

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND and ZURICH AMERICAN
INSURANCE COMPANY

CIVIL ACTION NO. 11-2722

VERSUS

JUDGE

BENETECH, LLC,
WILLIAM J. BENNETT and
WILLIAM A. BENNETT

MAGISTRATE

COMPLAINT

The Complaint of Fidelity and Deposit Company of Maryland (“F&D”), a corporation organized under the laws of the State of Maryland, with its principal place of business in the State of Maryland, and Zurich American Insurance Company (“Zurich”), a corporation organized under the laws of the State of New York, with its principal place of business in the State of Illinois, through undersigned counsel, with respect represents:

PARTIES

I.

Made defendants herein are:

- a. Benetech, L.L.C. (“Benetech”), a Louisiana corporation with its principal place of business in Orleans Parish, Louisiana;

- b. William J. Bennett, upon information and belief, a resident of Atascosa, Texas;
and
- c. William A. Bennett, upon information and belief, a resident of New Orleans,
Louisiana.

JURISDICTION AND VENUE

II.

The amount in controversy exceeds \$75,000.00 exclusive of interest and costs. This Court has jurisdiction pursuant to 28 U.S.C. § 1332.

III.

Venue is properly placed in this Court pursuant to 28 U.S.C. § 1391(a).

GENERAL ALLEGATIONS

IV.

F&D is a surety company which issues payment and performance bonds and stands as surety for selected contractors.

V.

Zurich is a surety company which issues payment and performance bonds and stands as surety for selected contractors.

VI.

Benetech is a contractor in the business of performing construction work.

VII.

In order to submit bids on and obtain certain projects, Benetech required bid, performance and payment bonds, and sought to obtain these bonds from F&D and Zurich.

VIII.

On or about September 1, 2009, Benetech, along with individual indemnitors William J. Bennett and William A. Bennett (hereinafter “indemnitors”), executed an Agreement of Indemnity (“Indemnity Agreement”) with F&D and Zurich for various contracted projects.

IX.

Under the Indemnity Agreement, the Indemnitors agreed to the following indemnification provisions:

INDEMNITY

Second: The Contractor and Indemnitors shall exonerate, indemnify, and keep indemnified the Surety from and against any and all liability for losses and/or expenses of whatsoever kind or nature (including, but not limited to, interests, court costs and counsel fees) and from and against any and all such losses and/or expenses which the Surety may sustain and incur: (1) By reason of having executed or procured the execution of the Bonds, (2) By reason of the failure of the Contractor or Indemnitors to perform or comply with the covenants and conditions of this Agreement or (3) In enforcing any of the covenants and conditions of this Agreement. Payment by reason of the aforesaid causes shall be made to the Surety by the Contractor and Indemnitors as soon as liability exists or is asserted against the Surety, whether or not the Surety shall have made any payment therefor. Such payment shall be equal to the amount of the reserve set by the Surety. In the event of any payment by the Surety the Contractor and Indemnitors further agree that in any accounting between the Surety and Contractor, or between the Surety and the Indemnitors, or either or both of them, the Surety shall be entitled to charge for any and all

disbursements made by it in good faith in and about the matters herein contemplated by this Agreement under the belief that it is or was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity or expediency existed; and that the vouchers or other evidence of any such payments made by the Surety shall be *prima facie* evidence of the fact and amount of the liability to the Surety.

X.

A true copy of the Agreement of Indemnity dated September 1, 2009 is attached as Exhibit "A."

XI.

Subsequent to the execution of the Indemnity Agreement, Benetech entered into contracts with the United States Army Corps of Engineers (the "Corps") for Project Nos. W912P8-09-D-0021-0001-01 and W912P8-09-D-0021-0002-01 (the "Projects").

XII.

At the request of the Indemnitors and in reliance on the Indemnity Agreement, F&D executed statutory payment bonds bearing nos. 08963541 and 08953535 (the "Bonds") naming "Benetech, LLC," as principal.

COUNT ONE: INDEMNIFICATION

XIII.

Pursuant to the Indemnity Agreement, the Indemnitors are liable to indemnify F&D and Zurich and hold them harmless from all losses and/or expenses (including, but not

limited to, interests, court costs and counsel fees) and from and against any and all such losses and/or expenses which F&D and Zurich may sustain and incur by reason of having executed the Bonds for the Projects.

XIV.

