

RMS INSURANCE BROKERAGE,LLC
DBA RMS Hospitality Group
100 Ring Road West, Suite 202, Garden City, N.Y. 11530

Sub-Broker Agreement

AGREEMENT effective _____ 2015 by and between RMS Insurance Brokerage LLC, hereinafter referred to as “RMS” and broker _____ with an office and principal place of business located at _____ hereinafter referred to as the “Broker.”

WHEREAS, RMS has developed Insurance Programs and is the insurance broker for insurance carriers designed specifically for commercial lines, property & casualty insurance; and

WHEREAS, the broker desires to submit and place insurance with admitted carriers and/or non-admitted carriers through RMS; and

WHEREAS, RMS is willing to submit and place such insurance subject to the RMS conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties, intending to be bound in contract hereby agree as follows:

Section 1. Definitions.

Where used in this Agreement the following have the meanings set forth in this section 1.

- (a) “Broker Business” means the insurance business produced or submitted by Broker pursuant to this Agreement.
- (b) “Broker Commissions” has the meaning set forth in Section 4(a).
- (c) “Policy” means the RMS insurance policy placed with its contracted insurance carriers.
- (d) “Material Changes” means changes in operations or exposure of the insured that affect the exposure to loss or alter the rating base data utilized to calculate premium.

Section 2. Broker’s Obligations.

During the term of this Agreement the Broker will have the following responsibilities:

- (a) Submit business to RMS wherein Broker will follow all RMS procedures and will provide complete, truthful, and accurate information concerning the proposed insured, including full details concerning the proposed insured’s insurance exposures and claims history.
- (b) Promptly disclose to RMS any Material Changes to the insured’s exposure to loss. The Broker’s duty to disclose changes in the insured’s exposure to loss will be ongoing from the date of first submission to RMS through the entire period that any coverage is in effect.
- (c) Vigorously pursue each insured’s compliance with loss control and risk management recommendations

- (d) Report to RMS and/or insurance carrier(s) in writing within as soon as reasonably practical following the date Broker receives any notice of any claim, or of any incident that is likely to lead to a claim, under any insurance policy.
- (e) Pay to RMS or its designee, by the due date specified, all premiums and deposits for policies and endorsements as billed by RMS or the insurance carrier, irrespective of whether such amounts have been collected by Broker. A down payment of 25% of the annual premium plus all taxes and filing fees as well as all policy fees are required to bind coverage. The balance of premiums are due within the following twenty (20) days of the effective date.
- (f) In the event any of the insurance policies are issued by non-admitted surplus lines insurance carriers, the Broker will collect all taxes and fees directly from the insured, and RMS will execute the required surplus lines filings, in connection with the Broker Business.

Section 3. Obligations of RMS.

- (a) During the term of this Agreement, RMS will:
 - (i) Submit proposals to insurance carriers as requested by the Broker and based solely on information provided by the Broker. RMS will not be responsible for the accuracy, quality or completeness of any information provided by Broker when requesting a quotation.
 - (ii) Prepare or obtain evidence of coverage upon receipt of an order to bind coverage from broker. Such order to bind coverage must be in writing to RMS. Unless otherwise expressly agreed to by RMS in writing, all evidence of coverage issued by RMS will be subject to and governed by the quotation or proposal for coverage given by RMS in response to the Broker's submission.
 - (iii) Cooperate with the insurance carrier(s) to facilitate issuance of policies, endorsements, and loss control recommendations, and coordinate the insurance carrier(s)' requests for information from the Broker and the Broker's responses to such requests.
- (b) The Broker agrees that this Agreement will not be interpreted or construed to compel RMS to accept or place all or any of the Broker Business. RMS may, in its sole discretion, reject any or all of the Broker Business.

Section 4. Commissions and Premiums.

