



General Terms and Conditions of Service

These General Terms and Conditions of Service govern BBP Admin's provision of services to you, the client, and shall be read in conjunction with each Line of Service (LOS) Form, which identifies the services ("Services") purchased by you, as well as each Funding Agreement (if applicable). Some of these terms and conditions may not be applicable to you or the purchased Services.

1. Plan Administrator; Fiduciary

You acknowledge and agree that you are the "plan administrator" and "fiduciary" within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (to the extent such law applies) of any and all employee benefit plans or programs (each a "Plan" or, collectively, the "Plans") sponsored by you, and that BBP Admin is an independent contractor engaged to perform the agreed upon Services.

2. Term

The term of the provision of each Service is set forth on the applicable LOS Form. These General Terms and Conditions of Service shall remain in effect for so long as BBP Admin provides Services pursuant to any LOS Form. The term of each Service shall automatically renew for successive one (1) year periods, unless earlier terminated by either party as set forth below.

3. Fees; Payment

You shall pay BBP Admin the fees ("Fees") listed in the relevant LOS Form pursuant to the payment method set forth therein (unless otherwise specified). All undisputed Fees shall be paid net thirty (30) days from the invoice date (unless otherwise specified). You must submit written notice to BBP Admin and provide supporting documentation as to any Fees you dispute within thirty (30) days from the date of the invoice. BBP Admin shall provide a written response within thirty (30) days of receipt of the notice. Upon resolution, you shall pay any and all outstanding amounts due and owing within five (5) business days of such resolution. BBP Admin shall have the right to increase Fees after the first year of Service on an annual basis by three percent (3%) unless there is a rate guarantee in place. The new Fees shall take effect on the first day of second year of Service and each annual date thereafter. All services not set forth in the LOS Form may be subject to

additional fees (e.g. additional services required as a result of legislative changes, correction services, customization, etc.).

Any payments received that do not include the information necessary to identify the invoice to which the payment is to be applied will be applied at BBP Admin' discretion. BBP Admin is not responsible for reconciling such payments against information you may be maintaining separately.

The Fees described herein represent only those fees charged by BBP Admin to you. They do not include or cover fees and/or charges that a third party service provider, including a Health Savings Account ("HSA") custodian bank, may directly charge your employee participants for services they receive from such third parties. Any and all such fees and charges that may be charged to an individual, including deductions made from an individual's account (e.g., an HSA) or otherwise, by such third party service provider are detailed in the individual agreement(s) entered into by and between the third party service provider, including an HSA custodian bank, and each individual employee participant, which may include but are not limited to Accountholder Agreements, Participant Terms and Conditions and other ancillary agreements.

4. **Taxes; Regulatory Fees.**

You shall be responsible for, and shall promptly pay or reimburse BBP Admin for any taxes, as well as any benefit or plan-related charge, surcharge or assessment, imposed as a result of the provision of Services by BBP Admin.

5. **Benefit Claims Funding**

You shall timely provide to BBP Admin all benefit claims funding amounts ("Funding"). You acknowledge and agree that any Funding submitted by you to BBP Admin: (i) shall be comprised of general assets; (ii) does not consist of Plan assets or participant/employee contributions, whether made by salary reduction or otherwise, within the meaning of ERISA, without regard to whether ERISA applies, and is not otherwise subject to any restrictions; and (iii) shall not be segregated or set aside in a trust or escrow account by BBP Admin. You agree to pay BBP Admin the entire amount delivered, or deliverable, to participants in any Plan, regardless of whether you collect sufficient payroll deductions from your participants.

6. **Maintenance**

BBP Admin reserves the right to perform routine system (both web and IVR) maintenance during off-hours (normally between 5 PM and 8:30 AM CST). Any longer maintenance period will be posted on BBP Admin' website and social media accounts.

7. **Termination**

- a. Termination for Convenience. Either party may terminate a Service without cause after completion of the first year of the initial term of

that Service upon at least thirty (30) days' prior written notice to the other party.

- b. Termination for Material Breach. Either party may terminate a Service with cause upon thirty (30) days' prior written notice to the defaulting party if such material breach is not cured within that period, if curable.
- c. Termination for Bankruptcy, Insolvency, or Business Wind Down. Either party may terminate a Service immediately if either party (i) voluntarily files for bankruptcy; (ii) declares insolvency; (iii) takes action to commence winding down its business; or (iv) is named as a defendant in any involuntary bankruptcy or insolvency proceeding.
- d. Termination Due to Legislative and/or Regulatory Changes. Either party shall have the right to terminate a Service if a material change to such Service is required as a result of a legislative and/or regulatory change. Upon receipt of written notice of such change, the parties shall meet and confer in good faith. If the parties do not reach agreement on any such modification of the Service, then either party shall have the right to terminate the Service thereafter upon thirty (30) days' prior written notice to the other party.
- e. Effect of Termination. Upon termination of a Service, all rights and licenses granted to you with respect to that Service shall immediately terminate. You shall be responsible to pay all amounts due and owing upon termination. You shall have the ability to access and download your records and reports via BBP Admin' website up through the date of termination.

