

## TERMS OF USE

Effective for services provided on or after January 1, 2022

1. Applicability.

(a) These terms and conditions for services (these "**Terms**") are the only terms that govern the provision of services by RSC Insurance Brokerage, Inc., by and through its division BBPAdmin ("**BBPAdmin** ") to its end user or customer ("**Customer**"). BBPADMIN and Customer each a "Party" and, collectively, the "Parties".

(b) These Terms and Conditions (collectively, the "**Terms**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and any written agreement between BBPADMIN and Customer, such written agreement shall govern.

(c) These Terms prevail over any of prior terms and conditions.

2. Services. BBPADMIN shall provide the services to Customer as described in proposal (or similar document) or invoice (the "**Services**") in accordance with these Terms.

3. Performance Dates. BBPADMIN shall use best efforts to meet any performance dates agreed to or as are required under law.

4. Customer's Obligations. Customer shall:

(a) cooperate with BBPADMIN in all matters relating to the Services and provide such information as may reasonably be requested by BBPADMIN, for the purposes of performing the Services;

(b) respond promptly to any BBPADMIN request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for BBPADMIN to perform Services in accordance with the requirements of the Terms;

(c) provide such Customer materials or information as BBPADMIN may request to carry out the Services in a timely manner and ensure that such Customer materials or information are complete and accurate in all material respects;

(d) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start; and

(e) determine whether Customer's FSA/HRA or Health & Welfare plan (i.e., small or large funded plan, or a large combination insured/unfunded plan) ("Plan") requires the filing of a Form 5500. Customer shall consult with its own tax and / or Legal advisor regarding this

determination; Customer has the responsibility to confirm the accuracy and completeness of any 5500 Filing, and timely sign such 5500 Filing.

5. Customer's Acts or Omissions. If BBPADMIN's performance of its obligations under the Terms is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, BBPADMIN shall not be deemed in breach of its obligations under the Terms or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

6. Change Orders.

(a) If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing. BBPADMIN shall, within a reasonable time after such request, provide a written estimate to Customer of:

(i) the likely time required to implement the change;

(ii) any necessary variations to the fees and other charges for the Services arising from the change;

(iii) the likely effect of the change on the Services; and

(iv) any other impact the change might have on the performance of the Terms.

(b) Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing.

(c) Notwithstanding the foregoing, BBPADMIN may, from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates.

7. Fees and Expenses; Payment Terms; Interest on Late Payments.

(a) In consideration of the provision of the Services by BBPADMIN and the rights granted to Customer under the Terms, Customer shall pay the fees as invoiced.

(b) Customer shall pay all invoiced amounts due to BBPADMIN within 30 days from the date of BBPADMIN's invoice. Customer shall make all payments hereunder in US dollars.

(c) In the event payments are not received by after becoming due, BBPADMIN may:

(i) charge interest on any such unpaid amounts at a rate of 1.5% per month or, if lower, the maximum amount permitted under applicable law, from the date such payment was due until the date paid; and

(ii) suspend performance for all Services until payment has been made in full.

(d) In the event BBPADMIN expends funds on Customer's behalf, Customer shall reimburse BBPADMIN for such expended funds promptly, but in no event later than five (5) business days after receipt of notice to Customer that such funds were expended. In the event such reimbursement is not received by the fifth (5<sup>th</sup>) business day, BBPADMIN may:

- (i) charge interest on any such un-reimbursed amounts at a rate of 1.5% per month or, if lower, the maximum amount permitted under applicable law, from the date such funds were expended until the date paid; and
- (ii) suspend performance for all Services until payment has been made in full.

8. Taxes. Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Customer hereunder.

9. Confidential Information. In the course of providing the Services the Parties may disclose Confidential Information to each other. "Confidential Information" means all non-public, confidential or proprietary information disclosed before, on or after the Effective Date, by one Party (the "Disclosing Party") to the other Party (the "Recipient"), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," including, but not limited to, all information concerning the Disclosing Party's past, present and future business affairs including, without limitation, finances, insurance policies, customer information, products, services, organizational structure and internal practices, employees, financial results, records and budgets, and business, marketing, development, sales and other commercial strategies, and all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials prepared by or for the Recipient that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing. Except as required by applicable federal, state or local law or regulation, the term "Confidential Information" as used in the Terms shall not include information that:

- (a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of the Terms by the Recipient;
- (b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by a legal, fiduciary or contractual obligation to the Disclosing Party;
- (c) was known by or in the possession of the Recipient, as established by documentary evidence, prior to being disclosed by or on behalf of the Disclosing Party pursuant to the Terms; or
- (d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information.

The Recipient shall protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no

event with less than a commercially reasonable degree of care, and shall only use the Confidential Information in connection with the Services.

Each Party acknowledges and agrees that money damages might not be a sufficient remedy for any breach or threatened breach of this Confidentiality provision by such Party. Therefore, in addition to all other remedies available at law (which neither Party waives by the exercise of any rights hereunder), the non-breaching Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

Each Party hereby retains its entire right, title and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of Confidential Information hereunder shall not be construed as an assignment, grant, option, license or other transfer of any such right, title or interest whatsoever to the Recipient.

