORT, AND ANY TOOLS WHICH MAY BE SOLD, LICENSED OR PROVIDED, INCLUDING THOSE AT NO COST, PURSUANT TO THIS AGREEMENT.

10. Security.

(a) The Customer agrees that the Customer is solely responsible for (i) the confidentiality of all Customer and End User passwords and all use or charges incurred from use of the SaaS Solution, Professional Services, and support accessed from BenTek with the Customer's and End Users' passwords, and (ii) the content of all visual, written or audible communications using the Customer's account. Although BenTek is not responsible for any such communications, BenTek may suspend any such communications of which BenTek is made aware of, at any time, and BenTek shall provide prompt notice thereof to the Customer. The Customer agrees that the Customer and Users will not use the SaaS Solution, Professional Services, Tools, support, related systems and network in a manner that constitutes a Prohibited Act.

11. Term and Termination.

(a) **Term.** This Agreement commences on the Effective Date and continues until all subscriptions for End Users granted in accordance with this Agreement have expired or been terminated. Subscriptions for End Users commence on the start date specified in the applicable Order Form (Exhibit A-1) and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all End User subscriptions shall automatically renew for additional periods equal to the then-expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 90 days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless BenTek provides written notice of a pricing increase at least 90 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.

(b) **Renewal.** This Agreement shall be automatically renewed for additional one (1) year periods (a "Renewal Term") on the same terms and conditions as provided herein (or as may be otherwise negotiated between the parties) unless either party notifies the other in writing at least 90 days prior to the end of the Term or a Renewal Term, as the case may be, that it has elected to terminate this Agreement, in which case the Agreement shall terminate at the end of the relevant Term.

(c) **Termination.** This Agreement may be terminated by either party upon the occurrence of any of the following events, which shall be deemed to be a breach of the terms of this Agreement:

(i) there is a material breach of this Agreement; provided that the party terminating this Agreement shall first have given prior written notice to the other of its intent to terminate, together with details of the default causing the termination, and the party receiving such notice shall have been given 20 days to cure any such default;

(ii) if either party ceases or threatens to cease to carry on its business, commits an act of bankruptcy, becomes insolvent, makes an assignment or bulk sale of its assets, or proposes a compromise or arrangement to its creditors;

(iii) if any proceeding is taken with respect to a compromise or arrangement, or to have either party declared bankrupt or wound up, or to have a receiver appointed with respect to any part of the assets of a party, or if any encumbrancer takes possession of any part thereof and such proceeding is not dismissed within 60 days of such proceeding being initiated, and with respect to any encumbrancer, any default has not been cured within 60 days of the occurrence of such default; or

(iv) BenTek may, at its sole option suspend the Customer's access to the Software, Support, Services, System and/or Network, and/or terminate this Agreement immediately and take any remedial action under any applicable law:

A. In the event that any Customer Data constitutes or may reasonably be considered to constitute a Prohibited Act hereunder; or

B. The Customer, its End Users or its agent commits or suffers to be committed a Prohibited Act hereunder.

(d) **Events Upon Termination.** Upon termination of this Agreement:

(i) the Customer shall pay to BenTek all amounts outstanding and owing to the effective date of termination upon receipt of a final invoice from BenTek, and payment shall be made in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1, *et. seq.*);

(ii) each of the parties shall deliver or destroy all Confidential Information of the other, which is in its possession, care, or control to the other as provided in Section 8(e) to the extent permitted by the Illinois Local Records Act;

(iii) each of the parties shall release the other from all obligations under this Agreement except for obligations accrued and owing up to the effective date of termination and those obligations which survive as provided in section 11(d)(iv);

(iv) the provisions in Section 5, 6, 7, 8, 9, 10, 11(d), 13, 14, 15, 16, 17(j), (k), (l), and (m) of this

Agreement shall continue in force following termination of this Agreement.

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12. **Inspection Right.** During normal business hours during the Term or any Renewal Term, BenTek or its authorized representative, shall have the right, upon reasonable advance written notice, to audit and inspect the Customer's utilization of the Software and/or Services via accessing the Customer's accounts, in order to verify compliance with the terms and conditions of this Agreement. BenTek shall be solely responsible for the cost and expenses of such audit; however, if Customer is not in compliance with this Agreement, then Customer shall be liable for the cost and expenses of the audit.

13. **Access.** BenTek shall have the right to access the Software, Systems and Network for purposes of maintenance, support, administration, invoicing and inspection, as reasonably necessary in its sole discretion.

LIMITATIONS OF LIABILITY, DAMAGES, AND CAUSE OF ACTION(a) **Limited Liability.** Excluding any breach by Customer of Sections 2(a), 2(e), 6, or any breach by either party of its obligations under Section 8 or Section 15 hereof, neither party, its directors, officers, employees and agents shall in any event be liable for any loss, injury, cause of action (whether in contract, tort (including negligence) or otherwise, liability or damage of any kind with respect to the support, Tools, the SaaS Solution, or otherwise under this Agreement, as the case may be, in excess of the three times the Fees paid or payable by Customer to BenTek in the applicable Term or Renewal Term under this Agreement in which the event giving rise to liability occurred. Without limiting the generality of the foregoing, BenTek shall in no event be liable for any loss of business, lost profits, lost data, or failure of security resulting in any way from the Customer or the Customers' use of the support, Tools, and/or the SaaS Solution, without limitation, any errors or omissions, any content, any delay or failure of performance, data loss, security breaches, scheduled or unscheduled, downtime, any data/loss of files caused by delays, non-deliveries or wrong deliveries, accuracy or quality of information accessed through the Support, Tools, SaaS Solution, or the unavailability or interruption of the support, Tools, the SaaS Solution, or the Professional Services caused by BenTek, the Customer, any third party agent of BenTek or the Customer, an act of God or power line failure or otherwise.