8. Intellectual Property

- a. Ownership. BBP Admin owns and shall retain all right, title and interest (including, without limitation, all intellectual property rights) in and to all software, web pages, documents, processes, and other information, equipment and materials used in connection with the provision of Services hereunder, including, without limitation, those developed by BBP Admin for use by you, participants and beneficiaries (the "BBP Admin System").
- b. Grant of License. BBP Admin grants you, as well as the participants and beneficiaries, a limited, non-exclusive, non-transferable license to access and use the BBP Admin System during the applicable term, solely and exclusively: (i) in accordance with these General Terms and Conditions of Service and any instructions, user guides, and policies made available by BBP Admin; and (ii) for the purpose of receiving the Services provided by BBP Admin. Without limiting the generality of the foregoing, you shall not, (i) without BBP Admin' prior written consent, disclose or provide access to the BBP Admin System to any unauthorized third parties, or (ii) duplicate the BBP Admin System (or any associated materials) or use the same in connection with any other benefits program (including your programs).

- c. Exclusion. All other rights, license and title in and to the BBP Admin System not expressly granted hereunder shall remain the property of BBP Admin.

9. Exclusive Warranty

BBP Admin warrants that the Services will be performed in accordance with generally accepted industry practices and with reasonable skill and care. THE BBP ADMIN SYSTEM AND SERVICES ARE PROVIDED "AS IS" WITHOUT ANY FURTHER WARRANTY OF ANY KIND (EXPRESS OR IMPLIED) INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

10. Indemnification

Each party shall indemnify, defend and hold harmless the other party and its officers, directors, shareholders, employees and agents ("Indemnified Parties") from and against claims and proceedings for actual damages or losses (including legal fees and expenses) arising out of any actual or alleged: (i) breach by such party of its obligations hereunder; (ii) negligence or willful misconduct of such party or its employees, officers or agents; (iii) failure of such party to comply with applicable law (except, with respect to BBP Admin, if such act or omission taken by BBP Admin is pursuant to your instructions); or (iv) claims in which one party is named or joined with the other party when such party has not engaged in any wrongful acts. In addition, you shall indemnify, defend and hold harmless BBP Admin Indemnified Parties for any act or omission taken by BBP Admin pursuant to your instructions. The Indemnified Parties will promptly notify the indemnifying party of any claim. The indemnifying party shall assume and have sole control of the defense of such claim; provided, however, that neither party may settle any claim without the prior written consent of the other party if such settlement exposes the other party to any liability.

11. Limitation of Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST BUSINESS, LOSS OF DATA OR COST OF SUBSTITUTE SERVICES) ARISING OUT OF OR IN CONNECTION WITH ANY AGREEMENT BETWEEN THE PARTIES, THE BBP ADMIN SYSTEM OR THE SERVICES PERFORMED THEREUNDER UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE). IN ADDITION, EXCEPT FOR BREACHES OF CONFIDENTIALITY OR PRIVACY, BBP ADMIN SHALL ONLY BE LIABLE TO YOU FOR ANY DIRECT DAMAGES IN AMOUNT EQUAL TO (A) ACTUAL DAMAGES OR (B) THE FEES PAYABLE TO BBP ADMIN FOR THE SERVICE(S) GIVING RISE TO THE CLAIM DURING THE PLAN YEAR IN WHICH THE EVENT OCCURS, WHICHEVER IS LESS.

