



Employer Services Assurance Corporation

Standards and Procedures for ESAC Accreditation and Client Assurance Program Participation

(Effective March 2024)

One Financial Centre, Suite 327
650 S. Shackleford Road
Little Rock, Arkansas 72211-3503

(501) 219-2045
service@ESAC.org
www.ESAC.org

Table of Contents

GENERAL INFORMATION

Statement of Purpose and Operation	3
Confidentiality	3
Authority of ESAC	4
Definitions	4

STANDARDS

Ethical Standards.....	10
Financial Standards	11
Operational Standards.....	17

APPLICATION AND MAINTENANCE PROCEDURES

Application	22
Accreditation Maintenance	24
Reportable Practices	27
ESAC Notification Requirements.....	27
Termination of Accreditation	28

OTHER INFORMATION

Limitation of Liability of ESAC and Standard of Review	28
Grounds for Disciplinary Action	28
Rights of Applicants and Accredited PEOs.....	29
Procedures for Handling Alleged Violations, Defaults & Claims	30
Compliance Committee	30
Reporting of an Allegation of a Default or Failure to Comply.....	30
Procedure for Handling an Allegation of a Default or Failure to Comply	31
Standards for Hearings.....	32
Penalties	33
Appeals Procedure	34
Fees.....	35
Application Fee	35
Accreditation Fee.....	35
Bond Fee	36
Acquisition Fee	37
Delinquent Reporting Penalties	36
Reimbursements of Direct Cost.....	36
Denial of Application and Treatment of Pending Applications	34

EXHIBITS

Exhibit A: Participation Agreement	
Exhibit B: Ethical Conduct Guidelines Example	
Exhibit C: Financial Guaranty Form	
Exhibit D: Carrier's Estimate of Ultimate Liability	
Exhibit E: Tax & Benefits Payment Verification Agreed-Upon Procedures	

GENERAL INFORMATION

Statement of Purpose and Operation

ESAC's purpose is to build integrity and trust and provide assurance for the PEO industry. To accomplish its purpose, ESAC:

- 1) Establishes standards for ethical conduct, professional competency, and financial and operational reliability;
- 2) Provides a credible program of accreditation based on independent verification of standards compliance;
- 3) Provides financial assurance and notification programs to assure the clients, employees and insurers of accredited PEOs and government agencies that accredited PEOs are in compliance with ESAC's standards; and
- 4) Provides services to make PEO compliance with state and federal laws and regulations more time and cost efficient and reliable.

ESAC is managed by its officers and staff under the supervision of a Board of Directors. ESAC's board is comprised of Independent Directors, including former regulators, Professional Advisory Directors, and PEO industry executives.

PEO participation in ESAC programs is voluntary. Annual fees paid by participating PEOs provide funding for ESAC programs. The accreditation fee schedule is established by majority vote of the Board of Directors as necessary to cover administrative and program costs. The Board diligently seeks to manage the affairs of ESAC consistent with accomplishing its purpose and its nonprofit status.

Any Professional Employer Organization (PEO) or group of Affiliated Professional Employer Organizations (PEO Group) is eligible to apply for accreditation. As a condition of eligibility for initial and continued accreditation, Applicants, Accredited PEOs and Responsible Persons agree to be bound by the terms and conditions set forth in these *Standards and Procedures*.

Confidentiality

Information provided to ESAC by Applicants and Accredited PEOs shall be used appropriately and held in strict confidence. Only ESAC staff, surety, advisors and Independent Directors have access to confidential PEO information and only Independent Directors vote on matters involving the initial accreditation or ongoing compliance of Accredited PEOs unless the PEO requests a review of the matter by the entire Board.

The following principles of conduct will be adhered to by ESAC staff, officers, Board of Directors, service providers, and trusted advisors to the Board:

- 1) Any portion of Board or committee meetings where matters related to specific Applicants or Accredited PEOs are scheduled for discussion are closed to all persons except authorized representatives of the PEO in question and Board members, Board advisors and ESAC staff.
- 2) An Applicant or Accredited PEO shall be provided prior notice when matters specifically pertaining to them are included in the discussion agenda of any Board or committee meeting.
- 3) Any Applicant or Accredited PEO has the right to petition the recusal of any Board member it reasonably believes possesses a bias against it, has a conflict of interest, or is otherwise unable to cast an objective decision on the matter at hand. Such petition must be received by ESAC in writing at least 3 business days prior to Board action and must include the reason why recusal is requested. A copy of the petition shall be provided to the Board member in question, and he or she shall be required to respond in writing. The Board will evaluate such petition and the Board member's response and will vote whether to require the recusal of the member as requested by the petitioner. The affected Board member shall not vote on the petition for his or her recusal. The Board shall be liberal in approving such requests for recusal based on receipt of factual justification.
- 4) ESAC shall hold all information submitted by an Applicant and the fact that an Applicant has applied in strict confidence, except for the announcement of approved Applicants, and as specifically provided in this manual and

in the Participation Agreement attached as Exhibit A. The proceedings of ESAC are not subject to any Freedom of Information or “Sunshine” laws. Submitted information is for ESAC’s exclusive use for the purpose of accreditation and program administration and is not released to anyone outside of ESAC, except upon an order from a court of competent jurisdiction or as specifically provided in this manual.

- 5) All Board members, Board advisors, ESAC staff and service providers are required to execute a comprehensive, enforceable non-disclosure agreement protecting the confidentiality of information submitted by Applicants and Accredited PEOs, and such individuals are subject to removal for violating the terms of such agreement.
- 6) All financial statements provided by an Applicant or Accredited PEO are submitted to ESAC for evaluation by ESAC and the surety carrier backing the Client Assurance Program, or their authorized agent. Such financial statements are not provided to any ESAC Industry Director or unauthorized party without the written consent of the Applicant or Accredited PEO.

Authority of ESAC

ESAC has the authority to:

- 1) Require submission of any information, document, attestation or certification from an Accredited PEO, Applicant or Responsible Person that it deems necessary to grant or maintain accreditation and participation in any program administered by ESAC;
- 2) Correspond with insurers, their agents, third party administrators, regulators and government agencies to inquire about or verify information relative to an Accredited PEO, Applicant or Affiliate;
- 3) Approve, deny or revoke accreditation, issue a letter of warning, assess fines, place the Accredited PEO or PEO Group on probation including specifying the conditions for probation, require a certification of compliance, or assess costs associated with an investigation and determination of final judgment; and
- 4) Extend any of the time periods set forth in these *Standards and Procedures* within its sole discretion and for good cause shown.

ESAC’s sole discretion may be exercised with respect to any and all determinations to be reached by ESAC throughout these *Standards and Procedures*. Nothing set forth in these *Standards and Procedures* limits ESAC’s authority, including ESAC’s discretionary authority to investigate and act on any matter that represents an imminent or material risk to the financial or operational stability of an Accredited PEO or to ESAC’s Client Assurance Program.

Definitions

- 1) “Accreditation Fee” shall mean ESAC’s standard accreditation fee, based upon the amount of the PEO’s annual gross wages, with the fee calculated in accordance with the fee schedule contained in ESAC’s *Standards and Procedures*, as may be amended from time to time. The current Accreditation Fee schedule is available at www.ESAC.org.
- 2) “Accredited PEO” shall mean a PEO or PEO Group that is accredited by ESAC pursuant to these *Standards and Procedures*.
- 3) “Accredited PEO Worksite Employee” is defined as any individual whose employment status with an Accredited PEO has been recognized by completion of Internal Revenue Service (IRS) Form W-4, who is treated as an employee of the PEO on its payroll records, and who provides services for a client of the PEO pursuant to a PEO service contract.
- 4) “Accredited in Good Standing” shall mean the PEO or PEO Group is presently accredited by ESAC and such accreditation has not been terminated or relinquished.
- 5) “Acquisition” shall mean a transaction or series of transactions pursuant to which an Accredited PEO, Affiliate or Responsible Person of an Accredited PEO (a) acquires a controlling interest in; (b) merges or consolidates with; and/or (c) acquires the assets of, either a non-Accredited or Accredited PEO, or there is a transaction having a similar effect.

- 6) "Acquisition Fee" shall mean ESAC's standard acquisition fee, based upon the amount of the acquired PEO's annual gross wages, with the fee calculated in accordance with the Accreditation Fee schedule contained in ESAC's *Standards and Procedures*, as may be amended from time to time.
- 7) "Adjusted Net Worth" is defined to include stockholders' equity determined in accordance with generally accepted accounting principles, increased by the amount of obligations subordinated to claims of general creditors (subordinated debt) with a remaining term to maturity in excess of three years, and mandatory redeemable preferred stock with a remaining term to redemption in excess of three years.
- 8) An "Affiliate" of another Person shall mean a Person who meets any of the following requirements:
 - a. Ownership: at least 50% of the equity of one Entity, determined on the basis of either voting power or value, is owned, directly or indirectly, by such Person;
 - b. Voting Power or Value: the same Person(s) who have ownership in each Entity own, directly or indirectly, at least 50% of the equity of each Entity, determined on the basis of either voting power or value; or
 - c. Direction or Control: the same Person(s), whether by office held, contract or otherwise, control or direct or have the ability to control or direct material aspects of the affairs of each Entity.

With respect to an Accredited PEO, another PEO shall be an Affiliate if:

- i. such Accredited PEO, or an Affiliate of such Accredited PEO, owns, directly or indirectly, any equity interest in such other PEO;
- ii. such other PEO, or an Affiliate of such other PEO, owns, directly or indirectly, any equity interest in such Accredited PEO; or
- iii. any Responsible Person of an Accredited PEO owns, directly or indirectly, 10% or more of another PEO or its ultimate parent.

For the purposes of i., ii., or iii. above, if a PEO or its ultimate parent is a publicly-traded company, then ownership of less than 10% of the voting stock of such PEO or its ultimate parent shall be disregarded.

For the avoidance of doubt:

- i. an Entity and the Person described in a., b., or c. above are each an Affiliate with respect to each other;
- ii. a Responsible Person is an Affiliate of any PEO for which he or she is a Responsible Person; and
- iii. a Person includes an Entity.

The determination of whether a Person is an Affiliate of another Person shall be made by ESAC in its sole discretion. ESAC may disregard any ownership that would otherwise result in another Entity being an Affiliate of an Accredited PEO if ESAC determines that treating such other Entity as an Affiliate is not necessary for the furtherance of ESAC stated purposes.

- 9) An "Affiliated Party Transaction" is a transaction between an Accredited PEO and a Non-PEO Affiliate in which (a) either party provides goods, services, or a benefit of any kind to or for the benefit of the other, or (b) there is a sharing of employees, assets or other resources between the parties.
- 10) "Applicant" shall mean a PEO or PEO Group whose application for accreditation by ESAC is pending.
- 11) "Board" shall mean the Board of Directors of ESAC, or where the context requires, shall mean the Independent Directors, as more fully set forth in the Bylaws of ESAC.
- 12) "Captive" shall mean an entity that insures a risk of the Accredited PEO, whether directly or indirectly through the use of a fronting company or similar arrangement, without regard to whether any portion of such risk is reinsured, if the Accredited PEO or an Affiliate thereof has an ownership interest in such entity. A publicly-traded company in which the PEO or an Affiliate thereof owns less than one percent (1%) shall not be considered a Captive.
- 13) "Certified Actuary" is an actuary who is independent of the PEO, is a member of the American Academy of Actuaries and complies with any other requirements of state law.