(b) **LIMITATION OF DAMAGES.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THREE TIMES THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S LIABILITY FOR BREACH OF SECTION 2(a) (GRANT AND SCOPE OF LICENSE) AND/OR

2(e) (CUSTOMER'S USE OF SAAS SOLUTION), CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTIONS 4 (FEES AND TAXES), SECTION 15 (INDEMNIFICATION), AND BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 8.

14. **Indemnification for Intellectual Property Claims.**

(a) **Indemnification of Customer.** BenTek shall indemnify Customer, and its elected officials, employees, and agents against all claims, liabilities, and costs, including reasonable attorneys' fees, reasonably incurred in the defense of any claim brought against Customer by third parties alleging that Customer's and/or its End Users' use of the SaaS Solution or Tools infringes any United States patent, a copyright or trade secret, provided that such indemnity shall not apply if the alleged infringement results from use of the SaaS Solution or Tools other than in their respective unaltered forms as supplied by BenTek or unlicensed activities or use not in compliance with this Agreement, and so long as Customer promptly notifies BenTek in writing of any such claim and BenTek is permitted to control fully the defense and any settlement of such claim as long as such settlement shall not include a financial obligation on Customer. Customer shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel of its choosing, and may settle any claim on a basis requiring BenTek to substitute for the SaaS Solution or Tools alternative substantially equivalent non-infringing software and services. In the event Customer's continued use of any SaaS Solution or Tools is prohibited by reason of infringement or misappropriation of a valid United States patent, copyright, trademark, or trade secret, or if infringement is likely in BenTek's opinion, BenTek may, at its sole option and at its expense, obtain the rights to continued use of any such SaaS Solution or Tools; replace or modify such SaaS Solution or Tools so that they are no longer infringing; or terminate the license to the SaaS or Tools involved and issue a pro rata refund to the Customer.

(b)

15. **General Provisions.**

(a) **Additional Subscriptions for the SaaS Solution and Support.** All Fee changes and agreements as to the provision of additional subscriptions for the SaaS Solution and support to the Customer by BenTek, from time to time, shall be appended hereto as amended or incorporated herein as additional Exhibits and shall be subject to the terms and conditions hereof upon mutual agreement in accordance with the Agreement.

(b) **Entire Agreement.** This Agreement, inclusive of the Exhibits and any amendments or additions thereto, constitutes the entire agreement and sets forth the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, covenants, arrangements and discussions with respect thereto. In the event of an inconsistency between the terms and conditions of this Agreement and any Exhibit now or hereafter appended hereto, the terms of the applicable Exhibit shall govern to the extent necessary to remedy such inconsistency.

(c) **Marketing.** Customer hereby grants to BenTek and BenTek accepts a world-wide, royalty free, and non-exclusive license to use the Customer's name, trademarks and trade names ("Customer Marks") to identify the Customer as a customer of BenTek on BenTek's website, and for use of such Customer Marks in BenTek's corporate, promotional and marketing literature.

(d) **Relationship of Customer and BenTek.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between the parties; no party is by virtue of this Agreement, authorized as an agent, employee or agent representative of the other party.

(e) **Non-Exclusivity.** Nothing in this Agreement will be construed to prevent BenTek from marketing, licensing, selling or otherwise providing the SaaS Solution and Professional Services or any aspects of BenTek's technology or services to any third party.

(f) **Modifications.** No modification of, amendment or addition to this Agreement is valid or binding unless set forth in writing and fully executed by both parties hereto.

(g) **Waiver.** Any waiver of any right or remedy under this Agreement must be in writing and signed by each party. No delay in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on one occasion shall not be construed as a waiver of any right or remedy on any future occasion.

(h) **No Assignment.** This Agreement and any rights or obligations hereunder, shall not be assigned, sublicensed or otherwise transferred by the Customer without the prior written consent of BenTek. Any transfer by merger, consolidation, or liquidation shall constitute an assignment for purposes of this Agreement. BenTek may transfer or assign its rights and obligations hereunder in the event of a change in ownership or control.

(i) **Inurement.** This Agreement shall be binding upon and shall inure to the benefit of BenTek and the Customer and each of their successors and permitted assigns.

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(j) **Governing Law.** The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to conflicts of laws principles. The parties agree that in the event any cause of action or claim is filed, jurisdiction and venue shall be proper in the Circuit Court of Kane County, Illinois.

(l) **Notices.** Any notices, demands and other communications hereunder shall be in writing and shall be delivered, sent by electronic transmission, or by mail, registered or certified, return receipt requested, postage prepaid, and addressed as follows:

- (i) to BenTek, at:
11505 Fairchild Gardens Avenue, Suite 102
Palm Beach Gardens, Florida 33410
Attn: Chief Financial Officer
Facsimile: (561) 626-6970
Email: contracts@mybentek.com
Email: kate.grangard@gehringgroup.com

With a copy to (which shall not constitute notice):
Albert B. Maggio, Jr., P.A.
CRGO Law
7900 Glades Road
Suite 520
Boca Raton, Florida 33434

- (ii) to the Customer, at:
Customer Name: City of Aurora
Customer Address: 44 E. Downer Place
Customer Address: Aurora, IL 60507
Customer Contact Name: Steve McLean, Systems Analyst
Customer Facsimile: (630)256-3469
Customer Email Address: smclean@aurora-il.org

All notices shall be effective and deemed to be delivered (i) if mailed, on the fifth business day following such mailing, unless there is an interruption in the mail, in which case it shall be deemed to have been given when received; or (ii) if delivered or sent by facsimile, on the business day following the date of dispatch or the date of transmission, as the case may be. Either party may change the address for notice by giving written notice of such change to the other party in the manner provided in this Section.

(m) **Severability.** If any provision of this Agreement is held to be unenforceable or illegal by a court of competent jurisdiction, such provision shall be modified to the extent necessary to render it enforceable, or shall be severed from this Agreement, and all other provisions of this Agreement shall remain in full force and effect.