Howard Pile Driving Company, Inc., a subcontractor working on the Cataouatche No. 1 & 2, Estelle No. 2, Hero No. 1 & 2, Planters No. 2 and Westwego No. 2 Pump Stations project (“Cat/Westwego Project”), filed a Complaint against F&D and Zurich seeking damages of \$152,964.20 for non-payment of materials and labor furnished in connection with the Project.

XV.

Anders Construction, Inc., a subcontractor working on the Cat/Westwego Project, filed a Complaint against F&D and Zurich seeking damages of \$148,255.00 for non-payment of materials and labor furnished in connection with the Project.

XVI.

Safway Services, LLC, a subcontractor working on both the Cat/Westwego Project and the Bonnabel Suburban project, filed a Complaint against F&D seeking damages of \$117,923.74 for non-payment of materials and labor furnished in connection with the Projects.

XVII.

F&D and Zurich paid to Thermacor Process \$120,109.00 in full and final settlement of Thermacor Process's claims against F&D and Zurich on the Bonnabel Suburban project.

XVIII.

F&D and Zurich paid to Fucich Contracting \$36,381.86 in full and final settlement of Fucich Contracting's claims against F&D and Zurich on the Bonnabel Suburban project.

XIX.

F&D and Zurich paid to Cummins Mid-South, LLC \$500,000.00 in full and final settlement of Cummins Mid-South's claims against F&D and Zurich on the Bonnabel Suburban project.

XX.

F&D and Zurich paid to Professional Service Industries \$1,190.40 in full and final settlement of Professional Service Industries' claims against F&D and Zurich on the Bonnabel Suburban project.

XXI.

F&D and Zurich paid to Safway Services \$45,529.11 in full and final settlement of Safway Services' claims against F&D and Zurich on the Bonnabel Suburban project.

XXII.

F&D and Zurich paid to Equipco \$190.60 in full and final settlement of Equipco's claims against F&D and Zurich on the Bonnabel Suburban project.

XXIII.

F&D and Zurich paid to Premier HVAC Sales \$24,949.96 in full and final settlement of Premier HVAC Sales' claims against F&D and Zurich on the Bonnabel Suburban project.

XXIV.

F&D and Zurich paid to Plaas Incorporated \$259,940.51 in full and final settlement of Plaas Incorporated's claims against F&D and Zurich on the Cat/Westwego Project.

XXV.

F&D and Zurich paid to Keymel Technologies \$6,244.43 in full and final settlement of Keymel Technologies' claims against F&D and Zurich on the Cat/Westwego Project.

XXVI.

F&D and Zurich paid to DR Services \$508,645.75 in full and final settlement of DR Services' claims against F&D and Zurich on the Cat/Westwego Project.

XXVII.

F&D and Zurich paid to LaFarge Concrete \$41,476.40 in full and final settlement of LaFarge Concrete's claims against F&D and Zurich on the Cat/Westwego Project.

XXVIII.

F&D and Zurich paid to Thomas Insulation \$564,191.65 in full and final settlement of Thomas Insulation's claims against F&D and Zurich on the Cat/Westwego Project.

XXIX.

F&D and Zurich paid to Industrial Equipment Sales & Service \$34,337.50 in full and final settlement of Industrial Equipment Sales and Services' claims against F&D and Zurich on the Cat/Westwego Project.

XXX.

F&D and Zurich paid to Walter J. Barnes Electric Co., Inc. \$540,272.71 in full and final settlement of Walter J. Barnes Electric Co., Inc.'s claims against F&D and Zurich on the Cat/Westwego Project.

XXXI.

F&D and Zurich paid to Premier Fence Co. \$40,000.00 in full and final settlement of Premier Fence Co.'s claims against F&D and Zurich on the Cat/Westwego Project.

XXXII.

F&D and Zurich paid to NES Rentals \$155,005.19 in full and final settlement of NES Rentals' claims against F&D and Zurich on the Cat/Westwego Project.

XXXIII.

F&D and Zurich paid to Equipco \$20,145.32 in full and final settlement of Equipco's claims against F&D and Zurich on the Cat/Westwego Project.

XXXIV.

F&D and Zurich paid to Melco Steel, Inc. \$3,300.00 in full and final settlement of Melco Steel, Inc.'s claims against F&D and Zurich on the Cat/Westwego Project.

XXXV.

F&D and Zurich paid to A&A Enterprises \$2,230.53 in full and final settlement of A&A Enterprises' claims against F&D and Zurich on the Cat/Westwego Project.