- 14) “Certified Public Accountant” is a public accountant who is independent of the PEO, as prescribed by the Code of Professional Conduct of the American Institute of Certified Public Accountants (“AICPA”), duly licensed by the state as a “CPA” and who also is a member in good standing of the AICPA.
- 15) “Client Assurance Program” shall mean that certain program of financial assurance as defined in the Participation Agreement and required as part of a PEO’s accreditation.
- 16) “Employer Responsibilities” shall mean responsibilities generally performed by an employer including payment of wages and taxes, the right to provide benefits and to hire, direct, control, discipline and terminate employees.
- 17) “Employment-Related Service” shall mean any service provided by an Entity to one of its clients: (a) which service at a minimum includes payroll and tax administration services, and (b) whereby the Entity collects or otherwise has access to funds of the client, other than fees charged by the Entity for its services.
- 18) “Entity” shall mean a corporation, limited liability company, sole proprietorship, general or limited partnership, association, trust, estate or other being of any kind or nature.
- 19) “Fully Insured” insurance policy shall mean any policy of insurance for which all benefits under the policy are guaranteed by an insurance company licensed to conduct business in the state or states in which such benefits are provided.
- 20) “Fully Funded” insurance policy shall mean a type of Fully Insured insurance policy pursuant to which total premium cost is fully paid by the PEO in advance of the period for which coverage is provided and the PEO bears no risk of loss based upon actual claims experience.
- 21) “Investment Adviser” shall mean any person or firm that makes investment recommendations or conducts securities analysis in return for a fee and is subject to regulation of either the Securities and Exchange Commission (SEC) or state regulatory authorities under the U.S. Investment Advisers Act of 1940 (the “Act”) or state securities laws. An investment adviser who has sufficient assets to be registered with the SEC and does not qualify for an exception from the Act’s registration requirements is known as a Registered Investment Adviser or RIA.
- 22) “Investment Fund” shall mean a supply of capital belonging to numerous investors used to collectively purchase securities while individual share ownership and control is retained by each investor. Examples of investment funds include mutual funds, hedge funds, private equity funds and venture capital funds.
- 23) “Loss Sensitive” insurance policy shall mean a type of Fully Insured insurance policy for which the final premium is determined after the end of the policy period based on actual claims experience and pursuant to which the licensed insurance company agrees to share contractually a portion of the financial risk with the PEO.
- 24) “Participation Agreement” shall mean the agreement, attached as Exhibit A to these *Standards and Procedures* and incorporated herein, by which an Accredited PEO agrees to participate in the Client Assurance Program.
- 25) “PEO Group” shall mean a group of Affiliated Professional Employer Organizations.
- 26) “PEO Service Arrangement” means a service arrangement wherein the rights, duties, and obligations of an employer which arise out of an employment relationship are allocated between the service firm and its client as co-employers pursuant to a written service agreement. A PEO Service Arrangement does not include:
- a. Service arrangements wherein an Entity does not in fact employ all or part of a client’s workforce, and such services are provided to the client for a fee without assumption of associated employer responsibilities and liabilities;
 - b. Service arrangements wherein an Entity, whose principal business activity is not entering into PEO Service Arrangements and who does not hold itself out as a PEO, shares employees with a commonly owned company within the meaning of section (414) (b) and (c) of the Internal Revenue Code of 1986, as amended;
 - c. Service arrangements that are outsourced arrangements by which the service firm assumes responsibility as a contractor for a product produced or a service delivered by the client’s business, as well as assumes primary direction and control over the work performed; or

- d. Providing temporary help or other staffing services.
- 27) “Person” means an individual, corporation, limited liability company, general or limited partnership, association, trust, estate or other entity of any kind or nature.
- 28) “Presumed Imminent Material Risk” is present with regard to the financial condition of an Accredited PEO when the PEO’s quarterly (or monthly, if applicable) financial statements show a loss which, if recurred in the next two like reporting periods, would result in a violation of one or more of ESAC’s Financial Standards, absent any curative action by the PEO, unless ESAC determines that the subject loss is a cyclical or isolated event.
- 29) “Professional Employer Organization” or “PEO” means any Person engaged in the business of providing services under a PEO Service Arrangement. The term “PEO” is to be liberally construed so as to include any and all service firms meeting the above criteria by whatever term known. An Entity that does not hold itself out as a PEO and for which less than five percent of its total gross wages paid to all employees is paid to employees under a PEO Service Arrangement during its fiscal year shall not be considered a “Professional Employer Organization” or “PEO”.
- 30) “Responsible Person” is defined as:
- a. Any individual owning or directly or indirectly controlling 10% or more of the voting stock of a PEO or the PEO’s ultimate parent, if the PEO or its ultimate parent is a closely held company, or 20% or more of the voting stock of a PEO or of the PEO’s ultimate parent, if the PEO or its ultimate parent is a publicly traded company. If such owner is a limited partner in an Investment Fund, the Investment Fund’s Investment Adviser will instead be the Responsible Person representing all limited partners. For these purposes, “voting stock” shall include stock which is convertible to voting stock or has voting rights upon occurrence of some condition or event and shall include other forms of equity that possess voting rights with respect to the Entity.
 - b. Any officer or manager of the PEO with apparent authority to obligate the PEO with respect to a material matter, including by rebuttable presumption the Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, and Chief Marketing Officer, or any equivalent position by whatever name used. Having been delegated the authority to sign checks on behalf of the PEO shall not alone be considered “authority to obligate the PEO.”
 - c. Any director of the PEO; provided however, an individual shall not be considered a Responsible Person solely by reason of this paragraph if the director (i) is neither an officer or employee of a publicly traded PEO Entity that maintains an annual average aggregate market value in excess of \$100 million, or (ii) is a representative of an Investment Fund whose Investment Adviser has been identified as a Responsible Person.
 - d. Any natural person with apparent authority to obligate an Entity with respect to a material matter if that Entity owns more than 50% of the voting stock of the PEO, including by rebuttable presumption the Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, and Chief Marketing Officer of such Entity, or any equivalent position by whatever title used.
 - e. Any individual who is a Controlling Person or Responsible Individual or the equivalent thereof pursuant to the Internal Revenue Service’s certified PEO (CPEO) program or any state licensing or registration law to which the PEO is subject.
 - f. Any other individual who has by contract or otherwise or in fact exercises the authority or power to control the operation or direction of the PEO or to obligate the PEO with respect to a material contractual matter such as entering into a service contract with a client company.
 - g. In the case of any publicly traded Entity that owns 20 percent or more of the stock of the PEO, provided that such Entity maintains an annual average aggregate market value in excess of \$100 million, such Entity may satisfy its Responsible Person requirements by disclosing the names of such Entity’s officers and directors and putting forth one duly authorized and appointed officer as the Responsible Person representing the publicly traded Entity for all purposes related to accreditation. In the event that more than one officer of the Entity is a Responsible Person pursuant to any state licensing or registration law, such officer(s) may satisfy ESAC’s Responsible Person requirement by providing evidence of the state’s approval of the officer(s) as a Responsible Person.

The determination of whether a person is a Responsible Person shall be made by ESAC based on information provided by the Applicant or Accredited PEO or otherwise obtained by ESAC, whose determination shall be conclusive and final.

- 31) "Risk Sharing Insurance Plan Participation" means the practice of an Accredited PEO entering into a contract or otherwise participating in a captive, plan, policy, trust or any other arrangement in which the Accredited PEO shares in any manner some amount of financial risk associated with providing employee benefits or any other insurance service, including health and workers' compensation insurance, with one or more non-Affiliate entities.
- 32) "SBEA of 2014" means the Small Business Efficiency Act of 2014, which among other things authorizes the Internal Revenue Service ("IRS") to establish a voluntary program of certification for PEOs.
- 33) "Self Insured" or "Partially Self Insured" plan of insurance shall mean any plan of insurance under which all or any portion of the benefits to which insureds and beneficiaries are entitled are not payable under a Fully Insured insurance policy.
- 34) "Separately Accredited PEO" shall mean an Accredited PEO or PEO Group that operates as a separately branded PEO or PEO Group.
- 35) "*Standards and Procedures*" means these standards and procedures for accreditation and participation in the Client Assurance Program established by ESAC, as amended from time to time.
- 36) Termination of Accreditation:
 - a. "Agreed Termination of Accreditation" means the termination of ESAC accreditation of an Accredited PEO by agreement of the Accredited PEO and ESAC unless, as determined by ESAC in its sole discretion, (i) there is then a violation or alleged violation of one or more provisions of the *Standards and Procedures* or the Participation Agreement; or (ii) the Accredited PEO is then subject to a disciplinary action by ESAC or subject to an outstanding penalty, including without limitation, probation; and in the case of either (i) or (ii), ESAC determines there exists a material risk to ESAC's Client Assurance Program or the Accredited PEO's ability to meet its client and financial obligations.
 - b. "Voluntary Relinquishment of Accreditation" means the voluntary relinquishment of ESAC accreditation by an Accredited PEO unless, as determined by ESAC in its sole discretion, (i) there is then a violation or alleged violation of one or more provisions of the *Standards and Procedures* or the Participation Agreement; or (ii) the Accredited PEO is then subject to a disciplinary action by ESAC or subject to an outstanding penalty, including without limitation, probation.
 - c. "Involuntary Termination of Accreditation" means the termination of accreditation of an Accredited PEO by ESAC due to the Accredited PEO's violation of one or more provisions of the *Standards and Procedures* or the Participation Agreement.
- 37) "Total Adjusted Liabilities" equals, for purposes of determining minimum net worth standards, total liabilities as stated in the financial statements less obligations subordinated to claims of general creditors with a remaining term to maturity in excess of three years.
- 38) "Ultimate Liability" shall mean the total maximum liability of an Accredited PEO or PEO Group from the source of liability being considered. For purposes of these *Standards and Procedures*, primary sources of PEO liability include the payment of wages, payroll taxes, workers' compensation and group life and health insurance premiums and/or claims, contributions to employee welfare and retirement plans, and general trade payables. Ultimate Liability shall include both (a) amounts currently due and payable as of the reporting date, and (b) all amounts due and payable in the future for obligations incurred as of the reporting date. Generally Accepted Accounting Principles and generally accepted actuarial standards shall be used in determining Ultimate Liability, including in the case of insurance claims, appropriate consideration of incurred but not reported insurance claims, claims development, and effects of inflation on claims cost.
- 39) "Working Capital" is defined as current assets less current liabilities, determined in accordance with generally accepted accounting principles.
- 40) "Positive Working Capital" is defined as Working Capital in excess of zero.

- 41) “Quick Working Capital” is defined as the total of Cash & Cash Equivalents, Accounts Receivable-Trade, Unbilled Revenue, and Affiliated Party Trade and Affiliated Party Loan Receivables less the total of Accrued Salaries and Wages, Payroll Taxes Payable, Other Payroll Deductions, Unearned Revenue, Group Insurance Liabilities Payable, and Workers’ Compensation Liabilities Payable.

Quick Working Capital Components:

- a. “Cash & Cash Equivalents” is defined as currency on hand, demand deposits with banks or other financial institutions, savings accounts, certificates of deposit, or other highly liquid investments with original maturities of 90 days or less, excluding any restricted cash or cash equivalent that will remain restricted for at least 90 days.

Any liability that is fully secured or collateralized by restricted cash or cash equivalent that is excluded from the Cash & Cash Equivalents (as defined above) may be excluded as a liability from the computation of either Working Capital or Quick Working Capital. If restricted cash or cash equivalent is used as security or collateral for liabilities excluded from the computation of Working Capital or Quick Working Capital and other liabilities, the amount of restricted cash or cash equivalent used in the computation must be first reduced by the full amount of the other liabilities. An Accredited PEO must provide documentation acceptable to ESAC with respect to any exclusion of a liability from the computation of either Working Capital or Quick Working Capital.

- b. “Accounts Receivable-Trade” is defined as amounts due from non-Affiliate clients in the normal course of business, less trade receivables in excess of 30 days past due and any other known uncollectible accounts except for allowances already made to the Accounts Receivable for doubtful accounts.
- c. “Unbilled Revenue” is defined as fees for worksite employees related to the period from the last pay period ending date through the financial statement date, which have not yet been billed.
- d. “Affiliated Party Trade Receivables” is defined as Affiliate trade receivables due within 60 days and incurred in the ordinary course of business as part of a written service agreement and which, as of the reporting date, are not past due or otherwise in default.
- e. “Affiliated Party Loan Receivables” is defined as Affiliate loan receivables due within 90 days and: (1) evidenced by a promissory note or similar instrument bearing a reasonable rate of interest, (2) amortized in substantially equal payments of principal and interest over not more than 60 months from the date of original advance, and (3) not past due or otherwise in default as of the reporting date.
- f. “Accrued Salaries and Wages” is defined as salaries and wages due to worksite employees for work performed through the balance sheet date and which have not yet been paid.
- g. “Payroll Taxes Payable” is defined as all payroll taxes withheld from worksite employees’ gross wages and the accrued portion of the PEO’s share of payroll taxes.
- h. “Other Payroll Deductions” is defined as deductions withheld from worksite employee wages (e.g. garnishments, levies, savings accounts, all insurance and retirement benefit plan contributions, etc.) aside from taxes.
- i. “Unearned Revenue” is defined as payments received from clients prior to delivery of services or the invoice date, including any client cash security deposits.
- j. “Group Insurance Liabilities Payable” is defined as accrued or payable premiums, claims and administrative costs for group insurance benefit plans less any worksite employee contributions included in Other Payroll Deductions, excluding those amounts not due within 90 days.
- k. “Workers’ Compensation Liabilities Payable” is defined as accrued or payable workers’ compensation premiums, claims and administrative costs, excluding those amounts not due within 90 days.
- l. “Other Liabilities” is defined as all other accrued liabilities not included above (such as trade payables or loan payments) due and payable in the next 90 days.