(n) **Facsimile Transmission.** This Agreement may be executed and delivered by facsimile or other electronic means of transmission, and upon receipt such transmission shall be deemed delivery of an original. Within a reasonable time after such electronic delivery, the party executing the document shall mail or deliver an originally signed copy of such document to the other party.

(o) **Counterparts.** This Agreement may be executed in several counterparts each of which when executed shall be deemed to be original, and such counterparts shall each constitute one and the same instrument and notwithstanding their date of execution shall be deemed to bear the day and year first above written.

(p) **Force Majeure.** Neither party to this Agreement shall be liable to the other for any failure or delay in performance by circumstances beyond its control, including but not limited to, acts of God, fire, labor difficulties or governmental action, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable efforts to overcome such circumstances.

BENTEK, INC.

CUSTOMER-CITY OF AURORA

By: _____

Kurt N. Gehring

Name: _____

President

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

SIGN HERE

PRIOR ACTION

EXHIBIT A-1
ORDER FORM FOR SAAS SOLUTION
ADDENDUM TO THE MASTER SOFTWARE AS A SERVICE AGREEMENT
BETWEEN BENTEK, INC. AND CITY OF AURORA ("CUSTOMER")

This Exhibit A-1, BenTek Order Form for SaaS Solution between BenTek, Inc. ("BenTek") and City of Aurora ("Customer") is effective as of the date of execution by BenTek ("Services Effective Date"). This is an Exhibit to the Master Software as a Service Agreement between BenTek and Customer ("Master SaaS Agreement"), the terms of which are incorporated herein.

1. Customer. The legal name, address, contact person, telephone number and e-mail address of the Customer:

Legal Name: City of Aurora
Address: 44 E. Downer Place
Aurora, IL 60507
Contact Name: Steve McLean, Systems Analyst
Telephone Number: (630)256-3464
E-mail Address: smclean@aurora-il.org

2. SaaS Solution. Customer orders the following annual subscriptions to the SaaS Solution and agrees to pay the corresponding fees associated with the license:

<u>Description</u>	<u>User (Group)</u>	<u>Fee</u>
BenTek® Employee Benefits Enrollment & Administration System	City of Aurora	See attached quote.

3. Subscription Term. The term for the subscription for SaaS Solution is Three (3) years.

4. Fees. Pursuant to Section 3 of the Master SaaS Agreement, following are the payment terms for the SaaS Solution:

An implementation fee is due and payable in advance. Payment obligations are non-cancelable and fees paid are non-refundable. If SaaS Solution Fees are based upon the number of subscriptions for Users and not a fixed fee, the number of subscriptions for Users purchased cannot be decreased during the relevant subscription term stated on the Order Form. User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

5. Support. So long as Customer is in compliance with the terms of the SaaS Agreement and is current in all of its payment obligations, BenTek shall provide Customer with telephone support between the hours of 8:30 a.m. and 5:00 p.m., Eastern time. The support number is 888. 5BENTEK. (888.523.6835). E-mail: support@mybentek.com. Response is within one business day.

BENTEK, INC.

CUSTOMER-CITY OF AURORA

By: _____

Kurt N. Gehring

Name: _____

President

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

SIGN HERE

PRIOR ACTION

**PRICING FORM TO EXHIBIT A-2
ADDENDUM TO THE MASTER SOFTWARE AS A SERVICE AGREEMENT
BETWEEN BENTEK, INC. AND CITY OF AURORA ("CUSTOMER")**

PRIOR ACTION

EXHIBIT B
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") by and between City of Aurora ("Customer"), and BenTek, Inc. ("BenTek") is made and entered into effective _____, 2019.

RECITALS

WHEREAS, Customer is a "covered entity" as those terms are defined in 45 C.F.R. § 160.103; and WHEREAS, BenTek provides administration services to Customer; and

WHEREAS, as a result of such functions, Customer has identified BenTek as a "business associate," as defined in 45 C.F.R. § 160.103, of Customer for purposes of the privacy and security requirements under the Health Insurance Portability and Accountability Act of 1996, (HIPAA) as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) and the regulations issued thereunder; and

WHEREAS, BenTek acknowledges that it is a business associate, as defined in 45 C.F.R. § 160.103, of Customer that may create, use, or disclose Protected Health Information or Electronic Protected Health Information on behalf of Customer; and

WHEREAS, Customer desires to obtain written assurances that BenTek will safeguard Protected Health Information or Electronic Protected Health Information created or received by or on behalf of Customer.

NOW, THEREFORE, the parties agree as follows:

1. **DEFINITIONS**

1.1 "Breach" shall have the meaning set forth in 45 C.F.R. §164.402.

1.2 "Data Aggregation" shall have the meaning as the term "data aggregation" in 45 C.F. R. § 164.501.

1.3 "Designated Record Set" shall mean a group of health-related records about an Individual as provided in 45 C.F.R. § 164.501.

1.4 "Electronic Health Record" shall mean an electronic record of health-related information with respect to an Individual that is created, gathered, managed and consulted by authorized healthcare clinicians and staff.

1.5 "Electronic Protected Health Information" or "Electronic PHI" means information that BenTek or its agent, including a subcontractor, creates, receives, maintains or transmits from or on behalf of Customer that comes within paragraphs 1(i) or 1(ii) of the definition of "protected health information" at 45 C.F.R. § 160.103.

1.6 "Genetic Information" shall have the meaning assigned to such term in 45 C.F.R. § 160.103.

1.7 "HIPAA" shall mean the health information privacy provisions under the Health Insurance Portability and Accountability Act of 1996, and regulations issued thereunder at 45 C.F.R. Parts 160 and 164, as amended by HITECH.

1.8 "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act and the regulations issued thereunder.

1.9 "Individual" shall mean a person who is the subject to the Protected Health Information of the Customer and shall include a person who qualifies as the Individual's personal representative in accordance with 45 C.F.R. § 164.502(g).