COUNT THREE: REIMBURSEMENT

XXXVI.

F&D and Zurich reaver each of the allegations in paragraph I through XXXV.

XXXVII.

Under Louisiana Civil Code articles 3048, *et seq.*, F&D and Zurich are subrogated to the rights of the Corps against Benetech by virtue of its satisfaction of claims against the Projects.

XXXVIII.

Further, defendants Benetech, LLC, William J. Bennett, and William A. Bennett are liable to F&D and Zurich under La. Civ. Code arts. 3048-3049 for reimbursement of all

amounts paid to Benetech suppliers, materialmen, or subcontractors in satisfaction of said claims against the Projects, which payments include loss of \$2,904,140.92 plus expenses incurred, less recovery of \$30,027.25.

COUNT THREE - ATTORNEYS' FEES AND COSTS

XXXIX.

F&D and Zurich reaver each of the allegations in paragraph I through XXXVIII.

XL.

Despite amicable demand, Benetech, along with individual indemnitors William J. Bennett and William A. Bennett, have refused and/or failed to honor their indemnity obligations to F&D and Zurich.

XLI.

Pursuant to the Agreement of Indemnity, Benetech, LLC, along with individual indemnitors William J. Bennett and William A. Bennett, are liable, without limitation in connection with this action, to F&D and Zurich for all attorneys' fees, costs and expenses incurred or expended by F&D and Zurich by reason of F&D and Zurich having issued the bonds, and F&D and Zurich have the right to enforce indemnitors' indemnity obligations under the Agreement of Indemnity.

WHEREFORE, after due proceedings are held, Fidelity and Deposit Company of Maryland demands judgment against Benetech, LLC, William J. Bennett, and William A. Bennett, as follows:

- a. That there be judgment in its favor and against defendants Benetech, LLC, William J. Bennett and William A. Bennett, jointly and *in solido*, in the amount of \$2,904,140.92 plus expenses incurred less recovery of \$30,027.25 for reimbursement for all sums expended in satisfaction of claims against the Bonds and/or under the Contract;
- b. That there be judgment in its favor and against defendants Benetech, LLC, William J. Bennett and William A. Bennett, jointly and *in solido*, for all liabilities, losses and expenses, including costs and attorneys' fees, incurred by F&D and Zurich as a result of having executed the Bonds on the Projects;
- c. That there be judgment in its favor and against defendants Benetech, LLC, William J. Bennett, and William A. Bennett, jointly and *in solido*, for all costs and attorneys' fees incurred in bringing the captioned action; and
- d. For such additional relief as this Court may deem just and proper.

Respectfully submitted,

KREBS, FARLEY & PELLETERI, P.L.L.C.

s/ Maurice C. Ruffin

DAVID J. KREBS (La. Bar #1466) (T.A.)

MAURICE C. RUFFIN (La. Bar #28747)

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New Orleans, LA 70130

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ATTORNEYS FOR FIDELITY AND
DEPOSIT COMPANY OF MARYLAND and
ZURICH AMERICAN INSURANCE
COMPANY

PLAINTIFFS WILL SERVE:

Benetech, L.L.C.

through its registered agent for service of process:

Julie Ott

2530 Lexington Avenue

Kenner, LA 70062

William J. Bennett

12580 Pearsall Road #4

Atascosa, TX 78002

William A. Bennett

610 John Churchill Chase #P1

New Orleans, LA 70130



Agreement of Indemnity

THIS AGREEMENT of Indemnity, made and entered into this 1st day of September, 2009 by Benetech, LLC, 915 S. White St., New Orleans, LA 70125 (hereinafter called the Contractor) and Benetech, LLC, 915 S. White St., New Orleans, LA 70125, William J. Bennett, 12580 Pearsall Road #4, Atascosa, Texas 78002, William A. Bennett, 610 John Churchill Chasse # P1, New Orleans, LA 70130, (hereinafter called the Indemnitors, if any) and ZURICH AMERICAN INSURANCE COMPANY and its Subsidiaries and Affiliates including, but not limited to FIDELITY AND DEPOSIT COMPANY OF MARYLAND, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY, its successors and assigns (hereinafter called Surety),

WITNESSETH:

WHEREAS, the Contractor, in the performance of contracts and the fulfillment of obligations generally, whether in its own name solely or in joint venture with others, may desire or be required to give or procure certain surety bonds, undertakings or instruments of guarantee, and to renew, or continue or substitute from time to time the same or new bonds, undertakings or instruments of guarantee with the same or different penalties, and/or conditions, any one or more of which are hereinafter called Bonds; or the Contractor or Indemnitors may request the Surety to refrain from cancelling said Bonds; and

WHEREAS, at the request of the Contractor and the Indemnitors and upon the express understanding that this Agreement of Indemnity be given, the Surety has executed or procured to be executed, and may from time to time hereafter execute or procure to be executed, said Bonds on behalf of the Contractor; and

WHEREAS, the Indemnitors have a substantial, material and beneficial interest in the obtaining of the Bonds or in the Surety's refraining from cancelling said Bonds.

Now, THEREFORE, in consideration of the premises the Contractor and Indemnitors for themselves, their heirs, executors, administrators successors and assigns, jointly and severally, hereby covenant and agree with the Surety, as follows:

PREMIUMS

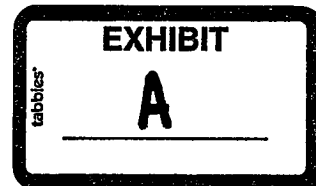
FIRST: The Contractor and Indemnitors will pay to the Surety in such manner as may be agreed upon all premiums and charges of the Surety for the Bonds in accordance with its rate filings, its manual of rates, or as otherwise agreed upon, until the Contractor or Indemnitors shall serve evidence satisfactory to the Surety of its discharge or release from the Bonds and all liability by reason thereof.

INDEMNITY

SECOND: The Contractor and Indemnitors shall exonerate, indemnify, and keep indemnified the Surety from and against any and all liability for losses and/or expenses of whatsoever kind or nature (including, but not limited to, interests, court costs and counsel fees) and from and against any and all such losses and/or expenses which the Surety may sustain and incur: (1) By reason of having executed or procured the execution of the Bonds, (2) By reason of the failure of the Contractor or Indemnitors to perform or comply with the covenants and conditions of this Agreement or (3) In enforcing any of the covenants and conditions of this Agreement. Payment by reason of the aforesaid causes shall be made to the Surety by the Contractor and Indemnitors as soon as liability exists or is asserted against the Surety, whether or not the Surety shall have made any payment therefor. Such payment shall be equal to the amount of the reserve set by the Surety. In the event of any payment by the Surety the Contractor and Indemnitors further agree that in any accounting between the Surety and Contractor, or between the Surety and the Indemnitors, or either or both of them, the Surety shall be entitled to charge for any and all disbursements made by it in good faith in and about the matters herein contemplated by this Agreement under the belief that it is or was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity or expediency existed; and that the vouchers or other evidence of any such payments made by the Surety shall be *prima facie* evidence of the fact and amount of the liability to the Surety.

ASSIGNMENT

THIRD: The Contractor, the Indemnitors hereby consenting, will assign, transfer and set over, and does hereby assign, transfer and set over to the Surety, as collateral, to secure the obligations in any and all of the paragraphs of this Agreement and any other indebtedness and liabilities of the Contractor to the Surety, whether heretofore or hereafter, incurred, the assignment in the case of each contract to become effective as of the date of the bond covering such contract, but only in the event of (1) any abandonment, forfeiture or breach of any contracts referred to in the Bonds or of any breach of any said Bonds; or (2) of any breach of the provisions of any of the paragraphs of this Agreement; or (3) of a default in discharging such other indebtedness or liabilities when



