

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 within thirty (30) days of the date of invoice. Client shall be responsible for all travel and living expenses incurred by BenTek's staff in connection with this PSA, 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 to the extent allowed by law defend, indemnify, and hold harmless BenTek from any claims or damages incurred relating thereto.

7.1 Limitation/Remedies. BenTek's sole liability under Section 6 shall be to re-perform any service that fails to conform to the specified standard. In no event shall BenTek's liability under this Section 6 exceed the value of the product or service provided which gave rise to the claim hereunder. 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 DAMAGES. IN NO EVENT SHALL BENTEK BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING OUT OF THE WORK. BENTEK'S TOTAL AGGREGATE LIABILITY FOR ANY AND ALL DAMAGES SHALL NOT EXCEED THE TOTAL FEES PAID UNDER THE APPLICABLE SOW WHICH GAVE RISE TO THE CLAIM.

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.

(C) Disclosure by Customer may be made required by Texas Public Record Laws.

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. To the extent by law, 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. Client shall not assign this PSA without the prior written consent of BenTek. 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 Texas excluding its choice of law provisions. Venue shall be in a court of competent jurisdiction in Nueces County, Texas.

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: 12/21/2018

CUSTOMER: NUECES COUNTY, TEXAS

By: _____

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 Nueces County, Texas 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 5010) 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.

BENITEK, INC.

By: Kurt Gehring

Name: KURT N. Gehring

Title: President

Date: 12/21/2018

CUSTOMER: NUECES COUNTY, TEXAS

By: _____

Name: _____

Title: _____

Date: _____