1.10 "Limited Data Set" shall have the meaning assigned to such term in 45 C.F.R. §164.514(e)(2).

1.11 "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by BenTek from or on behalf of Customer. Genetic Information shall be considered PHI.

1.12 "Required by Law" shall mean a mandate contained in an applicable state, federal, or local law that compels Customer (or business associates acting on behalf of Customer) to make a use or disclosure of PHI that is enforceable in a court of law.

1.13 "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, as defined at 45 C.F.R. § 164.304. However, certain low risk attempts to breach network security, such as the incidents listed below, shall not constitute a Security Incident under this Agreement, provided they do not penetrate the perimeter, do not result in an actual breach of security and remain within the normal incident level:

- pings on the firewall;
- port scans;
- attempts to log on to a system or enter a database with an invalid password or username;
- denial-of-service attacks that do not result in a server being taken off-line; and
- malware such as worms or viruses.

1.14 "Subcontractor" shall have the meaning as the term in 45 C.F.R. § 160.103.

1.15 "Unsecured Protected Health Information" or "Unsecured PHI" shall have the meaning assigned to such term in 45 C.F.R. § 164.402 and guidance issued thereunder.

1.16 All terms defined herein. Unless specifically modified, and any undefined terms shall have the same meaning as such terms do in HIPAA and HITECH.

2. OBLIGATIONS OF THE PARTIES

2.1 BenTek shall safeguard all PHI and Electronic PHI created or received by BenTek on behalf of Customer in accordance with HIPAA. BenTek shall implement administrative, physical and technical safeguards that prevent use or disclosure of the Electronic Protected Health Information other than as permitted by the Security Rules. Specifically, BenTek agrees to implement policies and procedures in accordance with 45 C.F.R. 164.316 that:

- i. Prevent, detect, contain and correct security violations in accordance with the administrative safeguards set forth in 45 C.F.R. § 164.308;
- ii. Limit physical access to electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed in accordance with the physical safeguards set forth in 45 C.F.R. § 164.310; and

iii. Allow access to electronic information systems that maintain Electronic PHI to only those persons or software programs that have been granted access rights in accordance with the technical safeguards set forth in 45 C.F.R. § 164.312.

2.2 BenTek shall not use or disclose PHI or Electronic PHI except as permitted or required by Article 3 of this Agreement or as Required by Law. BenTek shall notify Customer of all requests for the disclosure of PHI and Electronic PHI from a law enforcement or government official, or pursuant to a subpoena, court or administrative order, or other legal request as soon as possible prior to making the requested disclosure. BenTek shall provide to Customer all PHI and Electronic PHI necessary to respond to these requests as soon as possible, but no later than ten (10) business days following its receipt of a written request from Customer.

2.3 Customer shall provide to BenTek, and BenTek shall request from Customer, including disclosures to its affiliates, subsidiaries, agents and subcontractors or other third parties, only a Limited Data Set or, if necessary or otherwise permitted by HHS regulations, the minimum PHI or Electronic PHI necessary to perform or fulfill a specific function required or permitted under the Agreement. "Minimum necessary" shall be interpreted in accordance with HITECH, and in any event, shall not include any direct identifiers of individuals such as names, street addresses, phone numbers or social security numbers, except for a unique identifier assigned by Customer as necessary for the strategic analysis.

2.4 BenTek shall comply with all granted restrictions on the use and/or disclosure of PHI, pursuant to 45 C.F.R. § 164.522(a), upon written notice from Customer; provided, however, that Customer shall not grant any restriction that affects BenTek's use or disclosure of PHI without first consulting with BenTek.

2.5 BenTek shall comply with all granted requests for confidential communication of PHI, pursuant to 45 C.F.R. § 164.522(b), upon written notice from Customer.

2.6 BenTek shall report to Customer any use or disclosure of PHI not permitted by this Agreement of which BenTek becomes aware within fifteen (15) business days of its becoming aware, and will take such corrective action necessary, or as reasonably directed by Customer, in order to prevent and minimize damage to any Individual and to prevent any further such occurrences.

2.7 Following the discovery of a Breach of Unsecured PHI, BenTek shall notify the Customer without unreasonable delay and in no case no later than fifteen (15) days after discovery of the Breach. The notification shall include the identification of each Individual whose Unsecured PHI has been or is reasonably believed by BenTek to have been accessed, acquired, used or disclosed during the Breach. BenTek shall provide the Customer with any other available information that the Customer requires to notify affected individuals under the Privacy Rule.

2.8 BenTek shall make reasonable efforts to mitigate, to the extent practicable or as reasonably directed by Customer, any harmful effect that is known to BenTek resulting from a breach of this Agreement or HIPAA that is directly caused by BenTek.

2.9 BenTek shall report to Customer any Security Incident within five (5) business days of when it becomes aware of such Security Incident. BenTek shall mitigate to the extent practicable or as reasonably directed by Customer any harmful effect that is known to BenTek of a Security Incident by BenTek.

2.10 BenTek shall take reasonable steps to ensure that any Subcontractor performing services for Customer agrees in writing to the same restrictions and conditions that apply to BenTek with regard to its creation, use,

and disclosure of PHI and Electronic PHI in accordance with 45 C.F.R. §§ 164.308(b)(2), 164.502(e)(1)(ii) and 164.504(e)(5). BenTek shall, upon written request from Customer, provide a list of any Subcontractors with whom BenTek has contracted to perform services for Customer. BenTek shall advise Customer if any Subcontractor breaches its agreement with BenTek with respect to the disclosure or use of PHI or Electronic PHI. If BenTek knows of a pattern of activity or practice of its Subcontractor that constitutes a material breach or violation of the Subcontractor's duties and obligations under its agreement with the Subcontractor ("Subcontractor Material Breach"), BenTek shall cure the breach or provide a reasonable period for Subcontractor to cure the Subcontractor Material Breach; provided, however, that if BenTek cannot, or Subcontractor does not, cure the Subcontractor Material Breach within such period, BenTek shall terminate the agreement with Subcontractor, if feasible, at the end of such period.