- (a) Where applicable, the Broker will be paid a commission of 10% of premium on the Broker Business (herein the "Broker Commissions").
- (b) The Broker acknowledges and agrees that the Broker Business is not subject to flat cancellation by the Broker. Any cancellation by Broker of an insured, other than cancellation for non-payment of premium by the insured will be canceled on a short rate basis unless otherwise specified. The Broker will refund Broker Commission to the RMS on a proportionate basis on all Broker Business that is canceled and/or for which the premiums are reduced after inception date. Such refund will be due within thirty (30) days after the Broker is given notice of such cancellation or reduction.
- (c) In the event a financed premium is canceled and the premium is refunded to the applicable premium finance company, the Broker will immediately refund any Broker Commission to RMS on a proportionate basis. The Broker will be responsible for all assessments, fees, penalties and fines in connection with any finance company the Broker contracts on behalf of its insured.

- (d) Each party will maintain the premiums it receives in a fiduciary capacity in accordance with applicable law.

Section 5. Binding/Settlement Authority.

- (a) In no event, not under any circumstances whatsoever will this Agreement be interpreted or construed to permit the Broker to bind on behalf of RMS or any insurance carrier(s). All binding authority will vest and remain with RMS and the RMS designated insurance carrier(s).
- (b) All insurance applications must be received by RMS prior to the proposed effective date of coverage, and it will be a condition to coverage that any and all documents or other information required by RMS must be attached to the application.
- (c) Nothing herein will be construed as giving the Broker authority or permitting Broker to adjust, settle, compromise or pay any claim.

Section 6. Relationship of Parties

The relationship of the parties will be that of independent contractors and nothing herein will create the relationship of principal and agent, or the relationship of employer and employee, or partners in a partnership, between the parties hereto. Neither party will hold itself out as the agent or other representative of the other. The Broker will be an independent contractor, and will be free to exercise its own discretion and judgment with respect to the person, or corporations from which it solicits business, but for the purpose of this agreement, will not accept business from any third party and/or brokers/agents that it does not financially control.

Section 7. Broker's Representations and Warranties

In order to induce RMS to enter into this Agreement, the Broker represents and warrants that:

- (a) Broker will obtain and maintain in effect all licenses and permits required by any applicable federal, state or local law or regulation in order to produce business in connection with this Agreement, and all such licenses will be maintained in full force and effect throughout the term of this Agreement, and all solicitations and submissions by the Broker hereunder will be in compliance with all applicable laws and regulations. The Broker agrees that RMS may decline to bind any insurance, and/or that RMS will have all right, title and interest in the Broker Commissions in the event acceptable evidence of relevant current licensing information is not on file with RMS.
- (b) During the term of this Agreement, the Broker will maintain and keep in full force and effect, an errors and omissions policy of insurance providing coverage of not less than one million (\$2,000,000.00) dollars per occurrence. The Broker will furnish RMS with a copy of the policy (including the declaration page of other evidence of insurance) upon execution of this Agreement, and following each renewal of such policy.
- (c) Any and all information provided in connection with any application for insurance subject to this Agreement will be true and complete. Broker further represents and warrants that such applications will contain no material misrepresentations of any kind.
- (d) No facts or circumstances that might reasonably be anticipated to affect a decision whether to accept an application for insurance will be withheld from RMS prior to the effective date of insurance coverage.
- (e) In the Broker's performance under all terms and conditions hereunder the Broker will not knowingly violate any prior confidentiality agreement, employment contract or any other duty owed to any other person.

- (f) The Broker will give RMS prompt notice of any change in information concerning its license status or the license status of any of its principals, and any changes in ownership of the Broker.
- (g) Broker will not accept business from any other producer or sub-producer for placement under this Agreement, and will not appoint any sub-producer or sub-broker to solicit and place business with the RMS.
- (h) The Broker Business will consist of accounts developed solely and exclusively by Broker without the involvement of any other insurance producer or brokerage organization.
- (i) The Broker will not divide or share any portion of the Broker Commissions with any other insurance producer or brokerage organization, will not pay any fee or give any valuable consideration of any kind to any person or entity (other than its sales employees) for the production of the business subject to this Agreement.
- (j) The Broker will not charge any insured any fee nor receive any payment other than the Broker Commissions in connection with the business subject to this Agreement, unless fully disclosed in writing to RMS prior to binding and in a form/format compliant with the governing state insurance department rules and regulations.

Section 8. RMS's Representations and Warranties.