due; or (4) of any assignment by the Contractor for the benefit of creditors, or of the appointment, or of any application for the appointment, of a receiver or trustee for the Contractor whether insolvent or not; or (5) of any proceeding which deprives the Contractor of the use of any of the machinery, equipment, plant, tools or material referred to in section (b) of this paragraph; or (6) of the Contractor's dying, absconding, disappearing, incompetency, being convicted of a felony, or imprisoned if the Contractor be an individual: (a) All the rights of the Contractor in, and growing in any manner out of, all contracts referred to in the Bonds, or in, or growing in any manner out of the Bonds; (b) All the rights, title and interest of the Contractor in and to all machinery, equipment, plants, tools, drawings, plans, designs, architectural works, documents, specifications, models and materials which are now, or may hereafter be, about or upon the site or sites of any and all of the contractual work referred to in the Bonds or elsewhere, including materials purchased for, held, intended for or chargeable to any and all contracts referred to in the bonds, materials which may be in process of construction, in storage elsewhere, or in transportation to any and all of said sites; (c) All the rights, title and interest of the Contractor in and to all subcontracts let or to be let in connection with any and all contracts referred to in the Bonds, and in and to all surety bonds supporting such subcontracts; (d) All actions, causes of actions, claims and demands whatsoever which the Contractor may have or acquire against any subcontractor, laborer or materialman, or any person furnishing or agreeing to furnish or supply labor, material, supplies, machinery, tools or other equipment in connection with or on account of any and all contracts referred to in the Bonds; and against any surety or sureties of any subcontractor, laborer, or materialman; (e) Any and all percentages retained and any and all sums that may be due or hereafter become due on account of any and all contracts referred to in the Bonds and all other contracts whether bonded or not in which the Contractor has an interest; (f) A license to use, without cost to the Surety, any interest the Contractor may have in and to all copyrights, inventions, applications, patents, or any other form of intellectual property, and any improvements thereon, which now, or may hereafter, relate to any and all of the contracts referred to in the Bonds or elsewhere, or which are now, or may hereafter be, embodied in any drawings, plans, designs, architectural works, documents, specifications, models, machinery, equipment, plants, processes or other materials referred to in section (b) of this paragraph.

TRUST FUND

FOURTH: If any of the Bonds are executed in connection with a contract which by its terms or by law prohibits the assignment of the contract price, or any part thereof, the Contractor and Indemnitors covenant and agree that all payments received for or on account of said contract shall be held as a trust fund in which the Surety has an interest, for the payment of obligations incurred in the performance of the contract and for labor, materials, and services furnished in the prosecution of the work provided in said contract or any authorized extension or modification thereof; and, further, it is expressly understood and declared that all monies due and to become due under any contract or contracts covered by the Bonds are trust funds, whether in the possession of the Contractor or Indemnitors or otherwise, for the benefit of and for payment of all such obligations in connection with any such contract or contracts for which the Surety would be liable under any of said Bonds, which said trust also inures to the benefit of the Surety for any liability or loss it may have or sustain under any said Bonds, and this Agreement and declaration shall also constitute notice of such trust.

UNIFORM COMMERCIAL CODE

FIFTH: That this Agreement shall constitute a Security Agreement to the Surety and also a Financing Statement, both in accordance with the provisions of the Uniform Commercial Code of every jurisdiction wherein such Code is in effect and may be so used by the Surety without in any way abrogating, restricting or limiting the rights of the Surety under this Agreement or under law, or in equity.

TAKEOVER

SIXTH: In the event of any breach or default asserted by the obligee in any said Bonds, or the Contractor has abandoned the work on or forfeited any contract or contracts covered by any said Bonds, or has failed to pay obligations incurred in connection therewith, or in the event of the death, disappearance, Contractor's conviction for a felony, imprisonment, incompetency, insolvency, or bankruptcy of the Contractor, or the appointment of a receiver or trustee for the Contractor, or the property of the Contractor, or in the event of an assignment for the benefit of creditors of the Contractor, or if any action is taken by or against the Contractor under or by virtue of the National Bankruptcy Act, or should reorganization or arrangement proceedings be filed by or against the Contractor under said Act, or if any action is taken by or against the Contractor under the insolvency laws of any state, possession, or territory of the United States the Surety shall have the right, at its option and in its sole discretion and is hereby authorized, with or without exercising any other right or option conferred upon it by law or in the terms of this Agreement, to take possession of any part or all of the work under any contract or contracts covered by any said Bonds, and at the expense of the Contractor and Indemnitors to complete or arrange for the completion of the same, and the Contractor and Indemnitors shall promptly upon demand pay to the Surety all losses, and expenses so incurred.

CHANGES

SEVENTH: The Surety is authorized and empowered, without notice to or knowledge of the Indemnitors to assent to any change whatsoever in the Bonds, and/or any contracts referred to in the Bonds, and/or in the general conditions, plans and/or specifications accompanying said contracts, including, but not limited to, any change in the time for the completion of said contracts and to payments or advances thereunder before the same may be due, and to assent to or take any assignment or assignments, to execute or consent to the execution of any continuations, extensions or renewals of the Bonds and to execute any substitute or

substitutes therefor, with the same or different conditions, provisions and obligees and with the same or larger or smaller penalties, it being expressly understood and agreed that the Indemnitors shall remain bound under the terms of this Agreement even though any such assent by the Surety does or might substantially increase the liability of said Indemnitors.