2.11 BenTek shall, upon written request from Customer, provide to Customer a copy of any PHI or Electronic PHI in a Designated Record Set, as defined in 45 C.F.R. § 164.501, created or maintained by BenTek, and not also maintained by Customer, within thirty (30) days of receipt of the request.

2.12 BenTek shall, upon written request from Customer, make any amendment to PHI in a Designated Record Set maintained by BenTek within thirty (30) days of receipt of the request unless BenTek can establish to Customer's satisfaction that the PHI at issue is accurate and complete.

2.13 If an Individual's PHI is held in an Electronic Health Record, BenTek shall provide requested copies in electronic format to the individual or to an entity or person designated by the Individual, provided such designation is clearly and conspicuously made by the Individual or Customer.

2.14 BenTek shall make its internal practices, written policies and procedures, books, records, and other documents relating to the use and disclosure of PHI and/or Electronic PHI created or maintained by BenTek on behalf of Customer available to the Secretary of the Department of Health and Human Services, or his or her designee, for purposes of the Secretary determining Customer's compliance with HIPAA.

2.15 BenTek shall make available the information required to provide an accounting of disclosures made on and after the Effective Date, as necessary for Customer to comply with 45 C.F.R. § 164.528, within twenty (20) business days of receipt of the request. BenTek shall provide one such accounting within a twelve-month period without charge but may make a reasonable charge for any additional such accountings within the same twelve-month period.

2.16 BenTek shall maintain all records, other than those records that are also maintained by Customer, for six (6) years from the date created or last in effect, whichever is later, as necessary for Customer to comply with 45 C.F.R. § 164.530(j)(2).

3. **PERMITTED USES OF PHI**

3.1 BenTek may use and disclose PHI and Electronic PHI as necessary to provide services to Customer, subject to Section 2.3 of this Agreement and consistent with the requirements of HIPAA.

3.2 BenTek may use and disclose PHI and Electronic PHI as necessary for the proper management and administration of BenTek or to carry out BenTek's legal responsibilities, subject to Section 2.4 of this Agreement and consistent with the requirements of HIPAA; provided, however, that BenTek may disclose the PHI and Electronic PHI for such purposes only if:

- i. the disclosure is Required by Law, or

ii. BenTek obtains reasonable assurances that the party to whom the PHI or Electronic PHI is disclosed (a) will protect the confidentiality of the PHI and Electronic PHI, (b) will not further disclose the PHI or Electronic PHI except as Required by Law or for the purposes for which it was disclosed to the other party, and (c) will report any improper use or disclosure of the PHI and/or Electronic PHI to BenTek.

3.3 Except as otherwise limited in this Agreement, and to the extent provided for under this Agreement, BenTek may use PHI and Electronic PHI to provide Data Aggregation services to Customer, as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

4. **TERMINATION OF AGREEMENT**

4.1 Except as described in Section 4.3, this Agreement shall continue in effect so long as BenTek provides service to Customer involving maintaining, using or disclosing PHI or Electronic PHI, or otherwise retains a copy of PHI or Electronic PHI provided to BenTek by Customer.

4.2 Customer may terminate this Agreement at any time if Customer discovers that BenTek has materially breached any provision of this Agreement.

4.3 If BenTek becomes aware of a pattern of activity or practice of the Customer that constitutes a material breach or violation of the Customer's duties and obligations under the Agreement, BenTek shall take reasonable steps and provide a period of thirty (30) calendar days for the Customer to cure the material breach or violation. If the Customer does not cure the material breach or violation within such 30-day period, BenTek shall terminate the Agreement, if feasible, at the end of such 30-day period.

4.4 Upon the expiration of Customer's relationship with BenTek, and contingent upon the payment of all outstanding fees, BenTek shall return PHI and Electronic PHI to Customer or Customer's designated agent upon Customer's request. If return of all PHI and Electronic PHI is not feasible, the provisions of this Agreement shall continue to apply to BenTek until such time as all PHI and Electronic PHI is either returned to Customer or destroyed pursuant to BenTek's document retention policy, provided that BenTek shall limit further use of PHI and Electronic PHI only to those purposes that make the destruction or return of the PHI and Electronic PHI infeasible. Following the expiration of the relationship, BenTek agrees not to disclose PHI and Electronic PHI except to Customer or as Required by Law.

5. **NOTICES**

Whenever, under this Agreement, BenTek is required to give notice to Customer, such notice shall be sent via First Class Mail to:

Attention: Privacy Officer
City of Aurora
44 E. Downer Place
Aurora, IL 60507

Whenever, under this Agreement, Customer is required to give notice to BenTek, such notice shall be sent via First Class Mail to:

Katherine Bellantoni, CHP, Privacy Officer
BenTek, Inc.
11505 Fairchild Gardens Ave., Suite 102
Palm Beach Gardens, FL 33410

6. **INDEMNIFICATION**

BenTek agrees to indemnify Customer, and its elected officials, employees, directors, officers of Customer (collectively "Customer Indemnitees"), against all actual and direct losses resulting from or in connection with any breach of this Agreement by BenTek, or its partners, agents, subcontractors, assigns, employees or other members of its workforce. Actual and direct losses shall include, but shall not be limited to, damages, judgments, liabilities, fines, penalties, costs, and expenses (including reasonable attorneys' fees) which are imposed upon or incurred by Customer Indemnitees by reason of any suit, claim, action, investigation, or demand by any Individual, government entity, or third party. This obligation to indemnify shall survive the termination of this Agreement. This obligation to indemnify shall survive the termination of this Agreement.