In order to induce Broker to enter into this Agreement, RMS represents and warrants that:

- (a) RMS will obtain and maintain in effect all licenses and permits required by any applicable federal, state or local law or regulation in order to place business in connection with this Agreement, and all such licenses will be maintained in full force and effect throughout the term of this Agreement, and that all solicitations and submissions by RMS hereunder will be in compliance with all applicable laws and regulations.
- (b) In RMS's performance of all the terms and conditions hereunder it will not knowingly violate any prior confidentiality agreement, employment contract or any other duty owed to any other person.

Section 9. Advertising.

During the term of this Agreement the Broker will not publish, circulate or issue any advertisement, letter, circular, pamphlet or other publication or statement, written, oral, or by electronic mail ("E-Mail") or other electronic distribution of advertising, or otherwise, referring to the RMS Agency without the prior written consent of RMS.

Section 10. Hold Harmless.

- (a) To the fullest extent permitted by law, the Broker will indemnify and forever hold harmless RMS, and any successor corporation, and their officers and directors, against any and all liabilities, claims, causes of action, losses, damages (including attorneys' fees) resulting from or attributable solely to any and all acts or omissions of the broker, or any breach by the broker of any obligation arising under the terms or conditions of this Agreement.
- (b) To the fullest extent permitted by law, RMS will indemnify and forever hold harmless the Broker, and any successor corporation, and their officers and directors, against any and all liabilities, claims, causes of action, losses, damages (including attorneys' fees) resulting from or attributable solely to any and all acts or omissions of RMS, or any breach by RMS of any obligation arising under the terms or conditions of this Agreement.

Section 11. Term, Termination of Agreement and Rights to Expirations.

- (a) This agreement may be terminated by either party upon not less than ninety (90) days written notice to the other party, sent by Registered or Certified Mail, Return Receipt Requested. Such termination, however, will in no event affect the respective rights or liabilities of either party occurring prior to the date of termination.
- (b) This Agreement may be terminated immediately by either party in the event of:
 - (i) The state of the other party's domicile cancels or declines to renew their license,
 - (ii) The other party receives a criminal conviction, or an adverse judicial or administrative decree or order affecting their ability to conduct business,
 - (iii) Abandonment, fraud, insolvency, intentional failure to remit premiums, or gross or willful misconduct on the part of the other party,
 - (iv) Failure of Broker to send satisfactory evidence of the renewal of its errors and omissions policy to RMS within thirty (30) days of its renewal/effective date.
- (c) In the event of termination of this Agreement, the Broker having accounted for and paid all premiums for which it is liable, the Broker's records, customer lists and use or control of expirations will remain the property of the Broker and will be left in its undisputed possession; otherwise, the records, customer list and use and control or expirations will be vested exclusively in RMS.

Section 12. Confidentiality; RMS's/Broker's Intellectual Property Rights.

The parties to this Agreement hereby represent and acknowledge to each other that in the course of the performance of the party's obligations they will each make available to the other party certain information pertaining to each party's business and operations ("Information"). Each party hereby agrees that as a condition to being provided the Information, that neither party will use any Information except in connection with the performance of duties hereunder. Each party agrees not to disclose and Information to anyone other than the employees, officers and directors of such party, that have a need to know, and to cause all such persons to abide by this Agreement. The limits on use and disclosure will not apply to any Information which (a) at the time of disclosure is generally available to the public or (b) which becomes generally available other than through a breach of an obligation of confidentiality.

Section 13. Limitation of Liability.

RMS will not be liable to any person or entity for any damages including, without limitation, direct, indirect, incidental, special, consequential or punitive damages, or lost profits and lost savings, under any theory including, but not limited to, contract, tort, negligence, strict liability, or any other cause of action, even if RMS has been advised of the possibility of or could have foreseen such damages. The aggregate liability of RMS under this agreement will not exceed the total commissions received by Broker hereunder.

Section 14. Inspection of Records

During the term of this Agreement, and for a period of three (3) years following termination for any reason, RMS will have the right to audit and inspect Broker's books and records concerning the business to which this Agreement applies. Such right of audit and inspection will be during normal business hours upon reasonable

notice to Broker. The costs of such audit and inspection, including costs of making copies of relevant records, will be borne by RMS.

