BENTEK® MASTER SOFTWARE AS A SERVICE AGREEMENT FOR END USERS

This Master Software as a Service Agreement for End Users ("Agreement") dated _____, 2024 ("Effective Date") by and between **Bentek, LLC**, a Florida limited liability company, with a principal place of business at 3500 Kyoto Gardens Drive, Palm Beach Gardens, FL 33410 ("Bentek") and **City of Joplin**, with a principal place of business located at 602 S. Main Street, Joplin, MO 64801 ("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 the applicable Exhibit A 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 as specified in the applicable Order Form 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 as well as the Benefit Specification Document provided to Customer as part of the services delivered under the PSA.

(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.

(i) “Support” is defined as telephone support between the hours of 8:30 a.m. and 5:00 p.m., Eastern Standard Time, Mondays through Fridays. The Support telephone number is 888. 5BENTEK (888.523.6835), and the Email support address is: support@mybentek.com, so long as Customer is compliant with the terms of this SaaS Agreement and is current in all its payment obligations. The response time for Support is within one (1) business day.

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 the applicable Order Form 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 its payment obligations.

(d) **Provision of SaaS Solution.** Bentek shall: (i) provide to Customer Support for the SaaS Solution at no additional charge; (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 User's compliance with the terms of 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 the applicable Order Form (Exhibit A-1) 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, unless it is exempt under regulation, 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 taxes are 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 Master Professional Services Agreement (PSA) dated on or about the date of this Master SaaS Agreement. 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 by whomever made. The Customer agrees that, except for the purchase of subscriptions for End Users to access the SaaS Solution in this Agreement (which is a license only), nothing in this Agreement gives the Customer or any End User any right, title, or interest in, to or under any of the software, network, systems, or any intellectual property rights therein.

(b) Bentek shall own all right, title, and interest (including patent rights, copyrights, trade secret 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 and 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 username 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. 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; and,

(ii) to the extent that the Receiving Party is directly ordered by a court or required under State or Federal law 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.

(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.

9. **WARRANTIES AND DISCLAIMERS.**

(a) **LIMITED WARRANTY**. Bentek warrants that (i) the SaaS Solution and Tools shall perform substantially 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)(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 applicable Order Form 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 knowingly or intentionally 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;

(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);

(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(j), (k), (l), and (m) of this Agreement shall continue in force following termination of this Agreement.

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.

14. **LIMITATIONS OF LIABILITY, DAMAGES, AND CAUSE OF ACTION**

(a) **Limited Liability**. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCLUDING ANY BREACH BY CUSTOMER OF SECTIONS 2(a), 2(e), 6, BREACH BY BENTEK OF ANY OF ITS OBLIGATIONS WITH RESPECT TO PHI UNDER THE BAA AS REFERENCED IN SECTION 7(d), OR ANY BREACH BY EITHER PARTY OF ITS OBLIGATIONS UNDER SECTION 8 OR SECTION 15 OF THIS AGREEMENT, NEITHER PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND WHATSOEVER, WHETHER OR NOT FORESEEABLE (INCLUDING, WITHOUT LIMITATION, LEGAL FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF ANY PARTY'S NEGLIGENCE OR FOR ANY CAUSE OF ACTION WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, EVEN IF THE OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN THIS AGREEMENT OR THE BAA, BENTEK SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY OR ARISING FROM CUSTOMER'S AND END USER INTENTIONAL MISUSE OR NEGLIGENT USE OF (i) USERNAMES AND PASSWORDS; (ii) CONFIDENTIAL INFORMATION; AND (iii) PHI; INCLUDING, BUT NOT LIMITED TO, FAILURE OF CUSTOMER AND END USER TO PROTECT AGAINST UNAUTHORIZED USE OF ANY OF THE FOREGOING.**

(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 THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE LESSER OF $1,000 OR THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. 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), BENTEK'S BREACH OF ANY OF ITS OBLIGATIONS WITH RESPECT TO PHI UNDER THE BAA AS REFERENCED IN SECTION 7(d) (BUSINESS ASSOCIATE AGREEMENT) OF THIS AGREEMENT, BREACH OF A PARTY'S OBLIGATIONS UNDER SECTION 8 (CONFIDENITALITY) OF THIS AGREEMENT, AND A PARTY'S OBLIGATIONS OR BREACH OF ITS OBLIGATIONS UNDER SECTION 15 (INDEMNIFICATION) OF THIS AGREEMENT.