- 42) “Positive Quick Working Capital” is defined as Quick Working Capital in excess of zero.

STANDARDS

The determination of whether an Accredited PEO, Applicant or Responsible Person or an Affiliate thereof meets any of the following standards shall be made by ESAC in its sole discretion. In determining compliance with the standards, ESAC has the authority to require the submission of any information, document, attestation or certification from an Accredited PEO, Applicant or Responsible Person that it deems necessary to grant or maintain accreditation or participation in any program administered by ESAC. No PEO shall be denied accreditation if it is unable to meet any requirement of accreditation because of the need to operate in compliance with a state law, regulation or administrative rule.

Changes to the *Standards and Procedures*. ESAC's board of directors has the authority to change the *Standards and Procedures*. For those changes ESAC deems to be material with respect to a contractual or service obligation to clients and worksite employees, adequate advance notice, as determined by ESAC's board of directors, will be provided to Accredited PEOs. However, if the change is required by law or by ESAC's surety carrier, such mandatory changes shall be made with written notice to Accredited PEOs. All changes to the *Standards and Procedures* shall be made as follows:

- 1) The Standards Committee shall be responsible for reviewing and making recommended changes to ESAC's *Standards and Procedures*;
- 2) For those changes the Standards Committee deems material, the Committee shall provide its recommendations for a proposed change to ESAC's independent financial, legal and surety advisors for review as appropriate and provide the recommendations along with the advisors' written comments to all Industry and Professional Advisory Directors for review and comment;
- 3) The Board's Independent Directors shall review and approve by majority vote all material changes to ESAC's *Standards and Procedures* after consideration of the comments provided by the Industry and Professional Advisory Directors;
- 4) An Accredited PEO shall have the right to request an appeal hearing of the Independent Directors with respect to any change to a standard or procedure.

Exceptions to the *Standards and Procedures*. ESAC's Accreditation Committee and Compliance Committee, each composed of three or more Independent Directors, have the authority to approve exceptions to ESAC's *Standards and Procedures* on a case by case basis for an Applicant or Accredited PEO, provided that:

- 1) The Accreditation Committee or Compliance Committee determines that the exception is not reasonably likely to result in a material risk to the financial or operational viability of the PEO or a material risk to ESAC or its mission;
- 2) If the exception involves a financial matter, ESAC's surety underwriter has agreed in writing that such exception does not represent a material financial risk to the surety carrier;
- 3) If the exception involves an operational matter, ESAC's independent legal advisor or legal counsel has provided written advice that such exception does not represent a material risk to ESAC or its mission; and
- 4) The Committee's approval of the exception and supporting information shall be: (a) documented in the Committee's minutes, (b) made part of ESAC's confidential records for the Applicant or Accredited PEO, and (c) each such exception shall be reported to all Independent Directors within thirty (30) days of the Committee's action.

The standards for ESAC accreditation are organized into the ethical, financial and operational categories described below.

Ethical Standards

- 1) **PEO and Responsible Person Qualification & Compliance.** No PEO shall be granted new or continuing accreditation unless such PEO operates in accordance with these standards and unless all Responsible Persons are determined to be qualified to operate as a Responsible Person pursuant to the standards prescribed herein.

No Accredited PEO shall permit an individual who is not recognized as a qualified Responsible Person to perform duties associated with Responsible Persons.

- 2) **Ethics and Competency.** All Responsible Persons must be at least 18 years of age, must be honest, trustworthy, competent and ethical in managing the affairs of a PEO, and must have a history of complying with the laws of the state and nation in which they live and conduct business. An Accredited PEO or Applicant shall not be an Affiliate of any Entity whose management team and owners do not meet these requirements. An Accredited PEO or Applicant must be operated and managed in a competent and ethical manner so as to benefit its clients and worksite employees. For these purposes, “competent” with respect to an Accredited PEO or Applicant, shall mean that its Responsible Persons, management staff and contract service providers, as a group, clearly demonstrate by documented and verifiable work history or by written certification of third-party references and/or education the knowledge and experience in the key business disciplines required to successfully operate a PEO. For these purposes, key PEO business disciplines shall include general business and risk management, finance and accounting, human resources management, employment law compliance, payroll and tax administration, employee benefits administration, workplace safety, and PEO registration and licensing.
- 3) **Authorization to Investigate & Verify Compliance.** Each Accredited PEO, Applicant or Responsible Person shall authorize ESAC to investigate the accuracy of representations made by the Accredited PEO, Applicant or Responsible Person and to conduct thorough background investigations of the PEO’s history of business conduct and of each Responsible Person’s history of personal and business conduct to determine the competency, honesty, trustworthiness, ethics, and respect for state and federal laws. ESAC shall also be authorized to enroll each Accredited PEO in a nationally recognized alert service that continuously monitors key factors of business conduct. In evaluating the resulting information, ESAC shall consider the nature, frequency, timing, and relevancy of the information to the operation of the PEO and to the protection of the PEO’s clients, worksite employees, insurers, and taxing authorities. An Accredited PEO or Applicant shall allow ESAC staff and professional advisors to conduct on-site inspections and reviews to verify compliance with any standard or requirement of accreditation.
- 4) **Ethical Conduct & Professional Competency Must Be Maintained.** As a condition of accreditation, a PEO must maintain and promote to its internal staff ethical conduct guidelines in accordance with and in furtherance of these Standards of Ethical Conduct. An example form is provided as Exhibit B. An Accredited PEO must maintain management staff experienced in the management of key PEO business disciplines and shall provide managers and internal staff with the opportunity to maintain their competency in key PEO business disciplines through participation in relevant trade associations or other sources of continuing education.

Financial Standards

1. **Adjusted Net Worth Requirement.** An Accredited PEO must have Adjusted Net Worth in an amount which is the larger of \$100,000 or five percent of Total Adjusted Liabilities as demonstrated by its audited financial statements and internal financial statements.
2. **Positive Working Capital Requirement.** An Accredited PEO must maintain an adequate level of financial liquidity as demonstrated by maintaining Positive Working Capital. Provided however, an Accredited PEO may have Working Capital that is not Positive Working Capital for a period not to exceed six consecutive months so long as current liabilities are not more than two times current assets and the PEO maintains Positive Quick Working Capital. Notwithstanding the above financial liquidity requirements, all Applicants for accreditation must be able to demonstrate Positive Working Capital, and shall not be eligible for the Positive Quick Working Capital exception as part of the initial qualification for accreditation. Applicants and Accredited PEOs must maintain the level of financial liquidity necessary for licensure or registration in the states in which they operate.
3. **Calculation of Net Worth and Working Capital.** An Accredited PEO’s calculation of net worth and working capital must be made in compliance with generally accepted accounting principles (GAAP) for a combined or consolidated statement of the financial condition of all PEO entities under common control and include a proper accounting of all transactions with non-PEO Affiliates and related parties including Responsible Persons, Captives, trusts and variable interest entities. Such calculation of net worth and working capital shall not include as an asset: (a) any receivable from a trust or captive operated for the exclusive benefit of the Accredited PEO, or (b) any receivable from an Affiliate, Responsible Person or related party Entity unless evidence of collectability acceptable to ESAC is provided. Any affiliated party receivable must also comply with the requirements of ESAC’s Financial Standard regarding “Affiliated Party Receivable Reporting.”

4. **Alternative Compliance Method for Adjusted Net Worth and Positive Working Capital Requirements.** In lieu of a PEO meeting ESAC's Adjusted Net Worth and Working Capital requirements, the PEO's parent, owner or Responsible Person may provide one of the following forms of liquid assets or a guaranty provided: (a) the PEO remains in compliance with the financial requirements for applicable state licensing; (b) the capital deficiency is temporary; and (c) the PEO agrees to provide monthly financial statements until such deficiency is cured:
- a. A bank certificate of deposit, irrevocable bank letter of credit, or other liquid security provided by the PEO's parent, owner or Responsible Person to satisfy up to 100% of the amount of the deficiency; or
 - b. A guaranty of a controlling or parent company equal to at least 150% of the deficiency and in a form acceptable to ESAC may be used to satisfy up to 100% of the deficiency so long as an audited financial statement can be provided that demonstrates adequate Net Worth and liquidity to meet the obligation of the guarantor; or
 - c. The personal guaranty of an individual who is a Responsible Person that is equal to at least 150% of the deficiency may be used to satisfy up to 100% of the capital deficiency if the guarantor provides a current personal financial statement and federal income tax return to ESAC's independent financial advisor, along with any other evidence required to verify sufficient income and sufficient unpledged or liquid assets to secure the guaranty (see Exhibit C).

If a parent, owner or Responsible Person of an Accredited PEO chooses to submit an irrevocable letter of credit to offset any deficiency, such irrevocable letter of credit will be acceptable so long as: (i) ultimate responsibility for repayment of any sums disbursed under the letter of credit is not an obligation of the PEO or any Affiliated PEO; (ii) the letter of credit contains an "evergreen" clause, which automatically renews the letter of credit unless the issuer notifies the PEO and ESAC by 60 days prior written notice of the decision not to renew; and (iii) the letter of credit is issued by a financial institution authorized to do so under applicable state or federal banking laws.

5. **Financial Reserves.** An Accredited PEO must have adequate financial reserves for all liabilities, including but not limited to all employee benefit and insurance policies, plans and programs where the maximum financial liability to the Accredited PEO exceeds payments made under such plan(s). This includes:
- a. All plans in which the PEO is Self Insured or Partially Self Insured; and
 - b. All Fully Insured health and workers' compensation insurance policies or plans that are not Fully Funded (i.e. Loss Sensitive); and
 - c. Any other employee benefit plans maintained as permitted by state law that are not Fully Insured and Fully Funded.

Examples of such plans include, but are not limited to, Self Insured plans, Partially Self Insured plans, minimum premium plans, captive plans, large deductible plans, retrospective rating plans, and any trust through which employee benefits are provided other than a Fully Funded trust that exclusively provides retirement benefits in connection with a retirement plan qualified under Section 401(a) of the Internal Revenue Code.

Financial Reserves for such insurance and benefit plans shall be equal to the estimated Ultimate Liability for such plans, based upon generally accepted actuarial methods, including but not limited to incurred but not reported claims, incurred but unpaid claims, future claims development, retrospective premium adjustments, inflationary trends and the degree of risk. The Accredited PEO must demonstrate to ESAC that reserves for such insurance and benefit plans are adequate and are established based on actuarially developed estimates performed by an independent Certified Actuary who is a member of the American Academy of Actuaries, unless one or a combination of the following apply:

- a. The policy(ies) or plan(s) of workers' compensation insurance are Fully Insured by a licensed insurance carrier(s) and the Accredited PEO provides ESAC the annual confirmation of the carrier's estimate of the PEO's Ultimate Liability for both the current and all prior policy years.
 - i. The PEO is responsible for providing a carrier confirmation letter from each current or former workers' compensation carrier for which there is any potential remaining claim liability or any such carrier that continues to hold collateral for a potential claim liability.

- ii. The written confirmation(s) must be transmitted in writing on the carrier(s)' letterhead and signed by an authorized corporate manager or officer in a manner that is consistent with the content and form of Exhibit D.
- b. The policy(ies) or plan(s) of insurance are Fully Insured by a licensed insurance carrier(s) and the Accredited PEO provides ESAC with a copy of the policy of insurance or other legal contract between the Accredited PEO and the insurance carrier(s) that specifies the Ultimate Liability of the Accredited PEO under the policy or plan of insurance and the Accredited PEO demonstrates to ESAC that the Accredited PEO's financial statements include financial reserves for such policy or plan equal to or in excess of the policy's or plan's Ultimate Liability.
- c. Loss sensitive dental, vision and/or prescription drug policy(ies) or plan(s) not covered by other applicable medical coverage at all times are at least 125% of the prior calendar quarter's total reported claims for dental and vision plans and at least 125% of the prior calendar month's total reported claims for prescription drugs. A written certification by the third-party claims administrator or insurance carrier(s) must be submitted along with the PEO's audited financial statements attesting to the amount of the prior calendar quarter's total reported claims for dental and vision plans and the amount of the prior calendar month's total reported claims for prescription drugs.