ADVANCES

EIGHTH: The Surety is authorized and empowered to guarantee loans, to advance or lend to the Contractor any money, which the Surety may see fit, for the purpose of any contracts referred to in, or guaranteed by the Bonds; and all money expended in the completion of any such contracts by the Surety, or lent or advanced from time to time to the Contractor, or guaranteed by the Surety for the purposes of any such contracts, and all costs, and expenses incurred by the Surety in relation thereto, unless repaid with legal interest by the Contractor to the Surety when due, shall be presumed to be a loss by the Surety for which the Contractor and the Indemnitors shall be responsible, notwithstanding that said money or any part thereof should not be so used by the Contractor.

BOOKS AND RECORDS

NINTH: At any time, and until such time as the liability of the Surety under any and all said Bonds is terminated, the Surety shall have the right to reasonable access to the books, records, and accounts of the Contractor, and Indemnitors; and any bank depository, materialman, supply house, or other person, firm, or corporation when requested by the Surety is hereby authorized to furnish the Surety any information requested including, but not limited to, the status of the work under contracts being performed by the Contractor, the condition of the performance of such contracts and payments of accounts.

DECLINE EXECUTION

TENTH: Unless otherwise specifically agreed in writing, the Surety may decline to execute any Bond and the Contractor and Indemnitors agree to make no claim to the contrary in consideration of the Surety's receiving this Agreement; and if the Surety shall execute a Bid or Proposal Bond, it shall have the right to decline to execute any and all of the bonds that may be required in connection with any award that may be made under the proposal for which the Bid or Proposal Bond is given and such declination shall not diminish or alter the liability that may arise by reason of having executed the Bid or Proposal Bond.

NOTICE OF EXECUTION

ELEVENTH: The Indemnitors hereby waive notice of the execution of said Bonds and of the acceptance of this Agreement, and the Contractor and the Indemnitors hereby waive all notice of any default, or any other act or acts giving rise to any claim under said Bonds, as well as notice of any and all liability of the Surety under said Bonds, and any and all liability on their part hereunder, to the end and effect that, the Contractor and the Indemnitors shall be and continue liable hereunder, notwithstanding any notice of any kind to which they might have been or be entitled, and notwithstanding any defenses they might have been entitled to make.

HOMESTEAD

TWELFTH: The Contractor and the Indemnitors hereby waive, so far as their respective obligations under this Agreement are concerned, all rights to claim any of their property, including their respective homesteads, as exempt from levy, execution, sale or other legal process under the laws of any State, Territory, or Possession.

SETTLEMENTS

THIRTEENTH: The Surety shall have the right to adjust, settle or compromise any claim, demand, suit or judgment upon the Bonds, unless the Contractor and the Indemnitors shall request the Surety to litigate such claim or demand, or to defend such suit, or to appeal from such judgment, and shall deposit with the Surety, at the time of such request, cash or collateral satisfactory to the Surety in kind and amount, to be used in paying any judgment or judgments rendered or that may be rendered, with interest, costs, expenses and attorneys' fees, including those of the Surety.

SURETIES

FOURTEENTH: In the event the Surety procures the execution of the Bonds by other sureties, or executes the Bonds with co-sureties, or reinsures any portion of said Bonds with reinsuring sureties, then all the terms and conditions of this Agreement shall inure to the benefit of such other sureties, co-sureties and reinsuring sureties, as their interests may appear.

SUITS

FIFTEENTH: Separate suits may be brought hereunder as causes of action accrue, and the bringing of suit or the recovery of judgment upon any cause of action shall not prejudice or bar the bringing of other suits, upon other causes of action, whether theretofore or thereafter arising.

OTHER INDEMNITY

SIXTEENTH: That the Contractor and the Indemnitors shall continue to remain bound under the terms of this Agreement even though the Surety may have from time to time heretofore or hereafter, with or without notice to or knowledge of the Contractor and the Indemnitors, accepted or released other agreements of indemnity or collateral in connection with the execution or procurement of said Bonds, from the Contractor or Indemnitors or others, it being expressly understood and agreed by the Contractor and the Indemnitors that any and all other rights which the Surety may have or acquire against the Contractor and the Indemnitors and/or others under any such other or additional agreements of indemnity or collateral shall be in addition to, and not in lieu of, the rights afforded the Surety under this Agreement.

