NC DEPARTMENT of INSURANCE

Special Entities Division

Unconditional Cross Guaranty Agreement Between Professional Employer Organization Group Members Made for the Direct Benefit of the Commissioner of Insurance in His Official Capacity

Submit to: Christine.Williams@ncdoi.gov

Now come (Group Members)

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_____

(each hereinafter referred to individually as "Guaranteeing Member" and collectively as "Guaranteeing Members") for good and valuable consideration, the receipt and mutuality of which is hereby acknowledged, and covenant and agree as follows:

1. All parties hereto are either controlled by the same ultimate parent, entity, or persons or are the ultimate controlling parent, entity, or persons.
2. Guaranteeing Members have applied to the Commissioner of Insurance of the State of North Carolina (hereafter "COI") for a professional employer organization group license to engage in and offer professional employer services in North Carolina. All parties to this Agreement have a desire that Guaranteeing Members obtain a professional employer organization group license to engage in and offer professional employer services in North Carolina, and all parties hereto recognize that the execution of this Agreement is necessary for approval of an application for a professional employer organization group license by the COI. Further, the parties hereto have entered this Agreement with the intent to confer a direct benefit on the COI.

Section 1. Guaranty

Each Guaranteeing Member unconditionally guarantees the payment of all financial obligations of every other Guaranteeing Member. This guarantee extends from the date of the COI's issuance of a professional employer organization group license to Guaranteeing Members. Nothing herein shall operate to obviate Guaranteeing Members' 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 COI

The execution of this Agreement by each Guaranteeing Member is a precondition to the approval by the COI of the Guaranteeing Members' applications for a professional employer organization group license to engage in and offer professional employer services in North Carolina.

The COI is the beneficiary of the Agreement, and all parties to this Agreement acknowledge that their intent to entering into this Agreement is to confer a direct benefit upon the COI. Consequently, while the parties to this Agreement have rights to enforce the terms hereunder, it is also necessary that the COI have the ability to enforce each Guaranteeing Member's obligation and liabilities hereunder.

All parties to this Agreement acknowledge the COI's status as a direct, intended third party beneficiary, and all parties to this Agreement irrevocably grant to the COI the right to enforce all terms of this Agreement and to compel any Guaranteeing Member to fulfill its duties and obligations hereunder.

It is further agreed and understood that the failure of any party to this Agreement to seek to enforce the terms of the same shall in no way bar or preclude the COI from seeking such enforcement.

The COI's right to seek enforcement of the terms of this Agreement may be exercised the instant a Guaranteeing Member fails to pay any financial obligation referenced in Section 1 of this Agreement. Upon demand of the COI, each Guaranteeing Member shall within 48 hours take whatever measures are necessary to ensure that the defaulting Guaranteeing Member's financial obligations are paid. Each Guaranteeing Member is jointly and severally liable for the satisfaction of these financial obligations.

In the event that the COI has to take legal action to enforce his rights under this Agreement, any Guaranteeing Member who is determined not to have complied with the terms of this Agreement shall reimburse the COI for his costs and legal fees in enforcing the terms of the Agreement.

Section 2. Term of Guaranty Agreement

This Agreement shall remain in full force and effect from the date a professional employer organization group license is issued by the COI until satisfaction of all financial obligations guaranteed hereby, or until cancelled by the COI, whichever occurs later.

Section 3. Representations and Warranties of Guaranteeing Members

Each Guaranteeing Member hereby represents and warrants:

a) Each Guaranteeing Member 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 each Guaranteeing Member 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 each Guaranteeing Member, and constitutes a legal, valid, and binding agreement of each Guaranteeing Member.

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 any Guaranteeing Member, or any contract or other agreement or instrument to which any Guaranteeing Member is a party or, to the knowledge of any Guaranteeing Member, 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 any Guaranteeing Member, 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 any Guaranteeing Member.

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) Each Guaranteeing Member is either controlled by the same ultimate parent, entity, or persons or is the ultimate controlling parent, entity, or persons.

Section 4. Obligations of Each Guaranteeing Member Absolute and Unconditional

The obligations of each Guaranteeing Member under this Agreement are absolute and unconditional, and such obligations of each Guaranteeing Member 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, any Guaranteeing Member:

a) The waiver of the payment, performance or observance by COI or any Guaranteeing Member 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 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 any Guaranteeing Member 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. However, in no event shall a Guaranteeing Member be required to make any contribution if the Guaranteeing Member is in a hazardous financial condition, as defined by N.C. Gen.Stat. § 58-89A-5(8), or if such contribution would cause a hazardous financial condition of the Guaranteeing Member.

d) To the extent permitted by law, the release or discharge of any Guaranteeing Member 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 any Guaranteeing Member to fully perform any of its obligations set forth in this Agreement.

Section 5. Guaranty for Benefit of Parties Hereto and the COI

This Agreement is entered into by the Guaranteeing Members for the benefit of each party to this Agreement whose financial obligations are being guaranteed hereby, and each such party is entitled to enforce performance and observance of the Agreement. Further, all parties to this Agreement have entered into the same for the direct, intended benefit of the COI.

Section 6. Governing Law

This Agreement shall be construed in accord with and governed by North Carolina law.

Section 6A. Choice of Forum

All parties agree that 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 Guaranteeing Members or any subsidiary or affiliate of Guaranteeing Members 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 the prior written approval of the North Carolina Department of Insurance.

Execution

In witness whereof, the parties hereto have caused this Agreement to be executed in their names and behalf by their duly authorized officers this

_____ day of _____, _____.

By:

Name _____

Title _____

Company _____

Date _____

County of _____

State of _____

Notary Public _____

Commission Expires _____

(Seal)

_____ day of _____, _____.

By:

Name _____

Title _____

Company _____

Date _____

County of _____

State of _____

Notary Public _____

Commission Expires _____

(Seal)