An Accredited PEO must submit along with its quarterly financial statements a certification by management that financial reserves for all policy(ies) or plan(s) of insurance subject to the requirements of this standard have been estimated and adjusted if necessary for such quarterly financial statements and such plans were operated in compliance with this standard at all times during the reporting period. If requested by ESAC, provide a description of the methods and supporting documentation used to estimate the Ultimate Liability of all plans of self insurance or loss sensitive insurance plans or policies.

If an Accredited PEO participates in or otherwise uses a Self Insured or Partially Self Insured employee benefit arrangement whose financial statements are separately maintained, the Accredited PEO shall submit such audited financial statements (including the auditor's report) to ESAC annually.

6. **Affiliated Party Receivable Reporting.** A receivable from an Affiliate ("Affiliated Party Receivable") must be excluded from a PEO's assets for purposes of meeting ESAC financial standards, unless:

- a. The receivable is a loan receivable that meets the following four criteria:
 - i. Such receivable has never been a trade receivable,
 - ii. Such receivable is evidenced by a promissory note or similar instrument bearing a reasonable rate of interest,
 - iii. Such receivable is amortized in substantially equal payments of principal and interest over not more than 60 months from the date of original advance, and
 - iv. Such receivable is not past due or otherwise in default as of the reporting date.
- b. The receivable is immaterial because its exclusion would not result in a failure to meet net worth or liquidity standards; or
- c. The PEO submits additional documentation that verifies to the satisfaction of ESAC the authenticity and collectability of the receivable for purposes of complying with ESAC's financial standards.

If the total amount of Affiliated Party Receivables otherwise treated as assets exceeds 33% of the Accredited PEO's reported Net Worth as of the reporting date, the Accredited PEO's Net Worth shall be reduced by the amount of Affiliated Party Receivables exceeding this 33% limitation unless:

- a. The parent is a publicly-traded company with Positive Working Capital and a Net Worth of at least 10% of its total liabilities; or
- b. The Accredited PEO provides ESAC with audited consolidated financial statements in which the Affiliate's financial statements are consolidated with those of the Accredited PEO. In such case, the consolidated entities must meet ESAC financial standards on a consolidated basis. Each non-PEO Entity included in the

consolidated financial statements must execute a cross guaranty agreement in a form acceptable to ESAC guaranteeing the liabilities of each PEO Entity; or

- c. The Affiliated Party Receivable is backed by liquid assets or guaranty which complies with the requirements of ESAC's Financial Standard regarding "Alternative Compliance Method for Adjusting Net Worth and Positive Working Capital Requirements."
7. **Imminent Material Risk Provision.** An Accredited PEO shall maintain its financial condition and operations in a manner that does not present an imminent material risk, including a Presumed Imminent Material Risk, to the financial soundness of such PEO or to ESAC's Client Assurance Program. An Accredited PEO shall be in violation of this standard at such time as ESAC provides written notice to the PEO that ESAC has determined that an imminent material risk exists. However, if in such written notice, ESAC grants the PEO a time period within which to submit a corrective action plan, a violation of this standard shall occur upon (a) the expiration of such time period without the submission of such a plan or (b) the rejection by ESAC of a corrective action plan. In the event ESAC accepts a corrective action plan, the PEO shall be in violation of this standard if ESAC determines that the PEO has failed to maintain the requirements of such corrective action plan and provides written notice of such finding to the PEO and the PEO fails to cure such deficiency within five (5) business days of receipt of the notice.
8. **Financial Audit.** Annual financial statements for all PEOs must be prepared in accordance with generally accepted accounting principles ("GAAP") and accompanied by an unqualified audit report issued by an independent Certified Public Accountant who received a rating of pass or pass with deficiency, subject to approval of ESAC, as a result of its most recent peer review performed in accordance with the AICPA peer review standards.
9. **Financial Reporting.** All PEO Entities under common control must be accredited and meet the following financial reporting requirements:
 - a. **Basis of Reporting.** PEO Entities in an Accredited PEO Group may satisfy ESAC's financial reporting requirements on an individual, combined or consolidated basis.
 - b. **State Regulatory Compliance.** An Accredited PEO or PEO Group that provides combined or consolidated financial statements and operates in a state that requires ESAC to certify individual PEO Entity compliance with financial requirements for state licensing must either: (a) provide evidence that the state has agreed to accept the PEO's combined or consolidated financial statement in lieu of evidence of individual PEO Entity compliance; or (b) provide supplementary consolidating schedules showing the balance sheet and income statement for each Entity that reconciles to the balance sheet and income statement provided as part of the combined or consolidated audited financial statements. The supplementary information should be referenced by the auditor, either with the auditor's report on the consolidated financial statements or in a separate report, and the auditor's opinion on the supplementary information should meet the requirements of AU-C Section 725 or the relevant section of the PCAOB's auditing standards, as applicable.
 - c. **Single Auditor Exceptions.** The audited financial statements for all accredited PEO Entities under common ownership control must be prepared by the same independent Certified Public Accountant, except that either of the following two exceptions may apply for not more than one year: (a) the PEO is an applicant for accreditation with existing audited financial statements prepared by more than one independent Certified Public Accountant, or (b) an existing accredited PEO has expanded into a new state where the regulatory agency requires an audit prepared by an independent Certified Public Accountant licensed in that state. A Separately Accredited PEO may have a separate auditor.
10. **Internal Financial Statements.** An Accredited PEO shall provide internal quarterly financial statements for all PEOs that meet the same financial standards and reporting requirements as annual audited financial statements, except the internal statements are not required to be reviewed or audited by an independent Certified Public Accountant.
11. **Captive Audit and Actuarial Opinion.** A Captive that insures any risk of an Accredited PEO must be audited at least annually according to US generally accepted auditing standards and a copy of the audited statements provided to ESAC as part of the PEO's annual submittal of audited financial statements. For any Captive providing insurance coverage to a non-Affiliate of an Accredited PEO, the Captive must demonstrate to ESAC that the financial reserves recorded in the Captive's year-end financial statements are established based on actuarially

developed estimates performed by an independent Certified Actuary who is a member of the American Academy of Actuaries. The financial condition of the Captive shall be considered by ESAC for purposes of determining the adequacy of recorded liabilities of the Accredited PEO.

A Captive that insures any risk of an Accredited PEO must be domiciled in and subject to the regulation of an approved jurisdiction, as listed on ESAC's website. An Accredited PEO that desires to use a Captive not subject to the regulation of an approved jurisdiction may use such a Captive only upon approval of ESAC, which approval shall not be unreasonably withheld if the proposed jurisdiction provides adequate regulatory oversight as determined by ESAC.

In evaluating the financial reliability of a Captive that insures any risk of a non-Affiliate of an Accredited PEO, ESAC has the authority to require evidence of adherence to generally accepted best practices for Captives, including, but not limited to the following:

- a. A feasibility study that looks at all aspects of the Captive and validates its viability and economics, as well as whether the Captive will meet critical tests for risk shifting and risk-distribution as may be required by the Captive's domicile;
 - b. A written acknowledgement from the Captive's management firm confirming that the Accredited PEO will not be subject to unanticipated taxation in states in which it has not done business;
 - c. Confirmation that the Captive has complied with applicable IRS regulations and that each line of coverage separately meets the IRS tests for risk distribution, i.e., without regard to other lines of coverage being underwritten by the Captive; and
 - d. A copy of the contract or insurance policy used by the Captive to insure the Accredited PEO's risk.
12. **Related Party Transaction Reporting.** An Accredited PEO's financial statements shall reflect all Affiliated Party Transactions whereby the value or cost of any goods, services or benefits provided by or to the PEO shall be fully and accurately recorded in accordance with ESAC's Financial Standard regarding "Affiliated Party Receivable Reporting" and generally accepted accounting principles, including an adequate footnote description of the nature of the transaction. Without limitation, this requirement shall be applicable to any receivables, payables, provision of goods or services, or sharing of employees or other resources between an Accredited PEO and a Responsible Person or an Affiliate of the Accredited PEO or a Responsible Person or any independent entity operated primarily for the benefit of an Accredited PEO or its clients or employees.
13. **Disclosure to Auditor.** An Accredited PEO shall provide a copy of these Financial Standards to its auditor at the time of engagement to audit the PEO's fiscal year-end financial statements.
14. **Startup Provision Concerning Audited Financial Statements.** An Applicant PEO that (a) has not had sufficient operating history to provide ESAC with audited financial statements based upon at least 12 calendar months of PEO operations, or (b) does not demonstrate positive net income in its most recent audited financial statements, shall demonstrate to ESAC's satisfaction that the PEO will have sufficient capitalization at all times from the date of accreditation, including demonstrating compliance with ESAC's Financial Standards regarding "Adjusted Net Worth Requirement," "Positive Working Capital Requirement" and "Imminent Material Risk Provision." Prior to accreditation, the Applicant shall provide ESAC with its projection of monthly cash flow, profit-loss and additional capital contributions until PEO profitability is sustained. After accreditation, if requested, the accredited PEO shall provide ESAC with updated projections each month of its cash flow and profitability, along with each month's financial statements. These monthly projections and monthly reporting of operating results will continue until the accredited PEO demonstrates consistent monthly profitability and provides ESAC with an audited financial statement covering at least 12 calendar months of PEO operations that demonstrate compliance with ESAC's Financial Standards regarding "Adjusted Net Worth Requirement," "Positive Working Capital Requirement" and "Imminent Material Risk Provision."

15. **Insurance Coverage.** An Accredited PEO must carry the following minimum amounts of insurance coverage:

PEO Total Annual Wages	Errors & Omissions Coverage (for PEO Internal Operation)		Fidelity Coverage (for PEO Internal Operation)		Umbrella Liability Coverage***
	Minimum Coverage*/Type	Maximum Deductible	Minimum Coverage*/Type	Maximum Deductible	
0 to 25 million	\$500,000	\$25,000	\$250,000	\$25,000	\$1 million
25 to 100 million	\$1 million	\$50,000	\$500,000	\$25,000	\$1 million
100 to 250 million	\$1 million	\$100,000	\$1 million	\$25,000	\$2 million
250 to 500 million	\$2 million	\$100,000	\$1 million	\$25,000	\$3 million
Above 500 million	\$3 million	\$250,000**	\$1 million	\$25,000**	\$5 million

*Coverage limits should be both per occurrence and in the aggregate.

**Deductible may exceed this limit so long as it does not exceed 10% of Adjusted Net Worth or Working Capital.

***May be used to satisfy E&O requirement so long as (1) E&O coverage is specifically listed in the umbrella policy's underlying schedule, and (2) the umbrella coverage is equal to or in excess of the combined requirement for both E&O and umbrella coverage.

