

**Parental Guaranty Agreement**

THIS UNCONDITIONAL GUARANTY AGREEMENT (hereinafter "Agreement"), dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ , is made by \_\_\_\_\_, (hereinafter "Guarantor"), for the use and benefit of the North Carolina Commissioner of Insurance (hereinafter "Commissioner") in the Commissioner's capacity as regulator of professional employer organizations under Article 89A of Chapter 58 of the North Carolina General Statutes (hereinafter "Article 89A).

WHEREAS, \_\_\_\_\_ (hereinafter "Applicant" or "Licensee") has applied to the Commissioner for licensure as a professional employer organization or has applied to the Commissioner to maintain or renew their license as a professional employer organization ("PEO") under Article 89A;

WHEREAS, Applicant desires to obtain a PEO license to engage in and offer professional employer services in North Carolina, or Licensee desires to comply with requirements of licensure and continue operation as a PEO;

WHEREAS, Applicant or Licensee is a direct or indirect subsidiary of Guarantor, and Guarantor exercises control over Applicant or Licensee as defined by N.C. Gen. Stat. § 58-89A-5(5);

WHEREAS, pursuant to N.C. Gen. Stat. § 58-89A-60(b2), the Commissioner may accept the audited financial statements of an applicant or licensee's parent company and consider the financial conditional and financial responsibility of the parent company in lieu of the applicant or licensee; and

WHEREAS, Applicant or Licensee has requested that the Commissioner accept the audited financial statements of Guarantor in lieu of Applicant or Licensee's own audited financial statements; and

WHEREAS, as a condition for the Commissioner's acceptance of Guarantor's audited financial statements, Guarantor must execute an unconditional guaranty of all obligations related to Applicant or Licensee's current and future client companies, including its obligations for payroll, payroll-related taxes, workers' compensation insurance, and employee benefits.

**NOW THEREFORE**, in consideration of the promises and agreements set out herein, and to induce the Commissioner to issue or renew a PEO license to Applicant or Licensee, Guarantor agrees as follows:

**Section 1. Guaranty**

Guarantor unconditionally guarantees to the Commissioner, his successor in office, for the benefit and protection of Applicant/Licensee's current and future North Carolina client companies and assigned employees, prompt payment of the financial obligations of Applicant/Licensee. The scope of this Agreement includes, but is not limited to, Applicant/Licensee's statutory and contractual responsibilities

under N.C. Gen. Stat. § 58-89A-60(b2)(1).

Nothing herein shall operate to obviate Applicant/Licensee's need to post a qualified surety bond, letter of credit, or cash deposit as required by N.C. Gen. Stat. § 58-89A-50.

#### Section 1A. Rights of Commissioner

The execution of this Agreement by Guarantor is a precondition to the approval by the Commissioner of Applicants' application for a PEO license to engage in and offer professional employer services in North Carolina or for Licensee to comply with the requirements of licensure and continue operation as a PEO. The Commissioner is the beneficiary of the Agreement, and all parties to this Agreement acknowledge that their intent is to confer a direct benefit upon the Commissioner. It is further agreed and understood that the failure of any party to this Agreement to seek to enforce the terms of this Agreement shall in no way bar or preclude the Commissioner from seeking such enforcement.

The Commissioner's right to seek enforcement of the terms of this Agreement may be exercised immediately upon Applicant/Licensee's failure to pay any financial obligation related to its current and future client companies. The Commissioner is not required to exhaust legal or administrative remedies against Applicant/Licensee before enforcing rights directly against Guarantor under this Agreement.

Upon written demand of the Commissioner, Guarantor shall pay to the Commissioner the amount required to ensure that Applicant/Licensee's financial obligations are paid. Guarantor shall pay the amount demanded within five (5) business days Guarantor is fully liable for the satisfaction of these financial requirements.

In the event that the Commissioner has to take legal action to enforce his rights under this Agreement, Guarantor shall reimburse the Commissioner, his successor, for any costs incurred in enforcing the terms of the Agreement, including reasonable attorney fees.

#### Section 2. Term of Guaranty Agreement

This Agreement shall remain in full force and effect from the date of execution until satisfaction of all financial obligations of Applicant/Licensee guaranteed hereby, or until it is cancelled in writing by the Commissioner, whichever occurs later.