INVALIDITY

SEVENTEENTH: In case any of the parties mentioned in this Agreement fail to execute the same, or in case the execution hereof by any of the parties be defective or invalid for any reason, such failure, defect or invalidity shall not in any manner affect the validity of this Agreement or the liability hereunder of any of the parties executing the same, but each and every party so executing shall be and remain fully bound and liable hereunder to the same extent as if such failure, defect or invalidity had not existed. It is understood and agreed by the Contractor and Indemnitors that the rights, powers, and remedies given the Surety under this Agreement shall be and are in addition to, and not in lieu of, any and all other rights, powers, and remedies which the Surety may have or acquire against the Contractor and Indemnitors or others whether by the terms of any other agreement or by operation of law or otherwise.

ATTORNEY IN FACT

EIGHTEENTH: The Contractor and Indemnitors hereby irrevocably nominate, constitute, appoint and designate the Surety as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights of the Contractor and Indemnitors assigned, transferred and set over to the Surety in this Agreement, and in the name of the Contractor and Indemnitors to make, execute, and deliver any and all additional or other assignments, documents or papers deemed necessary and proper by the Surety in order to give full effect not only to the intent and meaning of the within assignments, but also to the full protection intended to be herein given to the Surety under all other provisions of this Agreement. The Contractor and Indemnitors, hereby ratify and confirm all acts and actions taken and done by the Surety as such attorney-in-fact.

TERMINATION

NINETEENTH: This Agreement may be terminated by the Contractor or Indemnitors upon twenty days' written notice sent by registered mail to the Surety at its home office at 3910 Keswick Road, P.O. Box 1227, Baltimore, Maryland 21203, Attention: Vice President, Surety Department, but any such notice of termination shall not operate to modify, bar, or discharge the Contractor or the Indemnitors, as to the Bonds that may have been theretofore executed.

BONDS FOR RELATED ENTITIES

TWENTIETH: The Contractor and Indemnitors hereby agree that their obligation under this Agreement shall apply to any Bonds the Surety executes on behalf of any present or future, directly or indirectly owned subsidiaries or affiliates, and any other legal entities in which the Contractor has an ownership interest including, but not limited to, any corporations, partnerships, limited liability companies (LLC) and joint ventures, whether acting alone or in joint venture with others not named herein. In addition, the Contractors and Indemnitors agree that their obligations under this Agreement shall apply to any Bonds the Surety issues on behalf of any entity upon the written request of **Benetech, LLC**.

OTHER

TWENTY-FIRST: This Agreement may not be changed or modified orally. No change or modification shall be effective unless made by written endorsement executed to form a part hereof.

TWENTY-SECOND: This Agreement may be executed in any number of counterparts with separate signature pages, all of which taken together shall constitute the agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement shall be effective as to each Indemnitor when each Indemnitor has executed it. The Indemnitors hereby acknowledge that the failure of any one of them to execute this Agreement shall not in any way affect the validity or enforceability of this Agreement as to those Indemnitors who have executed the Agreement.

SIGNATURE PAGE(S) TO FOLLOW

(The remainder of this page is intentionally left blank)

I/WE HAVE CAREFULLY READ THIS AGREEMENT OF INDEMNITY (OF WHICH THIS SIGNATURE PAGE IS A PART) AND FULLY UNDERSTAND MY/OUR OBLIGATIONS AS A CONTRACTOR AND/OR INDEMNITOR HEREUNDER. THERE ARE NO SEPARATE AGREEMENTS OR UNDERSTANDINGS, EITHER WRITTEN OR ORAL, THAT IN ANY WAY LESSEN OR ALTER MY/OUR OBLIGATIONS AS ABOVE SETFORTH. IN WITNESS WHEREOF I/we have signed and sealed the day and year first above written.

Sign below if entity is a Corporation, Limited Liability Company, Partnership or Trust:

Instructions: If the entity is : 1) a corporation, the secretary and an authorized officer should sign on behalf of the corporation, 2) a limited liability corporation, the manager or member(s) should sign on behalf of the LLC, 3) a trust, the trustee(s) should sign on behalf of the trust, or 4) a partnership, the partner(s) should sign on behalf of the partnership. Two signatures are required for all entities and all signatures must be notarized and dated.