16. **Parent Guaranty.** An Accredited PEO that chooses to submit consolidated financial statements of a parent corporation must submit a guaranty by the parent of all the obligations of the PEO or PEO Group, executed in favor of the clients, worksite employees, insurers, and taxing authorities thereof.
17. **Cross Guaranty.** Each Affiliated Accredited PEO, other than a Separately Accredited PEO or PEO Group, must submit a cross guaranty of all the obligations of each other Affiliated PEO in the PEO Group, executed in favor of the clients, worksite employees, insurers, and taxing authorities thereof. Within a Separately Accredited PEO Group, each Accredited PEO must submit a cross guaranty of all the obligations of each other Accredited PEO in the group, executed in favor of the clients, worksite employees, insurers, and taxing authorities thereof.
18. **Surety Bond.** An Accredited PEO must qualify at all times for an individual surety bond underwritten by a surety carrier that is duly licensed in all states. This bond will be held by the Employer Services Trust for the benefit of the PEO's clients, employees and taxing authorities and must be in an amount equal to the greater of: (a) \$250,000 or (b) 5% of the Accredited PEO's total federal and state employment tax liability for the preceding calendar year as imposed by USC 26 Subtitle C and applicable laws of all states of operation, rounded up to the nearest \$250,000 and not to exceed \$1,000,000. For these purposes, "state employment tax liability" means all taxes payable to a state by an employer that are either dependent on wages paid or withheld from employees.
19. **Surety Bond Qualification.** An Accredited PEO must at all times meet the financial underwriting standards for bonding by ESAC's surety carrier for purposes of meeting the requirements of ESAC accreditation as set forth in these *Standards and Procedures*. These bonding requirements must be met based on the surety carrier's underwriting without the PEO posting cash or cash equivalents that could otherwise reduce the surety carrier's risk and the value of the surety carrier's financial underwriting.
20. **Demonstrated History of Financial Responsibility.** An Accredited PEO, its Responsible Persons and Affiliates must have a demonstrated history of responsible financial management of their business and personal affairs. Accreditation shall be denied to a PEO if the PEO, a Responsible Person or an Affiliate thereof has documented incident(s) of failing to meet personal or business financial responsibilities unless ESAC determines that the incident(s) are not relevant due to the nature and/or the time since occurrence.
21. **Timely Payment of PEO Employer Responsibilities.** An Accredited PEO shall timely and accurately pay all Accredited PEO Worksite Employee wages, state and federal payroll taxes, employee benefit plan contributions, and workers' compensation and health insurance premiums for all plans of insurance sponsored or co-sponsored by the PEO and shall provide to ESAC the quarterly confirmation of such payments by an independent Certified Public Accountant. Such confirmation may be in the form of an Examination Level Attestation and/or Agreed-Upon Procedures as specified in Exhibit E.

Operational Standards

- 1) **Conformity with all Applicable Laws.** An Accredited PEO and its Responsible Persons shall: (a) operate in conformity with all applicable laws and regulations, including but not limited to required state and federal licensing, certification and registration relative to PEO activities; (b) not engage in any deceptive trade practices; (c) not engage in misrepresentations of employer obligations and liabilities; and (d) have a history free of such misrepresentations, illegal activities, willful or repeated violation of laws, acts of moral turpitude, and willful or repeated violations of PEO licensing and/or registration laws and related regulations. In reviewing such history, the Board may give consideration to mitigating circumstances and the severity of the offense.
- 2) **PEO Shall Not Represent Itself as a Seller of Insurance.** An Accredited PEO shall not represent or imply that it is a seller of insurance in any of its sales and marketing materials or activities, or engage in any activity that constitutes the sale of insurance except through duly licensed insurance producers.
- 3) **Client Service Agreement.** The agreement documenting the terms of all PEO Service Arrangements shall be in writing and shall include the following:
 - a. An allocation of the rights and responsibilities of the PEO and the client with respect to the co-employment of the worksite employees, with the PEO retaining such rights and responsibilities as necessary to fulfill the PEO's responsibilities under applicable law and the PEO Service Arrangement; and
 - b. Any other provisions required by applicable law to be included in a PEO Client Service Agreement.

Provided, however, if an Accredited PEO does not operate in a state which establishes requirements for an allocation of the rights and responsibilities of the PEO as necessary to fulfill the PEO's responsibilities under the PEO Service Arrangement and the PEO is not certified by the Internal Revenue Service within the meaning of IRC Sec. 7705, then the PEO client service agreement shall include at a minimum:

- a. An allocation of the rights and responsibilities of the PEO and the client with respect to the co-employment of the worksite employees;
 - b. The PEO shall have responsibility to pay wages to worksite employees and to withhold, collect, report and remit applicable payroll taxes with respect to worksite employee wages; provided "wages" shall not include any obligation between a client and a worksite employee for compensation beyond or in addition to the worksite employee's salary, draw or regular rate of pay, unless the PEO has expressly agreed to assume liability for payment of such compensation;
 - c. The PEO shall have responsibility to make payments for employee benefits for worksite employees to the extent the PEO has assumed responsibility for such benefits in the PEO Service Arrangement;
 - d. The PEO shall have a right to hire, discipline, and terminate a worksite employee, as may be necessary to fulfill the PEO's responsibilities under applicable law and the PEO Service Arrangement; provided that to the extent allowed by law, such right may be allocated to the client;
 - e. A specific allocation to either the client or the PEO of the responsibility to obtain workers' compensation coverage for worksite employees as required by applicable law, from a carrier licensed to do business in the state(s) in which services are performed by the worksite employees; and
 - f. The rights and responsibilities of the PEO and the client with respect to service fees, terms of payment, effective date and termination.
- 4) **Written Acknowledgement from Worksite Employees.** An Accredited PEO shall obtain from all worksite employees a written acknowledgment that they understand the nature of their employment relationship with the PEO and voluntarily accept such employment. Such acknowledgment may be included as part of another document or form executed by worksite employees, or it may be a separate document used exclusively for this purpose.
- 5) **Employment Policies & Procedures.** An Accredited PEO shall provide all worksite employees with written employment policies and procedures, although such policies and procedures may be supplemented with, or modified, to reflect specific policies and procedures applicable at each client worksite.

- 6) **Termination Notices:** In the event of termination of a PEO Service Arrangement, an Accredited PEO shall provide timely written notice of termination of employment from the PEO directly to any affected worksite employee. While the PEO's client may also provide notice, such client notice to terminated employees does not satisfy the Accredited PEO's responsibility to provide notice of termination.
- 7) **Sales and Other Information Must be Free of Misrepresentation.** Whether communicated verbally or in writing within sales and marketing materials, sales proposals, client invoices and the like, information provided to Clients and prospective Clients by Accredited PEOs shall not contain incorrect or misleading information.
- 8) **Self Insured Benefit Plans.** An Accredited PEO that maintains a Self Insured employee welfare benefit plan (e.g. group health insurance), if permitted by state and federal law, must meet the following minimum requirements:
- a. The plan must have adequate excess loss insurance coverage if necessary to prevent material adverse impact on the financial condition of the PEO;
 - b. The plan must use a third-party claims administrator ("TPA") licensed as required by state law;
 - c. The Self Funded nature of the plan must be adequately disclosed to each eligible worksite employee;
 - d. Adequate financial reserves for the plan must be maintained in compliance with ESAC's Financial Standard regarding "Financial Reserves";
 - e. Plan assets, including participant contributions, must be held in trust for the exclusive benefit of participants and beneficiaries. The trust requirement is applicable to any Self Insured employee welfare benefit plan maintained by the PEO, whether funded through a cafeteria plan or not; provided that a flexible spending account maintained pursuant to a cafeteria plan shall not be considered a Self Insured employee welfare benefit plan for the purpose of this trust requirement; and
 - f. If the plan provides major medical coverage, the PEO must provide a written opinion from qualified outside legal counsel, acceptable to ESAC which specifically describes, to ESAC's satisfaction, the basis for counsel's opinion that the plan complies with all applicable law and with ESAC's requirements, specifically including ESAC's Financial Standard regarding "Financial Reserves."
- 9) **Workers' Compensation.** An Accredited PEO shall be responsible for ensuring that workers' compensation coverage is provided for every worksite employee to the extent required by state law. Such coverage shall be obtained from carriers or through plans of insurance admitted or otherwise approved by the states where the worksite employees perform their primary duties and shall be provided pursuant to coverage provisions of state law. A PEO may allow its client to cover the assigned worksite employees under the worksite employer's policies or plans of insurance, if permitted or required by state law, so long as the PEO obtains a certificate of coverage or policy endorsement naming the PEO as a certificate holder or, if required by state law, an additional insured. Under such circumstances, the PEO shall be responsible for ensuring that coverage is, in fact, provided for all assigned worksite employees. In states that permit employers to obtain alternatives to workers' compensation insurance, a PEO may do so, provided the alternative coverage meets or exceeds the statutory minimum coverage required by the state and a written disclosure of the nature and limitations of the coverage, including exposure to tort suits, if applicable, is provided to all clients affected by the coverage.
- 10) **Establish and Maintain Prudent Credit Policy.** An Accredited PEO shall adopt and enforce payment and credit policies and monitoring procedures that represent reasonable practices and procedures within the industry that are prudent with respect to the financial condition of the PEO.
- 11) **Interference with National Labor Relations Act Prohibited.** An Accredited PEO shall not knowingly use the PEO/Client relationship to help the Client evade or avoid its obligations under the National Labor Relations Act or any collective bargaining agreement.
- 12) **Trade Names.** An Accredited PEO shall conduct business as a PEO only in the name(s) under which it is granted accreditation. Nothing in this section shall prohibit an Accredited PEO from amending such name(s) or using a trade name, trademark, service mark, or parent company name provided that ESAC is properly notified and such name is approved. No Accredited PEO shall allow the use of its name(s) and/or trademark(s) by any Entity that is not an Accredited PEO except that an Accredited PEO may allow another Entity to market the services of the Accredited PEO so long as the services are marketed and delivered under the name of the Accredited PEO or a

tradename owned by the PEO and the Accredited PEO retains both contractually and in fact the responsibility and liability for delivery of services to all of its clients and worksite employees.

13) **Affiliation with a non-Accredited PEO.**

- a. **General Rule.** Accreditation is not transferable and an Accredited PEO shall not be an Affiliate with a non-Accredited PEO.
- b. **10-Day Notice Requirement.** An Accredited PEO shall provide written notice to ESAC within ten (10) business days of the effective date of any transaction in which the Accredited PEO, Affiliate or Responsible Person: (1) engages in an Acquisition of a non-Accredited PEO; (2) becomes an Affiliate with a non-Accredited PEO; or (3) is acquired by a non-Accredited PEO or an Affiliate or Responsible Person of a non-Accredited PEO. The notice shall include the effective date of the transaction, the names of affected PEO Group(s) and entity(ies), and information about the nature of the transaction, including changes in ownership and Responsible Persons.
- c. **Requirements if a non-Accredited PEO is Acquired by an Accredited PEO, Affiliate or Responsible Person.** If the transaction is an Acquisition of a non-Accredited PEO, or a transaction having similar effect, and is made directly or indirectly, by the Accredited PEO, an Affiliate, or a Responsible Person, the following provisions shall apply:
 - i. **Initial Required Actions by the Accredited PEO:** The Accredited PEO shall provide ESAC by not later than forty-five (45) days of the transaction effective date:
 - 1. A description of the transaction and a list of names and general business descriptions of any new Affiliates of the Accredited PEO;
 - 2. Notice of any changes in Responsible Persons with the submission of applications for any new Responsible Persons;
 - 3. Proforma balance sheet demonstrating any effect of the transaction on the Accredited PEO as of the transaction effective date;
 - 4. Copies of any insurance policies or programs acquired or assumed in the transaction other than policies or programs that are Fully Insured and Fully Funded;
 - 5. Notify ESAC as to whether the acquired non-Accredited PEO(s) will:
 - a) Cease to exist with clients being transferred to existing Accredited PEO entities;
 - b) Seek to become accredited as part of the acquiring Accredited PEO Group; or
 - c) Seek to become accredited as a separate PEO Group; and
 - 6. If after the transaction effective date, any acquired non-Accredited PEO that does not intend to become separately accredited, continues to operate as a PEO:
 - a) Include the acquired PEO(s) in the population of payments tested as specified in the “CPA Verification of Tax/Benefit Payments” of the Accreditation Maintenance Procedures beginning on the effective date of the transaction;
 - b) Provide a list of states in which all worksite employees are located and evidence of any applicable licensing or registration;
 - c) Provide an executed Parent Guaranty and/or Cross Guaranties as may be required by ESAC; and
 - d) Bring the acquired PEO entities into compliance with ESAC Operational Standards not specifically required by applicable state or federal laws within 12 months following the effective date of the transaction. (Note: ESAC shall not be able to certify via its eMac service any new Accredited PEO entity’s compliance to state agencies until the PEO’s compliance with applicable state law has been verified and ESAC has received all information required to provide such compliance service.)