7. **AMENDMENT**

The parties agree to negotiate in good faith any amendments necessary to conform this Agreement to changes in applicable law. BenTek further agrees to promptly attempt to amend its agreements with its subcontractors and agents to conform to the terms of this Agreement. In the event BenTek is unable to amend this Agreement or its agreements with its subcontractors in a way that is sufficient to satisfy the requirements under HIPAA, Customer may terminate this Agreement in accordance with Section 4 upon thirty (30) days' written notice.

8. **TERMS OF AGREEMENT GOVERN**

Any ambiguity in this Agreement shall be resolved in a way that permits compliance with HIPAA. In the event of a conflict between the terms of this Agreement and any other contract or agreement between Customer and BenTek, this Agreement shall govern.

9. **REGULATORY REFERENCES**

A reference in this Agreement to a section in the Privacy Rules or Security Rules means the applicable section of 45 CFR parts 160 and 164 as in effect or as amended, and for which compliance is required.

IN WITNESS HEREOF, the parties have executed this Agreement by their respective duly authorized officers or representatives.

BENTEK, INC.

CUSTOMER-CITY OF AURORA

By: _____

By: _____

Kurt N. Gehring

Name: _____

Name: _____

President

Title: _____

Title: _____

Date: _____

Date: _____

SIGN HERE

BenTek® Master Professional Services Agreement

This Master Professional Services Agreement ("PSA") sets forth the terms and conditions under which BenTek will perform certain consulting services for the undersigned Client.

1 Work. BenTek agrees to provide services as described in the Statement of Work ("SOW") attached hereto ("Work") and to use commercially reasonable efforts to complete the Work in accordance with the schedule set forth therein. BenTek agrees to notify Client if, at any time, it becomes apparent that the parties need to revise the schedule.

2 Price and Payment. In full consideration of the services provided hereunder and the license granted under this PSA, Client agrees to pay BenTek the fees set forth in Exhibit A pursuant to the provisions of the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, *et. seq.*) Client shall be responsible for all reasonable travel and living expenses incurred by BenTek's staff in connection with this PSA upon receipt of receipts or other documentation, if necessary. Payments to BenTek shall be made without deduction for taxes, imposts, customs, levies or other withholding ("Tax") or shall be grossed-up to provide BenTek the same amount after such Tax as it would have received without the imposition of such Tax, together with tax receipts or similar evidence of any Tax payment by Client.

3 Ownership. Client agrees that any and all deliverables, plans, specifications, documentation, and other materials delivered to Client hereunder, together with all ideas, concepts, know-how, techniques, inventions, discoveries or improvements, including but not limited to computer software, whether in object code or source code form, developed by BenTek and arising out of or relating to the Work (collectively referred to as the "Work Product") are the property of BenTek and BenTek hereby grants Client a nonexclusive, nontransferable license for internal use of the Work Product for the purposes set forth in this PSA in accordance with BenTek's standard software license terms and conditions. BenTek will retain all right, title and interest in and to the Work Product, except to the extent that the Work Product contains any Client Confidential Information to which Client will retain all right, title and interest. BenTek expressly reserves the right to perform similar work for other customers. To the extent of any such interest in the Work Product accruing to the Client may constitute "work for hire", the Client hereby agrees to assign and, upon its creation, does hereby assign to BenTek the ownership of such intellectual property absolutely, and all patent and intellectual property rights therein.

4 Force Majeure. Neither party shall be liable for failure to perform any of its obligations hereunder where such performance is prevented or interfered with by any cause beyond the reasonable control of the parties hereto. This provision shall not be construed as relieving either party from its obligation to pay any sums due the other party.

5 Term and Termination. This PSA shall commence on the Effective Date below and shall continue until completion of all Work unless earlier terminated. Either party may terminate this PSA if the other party fails to perform any of its material obligations hereunder and such failure to perform has not been cured within thirty (30) days of written notice thereof by the terminating party. The parties' obligations under Sections 3, 9 and 11 hereof shall survive expiration or termination of this PSA regardless of the manner of termination.

6 Warranty. During the term of the applicable Work, BenTek warrants that any Work performed by BenTek during such time shall be performed with the care and skill ordinarily used by other members of BenTek's profession practicing under similar conditions at the same time and in the same locality.

7 Client Responsibilities. Client is solely responsible for the use to which it puts any deliverable or information provided by BenTek hereunder and any decisions it makes in using such deliverable or information. Client represents and warrants that it has all right and authority from any third-party suppliers to allow BenTek to perform the Work hereunder and shall defend, indemnify, and hold harmless BenTek from any claims or damages incurred relating thereto.

7.1 Limitation/Remedies. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6 ABOVE, BENTEK MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED WITH REGARD TO THE WORK OR WORK PRODUCT, AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.

8

9 Confidential Information.

9.1 Definition. For purposes of this Agreement, "Confidential Information" shall include, but is not limited to, the following: any documentation and other tangible or intangible discoveries, ideas, concepts, software, designs, drawings, specifications, source code, object code, diagrams, flow charts, procedures and "know-how" comprising all or any portion of a computer program, strategic and development plans or concepts, financial information, business plans, marketing plans, sales plans, marketing and sales strategies, data, business records, project records, market reports, Customer Data, employee lists and business manuals, policies and procedures, information relating to products, processes, technologies or theory and all other information which may be disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party"), or to which the Receiving Party may be provided access by a Disclosing Party, or others, in accordance with this Agreement, or which is generated by the Disclosing Party as a result of or in connection with bona fide business purposes of the Disclosing Party, which is not generally available to the public.