10. Disclaimer of Warranties. **EXCEPT FOR THE WARRANTY SET HEREIN BBPADMIN MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

11. Limitation of Liability.

(a) **IN NO EVENT SHALL BBPADMIN BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT BBPADMIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL BBPADMIN'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO BBPADMIN IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING A CLAIM.**

(c) The limitation of liability set forth above shall not apply to (i) liability resulting from BBPADMIN's gross negligence or willful misconduct.

12. Hold Harmless & Indemnification.

(a) Client Indemnification. In exchange for BBPADMIN'S provision of the Services, to the full extent permitted by law, Customer hereby releases, forever discharges and agrees to indemnify, defend and hold harmless BBPADMIN and its officers, directors, employees, agents, affiliates, successors, and permitted assigns from and against any and all

losses, damages, liabilities, deficiencies, claims, causes of actions, judgments, settlements, interest, awards, penalties, fines, costs (including costs expended on Customer's behalf, whether or not previously approved), or expenses of whatever kind, including attorneys' fees, that are incurred by BBPADMIN (collectively, "Losses"), arising out of or in any way related to BBPADMIN's provision of the Services (whether prior to or after the effective date of these Terms), including, without limitation, any third-party claim arising out of or in any way related to BBPADMIN's provision of the Services, in each case other than Losses directly caused by BBPADMIN's negligence or willful misconduct (as detailed below) in the provision of such Services. The indemnity and hold harmless agreement provided by this Section shall be in addition to any rights to which BBPADMIN may be entitled under any other agreement, law, or otherwise.

(b) BBPADMIN Indemnification. BBPADMIN shall indemnify Client for all losses caused by BBPADMIN's acts, errors, or omissions to the extent such losses arise from BBPADMIN's negligence (or more culpable conduct) or willful misconduct.

13. Waiver of Subrogation. Without affecting any other rights or remedies, Customer waives its entire right to recover damages against BBPADMIN's insurers and agrees to have Customer's insurers waive any right to subrogation that such insurers may have against BBPADMIN and BBPADMIN's insurers.

14. BBPADMIN Duties. BBPADMIN does not owe any enhanced, special relationship, fiduciary, special duties, or otherwise to the Customer, whether express or implied, in fact or by law, (except to the extent required by applicable law). BBPADMIN will not be obligated to perform, and the Customer will not request performance of, any services which may constitute the practice of law. The Customer will be solely responsible for obtaining any legal advice, review or opinion as may be necessary to ensure that its own conduct and operations, including the engagement of BBPADMIN under the scope and terms as provided herein, conform in all respects with applicable local, state and federal laws, rules, and regulations (including ERISA, the Internal Revenue Code, state and federal tax and / or securities laws and implementing regulations) and, to the extent that the Customer has foreign operations, any applicable foreign laws and regulations.

15. ERISA Fiduciary. To the extent that one or more of the Customer's employee benefit plans are subject to the Employee Retirement Income Security Act, as amended ("ERISA") notwithstanding any other provision of the Terms to the contrary, the parties agree and acknowledge as follows:

(a) BBPADMIN's services under the Terms do not impose on BBPADMIN or any of its affiliates a fiduciary status under ERISA; and

(b) The Terms does not provide BBPADMIN, and the Customer will not cause or permit BBPADMIN to assume, without prior written consent of BBPADMIN, any: (i) discretionary authority or discretionary control respecting management of any "employee benefit plan" within the meaning of Section 3(3) of ERISA (an "ERISA Plan"); (ii) authority or control respecting management or disposition of the assets of any ERISA Plan; or (iii) discretionary authority or discretionary responsibility in the administration of any ERISA Plan.

16. Termination. In addition to any remedies that may be provided under the Terms, BBPADMIN may terminate the Terms with immediate effect upon written notice to Customer, if Customer:

(a) fails to pay any amount when due under the Terms [and such failure continues for 45 days after Customer's receipt of written notice of nonpayment];

(b) has not otherwise performed or complied with any of the terms of the Terms, in whole or in part; or

(c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

17. Waiver. No waiver by BBPADMIN of any of the provisions of the Terms is effective unless explicitly set forth in writing and signed by BBPADMIN. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from the Terms operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

18. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached the Terms, for any failure or delay in fulfilling or performing any term of the Terms (except for any obligations of Customer to make payments to BBPADMIN hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, pandemics, epidemics or public health crises, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of the Terms; (f) national or regional emergency; and (g) other similar events beyond the control of the Impacted Party.

19. Assignment. Customer shall not assign any of its rights or delegate any of its obligations under the Terms without the prior written consent of BBPADMIN. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under the Terms.

20. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. No Third-Party Beneficiaries. The Terms is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

22. Governing Law. All matters arising out of or relating to the Terms are governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Massachusetts or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Massachusetts.

23. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to the Terms shall be instituted in the federal courts of the United States of America or the courts of the

Commonwealth of Massachusetts in each case located in the City of Boston and County of Suffolk, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

24. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Terms, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

25. Severability. If any term or provision of the Terms is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of the Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. Survival. Provisions of these Terms, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of the Terms including, but not limited to, the following provisions: Fees and Expenses; Payment Terms; Interest on Late Payments, Confidentiality, Hold Harmless & Indemnification, Waiver of Subrogation, ERISA Fiduciary, Governing Law, Submission to Jurisdiction, Survival, and any other provisions which by their nature survive any termination.

27. Amendment and Modification. The Terms may only be amended or modified in a writing which specifically states that it amends the Terms and is signed by an authorized representative of each party, or upon notice of amendment by BBPADMIN.