Section 15. Miscellaneous.

- (a) This Agreement may not be assigned by Broker without RMS's prior written consent.
- (b) This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes all previous written or oral negotiations, commitments and writings pertaining thereto. The captions in this Agreement are for convenience of reference only, do not form a part hereof and do not in any way modify, interpret or construe the intentions of the parties. This Agreement may be executed in counterparts, all of which will constitute one and the same instrument. This Agreement may not be varied, modified or amended except by a writing signed by the party against which this Agreement is sought to be enforced.
- (c) If any one or more of the provisions of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this agreement will not be affected thereby and the parties will use all reasonable efforts to substitute one or more valid, legal and enforceable provisions which, insofar as practicable, implement the purposes and intents thereof.
- (d) The failure of either party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement, or to exercise any option herein contained, will not be constructed as a waiver or a relinquishment of such provisions, but the same will continue and remain in full force and effect.
- (e) All notices required or permitted hereunder will be effective upon the mailing thereof, in a stamped or postage paid envelope addressed, or by facsimile transmission, if to RMS to:

RMS Insurance Brokerage LLC
DBA RMS Hospitality Group
1051 Franklin Avenue
Garden City, New York 11530

- (f) This Agreement, as well as any and all tort claims arising from the Agreement or arising from any of the proposals, negotiations, communications or understandings regarding this Agreement, will be governed by and construed according to the laws of the State of New York, applicable in contracts wholly made and wholly performed in New York, without giving effect to its conflicts of laws principles. For purposes of any proceeding involving this Agreement and the obligations hereunder, the parties agree to the exclusive jurisdiction of the Courts of the State of New York and of the United States, having jurisdiction in the County of Nassau, State of New York, and agree not to raise, and waive, any objections or defenses based upon venue or *forum non conveniens*, except that RMS may seek temporary injunctive relief in any venue of its choosing.
- (g) RMS will not be responsible for the Broker's overhead or other operating expenses, including rent, transportation, facilities, clerk hire, solicitor's fees, postage, advertising, exchange, personal local license fees or any other expense whatsoever.
- (h) All remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies. If the Broker breaches this Agreement, RMS will be entitled, in addition to any other rights available at law or in equity, to immediate injunctive relief without any requirement to post a bond or other security. The Broker acknowledges that it has had a full and ample

opportunity to consult legal counsel regarding this Agreement prior to signing, has freely, and voluntarily entered into this Agreement, and has read and understood each and every provision.

- (i) The provisions of Sections 5, 6, 7, 9, 10, 12, 13, 14 and this 15(i) will survive any termination of this Agreement.

RMS:

BY: _____

Name: Mark D. Derrenberger

BROKER/Firm Name: _____

BY: _____

Name:

Broker FEIN Number _____

Broker License Number _____

Note: Upon completion of this agreement, and to avoid delays to bind business, you must include the following items:

Copy(s) of all required Agent or Broker License(s)

Copy of your current E&O policy declaration sheet.

Complete attached Broker Profile

Broker Profile

Broker Name: _____ Phone No.: _____

Address:

Street: _____ Fax #: _____

State: _____ Zip: _____ Email: _____

Agency Structure: Corporation _____ Partnership _____ LLC _____

Principals	Title	% Ownership	Yrs. In Ins.	In Agency
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1. _____

2. _____

3. _____

Person to Contact for:

Underwriting: _____ (Ext. # _____) Email _____

Claims: _____ (Ext. # _____) Email _____

Accounting: _____ (Ext. # _____) Email _____

Total # of Employees: _____

Has your agency been terminated by any carrier within the past 12 months: __No __Yes

In yes, explain: _____

Errors and Omissions Insurance:

Carrier: _____ Limit: _____

Policy: _____ Deductible: _____

Signed: _____ Date: _____

(Company Use Only)

Date Rec'd _____ Marketing Rep _____ Copies to UNDW _____

Accounting _____ Approved by: _____ Date Processed _____

Code Assigned _____