(c) NO ACTION AGAINST EITHER PARTY OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, REGARDLESS OF FORM (INCLUDING NEGLIGENCE), ARISING OUT OF ANY CLAIMED BREACH OF THIS AGREEMENT, USE OF THE SaaS SOLUTION OR IN ANY OTHER WAY RELATED TO THIS AGREEMENT AS OUTLINED ABOVE MAY BE BROUGHT BY THE OTHER PARTY MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ARISEN.

15. **Indemnification for Intellectual Property Claims.**

(a) **Indemnification of Customer.** Bentek shall indemnify Customer 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 reasonably acceptable to Bentek 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) **Additional Indemnification of Customer.** Bentek will indemnify, defend, save and hold the Customer harmless from and against any and all claims, suits, liabilities, losses, penalties or damages, including court costs and attorneys' fees, to the extent that such claims, losses, liabilities, damages and expenses arise out of or are based upon the gross negligence, fraudulent, criminal or dishonest acts of Bentek or its employees or its agents in the performance of Bentek's duties under this Agreement, except for any acts taken at the specific direction of the Customer.
(c) **Indemnification of Bentek**. To the extent allowed by law, Customer shall indemnify, defend,

and hold Bentek harmless from and against any third party claim, suit, or proceeding, brought against Bentek based on a claim that (i) the use or transfer of any SaaS Solution or Tools which is not in compliance with the terms of this Agreement constitutes an infringement, violation, or misappropriation of a United States patent, copyright, trademark, trade secret, or other intellectual property; (ii) the use of any SaaS Solution or Tools delivered hereunder and modified, altered or combined with any equipment, device or software not supplied by Bentek hereunder and (iii) Bentek's conformity and attempted conformity with the specifications provided by Customer constitutes an infringement of any United States patent, copyright, trademark, or trade secret because of such modification, alteration conformity, attempted conformity, or combination so long as Bentek promptly notifies Customer in writing of any such claim and Customer 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 Bentek or a restriction on its ability to continue to develop, market and support the SaaS Solution or Tools. Bentek shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to Customer.

(d) **Additional Indemnification of Bentek.** To the extent allowed by law, the Customer agrees to indemnify and hold harmless Bentek and its officers, directors, shareholders, employees, agents, and contractors from and against any and all Bentek Claims (as hereafter defined) arising from any Prohibited Act as well as those arising from Customer's failure to pay license fees. Customer acknowledges that Bentek may terminate Customer's and its End Users' use of the SaaS Solution if after written notice, Customer fails to pay the license fees due and owing. "Claim" shall mean all losses, liabilities, damages, claims, taxes, and all related costs and expenses, including, without limitation, reasonable attorneys' fees and costs of investigation, litigation, settlement, judgment, interest, and penalties.

(e) THE PROVISIONS OF THIS SECTION 15 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF THE INDEMNIFYING PARTY TO THE INDEMNIFIED PARTY WITH RESPECT TO THIRD PARTY INTELLECTUAL PROPERTY RIGHTS AND IS THE INDEMNIFIED PARTY'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS UNDER THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THIS PROVISION DOES NOT APPLY TO THE BAA, WHICH PROVIDES FOR INDEMNIFICATION UNDER SECTION 8 OF THE BAA.

16. **Non-Appropriation.** Notwithstanding any provision herein to the contrary, City (Customer) is obligated only to make the payments set forth in the attached contract as may lawfully be made from funds budgeted and appropriated for that purpose during City's (Customer) then current fiscal year at the discretion of City (Customer). If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Non-appropriation"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of City (Customer) to appropriate funds for this Agreement in any

subsequent fiscal year shall not be deemed a breach of this Agreement by any party.

17. **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 and duly executed written 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.** Bentek will obtain Customer's written permission prior to the use of Customer's name, trademarks, and/or 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.

(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 Florida, without regard to conflicts of laws principles. The parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods do not apply to this Agreement. The parties hereby irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts located within Palm Beach County, Florida.

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

(i) to Bentek, at:
3500 Kyoto Gardens Drive
Palm Beach Gardens, Florida 33410
Attn: Chief Financial Officer
Facsimile: (561) 626-6970

With a copy to (which shall not constitute notice):
Adam Fetterman, Esquire
The Fetterman Firm, PLLC
1231 SW Sunset Trail
Palm City, FL 34990
Facsimile: (772)905-0671

(ii) to the Customer, at:
_____
Attn.: _____
_____
_____

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; provided that if sent or delivered by facsimile, written confirmation of such transmission is sent or delivered via

regular certified or registered mail. 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.

(l) **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.

(m) **Facsimile Transmission.** This Agreement may be executed and delivered by facsimile or other electronic means of transmission or by U.S. Mail, and upon receipt such transmission shall be deemed delivery of an original.

(n) **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.

(o) **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.

