

**Agreement Between City of Cohoes and Benetech, Inc.**  
**For**  
**Self-Insured Workers' Compensation Third Party Administrative Services**

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 2020 between the **City of Cohoes**, with its principal place of business at 97 Mohawk Street, Cohoes, NY 12047 (hereinafter referred to as the "Client") and **Benetech, Inc.**, with its principal place of business at P.O. Box 348, One Dodge Street, Wynantskill, NY 12198 (hereinafter referred to as the "Administrator").

**WITNESSETH:**

WHEREAS, the Client and the Administrator wish to enter into an Agreement for the provision of Self-Insured Workers' Compensation Third Party Administrative Services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

**ARTICLE 1. SERVICES TO BE PERFORMED**

For consideration set forth below, the Administrator shall perform the Self-Insured Workers' Compensation Third Party Administration Services hereinafter set forth under Article III of this Agreement.

**ARTICLE 2. DEFINITIONS**

The following definitions shall apply to terms which appear in this Agreement.

**2.1.** "Record Only Claim" shall mean the creation and maintenance of a data file in those instances in which an accident (first or third party) involving only actual or alleged minor injury or property damage requiring minimal or no medical treatment or remedy had come to the Client's attention and, even though no injury or property damage had been formally reported, claimed or as anticipated, the Client requests the maintenance of record of the incident and associated data for informational tracking purpose (to determine the frequency of incident, safety awareness, possible repeat occurrences, etc.).

**2.2.** "Medical Only Claim" shall mean any reported Workers' Compensation accident or claim involving an injured worker who is, will, or may be entitled to medical benefits but has not lost and does not appear likely to lose time from work or submit a claim for indemnity benefits.

**2.3.** "Indemnity Claims" shall mean:

- a. any reported Workers' Compensation accident or claim for which the injured worker would be entitled to medical benefits but also has lost or appears likely to lose time from work or submit or has submitted a claim for indemnity benefits, including any claim originally classified as a Medical Only Claim which becomes an Indemnity Claim if and when the injured worker becomes eligible for indemnity benefits;
- b. any claim in litigation;
- c. claims which would otherwise be classified as Medical Only Claims involving an injured worker who has returned to work on alternative or "light" duty due to restrictions from the work-related injury, but follow-up by a claim representative will be needed to facilitate a return to full duty; and,

- d. claims which merit investigation by claim representative or private investigator due to a question regarding compensability.

**2.4.** “Qualified Claim or Loss” shall mean any claim, loss, monetary demand, occurrence or suit occurring within the Term of this Agreement provided the type of claim or loss is one which is to be administered hereunder.

**2.5.** “Allocated Loss Adjustment Expenses” shall mean any cost or expense incurred by the Administrator in connection with administration, investigation, adjustment, settlement or defense of claims on behalf of the Client, including but not limited to any of the following:

- a. subrogation;
- b. automobile or other physical damage appraisals;
- c. all court cost, fees and expenses;
- d. fees for service of process;
- e. fees and expenses to an attorney for legal services;
- f. the cost of services of undercover operations and detectives;
- g. fees to obtain medical cost containment services, including but not limited to bill review services;
- h. the cost of employing experts to prepare maps, photographs, diagrams, and chemical or physical analysis, or for experts’ advice or opinion;
- i. the cost of obtaining copies of any public records, and cost of depositions and court reporters or recorded statement; and,
- j. any other similar cost, fee, or expense reasonable or chargeable for the investigation, negotiation, settlement, or defense of Qualified Claim or indemnification and/or salvage rights of the Client.

**2.5.1.** “Allocated Loss Adjustment Expenses” shall not include any fee, cost, or expense which this Agreement specifically provides. Such expenses shall be included in the services to be provided by the Administrator hereunder at no additional or separate cost to the Client.

**2.6.** “Late Reported Claims” shall mean claims which are within the definition of Claims and which are reported after the cancellation or expiration of this Agreement and any renewals hereof.

### **ARTICLE 3. SCOPE OF WORK**

During the term of this Agreement, the Administrator shall provide the following services:

**3.1.** All customary and appropriate Workers’ Compensation Claim handling functions for all Qualified Claims or Losses. Such claims handling functions generally include, but are

not limited to, the investigation of each Qualified Claim or Loss to the extent deemed necessary by the Administrator, or as otherwise directed in writing by the Client; adjusting, settling or litigating all Qualified Claims within the stated discretionary settlement authority limit or with specific approval of the Client if outside the stated authority limit; investigation and pursuit of subrogation activities on behalf of the Client; determination of appropriate claim reserve; and the performance of necessary and customary administrative and clerical work in connection with each Qualified Claim or Loss. In addition, the following services will apply to the type of claims listed:

- 3.1.1.** Record Only Claims. For Record-Only Claims, no services will be provided except for recording and maintaining the relevant data, and no medical bills will be paid.