7. The Accredited PEO shall continue to comply with all applicable *Standards and Procedures* required for maintaining accreditation, including the timely payment of applicable Acquisition Fees; and
 8. Within a reasonable time period following receipt of the above-described information, ESAC shall make a determination and provide notice as to whether the transaction will have an adverse effect on the Accredited PEO's accreditation and if any remedial action is required.
- ii. **Requirements if a non-Accredited PEO seeks to become accredited separate from an existing Accredited PEO or PEO Group:** The non-Accredited PEO that is an Affiliate of the Accredited PEO or Accredited PEO Group must begin the accreditation application process within 120 days and become accredited within 12 months of the effective date of the transaction; and until the newly Affiliated non-Accredited PEO becomes accredited, the Accredited PEO or PEO Group shall:
1. Continue to operate separately from the non-Accredited PEO;
 2. Market and provide its services under a separate and distinct trade name and not allow any non-Accredited PEO to use the trade name of the Accredited PEO in any manner in sales and marketing or in client service or otherwise use the name of the Accredited PEO in a manner that implies that such Entities are affiliated;
 3. Not guarantee or otherwise share in or be responsible for the liabilities of the non-Accredited PEO;
 4. Not participate in any employee benefit or group workers' compensation insurance policy or plan held, sponsored or co-sponsored by the non-Accredited PEO or in which the non-Accredited PEO participates, nor allow the non-Accredited PEO to cover its clients or worksite employees by any such policy or plan sponsored or co-sponsored by the Accredited PEO; and
 5. Not engage in the transfer of clients from Accredited PEOs to any non-Accredited PEO or vice versa or allow a client obtained by either of the Entities to be signed or serviced under a PEO arrangement with the other Entity.

In the event any non-Accredited PEO does not become accredited within 12 months from the effective date of the transaction, the Accredited PEO must either (i) cease to be an Affiliate of the non-Accredited PEO, or (ii) cease to be an Accredited PEO.

- d. **Requirements if an Accredited PEO is acquired by a non-Accredited PEO, its Affiliate, or Responsible Person(s).** If such acquisition results in one or more non-Accredited PEOs becoming an Affiliate of the Accredited PEO, the following provisions shall apply:
- i. **Required Actions.** The Accredited PEO shall provide ESAC not later than forty-five (45) days of the effective date of such a transaction:
1. Notice of any changes in Responsible Persons with the submission of applications for any new Responsible Persons;
 2. A description of the transaction and a list of names and general business description of any new Affiliates of the Accredited PEO;
 3. A copy of the most recent audited financial statements of the acquirer;
 4. Each non-Accredited PEO that is an Affiliate of the Accredited PEO must begin the accreditation application process within 120 days and become accredited within 12 months of the effective date of the transaction; and
 5. Until such time as each non-Accredited PEO becomes accredited, the Accredited PEO shall:
 - a) Continue to operate as a separate Entity from each such non-Accredited PEO or its Affiliate(s). This separation shall prohibit the commingling or withdrawal of funds of the Accredited PEO with a non-Accredited PEO or its Affiliate(s); and the transfer of assets by the Accredited PEO to or for the benefit of a non-Accredited PEO or its Affiliate(s);

- b) Make from its own accounts all payments of employment taxes, employee benefit premiums and contributions, and workers' compensation premiums of the Accredited PEO directly to the taxing authority, insurance carrier or plan administrator;
- c) Market and provide its services under a separate and distinct trade name and not allow any non-Accredited PEO to use the trade name of the Accredited PEO in sales and marketing, client service or any other manner that implies such Entities are affiliated;
- d) Not guarantee, assume or otherwise share in or be responsible for the liabilities of any non-Accredited PEO Affiliate(s);
- e) Not participate in any employee benefit or group workers' compensation insurance policy or plan held, sponsored, or co-sponsored by any non-Accredited PEO or its Affiliate(s), unless such Affiliate is a duly licensed insurance company providing a fully insured policy or plan to the Accredited PEO prior to the transaction date, or in which any non-Accredited PEO or its Affiliate(s) participates, nor allow any non-Accredited PEO or its Affiliate(s) to cover clients or worksite employees by any employee benefit or workers' compensation insurance policy or plan held, sponsored or co-sponsored by the Accredited PEO;
- f) Not engage in any merger, combination or similar transaction in which the separate legal existence of the Accredited PEO ceases;
- g) Not engage in the transfer of clients from Accredited PEOs to any non-Accredited PEO or its Affiliate(s) or vice versa or allow a client sold by either of the Entities to be signed or serviced under a PEO arrangement with the other Entity; and
- h) Comply with all other *Standards* and *Procedures* required for maintaining accreditation.

In the event any non-Accredited PEO that is an Affiliate of the Accredited PEO does not become accredited within 12 months of the effective date of the transaction, the Accredited PEO must either (i) cease to be an Affiliate of non-Accredited PEO, or (ii) cease to be an Accredited PEO.

- e. **Effect of any Other Transaction.** If a transaction involves the merger of an Accredited PEO into another entity other than described in Sections c. and d., or a transaction having similar effect, the Accredited PEO shall cease to be accredited on the effective date of the transaction. Similarly, if the PEO ceases to do business because it has sold all or substantially all its assets, the Accredited PEO shall cease to be accredited on the effective date of the sale.

- 14) **Reportable Practices.** An Accredited PEO shall not engage in a legal, financial or operational practice ("Practice") that has been designated as a "Reportable Practice" by ESAC, unless the Accredited PEO provides written evidence acceptable to ESAC that such Reportable Practice as practiced by the PEO is not reasonably likely to result in a material risk to the PEO's financial or operational viability. An Accredited PEO shall have the responsibility to provide timely written notice to ESAC of any "Reportable Practice" in which the Accredited PEO engages or plans to engage.

Where a question of law is involved, a written opinion of a qualified legal counsel may be required by ESAC. If a legal opinion is required, at a minimum the opinion must: (a) be addressed to the Accredited PEO or to ESAC; (b) be written on the letterhead of qualified outside legal counsel engaged in the practice of law specifically applicable to the Reportable Practice; (c) opine that it is more likely than not the Reportable Practice complies with Applicable Law; and (d) set forth in detail the assumed facts upon which the opinion is based and an analysis of the Applicable Law as it relates to the Accredited PEO's Reportable Practice. "Applicable Law" shall include (a) an existing statute, regulation or agency ruling governing the PEO or the Reportable Practice, or (b) a decision of a court of competent jurisdiction.

A Practice shall be designated as a Reportable Practice by ESAC's Board of Directors if the Board determines that the Practice: (a) potentially represents a material risk to the safety and financial soundness of an Accredited PEO or a material risk to ESAC's client assurance program, (b) is not otherwise specifically covered by another ESAC standard, or (c) does not follow recognized industry best practices. ESAC's determination that a Reportable Practice is or is not reasonably likely to result in a material risk to the financial or operational viability of an

Accredited PEO shall in no way be considered or interpreted as an endorsement or rejection of the Reportable Practice.

- 15) **ESAC Client Assurance Program Participation.** An Accredited PEO shall participate in the Client Assurance Program by executing a Participation Agreement (Exhibit A, as may be amended from time to time) and shall maintain with ESAC a current list of all clients, updated at least monthly, including such information as ESAC shall require, to enroll clients in the Client Assurance Program and provide information required by state licensing and registration. All clients reported to ESAC shall automatically be covered by the Client Assurance Program so long as such client(s) shall remain a client of the Accredited PEO.
- 16) **Internal Controls.** An Accredited PEO shall establish and maintain adequate internal controls as reasonably required to prevent acts of infidelity by either owners or employees and to maintain its financial and operational integrity.
- 17) **Record-Keeping Practices.** An Accredited PEO shall be able to provide to regulatory agencies in each applicable jurisdiction and to insurance carriers the following minimum information upon request:
 - a. Name, address and tax I.D. number of any client added or terminated within 10 business days, or as required by state law;
 - b. Payroll data by client, client SIC number, and workers' compensation classification code;
 - c. List of all worksite employees covered by workers' compensation insurance by client worksite location and by classification code; and
 - d. Workers' compensation certificates of insurance, or certificates of alternative coverage where permitted by state law.

APPLICATION AND MAINTENANCE PROCEDURES

ESAC reserves on an ongoing basis the authority to request additional information or the release of data for verification procedures to ensure that it has current information regarding the PEO and each Responsible Person. Additionally, each Applicant and Accredited PEO shall authorize ESAC to initiate ongoing monitoring by an independent background investigation firm to verify that there are no outstanding tax liabilities, levies or liens filed against the PEO and to verify business creditworthiness and any litigation proceedings of record.

Information provided to ESAC by Applicant PEOs shall be held in strict confidence. Per the Confidentiality section above, only ESAC staff, surety, advisors and Independent Directors have access to confidential PEO information and vote on matters involving the initial accreditation unless the PEO requests a review of the matter by the entire Board. An Applicant shall be required as part of its application process to agree on behalf of itself, its Responsible Persons, directors, officers, employees and owners that any person objecting to approval of the application or submitting documentation in support of rejection shall be entitled to absolute immunity from liability for defamation solely with respect to making such objection or providing any documentation to ESAC.

Application

- 1) **Application Agreement.** Applicants shall submit an executed PEO application agreement, Application Fee and an online application.
- 2) **Responsible Persons.** Applicants shall submit the names of all its Responsible Persons and a Responsible Persons application for each individual. Each Responsible Person shall sign a statement authorizing ESAC staff and/or service providers to conduct a background investigation to confirm the accuracy of information provided in the Responsible Person application. A Responsible Person may submit evidence of prior approval as a controlling person or similar certification that has been issued within the past 5 years by a federal or state agency that ESAC determines has conducted an equal or greater background investigation than ESAC otherwise would require. A Responsible Person who has been evaluated by ESAC within the previous 6 months and currently is in good

standing, is not required to be reevaluated if that person changes affiliation or employment from one PEO to another.

- 3) **PEO Operations.** As part of the application, Applicants shall provide documentation and general information on the PEO's business location and contacts, business history, corporate structure, Responsible Persons, states of operation, reportable practices, property/casualty insurance, sales/client service materials, IRS 940/941 and client/worksite employee information, state licensing, and benefit and workers' compensation plans or policies.
- 4) **Audited Financials.** Applicants shall submit audited financial statements for all PEOs for the immediately preceding fiscal year accompanied by a disclosure of the methods and sources used to estimate the ultimate liability for all Loss Sensitive or Self Insured insurance plans or policies. If applicable, a list of Loss Sensitive or Self Insured Plan Reserves identifying established reserves and reserve methodologies shall accompany the audited financial statements. Any additional documentation as may be required to comply with ESAC's Financial Standard regarding "Financial Reserves" must be submitted.
- 5) **Internal Financials.** Applicants shall submit unaudited financial statements for all PEOs for the year-to-date through the immediately preceding quarter. Such financial statements shall present fairly the financial position and results of the PEO's operations in accordance with generally accepted accounting principles.
- 6) **Start-Up Applicants.** For Applicants that have not been operating long enough to have audited financial statements covering at least 12 months of PEO operations or have yet to achieve ongoing profitability, the application shall be accompanied by a business plan and:
 - a. The Applicant's most recent audited financial statements, if they exist. If not, financial statements that reflect capitalization sufficient to meet Financial Standards regarding "Adjusted Net Worth Requirement," "Positive Working Capital Requirement" and "Imminent Material Risk Provision" which in no case shall be more than 60 days prior to the date of the signed Application Agreement. The balance sheet must be in a format that ESAC can cost-effectively validate the balances of all key accounts. For PEOs with workers' compensation or group employee welfare plans or policies that are not Fully Insured and Fully Funded, such financial statements shall include schedules and related footnotes documenting appropriate adjustments to the financial reserves for these plans or policies. Related insurance company or third-party administrator claim reports or loss runs documenting the basis for such calculations also shall be provided, if requested by ESAC; and
 - b. A projection of monthly cash flow, net income and capital contributions through six months of profitable operations. The projections shall be based upon conservative assumptions of income and expenses as compared to industry norms and the Applicant's prior operating results, if applicable. These monthly projections, monthly reporting of operating results and monthly documentation of reserve adjustments will continue until the PEO has become accredited and demonstrates consistent monthly profitability and provides ESAC with an audited financial statement covering at least 12 calendar months of PEO operations that demonstrate compliance with Financial Standards regarding "Adjusted Net Worth Requirement," "Positive Working Capital Requirement" and "Imminent Material Risk Provision."

The financial statements, financial projections and business plan shall demonstrate to ESAC's satisfaction that the Applicant will have sufficient capitalization at all times from the date of accreditation until the audited financial statements referenced in (b) above, can be provided. If the financial statements provided in support of the application do not demonstrate sufficient capitalization, the Applicant must provide a guaranty of subsequent capitalization acceptable to ESAC in an amount sufficient to demonstrate the Applicant's ability to remain in compliance with ESAC's financial standards on an ongoing basis until the audited financial statements referenced in (b) above, can be provided. The Applicant also shall provide such additional information as may be requested by ESAC to evaluate the reasonableness of the Applicant's financial projections and business plan.