12. Confidentiality

- a. Confidential Information. Each party acknowledges that performance of Services may involve access to and disclosure of Confidential Information that belongs to the other party. "Confidential Information" means any non-public confidential or proprietary information, including, without limitation, business and financial information; policies and procedures; operations; customer and potential customer names; suppliers and vendor names; trade secrets; trade dress; patent applications; inventions disclosures; and, with respect to Plan participants and beneficiaries, personal identification information. Confidential Information does not, however, include any information that: (i) was publicly available or released to the public domain at any time prior to disclosure by one party, (ii) becomes publicly known or generally available after disclosure by one party through no wrongful action or inaction of the other party, (iii) information that is in the party's possession or known by the party at any time prior to the time of disclosure; (iv) is rightfully disclosed to the party by a third party that is not subject to any restrictions; or (v) a party can demonstrate was independently developed by that party without use of the other party's Confidential Information.
- b. Restricted Use. No Confidential Information shall be disclosed to any third party other than representatives of such party who have a "need to know" such Confidential Information, provided that such representatives are informed of the confidentiality provisions hereof and agree to abide by them.
- c. Disclosure. In the event a party is required by law to disclose Confidential Information, the disclosing party shall immediately notify the other party in writing, describing the circumstances of and extent of the disclosure.
- d. Return or Destruction. Upon termination of all LOS Forms, each party, upon the request of the other, will return or destroy all copies of all of the other's Confidential Information in its possession or control (unless impracticable), except to the extent such Confidential Information must be retained pursuant to applicable law or a party's document retention policy.
- e. Remedies. The parties acknowledge that compliance with the provisions of the foregoing paragraphs are necessary to protect their businesses and goodwill and that any actual or prospective breach will irreparably cause damage to them, for which money damages may not be adequate. Therefore, the parties agree that if one of them breaches, or attempts to breach, the confidentiality obligations set forth herein, the other party shall be entitled to obtain temporary, preliminary and/or permanent equitable relief, without bond, to restrain such breach, together with any and all other legal and equitable remedies available under applicable law or as set forth herein.

13. Arbitration

Any controversy or claim arising out of or relating to this Agreement between Employer and TPA, or the breach thereof, shall be subject to non-binding arbitration prior to the filing of a complaint in a court of law; provided, however, that such arbitration shall be final and binding and may be enforced in any court with the requisite jurisdiction if the parties agree in advance, in writing, that such arbitration shall have final, binding effect. All arbitration, whether binding or non-binding, shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place in the State of Illinois with an independent auditor chosen by BBP Admin, and agreed to by the employer.

14. Privacy

In addition to any confidentiality obligations set forth herein, any personally identifiable information (e.g., name, address, age, and social security number) collected or obtained by BBP Admin in the course of performing Services (the "Privacy Restricted Data") will be collected, stored, maintained, accessed, used and disclosed in accordance with any applicable federal, state and local privacy laws that govern the collection, storage, maintenance, access, use or disclosure of such Privacy Restricted Data (the "Privacy Laws"). BBP Admin shall, at all times, perform Services so as not to cause you to be in violation of the Privacy Laws. BBP Admin shall be fully responsible for any collection, access, use and disclosure of Privacy Restricted Data that is based on its actions or inactions that are in violation of any Privacy Laws. BBP Admin shall notify you as soon as administratively practicable of any breaches of security that may result or may have resulted in the unauthorized collection, access, use or disclosure of Privacy Restricted Data that is, or may be, in violation of any Privacy Laws. BBP Admin shall make all reasonable efforts to assist you in relation to the investigation and remedy of any such breach of security and any resulting claim, allegation, action, suit, proceeding or litigation with respect to BBP Admin's unauthorized collection, access, use or disclosure of Privacy Restricted Data that is in violation of any Privacy Laws. BBP Admin shall be responsible for the cost of its violation of any Privacy Laws with respect to the Privacy Restricted Data, including, without limitation, remedial activity, notification of Plan participants and beneficiaries, and fines and/or penalties.

15. Miscellaneous

- a. Publicity. With your prior consent, BBP Admin shall be permitted to use your name and logo in sales presentations and in any filings with the Securities and Exchange Commission, and shall be permitted to reference your name in any of its earnings calls.
- b. Subcontractors. BBP Admin utilizes subcontractors to perform certain Services. BBP Admin shall be liable for the acts or omissions of its subcontractors. For clarification, HSA custodian banks and/or trustees are not subcontractors of BBP Admin and any agreement(s), including

an Accountholder Agreement, entered into between the custodian bank and each individual HSA accountholder controls the terms under which the HSA is maintained by the custodian bank, including the rights of the custodian bank to charge fees or other amounts to individual HSA accountholders for services.