- 3.1.2. Medical Only Claims. For Medical-Only Claims, services will be limited to the recording of the claim and associated data, contact with the Client to verify Medical-Only claim status, and the payment of medical bills and expenses in accordance with the terms of this Agreement.
  - 3.1.3. Lost-Time Claims. For Lost-Time Claims, a claims professional will provide whatever services may reasonably be required to make a determination regarding compensability, pay the appropriate level of indemnity benefits, and attempt to achieve a return to full active duty.
  - 3.1.4. In no event shall the Administrator have any obligation or liability for any claims resulting from the Client's untimely handling of said claim. However, the Administrator shall have full responsibility for any fines, penalties, or cost, including legal fees imposed by any regulatory body, agency, or third party or which occur in any manner as a result of errors, omissions, or non-compliance by the Administrator.
- 3.2. The Administrator shall prepare and issue indemnity payments to the Client's injured employees.
- 3.3. The Administrator shall provide the Client with an explanation of services, claim reporting information and forms, and location coding schemes.
- 3.4. The Administrator shall complete all forms required to be used in the adjustment of Workers' Compensation Claims by the New York State Workers' Compensation Board (the "Board") and the New York State Workers' Compensation Act (the "Act") except for the Employers First Report of Injury, which shall be prepared by the Client.
- 3.5. The Administrator shall be entitled to engage outside vendors when deemed necessary based on their professional judgment. The Administrator will provide notice of any new vendors utilized.
- 3.6. The Administrator shall communicate to the Client in a manner mutually agreed to by the parties and make recommendations regarding proposals to resolve any Workers' Compensation Claims in a timely fashion.
- 3.7. Should the Administrator determine that a particular claim meets any of the Client's excess insurance reporting requirements about which it has been specifically informed by Client in writing, the Administrator shall notify the Client's excess insurance carrier accordingly.
- 3.8. The Client shall promptly report all claims to the Administrator.
- 3.9. At the Client's request, the Administrator shall meet with the Client quarterly to review open claims and other matters related to the Client.
- 3.10. The Administrator shall provide weekly or bi-weekly statements of funds drawn from all funding accounts. The funding will be in the manner presently in use by the Client.
- 3.11. The Administrator shall make the necessary paid claims and reserve reports available to the Client, provide monthly loss-runs by year, delineated by District/ Department/ Division /fund, type of injury, and cause of injury or such other delineations as may be reasonably requested by the Client. Also, the Administrator will provide quarterly claim review reports.

#### **ARTICLE 4. FEES**

In consideration of the terms and obligations of this Agreement, the Client agrees to pay, and the Administrator agrees to accept, as full compensation for all services rendered under this Agreement the following:

Services	Fees <sup>1</sup>
<b>Claims Handling Administrative Fees</b> <ul style="list-style-type: none"> <li>• Lost Time</li> <li>• Medical Only Claims <ul style="list-style-type: none"> <li>• Information Only</li> </ul> </li> <li>• Take-Over Claims</li> </ul>	\$25,000 Annually <sup>2</sup>
<b>Allocated and Non-Allocated Claim Expenses</b> <ul style="list-style-type: none"> <li>Medical Bill Reviews</li> <li>ISO Claims Indexing</li> <li>PPO and Out-of-Network Negotiation Fees</li> <li>NYS WCB Form Completion</li> <li>NYS Required Plan Reporting (e.g., Self-Insurer Reports, Assessment Base Factor Reports)</li> <li>Medicare Secondary Payor Reporting (MMSEA)</li> <li>Data Conversion of Historical Claims Data</li> </ul>	<ul style="list-style-type: none"> <li>\$8 per Review<sup>3</sup></li> <li>Included</li> <li>25% of PPO Savings</li> <li>Included</li> <li>Included</li> <li>\$5 Per Claim</li> <li>No Charge</li> </ul>

<sup>1</sup> The fees are guaranteed for the Term of the AGREEMENT and the Administrator guarantees that the total annual fees (Claims Handling and Allocated/Non-Allocated Claim Expenses) will not exceed \$32,000.

<sup>2</sup> The fee will be billed in twelve (12) equal monthly installments.

<sup>3</sup> The fee will be billed monthly based on the actual number of reviews done in the prior month.

The Administrator specifically agrees that the fees for the below-mentioned services will be provided at cost to the Client and warrants that the Administrator does not receive any income or benefit from those fees.

- A. Consultant Medical Exams
- B. Hearing Representation
- C. Managed Care Program
- D. Medical Rehabilitation
- E. Nurse Case Management/Return to Work Services
- F. Private investigation
- G. Vocational Rehabilitation

The Administrator shall notify the Client for prior authorization of Private Investigation and Vocational Rehabilitation services.