9.2 Obligation of Confidentiality. The Receiving Party covenants and agrees to receive and hold the Confidential Information in confidence. Without limiting the generality of the foregoing, the Receiving Party covenants and agrees:

(A) to protect and safeguard the Disclosing Party's Confidential Information against unauthorized use, publication or disclosure;

(B) not to use any of the Disclosing Party's Confidential Information except as required for its performance under this Agreement;

(C) not to, directly or indirectly, in any way, reveal, report, publish, disclose, transfer or otherwise use any of the Disclosing Party's Confidential Information except as specifically authorized by the Disclosing Party in accordance with this Agreement;

(D) to restrict access to the Disclosing Party's Confidential Information to those of its officers, directors, agents, attorneys, consultants, employees, contractors and partners who clearly and demonstrably need such access to fulfill its obligations under this Agreement;

(E) to advise in writing each of the persons to whom it provides access to any of the Disclosing Party's Confidential Information, that such persons are strictly prohibited from making any use, publishing or otherwise disclosing to others, or permitting others to use for their benefit or to the detriment of the Disclosing Party, any of the Disclosing Party's Confidential Information, and, upon the request of the Disclosing Party, to provide the Disclosing Party with a copy of a written agreement to that effect signed by such persons; and

(F) to comply with any other reasonable security measures requested in writing by the Disclosing Party.

9.3 Exceptions to Confidentiality Provisions. The foregoing confidentiality obligations do not apply:

(A) to the extent that the Confidential Information is or becomes generally available to the public other than as a result of a breach of this Agreement;

(B) if the other party is directly ordered by a court or other governmental authority to disclose all or any part of the Confidential Information, provided, however, that the party so ordered will give prompt notice to the other of any such order, or of any legal or governmental proceeding that might result in such an order, and will not disclose any Confidential Information until the other party has been provided with a reasonable opportunity to limit or prevent such disclosure.

9.4 Remedies for Breach. Each party acknowledges that any unauthorized disclosure or use of Confidential Information may cause immediate and irreparable harm to the other, for which damages may not be an adequate remedy, and as such, each party shall, in addition to any other rights or remedies it may have in law or equity under this Agreement or otherwise, be entitled to injunctive relief.

9.5 Return of Confidential Information. Each of the parties agrees that immediately upon request by the other, and in any event, immediately upon termination or expiration of this Agreement, it shall deliver and return to the other all copies of Confidential Information (including all copies thereof, in any form whatsoever) disclosed and/or in its possession, care or control.

10 No Assignment. Neither party shall assign this PSA without the prior written consent of the other party. Any transfer by merger, consolidation or liquidation shall constitute an assignment for purposes of this PSA.

11 Non-Solicitation. Client agrees that, during the term of this PSA and for a period of two (2) years thereafter, Client will not, except with BenTek's prior written approval, hire, solicit or offer employment, directly or indirectly, to any BenTek employee or staff.

12 Amendment; Waiver. Neither this PSA nor any term, covenant, condition or other provision hereof may be changed, waived, discharged or terminated orally but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Except as otherwise provided, failure or delay of either party to exercise any right or remedy hereunder shall not constitute a waiver of rights or remedies under this PSA.

13 Governing Law. This PSA shall be construed according to the laws of the State of Illinois excluding its choice of law provisions.

14 Entire Agreement. This PSA and all applicable SOW's shall constitute the entire agreement between the parties hereto with respect to its subject matter; and, except as otherwise expressly provided herein, this PSA shall not be affected by reference to any

other document.

15 Severability. If any provision of this PSA is held unenforceable or inoperative by any court of competent jurisdiction, either in whole or in part, the remaining provisions shall be given full force and effect to the extent not inconsistent with the original terms of this PSA.

16 Notices. Notices and communications required by this PSA shall be in writing and may be delivered in person, by courier, transmitted by facsimile, or mailed prepaid first class, return receipt requested, to the respective parties at the address listed herein or other address most recently designated in writing. Notices directed to BenTek shall be sent "Attention: Chief Financial Officer, BenTek, Inc., 11505 Fairchild Gardens Avenue, Suite 102, Palm Beach Gardens, Florida 33410."

17. Effective Date. The Effective Date of this PSA shall be the date signed by BenTek.

BENTEK, INC.

By: _____

Name: Kurt N. Gehring

Title: President

Date: _____

CUSTOMER: CITY OF AURORA

By: _____

SIGN HERE

Name: _____

Title: _____

Date: _____

BenTek® Statement of Work

This Statement of Work is Exhibit A-1 to the Master Professional Services Agreement ("PSA") between BenTek, Inc. and City of Aurora to provide services in connection with the Client's use of the BenTek Software as a Service solution licensed to Client under the terms of the Master Software as a Service Agreement.

The following sections describe the applicable implementation, customization, set-up, configuration, and training services as well as the responsibilities of the parties, and fees. An implementation timeline, system specification documents, and other supporting documentation will be provided to the Client under separate cover.

IMPLEMENTATION

- Client Administrators will be provided access to a secure Client Community Portal which provides 24/7 access to administrative support, administrative guides, product videos, project management and more.
- Optional Initial audit of core benefits (medical, dental, and vision plans) to identify and correct discrepancies prior to initial population of the BenTek application (includes audit of covered active, retired, Cobra, and dependent records as applicable)
- Evaluation and analysis of group benefits (Benefit Specification Document) for purposes of system configuration and business rules
- Collection of benefit related documents including forms, benefit booklet, plan summaries, coverage certificates, etc.
- Configuration of incoming personnel/payroll file(s) for ongoing reconciliation processes
- Creation and testing of all electronic file transmissions for core benefits
- Implementation period begins upon receipt of executed contract and will take 60* days, which begins upon final approval of the completed Benefit Specification Document.

*60-day implementation is contingent upon both BenTek and Client adhering to mutually agreed upon implementation timeline and deadlines.

APPLICATION FUNCTIONALITY

The BenTek application is composed of two major modules: Benefits Administration and the Employee Benefits Center (EBC).