- c. Massachusetts Data Security Regulations (201 CMR 17.00). BBP Admin certifies that it has in place and shall maintain during the provision of Services, a written comprehensive security program that is in compliance with the provisions of 201 CMR 17.00, et seq., at <http://www.mass.gov/ocabr/docs/idtheft/201cmr1700reg.pdf>.
- d. Tennessee Insurance Code, Sections 56-6-403 through 56-6-409. BBP Admin certifies that it shall provide Services in compliance with the provisions of Sections 56-6-403 through 56-6-409 of the Tennessee Insurance Code at <http://www.lexisnexis.com/hottopics/tncode/>, as applicable.
- e. Third Party Sender. As a Third Party Sender under National Automated Clearing House Association ("NACHA") rules and regulations, you acknowledge and agree that BBP Admin must perform a certain level of due diligence on you and that part of such diligence requires that you make certain representations and warranties in order for BBP Admin to be able to originate ACH transactions on your behalf. Accordingly, you (i) authorize BBP Admin to originate transactions on your behalf, (ii) agree to be bound by applicable NACHA rules, (iii) agree not to originate transactions that violate U.S. laws, and (iv) agree to provide written notice to BBP Admin if there are any restrictions on the type of transactions that may be originated and, if there are, to describe such restrictions. You further acknowledge and agree that in addition to other termination rights outlined herein, that BBP Admin has the right to terminate or suspend the Services if you violate any applicable NACHA rules. You additionally acknowledge and agree that BBP Admin and the originating depository financial institution have the right to audit your compliance with the NACHA Rules and the terms of this provision with reasonable notice, during normal business hours.
- f. Records Maintenance and Disposition. BBP Admin shall keep and archive records of information and data regarding you and your Plan(s) that it obtains in connection with the provision of Services hereunder (collectively "Service Records") for the longer of seven (7) years or the period required by applicable law.
- g. Escheatment. You shall be solely responsible for compliance with all escheatment obligations.
- h. Assignment. Neither of us may assign any of our rights and obligations in connection with the provision of Services without the prior written consent of the other, which consent shall not be unreasonably withheld. These General Terms and Conditions of Service shall be binding upon and shall inure to the benefit of a party's authorized successors and assigns.
- i. Notices. All notices shall be made in writing and delivered (i) in person, (ii) by certified mail, return receipt requested, (iii) by traceable overnight delivery or (iv) by electronically confirmed facsimile or

electronic mail, followed immediately by U.S. Mail to BBP Admin at 1100 Park Place, 4th Floor, San Mateo, CA 94403, Attn: General Counsel, or to you at the address listed on the LOS Form. A signed receipt shall be obtained where a notice is delivered in person. Notice will be effective upon delivery.

- j. Force Majeure. Neither party shall be liable in any way for any delay or any failure of performance of a Service, or for any loss or damage related thereto, due to any cause beyond its reasonable control, including, without limitation, acts of nature, terrorism, civil unrest, war (whether declared or not) or the Government, earthquakes, fire, floods, degradation or disruption of any communication service not under a party's control, loss of electrical power, congestion, failure or other inability to access the Internet or disruption in the financial markets or the banking system.
- k. Amendments. These General Terms and Conditions, as well as any LOS Form or Funding Agreement, may only be amended in a writing signed by both parties. Notwithstanding the foregoing, BBP Admin may make non-material change to these General Terms and Conditions of Service at any time by posting revised General Terms and Conditions of Service at https://www.BBPAdmin.com/employer/terms_conditions.htm. A non-material change is any modification that does not have an adverse impact on you or the Services provided hereunder. You are responsible for regularly reviewing this site to obtain timely notice of such amendments. You shall be deemed to accept the amended General Terms and Conditions of Service by your continued receipt of Services if you do not notify BBP Admin of your good faith objection within thirty (30) days after such amended terms and conditions have been posted. If BBP Admin does not agree to waive the amended terms and conditions to which you object, either party shall have the right to immediately terminate Services without penalty.
- l. Waiver. Any waiver of any provision set forth herein, or any LOS Form and/or Funding Agreement, shall be effective only if in writing and signed by both parties. Failure of either party to insist on performance of any term or condition, or to exercise any right or privilege, shall not be construed as a continuing or future waiver of such term, condition, right or privilege.
- m. Governing Law. Any claims arising under or related to the provision of Services shall be governed by the laws of the State of California, without regard to its conflicts of laws principles.
- n. Severability. If any provision in these General Terms and Conditions of Service, an LOS Form and/or Funding Agreement is held to be invalid or unenforceable, such provision shall be deemed deleted and the remaining provisions shall continue in full force and effect.
- o. Entire Agreement. These General Terms and Conditions of Service and any related LOS Form and/or Funding Agreement (if applicable) constitute the full and complete understanding and agreement of the parties relating to the subject matter hereof and supersede all prior understandings and agreements relating to such subject matter. In case of a conflict between these General Terms and Conditions of

Service and an LOS Form or Funding Agreement, the LOS Form or Funding Agreement shall prevail. Any conflict between an LOS Form and a Funding Agreement, the Funding Agreement shall prevail. In addition to the foregoing, these General Terms and Conditions of Service, and any LOS Form and/or Funding Agreement, shall prevail over any additional or different provisions in any purchase order, acceptance notice, or other similar document issued by you, which provisions shall be of no force or effect.

- p. Survival. The following Sections shall survive the termination of all LOS Forms: Effect of Termination, Intellectual Property, Warranty, Indemnification, Limitation of Liability, Confidentiality, Privacy, Records Maintenance and Disposition, Escheatment, Notices, Governing Law, Disputes, Entire Agreement and Survival.