Each of the undersigned hereby affirms to the Surety that he or she is a secretary or a duly authorized officer, manager, trustee or official of the business entity for which he or she executes the foregoing Agreement as an Indemnitor. In such capacity the undersigned is familiar with all of the documents which establish the rights which govern the affairs, power and authority of such entity including, to the extent applicable, the (1) certificate or articles of incorporation, (2) bylaws, (3) corporate resolutions, (4) trust agreements and (5) partnership, and operating or limited liability agreements of such business entity. Having reviewed all such applicable documents and instruments and such other facts as deemed appropriate, the undersigned hereby affirms that such entity has the power and authority to enter into such Agreement and that he or she is duly authorized to do so.

ATTEST OR WITNESS:

Benetech, LLC, 915 S. White St., New Orleans, LA 70125

Robert A. Casim
ROBERT A. CASIM

William J. Bennett SEAL
William J. Bennett, Managing Member

Phyllis S. Kincaid
PHYLLIS S. KINCAID

William A. Bennett SEAL
William A. Bennett, President & CEO

ACKNOWLEDGEMENT
STATE OF LOUISIANA

PARISH
County of JEFFERSON

On this 1st day of September, 2009 before me personally appeared William J. Bennett known or proven to me to be the Managing Member of the entity executing the foregoing instrument ("Entity") and Phyllis S. Kincaid known or proven to me to be the Secretary of the Entity and they acknowledge said instrument to be the free and voluntary act and deed of said Entity, for the uses and purposes therein mentioned and on oath stated that the seal affixed is the seal of said Entity and that it was affixed and that they executed said instrument by authority of the Entity IN WITNESS WHEREOF, I have hereunto set my hand and affixed my OFFICIAL SEAL the day and year first above written.

Notary Public Paul A. [Signature]
My Commission Expires FOR LIFE CREATED & SIGNED
Notary Registration No.: + 8481

ACKNOWLEDGEMENT
STATE OF LOUISIANA

PARISH
County of JEFFERSON

On this 5th day of September, 2009 before me personally appeared William A. Bennett known or proven to me to be the President & CEO of the entity executing the foregoing instrument ("Entity") and _____ known or proven to me to be the _____ of the Entity and they acknowledge said instrument to be the free and voluntary act and deed of said Entity, for the uses and purposes therein mentioned and on oath stated that the seal affixed is the seal of said Entity and that it was affixed and that they executed said instrument by authority of the Entity IN WITNESS WHEREOF, I have hereunto set my hand and affixed my OFFICIAL SEAL the day and year first above written.

Notary Public: Joni Adams
My Commission Expires: FOR LIFE STATE SUSAN
Notary Registration No.: 8481

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I/WE HAVE CAREFULLY READ THIS AGREEMENT OF INDEMNITY (OF WHICH THIS SIGNATURE PAGE IS A PART) AND FULLY UNDERSTAND MY/OUR OBLIGATIONS AS A CONTRACTOR AND/OR INDEMNITOR HEREUNDER. THERE ARE NO SEPARATE AGREEMENTS OR UNDERSTANDINGS, EITHER WRITTEN OR ORAL, THAT IN ANY WAY LESSEN OR ALTER MY/OUR OBLIGATIONS AS ABOVE SETFORTH. IN WITNESS WHEREOF I/we have signed and sealed the day and year first above written.

If an individual, sign below:

Instructions: Signatures of individuals must be witnessed and notarized.

William J. Bennett, 12580 Pearsall Road #4, Atascosa, TX 78002

Robert A. Chism
Witness Robert A. Chism

William J. Bennett
William J. Bennett

STATE OF LOUISIANA } SS:
COUNTY OF JEFFERSON

On this 1st day of September, 2009 before me, the subscriber, personally appeared William J. Bennett to me personally known, and known by me to be the person described in, and who executed, the foregoing instrument and acknowledged same to be his free act and deed.

Notary Public: Jane Adams
GAIL A. SNAKNE
My Commission Expires: FOR LIFE
Notary Registration No.: #8481

William A. Bennett,
610 Churchill Chasse #P1, New Orleans, LA 70130

Robert A. Chism
Witness ROBERT A. CHISM

William A. Bennett
William A. Bennett

STATE OF LOUISIANA } SS:
COUNTY OF JEFFERSON

On this 1st day of September, 2009 before me, the subscriber, personally appeared William A. Bennett to me personally known, and known by me to be the person described in, and who executed, the foregoing instrument and acknowledged same to be his free act and deed.

Notary Public: Jane Adams
GAIL A. SNAKNE
My Commission Expires: FOR LIFE
Notary Registration No.: 8481

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