- The Benefits Administration module provides the following functionality:
 - Unique password protected user profiles.
 - Single point of entry for benefits data management including demographic, employment, and group insurance eligibility information inclusive of plan elections, employee deductions, and employer contributions.
 - Ability to view and print employee life insurance beneficiary designations.
 - Maintenance of dependent records and coverage.
 - Benefit eligibility and payroll deduction/contribution analyses of core and ancillary benefits as defined in the benefit specification document.
 - Personnel data reconciliation process of demographic and job information.
 - HIPAA 834 and non-standard file exchange for core benefits.
 - Optional Third-Party export file exchange for core/ancillary benefits.
 - Optional Payroll data export files.
 - Optional Vendor billing and reporting with adjustment feature.
 - Approve/deny/suspend/qualifying life event changes requested by plan participants.
 - Maintains historical record of employee elections and changes.
 - Annual Open Enrollment benefit and payroll deduction reports for Payroll Department.
 - 40+ standard canned reports provided and customized reports upon request (e.g. Census, OE statistics).
- The Employee Benefits Center (Employee Self Service) module will provide the following functionality to employees of Client:
 - Unique user profile creation and ability to reset passwords at any time.
 - View current and future benefit elections, deductions, covered dependents, and beneficiaries.
 - Electronic submission of qualified event elections changes with access to required forms based on life event.
 - Resource Center including videos, forms, plan summary documents, etc.
 - Benefits Highlights of coverage options offered including access to Summary of Benefit and Coverage documents, plan summaries, carrier websites, etc.
 - Online Beneficiary Designation process accessible 24/7.
 - New Hire Orientation equipped with benefit rules permitting online enrollment of all eligible benefits based on established new hire eligibility

rules.

- Annual Open Enrollment equipped with benefit rules permitting the online enrollment of all available benefits based on renewal decisions.
- Generation of confirmation statements is available upon the completion of all online enrollment processes (New Hire, Open Enrollment, Qualifying Events)

BENTEK RESPONSIBILITIES

- Provides BenTek file specifications options for receipt of client files used for initial site population and ongoing audit features (Personnel Import and Payroll Audit).
- Manages initial and renewal implementation projects with timelines, weekly calls, on-site meetings, etc.
- Creates and manages communication and documentation flow via the Client Community Portal.
- Manages completion and analysis of the Benefit Specification Document during initial and renewal implementations.
- Obtains written letter of authorization from Client to permit BenTek to communicate with current insurance companies, TPA's, etc. in order to obtain enrollment files.
- Manages the completion and facilitation of initial client/vendor data audit and results.
- Executes required vendor electronic eligibility set-up documents.
- Creates and tests all electronic file transmissions for core benefits (medical, dental, and vision plans) in 834 (version 5610) file format and non-standard formats when applicable.
- Configures BenTek application with all client's benefit rules, election options, eligibility, etc. established in the Benefit Specification Document.
- Configures BenTek application with mechanism to transmit files electronically to third party vendors (insurance carriers, Third Party Administrators, payroll systems, etc).
- Manages creation and client review of site content for all BenTek screens including Log-in and Introduction screens, New Hire Orientation, Qualifying Events, Open Enrollment, etc.
- Provides regular system enhancements and updates as needed all of which are documented in the monthly distributed BenTek Newsletter.
- Maintains Client Community Portal with current membership, documentation, files containing PII, Technical Specifications, User/Admin Guides, Newsletters, Project Timelines etc.
- Establishes BenTek task list for Client, which includes eligibility file transmission and audit process schedules.
- Establishes and maintains Renewal (open enrollment) timeline, which is determined by type of renewal (carrier changes, plan/rate changes, etc.).
- Facilitates initial and annual Client review of test site (web demonstration)
- Provides dedicated Client Success Team (Client Success Manager, Account Manager, Implementation Manager, Technical Account Manager).
- Provides on-site/web client training (as mutually agreed upon)
- Provides and maintains all hardware to host the application (server and maintenance)

CLIENT RESPONSIBILITIES

- Executes Software as a Service and Professional Services Agreements BenTek.
- Executes agreements with BenTek and Third-Party vendors to establish secure electronic connection for transmission of eligibility files.
- Establishes membership in the Client Community Portal
- Exchanges data via the Client Community Portal
- Completes Benefit Specification Document including providing clarification and final approval.
- Updates Benefit Specification Document including providing clarification and approval at each annual renewal.
- Provides BenTek with Personnel and Payroll data files pursuant to BenTek file specifications. Continue to work with BenTek through layout requirement review and file testing.
- Provides BenTek with Payroll related information including but not limited to deduction and contribution codes, pay group information, deduction schedule and payroll calendar.
- Validates all employee demographic and benefit discrepancies identified during initial audit. Conveys all corrections directly to Third-Party vendors and provides revised Personnel and Payroll data files to BenTek for initial system population.
- Reviews EBC Site Content Template documents providing updates and final approval.
- Reviews application and performs record validation in test environment prior to "Go Live" date.
- Adheres to BenTek Implementation timeline to ensure product delivery.

CHANGE MANAGEMENT

BenTek is a system that is configured for each client from our standard benefits application. Additional configuration and / or requested changes may result in delays to the previously communicated implementation timeline; potentially altering the site launch date. Substantial changes that materially change the scope of services as provided in this agreement must be mutually agreed upon by BenTek and the Client prior to implementation. It is expected that new features will be added to BenTek and existing software may be modified from time to time. Any system-wide or version changes will be communicated to Client in advance of implementation if impacts are expected.

DATA MANAGEMENT

It is understood that BenTek maintains the software and warehouses the data for the Client. The software is the sole property of BenTek as specified in the accompanying Professional Services Agreement, executed by both parties and a part of this agreement. The Client's data is the property of the Client. In the event of termination, the Client's data will be returned to the Client upon request in a standard format determined by BenTek.

BENTEK, INC.

By: _____

Name: Kurt N. Gehring

Title: President

Date: _____

CUSTOMER: CITY OF AURORA

SIGN HERE

By: _____

Name: _____

Title: _____

Date: _____

PRIOR ACTION