- 7) **CPA Verification of Tax/Benefit Payments.** An Applicant shall submit for all PEOs, in a form prescribed by ESAC, the confirmation of an independent Certified Public Accountant verifying the appropriate and timely payment of withholding and employment taxes, worksite employee and employer contributions to any employee benefit plan as defined in Section 3(3) of ERISA that is sponsored or co-sponsored by the PEO, and workers' compensation and group life and health insurance premiums for policies or plans that are sponsored or co-sponsored by the PEO. Such confirmation may be in the form of an Examination Level Attestation and/or Agreed-Upon Procedures as specified in Exhibit E.

- 8) **Responsible Persons Certification.** Appropriate Responsible Persons shall attest to the accuracy of all information submitted in the application in a form prescribed by ESAC.
- 9) **Application Consideration.** After staff, professional advisor and surety review of the Applicant's submitted application materials, the complete application shall be reviewed by ESAC's Accreditation Committee, comprised of ESAC Independent Directors. If the Accreditation Committee recommends acceptance of the Applicant, staff shall submit the Applicant's business name, address, and Responsible Persons to all members of the Board and request any relevant information regarding the Applicant's market practices or Responsible Persons that the Independent Directors should consider in their final vote. Following consideration of the application, including any information provided by the Board, the Independent Directors shall vote upon such application, with an affirmative vote of the majority of Independent Directors required to accept an application for accreditation.

In the event the Independent Directors do not accept an application for accreditation, the Applicant may (1) withdraw its application, (2) undertake to cure any deficiencies noted as permitted by the *Standards and Procedures*, or (3) request a review of the Applicant's application by the Board of Directors, which request must be received by ESAC within thirty (30) days of the date on which notice of the nonacceptance recommendation was sent to the Applicant. If the Applicant timely requests a review by the Board:

- a. The Applicant may request the recusal of any Director who the Applicant believes has a conflict of interest. Such requests for recusal shall be considered by the Board in its sole discretion. Additionally, any director who is affiliated with an Applicant or who provides services to an Applicant or whose participation in the application consideration would constitute a conflict of interest, shall recuse herself or himself from consideration of such matter and shall not be in attendance when the Board considers such matter or otherwise have access to any non-public information regarding the Applicant which ESAC may have in its possession. Any Director who owns less than one (1) percent of the stock of a publicly traded PEO shall not be considered to be "affiliated" with such PEO for these purposes. Members of the Board who are disqualified from participation by the Board or who voluntarily recuse from participation shall be referred to as "Excluded Board Members."
- b. Prior to the review of the application by the Board of Directors, the application forms and information submitted by the Applicant will be made available to all Board members other than Excluded Board Members unless ESAC receives a written withdrawal of the Applicant's application within ten (10) days of the date on which notice of the review is sent to the Applicant in which case the Applicant's application shall be deemed withdrawn. The Board, other than Excluded Board Members, shall consider all forms and information submitted as part of the Applicant's application.
- c. Any Board member, including any Excluded Board Members, may object to the approval of the Applicant, in which case the Board may grant such objecting Board member a period of time within which to submit documentation that such Board member believes supports rejection of the application. Staff shall provide a copy of such documentation to the Applicant, who shall be granted a reasonable period of time within which to submit a written rebuttal of such documentation, which rebuttal shall be provided to all Board members.
- d. Following consideration of the application, including any objections and documentation in support thereof and any rebuttal submitted, the Board of Directors shall vote upon such application. An affirmative vote of the majority of the Board of Directors shall be required to accept an application for accreditation. Staff shall notify the Applicant of the Board of Directors' decision.

Accreditation Maintenance

- 1) **Notification Requirements.** An Accredited PEO shall self-report in writing to ESAC full disclosure of the following events, with failure to self-report serving as grounds for disciplinary action. Notifications shall be emailed to service@esac.org:
- a. Within 10 business days of discovery by any Responsible Person, failure by the Accredited PEO or any of its Responsible Persons to meet any ethical, financial or operational standard or any requirement of participation in the Client Assurance Program (Exhibit A).

- b. Within 10 business days if the Accredited PEO or any of its Responsible Persons, are indicted for or convicted of any criminal activity or wrongdoing, or receive any disciplinary action, suspension or revocation of any business license, or file for any sort of bankruptcy protection.
 - c. Within 10 business days of learning of any Accredited PEO or Responsible Person that is charged, arrested, indicted or convicted of any criminal activity, wrongdoing, disciplinary action, suspension or revocation of any business license or that files for any sort of bankruptcy protection.
 - d. Within 10 business days of receipt of any PEO-specific state or federal license/registration/certification addition, notice of restriction, non-compliance, suspension or revocation.
 - e. Within 10 business days of the effective date of any transaction in which the Accredited PEO, Affiliate or Responsible Person: (1) engages in the Acquisition of another PEO (including assets-only transactions); (2) becomes an Affiliate with another PEO; or (3) is acquired by another PEO or an Affiliate or Responsible Person of another PEO.
 - f. Within 30 business days of any change in Responsible Persons.
 - g. Within 30 business days of any change in ownership of "voting stock" (per ESAC's Responsible Person definition) of 10% or more or any series of changes occurring within 180 days that total a change of 10% or more.
- 2) **PEO Operations Updates.** An Accredited PEO shall submit each quarter updated documentation and general information on the PEO's business location and contacts, business history, corporate structure, Responsible Persons, states of operation, reportable practices, property/casualty insurance, sales/client service materials, IRS 940/941 and client/worksites employee information, state licensing, and benefit and workers' compensation plans or policies.
- 3) **Audited Financials.** An Accredited PEO shall submit audited financial statements for all PEOs within 120 days of the end of its fiscal year accompanied by a Responsible Person certification and disclosing the methods and sources used to estimate the ultimate liability for all Loss Sensitive or Self Insured insurance plans or policies, including a list of all such plans. Any additional documentation as may be required to comply with ESAC's Financial Standard regarding "Financial Reserves" must be submitted along with the corresponding audited financial statements for each fiscal year.
- 4) **Quarterly Internal Financials.** An Accredited PEO shall submit internal quarterly financial statements for all PEOs within 45 days of the end of each calendar quarter with the exception of the 4th calendar quarter which shall be submitted within 60 days after December 31. Such financial statements shall present fairly the financial position and results of the PEO's operations in accordance with generally accepted accounting principles and shall be accompanied by a Responsible Person certification. An Accredited PEO may be required to submit schedules documenting the calculation of financial reserves for any Loss Sensitive or Self Insured workers' compensation or group employee welfare benefit plans or policies.
- 5) **Subsequent Events.** If an Accredited PEO's annual or quarterly financial report fails to meet the Adjusted Net Worth or Working Capital as required by Financial Standards regarding "Adjusted Net Worth Requirement," "Positive Working Capital Requirement," and "Imminent Material Risk Provision," the deficiencies shall be deemed to be cured if, at the time the annual or quarterly reports are due, the Accredited PEO files additional information evidencing action subsequent to the reporting period which shows that the PEO's current financial status is in compliance.

In the case of audited annual financial statements, the information must take the form of a subsequent events note to the audit report issued by the independent Certified Public Accountant.

In the case of quarterly reports, the Accredited PEO may (a) submit a guaranty, surety bond, or letter of credit as provided by ESAC's Financial Standard regarding "Alternative Compliance Method for Adjusted Net Worth and Positive Working Capital Requirement," which shows that the PEO has access to sufficient funds to offset any financial deficiencies that existed in the quarterly statements, or (b) submit financial statements for the PEO reflecting the remediation accompanied by a narrative signed by a Responsible Person outlining the reasons for the deficiencies and setting forth the PEO's plan to prevent such deficiencies in the future.

- 6) **Start-up Accredited PEO Financials.** An Accredited PEO with insufficient operating history to have provided audited financial statements for at least 12 calendar months of operation shall submit along with its monthly internal financial statements an updated monthly projection by month of profit-loss until PEO achieves ongoing profitability. Such projections must be based upon conservative assumptions of income and expenses in the judgment of ESAC as compared to industry norms and the PEO's prior operating results, if applicable. The Accredited PEO also shall provide such additional information as may be requested by ESAC to evaluate the reasonableness of the PEO's financial projections and business plan.
- 7) **CPA Verification of Tax/Benefit Payments.** An Accredited PEO shall submit for all PEOs, in a form prescribed by ESAC, the confirmation of an independent Certified Public Accountant verifying the appropriate and timely payment of withholding and employment taxes, worksite employee and employer contributions to any employee benefit plan as defined in Section 3(3) of ERISA that is sponsored or co-sponsored by the PEO, and workers' compensation and group life and health insurance premiums for policies or plans that are sponsored or co-sponsored by the PEO. Such confirmation may be in the form of an Examination Level Attestation and/or Agreed-Upon Procedures as specified in Exhibit E.
- 8) **Workers' Compensation Verification.** Each Accredited PEO shall provide upon any change of coverage, a Certificate of Insurance from the PEO's insurance provider for each workers' compensation policy, or alternative coverage if permitted by law, and for each insurance policy held to comply with ESAC's Operational Standard regarding "Workers' Compensation."

The PEO shall also provide a certificate listing ESAC as a certificate holder for notification in the event of policy cancellation for all workers' compensation policies, for any alternative coverage, and for the excess loss insurance policy required for any plan of self insurance. Such certificates must include confirmation by the carrier that ESAC will receive at least 30 days notification prior to cancellation of coverage.

For multi-coordinated and client-based policies, the PEO may either engage an independent Certified Public Accountant to verify workers' compensation coverage based upon sampling and verification procedures prescribed by ESAC, or provide a Certificate of Insurance for sample clients randomly selected by ESAC, along with evidence of employer liability coverage extended to both the PEO and the client plus the affidavit of an officer that all clients have workers' compensation coverage.

- 9) **Monthly Monitoring.** If an Accredited PEO's financial report indicates that a Presumed Imminent Material Risk (see ESAC's Financial Standard regarding "Imminent Material Risk") is present with regard to the PEO's financial condition, the PEO will be designated for monthly monitoring by ESAC's Compliance Committee. The fact that an Accredited PEO is being monitored on a more frequent basis will not be disclosed to anyone outside of the ESAC Compliance Committee, legal and accounting advisors, and surety carrier(s), all of which will have executed a non-disclosure agreement, except where the PEO has authorized ESAC to release information to a specific regulatory agency and such agency requires the disclosure of an Accredited PEO being placed on monthly monitoring.

The following additional accreditation maintenance procedures shall be required during the time that an Accredited PEO is subject to monthly monitoring (provided however in the case of publicly-traded Accredited PEOs and PEOs that are in the "Quiet Period" prior to a public offering, ESAC and each member of its Compliance Committee, outside advisors, and surety carrier(s) that may review such monthly monitoring shall execute a non-disclosure agreement with the PEO and enter into an agreement prohibiting the buying or selling of stock of the PEO during the period that the PEO is subject to monthly monitoring):

- a. ESAC will notify an Accredited PEO in writing if it has been designated for monthly monitoring, to begin effective with the ending date of the last quarter for which financial conditions indicated a need for such monitoring.
- b. Following notification by ESAC, the PEO shall provide ESAC with monthly financial statements within 25 days following the end of each month, beginning for the month in which monthly monitoring notification was received.
- c. For PEOs with Loss Sensitive workers' compensation or group employee welfare benefit plans or policies, such financial statements also shall include schedules documenting appropriate adjustments to the financial

reserves for these plans or policies. Related insurance company or third-party administrator claim reports or loss runs documenting the basis for such calculations also shall be provided, if requested by ESAC.

d. Each monthly financial statement shall also be accompanied by a projection of cash flows and profit-loss until PEO profitability is sustained following the effective date of the monthly monitoring requirement. Such projections must be based upon reasonable assumptions of income and expenses in comparison to prior operating history and industry norms.

e. Monthly monitoring will no longer be required when the ESAC Compliance Committee determines that there is no longer a Presumed Imminent Material Risk with respect to the PEO's financial condition.