This Agreement shall be binding upon Guarantor and its successors and assigns, whether direct or indirect by purchase, merger, consolidation, or otherwise. No change in ownership, legal corporate entity structure, or business name of either Guarantor or Applicant/Licensee shall alter or diminish the obligations created under this Agreement.

#### Section 3. Representations and Warranties of Guarantor

Guarantor hereby represents and warrants:

- a) Guarantor is a corporation duly incorporated and in good standing under the laws of the state in which it is incorporated, has full legal right, power and authority to enter into this Agreement and to carry out and consummate all transactions contemplated by this Agreement, and by proper corporate action has duly authorized the execution and delivery of the Agreement.
- b) The officer of Guarantor executing this Agreement is duly and properly in office and fully authorized to execute the same.
- c) This Agreement has been duly authorized, executed and delivered by Guarantor, and constitutes a legal, valid, and binding agreement of Guarantor.
- d) The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof will not conflict with or constitute a violation or breach or default under the articles of incorporation or bylaws of Guarantor, or any contract or other agreement or instrument to which Guarantor is a party or, to the knowledge of Guarantor, any applicable law or administrative decree or order, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Guarantor, which conflict, violation, breach, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement of the financial condition, assets, properties, or operations of Guarantor.
- e) No consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution of any transaction herein contemplated, except as been obtained or made and as is in full force and effect.
- f) Applicant/Licensee is a direct or indirect subsidiary of Guarantor, and Guarantor exercises control over Applicant/Licensee as defined by N.C. Gen. Stat. § 58-89A-5(5).

#### Section 4. Obligations of Guarantor Absolute and Unconditional

The obligations of Guarantor under this Agreement are absolute and unconditional, and such obligations of Guarantor shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following, whether or not with notice to, or the consent of, Guarantor:

- a) The waiver of the payment, performance or observance by Applicant/Licensee, Commissioner or Guarantor of any of the obligations, covenants or agreements contained in this Agreement.
- b) The extension of the time for performance of any other obligation, covenant or agreement under

- or arising out of this Agreement or the extension or the renewal of any thereof.
- c) The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, or receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of debt, or other similar proceedings affecting either Applicant/Licensee or Guarantor or any of the assets of any of them, or any allegation of invalidity or contest of the validity of this Agreement in any such proceeding.
  - d) To the extent permitted by law, the release or discharge of Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Agreement by operation of law.
  - e) The default or failure of Guarantor to fully perform any of its obligations set forth in this Agreement.

#### Section 5. Guaranty for Benefit of Parties Hereto and the Commissioner

This Agreement is entered into by Guarantor for the benefit of Applicant/Licensee whose financial obligations are being guaranteed hereby, and Applicant/Licensee is entitled to enforce performance and observance of the Agreement. Further, Applicant/Licensee has entered into the same for the direct, intended benefit of the Commissioner.

#### Section 6. Governing Law

This Agreement shall be construed in accord with and governed by the laws of the State of North Carolina.

#### Section 6A. Choice of Forum

Any dispute arising out of the term of this Agreement may be resolved only and exclusively in either the Superior Court of Wake County, North Carolina, or in the Federal District Court for the Eastern District of North Carolina, Raleigh Division, and the parties agree to submit themselves to the jurisdiction of said courts.

#### Section 7. Other Guarantees

All guarantees made by Guarantor or any subsidiary or affiliate of Guarantor or any obligation of any of them executed prior to the date of this Agreement remain in full force and effect.

#### Section 8. Amendment

This Agreement may not be amended without prior written approval of the Commissioner or authorized deputy or employee of the North Carolina Department of Insurance.

**SIGNATURE AND ATTESTATION**

IN WITNESS WHEREOF, Guarantor has caused this Guaranty Agreement to be executed and attested by its duly authorized officer as of the date first above written.

Guarantor: \_\_\_\_\_  
(Type or Print Full Legal Name of Entity)

Guarantor State of Incorporation/Formation: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Type or Print Name)

Title: \_\_\_\_\_  
(Type of Print Title)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing instrument, and who acknowledged that he/she executed the same on behalf of and with the authority of \_\_\_\_\_ (Guarantor Entity Name).

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_ (SEAL)