Before any payments can be made, the Administrator shall submit invoices, in a form and manner to be mutually agreed to by the parties to the Client's Treasurer, or other appointee, for review and approval. Each invoice and Claim Form shall itemize and detail the services

rendered and any necessary disbursements, if applicable. The approval of invoices and payment of fees shall not be unreasonably delayed or withheld.

## **ARTICLE 5. TERM**

This Agreement shall commence on October 1, 2020 and will continue in effect through September 30, 2023.

## **ARTICLE 6. REPRESENTATIONS**

To induce the Client to enter into this Agreement, the Administrator has made the following representations:

**6.1.** The Administrator is familiar with the nature and extent of this Agreement, the services contemplated by this Agreement, the locality and all local conditions, and all federal, state and local laws, ordinance, rules, regulations, and orders of public authorities that in any manner affect cost, progress, or performance of the services contemplated by this Agreement;

**6.2.** The Administrator shall give notice and comply with all laws, ordinances, rules, regulations, and orders of public authorities bearing on the performance of the services contemplated by this Agreement;

**6.3.** The Administrator will meet with the Client to formulate a specific return-to-work program for each of the Client's participants;

**6.4.** The Administrator will train the Client employees charged with processing Workers' Compensation claims;

**6.5.** The Administrator shall provide the required notification to the Client excess insurance and excess employer's liability insurance carriers;

## **ARTICLE 7. AVAILABLE DATA**

All technical or other data relative to work in the possession of the Client or the Administrator shall be made available to the other party to this Agreement without expenses to the other party.

## **ARTICLE 8. COOPERATION**

The Administrator shall cooperate with representatives, agents, and employees of the Client and the Client shall cooperate with representatives, agents, and employees of the Administrator to the end that work may proceed expeditiously and economically.

## **ARTICLE 9. EXTRA WORK**

If the Administrator is the opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes "Extra Work," the Administrator shall promptly notify the Client of that and before engaging in any said Extra Work. The Client shall be the sole judge as to whether or not it constitutes Extra Work. If the Client determines that such work does constitute Extra Work, it shall provide extra compensation to the Administrator on a negotiated basis.

## **ARTICLE 10. RIGHT TO AUDIT**

**10.1.** Whenever it is deemed appropriate, the Client reserves the right to audit the claim

records and other records of the Administrator, as they pertain to the Workers' Compensation Program. The Client also reserves the right to assign outside auditors and to conduct on-site audits of the Administrator's records and files.

**10.2.** The Administrator may not charge extra fees for providing data tape(s) or for space and equipment utilized by outside auditors. Upon completion of the audits, the Administrator's representatives shall make themselves available to the Client and its representatives to resolve any deficiencies and shortcomings of the Administrator's services.

#### **ARTICLE 11. ACCOUNTING RECORDS**

Proper and full accounting records shall be maintained by the Administrator. The records shall clearly identify the cost of the work performed under this AGREEMENT and shall be subject to periodic and final audit by the Client upon request. The records shall be accessible to the Client for two (2) years following the date of final payment by the Client to the Administrator for the performance of the services contemplated herein.

#### **ARTICLE 12. ASSIGNMENTS**

The Administrator specifically agrees as required by section 109 New York General Municipal Law that it is prohibited from assigning, transferring, conveying, subcontracting, or otherwise disposing of this AGREEMENT, or of its right, title or interest therein without the previous consent in writing of the Client.

#### **ARTICLE 13. MODIFICATION**

This AGREEMENT may only be modified by a formal written amendment executed by both the Client and the Administrator.

#### **ARTICLE 14. MATERIALS**

All rights, title and ownership in all materials, including open and closed claims files and historical data whether saved in paper or computerized format, prepared under the provisions of this Agreement shall be in the Client, including the right of republication. The Client reserves the right to take custody of this claims file and/ or make copies of any information deemed appropriate. The Client reserves the right to monitor and audit claims files.

#### **ARTICLE 15. RELATIONSHIP**

The Administrator is, and will function as, an independent contractor under this Agreement for any purpose. The employees of the Administrator shall not in any manner be, or be held out to be, agents or employees of the Client.

#### **ARTICLE 16. INDEMNIFICATION**

The Administrator shall defend, indemnify and save harmless the Client, its employees and agents, from and against all claims, damages, losses and expenses (including, but not limited to, reasonable attorney's fees) arising out of, or in consequence of, any negligent or intentional act or omission of the Administrator, its employees, or its agents, to the extent of their responsibility for such claims, damages, losses and expenses.

## **ARTICLE 17. INSURANCE**

The Administrator agrees to procure and maintain for the entire term of this Agreement, without the additional expense to the Client, insurance policies of the kinds and in the amount that would normally be required as an Administrator.