CUSTOMER: **CITY OF JOPLIN**		**BENTEK:** **BENTEK, LLC**	
By:	_____	By:	_____
Title:	_____	Title:	Julie Fink President
Date:	_____	Date:	_____

EXHIBIT A-1
ORDER FORM FOR SAAS SOLUTION
ADDENDUM TO THE MASTER SOFTWARE AS A SERVICE AGREEMENT FOR END USERS
BETWEEN BENTEK, LLC AND CITY OF JOPLIN ("CUSTOMER")

This Exhibit A-1, Bentek Order Form for SaaS Solution between **Bentek, LLC** ("Bentek") and **City of Joplin** ("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 of Customer:	City of Joplin
Address**:**	602 S. Main, Joplin, MO 64801
Contact Name:	
Telephone Number:	
E-mail Address:	

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

Description	**User (Group)**	**Annual Fee**
Bentek® Employee Benefits Enrollment & Administration System	City of Joplin, MO	See attached Bentek Cost Proposal

3. Subscription Term. The term for the subscription for the Bentek SaaS Solution is one (1) year effective _____, 2024 subject to the provisions of Section 11 of the Master SaaS Agreement. The Subscription Term may be extended by written mutual agreement between Customer and Bentek after year one (1) at a three percent (3%) annual Fee increase.

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

☐ Monthly
☐ Quarterly
☐ Annually

5. Support. So long as the Customer is compliant with the terms of the SaaS Agreement and is current in all 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 (1) business day.

CUSTOMER: **CITY OF JOPLIN**		**BENTEK:** **BENTEK, LLC**	
By:	_____	By:	_____
			Julie Fink
Title:	_____	Title:	President
Date:	_____	Date:	_____

BENTEK COST PROPOSAL
City of Joplin, Missouri

QTY	DESCRIPTION	PRICE PER MONTH	TOTAL ANNUAL
525 Total Lives (Active, Retired, Cobra)	Bentek Core License includes: Admin Community Portal Benefits Administration Electronic Data Interchange (EDI) Life Event Module New Hire Orientation Module Open Enrollment Module Open Enrollment Payroll Export Payroll Audit Tool Payroll Integration - NaviLine Personnel Import Tool Standard Reporting Report Building Tool Standard COBRA Reporting Standard Carrier Self-Billing Professional Services and Software Licensing System Maintenance and Upgrades On-going Support and Service* Q1 Incentives**: Initial Payroll/Carrier Data Audit 50% off one-time implementation fee	$3,750.00	$45,000.00
		One-Time Implementation Fee	$5,000.00
		Total	$50,000.00

***Notes**: Please refer to the Bentek Master Professional Services Agreement for additional details regarding the features described herein.*On-going support and service includes unlimited administrator support and training, including product user guides, webinars, email support and phone support between 8:30am and 5:00pm EST.*

***Q1 Incentive Program pricing is valid if contract is executed on or before March 1, 2023:*

-50% discount off one-time $10,000.00 implementation fee to be paid separately
-Includes initial data audit
-Initial Electronic File Feeds will be waived during Implementation.

*-**Notes:** Post implementation, electronic file feed changes will incur additional fees of $1,500 per file.*

EXHIBIT B
BUSINESS ASSOCIATE AGREEMENT ("BAA")

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") by and between **City of Joplin** ("Customer"), and **Bentek, LLC** ("Bentek") is made and entered into effective _____. 2024.

RECITALS

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

WHEREAS, Bentek provides consulting 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.

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, disclose 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 regarding 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:

City of Joplin
602 S Main
Joplin, MO 64801
Attention: Privacy Officer

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

Bentek, LLC
3500 Kyoto Gardens Drive
Palm Beach Gardens, FL 33410
Attention: Privacy Officer

6. INDEMNIFICATION

Bentek agrees to indemnify Customer, and any 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, employees, or other members of its workforce. Actual and direct losses shall include, but shall not be limited to, 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.

To the extent allowed by law, Customer agrees to indemnify Bentek and any employees, directors, officers of Bentek (collectively "Bentek Indemnitees") against all actual and direct losses resulting from or in connection with any breach of this Agreement by Customer, or any violation of HIPAA resulting from any improper use or disclosure of PHI and Electronic PHI pursuant to Customer's direction. Actual and direct losses shall include, but shall not be limited

to, judgments, liabilities, fines, penalties, costs, and expenses (including reasonable attorneys' fees) which are imposed upon or incurred by Bentek 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.

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 section 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.

CUSTOMER:	**BENTEK:**
CITY OF JOPLIN	**BENTEK, LLC**
By: _____	By: _____
	Julie Fink
Title: _____	Title: President
Date: _____	Date: _____