## **ARTICLE 18. TERMINATION OF CONTRACT**

The Client and the Administrator shall have the right at any time to terminate the services required of the Administrator upon ninety (90) days advance notice in writing to the other party.

In the event of a termination of this Agreement, the Administrator shall be entitled to compensation for all work theretofore authorized and performed under this Agreement in accordance with Article 3. Additionally, in the event of the termination of this Agreement, all historical data and records, including claim files, pertaining to this Agreement shall be delivered within thirty (30) days after the termination of the ninety-day (90) notice period to the Client or its duly authorized representative. In case the Administrator fails to make such delivery, the Administrator shall be liable to the Client for any damages that the Client may sustain by reason thereof.

## **ARTICLE 19. DISSOLUTION**

In the event of dissolution of the Administrator as a partnership or corporation during the term of this Agreement, the Administrator shall give ninety (90) days advance notice in writing to the Client of any such dissolution.

In the event of the Administrator's dissolution, all historical data and records, including claim files, pertaining to this Agreement, shall be delivered within 30 days after the termination of the 90-day notice period to the Client or its duly authorized representative. In case the Administrator fails to make such delivery, the Administrator shall be liable to the Client for any damages that the Client may sustain by reason thereof.

## **ARTICLE 20. LICENSES**

The Administrator shall at all times obtain and maintain all licenses required by the State of New York to perform the services required under this Agreement.

## **ARTICLE 21. NON-DISCRIMINATION REQUIREMENTS**

In accordance with Article 15 of the Executive Law and all other State and Federal statutory and constitutional non-discrimination provisions, the Administrator agrees that it shall not, because of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any person who is qualified and available to perform the work; (b) discriminate against or intimidate any employee hired for the work contemplated by this Agreement.

## **ARTICLE 22. NON-APPROPRIATIONS CLAUSE**

Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur if no funds, or insufficient funds, are appropriated and budgeted or are otherwise unavailable to the Client for payment. In that event, the Client will immediately notify the Administrator of such occurrences and this Agreement shall terminate, without penalty or expenses to the Client of any kind whatsoever, on the last day of the fiscal period in which appropriations were received

except as to those portions herein agreed for which funds shall have been appropriated and budgeted.

### **ARTICLE 23. INVALID PROVISIONS**

If any term, part, provision, section, subdivision, or paragraph of this Agreement shall be held to be unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not invalidate the remaining terms, parts, provisions, sections, subdivisions, or paragraphs thereof.

### **ARTICLE 24. NOTICE**

All notices and documents required to be given to the Client by the Administrator under this Agreement shall be given or made to:

**City of Cohoes**  
c/o Brian S. Kremer  
97 Mohawk Street  
Cohoes, NY 12047

All notices and documents required to be given to the Administrator by the Client under this Agreement shall be given or made to:

**Benetech, Inc.**  
c/o Tina Panichi  
One Dodge Street  
Wynantskill, NY 12198

### **ARTICLE 25. DISPUTE RESOLUTION**

Before submitting any dispute between the Client and the Administrator (collectively, "Parties") related to this Agreement (a "Dispute") to litigation, a written request for resolution must be submitted to the other Party detailing the nature of the Dispute. The Parties then will meet and confer in good faith to resolve the Dispute. Thirty (30) calendar days after the written request, either party may initiate litigation.

### **ARTICLE 26. GOVERNING LAW AND VENUE**

This Agreement shall be governed and constructed under the laws of the State of New York without reference to conflict of laws and principles. No provision of this Agreement shall be applied or constructed in any manner inconsistent with applicable federal or state laws and regulations. Notwithstanding the provisions of this section, the parties hereby agree that all standards concerning the license and conduct of Benetech, Inc. as a professional Worker's Compensation Third Party Administrator will be strictly governed by the law of the State of New York. Any actions concerning this Agreement shall be brought in the Supreme Court of New York in Albany County.

### **ARTICLE 27. ENTIRE AGREEMENT**

This Agreement sets forth all promises, agreements, covenants, conditions and understandings between parties hereto and supersedes all before contemporaneous Agreements, oral or



written, except as herein contained. This Agreement may not be modified other than by an Agreement in writing signed by each of the parties hereto.

**ARTICLE 28. TITLES NOT TO AFFECT INTERPRETATION**

The titles of paragraphs contained in this Agreement are inserted for the convenience of reference only. They neither form a part of this Agreement nor are they used in the construction of interpretation thereof.

IN WITNESS THEREOF, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED AS FOLLOWS:

**Benetech, Inc.**

\_\_\_\_\_  
Date

By: \_\_\_\_\_

**City of Cohoes**

\_\_\_\_\_  
Date

By: \_\_\_\_\_

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