10) **Accredited PEO Acquisitions.** If an Accredited PEO, Affiliate or Responsible Person: (a) engages in the Acquisition of another PEO (including assets-only transactions), (b) becomes an Affiliate with another PEO, or (c) is acquired by another Accredited PEO or an Affiliate or Responsible Person of another Accredited PEO, ESAC must be notified within ten (10) business days and the appropriate acquisition application must be completed within 45 days and an Acquisition Fee must be paid as applicable.

Reportable Practices

An Applicant or Accredited PEO shall state whether it engages in any of the below designated Reportable Practices. In the event the PEO states that it has engaged in or intends to engage in a Reportable Practice, the PEO shall provide written evidence to ESAC that such Reportable Practice as practiced by the PEO is not reasonably likely to result in a material risk to the PEO's financial or operational viability. Where a question of law is involved, acceptable evidence may include a written opinion of a qualified legal counsel as described in ESAC's Operational Standard related to "Reportable Practices." An Accredited PEO shall provide such written evidence to ESAC prior to the later of (1) engaging in the Reportable Practice, or (2) thirty days after the Accredited PEO receives notice from ESAC that a Practice has been designated as a Reportable Practice. An Accredited PEO's failure to comply with this Procedure and not correct such failure upon written notice shall be a violation of ESAC's Operational Standard regarding "Reportable Practices."

Depending on the type and degree of potential risk associated with each reported Reportable Practice, written evidence received by ESAC shall be evaluated either by ESAC's independent legal advisor and/or Compliance Committee to determine whether such evidence is acceptable to ESAC to show that a Reportable Practice as practiced by the PEO is not reasonably likely to result in a material risk to the financial or operational viability of the Accredited PEO. ESAC shall deliver its written finding to the PEO, which finding shall include a determination of any remedial action requirements and/or disciplinary action, if applicable. An Accredited PEO that has been adversely affected by a finding of the Compliance Committee shall have all rights of appeal as set forth in these Standards and Procedures.

The following Practices have been designated as a "Reportable Practice" by ESAC:

- 1) **Owner Participation in Cafeteria Plan** means the practice by a PEO of allowing participation in a cafeteria plan sponsored or administered by the PEO by a person who is a more than 2% shareholder of an S corporation client, partner in a partnership client, a member of a limited liability company client or a sole proprietor who is a client of the PEO.
- 2) **PEO Services for Staffing Clients** means the practice of providing services under a PEO Service Arrangement to one or more clients engaged in providing staffing services to customers by placing staffing employees at customer worksites.
- 3) **Risk Sharing Insurance Plan Participation** means the practice of an Accredited PEO entering into a contract or otherwise participating in a captive, plan, policy, trust or any other arrangement in which the Accredited PEO shares in any manner some amount of financial risk associated with providing employee benefits or any other insurance service, including health and workers' compensation insurance, with one or more non-Affiliate entities.
- 4) **Non-PEO Services through a PEO Entity** means an Accredited PEO entity is contracting with a client to provide an Employment-Related Service other than through a PEO Service Arrangement.

ESAC Notification Requirements

ESAC shall notify ESAC's surety carrier in writing within 5 business days of the following ESAC determinations with respect to an Accredited PEO:

- 1) Material change in ownership;
- 2) Violation of an ESAC financial standard;
- 3) Termination of accreditation;
- 4) Imposed sanction; and
- 5) Designation for monthly monitoring

Termination of Accreditation

- 1) Accreditation may be relinquished by an Accredited PEO only if the relinquishment meets the definition of a Voluntary Relinquishment of Accreditation.
- 2) Except for a Voluntary Relinquishment of Accreditation, accreditation of an Accredited PEO may be terminated only pursuant to an Agreed Termination of Accreditation or an Involuntary Termination of Accreditation.
- 3) In the case of any termination of accreditation, ESAC shall endeavor to notify Covered Clients, as defined in the Participation Agreement.
 - a. In the case of Voluntary Relinquishment of Accreditation, the notification shall state that the relinquishment of accreditation was voluntary and that Covered Clients have thirty (30) days to file any claim under the Client Assurance Program.
 - b. In the case of an Agreed Termination of Accreditation, the notification shall state that the Accredited PEO and ESAC agreed to the termination of accreditation and that Covered Clients have thirty (30) days to file any claim under the Client Assurance Program.
 - c. In the case of an Involuntary Termination of Accreditation, the notification shall state that ESAC terminated the accreditation of an Accredited PEO due to the violation of one or more provisions of the Standards and Procedures or the Participation Agreement and that Covered Clients have thirty (30) days to file any claim under the Client Assurance Program.

OTHER INFORMATION

Limitation of Liability of ESAC and Standard of Review

- 1) Except as expressly provided in these *Standards and Procedures* and to the fullest extent permissible by law, as a condition of application for accreditation, an Accredited PEO, former Accredited PEO, Applicant, Responsible Person, and the respective owners, officers, employees or agents thereof agrees that such Person shall not bring a legal action of any type against ESAC, its Board of Directors, any Committee of ESAC, or any officer, employee, agent or representative thereof with respect to any action, omission or decision taken by ESAC, its Board of Directors, any Committee of ESAC, or any officer, employee, agent or representative thereof so long as such action, omission or decision was made in good faith. Neither ESAC, its Board of Directors, any Committee of ESAC, nor any officer, employee, agent or representative thereof shall be liable, responsible or accountable for damages or otherwise to any Accredited PEO, former Accredited PEO, Applicant, or Responsible Person or respective owners, officers, employees or agents thereof for any acts taken or performed or for any omission to act, if such conduct is taken in good faith, without regard to fault or negligence. It is intended that limitation of liability shall constitute qualified immunity from liability for defamation, libel and slander. Such qualified immunity

shall not apply only if it is shown that such allegation was false and made willfully with the intent to damage or injure the person claiming injury or was otherwise made with malice.

- 2) Except as expressly provided in these *Standards and Procedures*, any action or decision taken by ESAC, its Board of Directors, or any Committee of ESAC, so long as in accordance with these *Standards and Procedures*, may be made in the sole discretion of ESAC, its Board of Directors, or any Committee of ESAC, as the case may be, and shall be final, conclusive, and not subject to review or appeal.

Grounds for Disciplinary Action

Any of the following violations by an Accredited PEO shall be considered grounds for disciplinary action:

- 1) Failure to meet or maintain any provision of the *Standards and Procedures*.
- 2) Failure to comply with the terms and conditions of, or a breach of any representation or warranty contained in the Participation Agreement (Exhibit A), if applicable.
- 3) Failure to provide ESAC with information requested or with access to the PEO's records or premises in a timely manner.
- 4) Failure to abide by the terms of any conditions for probation as established by ESAC and provided in writing to the PEO.
- 5) Allowing the use of accreditation status by an Affiliated Entity or marketing agency not properly granted accreditation by ESAC or using an unauthorized Entity or trade name or names in marketing its services.
- 6) Knowingly giving incomplete, false or forged information to ESAC or purposefully withholding relevant information.
- 7) Failing to provide required information and reporting in a timely manner or to respond to requests or directives for information in a timely manner.
- 8) Being convicted of or found guilty of, or entering a plea of nolo contendere, regardless of adjudication, to a crime in any jurisdiction which relates to the operation of a PEO or the ability to engage in business as a PEO or as a Responsible Person of a PEO.
- 9) Failure to inform ESAC within 10 business days of discovery of any material fact adversely affecting the PEO's accreditation status, participation status in the Client Assurance Program, or the qualification of a Responsible Person to serve in such capacity with the PEO.
- 10) Failure to pay in a timely manner (a) any fee or reimbursement due to ESAC or (b) assessments as provided in the Participation Agreement; provided however, that failure to pay a Compliance Assessment to ESAC within ten (10) days of written notice shall result in an immediate Involuntary Termination of Accreditation, which is not subject to appeal.

Rights of Applicants and Accredited PEOs

- 1) Any Applicant or Accredited PEO has the right to request by prior written notice the recusal of any Board member it reasonably believes possesses a bias against it, has a conflict of interest, or is otherwise unable to make an objective decision on the matter at hand.
- 2) Any party to a proceeding who is adversely affected by an order or finding of the ESAC Compliance Committee has the right to file a motion for appeal to the ESAC Board, and any other party to such proceeding has the right to file a response to a motion for appeal, except in the case of either (a) a "Substantial Failure" of an Accredited PEO to perform its employer "Financial Obligations" or (b) the failure to pay a "Compliance Assessment" to ESAC within ten (10) days of written notice, as such terms are defined in the Participation Agreement, in which case the findings of the Compliance Committee shall be ratified by a majority vote of the Board of Directors and shall be final.

- 3) Applicants or Responsible Person applicants have the right to cure deficiencies in their application noted by the Board or staff within the time frame prescribed by ESAC in a letter notifying the Applicant or Responsible Person applicant that the application is incomplete or deficient.
- 4) All Accredited PEOs have the right to vote (one vote per PEO or PEO Group) on all matters provided for by ESAC's Bylaws, including the election of officers and directors.
- 5) All Accredited PEOs have the right to use ESAC's logo within ESAC guidelines and restrictions.
- 6) **Loss of Rights and Privileges:** If an Accredited PEO allegedly fails to comply with the accreditation *Standards and Procedures*, the PEO will be investigated by ESAC. Upon a finding by ESAC that the PEO is in violation and upon a failure of the PEO to cure such violation within the prescribed time period, the PEO will lose all the rights and privileges of being an Accredited PEO and will not represent itself in any fashion to be an Accredited PEO and in good standing with ESAC. The PEO's status as an Accredited PEO and its participation in any ESAC-administered programs shall be terminated. A terminated PEO shall not be entitled to a refund of any fees, but it shall remain liable to ESAC for any fees or other amounts owed.

Procedures for Handling Alleged Violations, Defaults & Claims

The following procedures shall be used for the reporting and handling of an allegation of a failure to comply with, or a violation of, the *Standards and Procedures*.

The ESAC Board reserves the right to amend and exercise its best judgment with regard to these procedures depending on the nature and severity of the alleged violation and the urgency with which corrective action needs to be taken. In all cases, the goal will be to preserve the right of each Accredited PEO to due process and to considerate, confidential and professional treatment, while making fair and impartial decisions that are in the best long-term interest of the PEO industry by protecting the PEO's clients, worksite employees, insurers and taxing authorities, and by protecting the surety carrier that backs ESAC's programs.

Notwithstanding anything provided for in these procedures, a "Default" by a PEO participating in the Client Assurance Program to perform in a timely manner its "Financial Obligations," as defined in Exhibit A, shall be handled according to the provisions of the Participation Agreement. All claims made under the Client Assurance Program shall be handled by a Claims Committee according to the provisions of the Client Participation Certificate (Attachment A to the Participation Agreement), as may be amended from time to time. For all other failures or alleged violations, these "Procedures for Handling Alleged Violations, Defaults & Claims" shall be followed.

Compliance Committee

A Compliance Committee, established by the ESAC Board of Directors in accordance with its Bylaws, shall handle all reported or discovered violations, failures to comply, and any other allegations made against an Accredited PEO. ESAC's President shall determine the exact size and composition of the Compliance Committee on a case-by-case basis depending upon the nature and urgency of the matter to be considered. At a minimum, the Compliance Committee shall include ESAC's President as the committee Chair and not less than three Independent Directors selected by the President based on the nature of the issue with an ESAC attorney or independent legal advisor serving as a non-voting advisor, as needed.

The Compliance Committee shall be responsible for conducting or supervising investigations by staff or professional advisors, determining probable cause, conducting mediation hearings, conducting arbitration hearings, reporting findings, establishing appropriate penalties and corrective measures, and rendering final judgments. All final decisions and findings of the Compliance Committee shall be made by majority vote and signed by the Committee chair. Compliance Committee decisions involving Involuntary Termination of Accreditation or participation in any ESAC-administered program must be ratified by majority vote of Independent Directors on the Board of Directors.

An Accredited PEO shall have the right to an appeals hearing before the ESAC Board of Directors for all final judgments of the Compliance Committee except in the case of either (1) a "Substantial Failure" of an Accredited PEO to perform its employer "Financial Obligations" or (2) the failure to pay a "Compliance Assessment" to ESAC within ten (10) days of written notice, as such terms are defined in the Participation Agreement. Such hearings shall be granted

liberally by majority vote of the Board based on factual justification presented by the accused PEO in a written motion filed within 10 business days of receipt of the final decision of the Compliance Committee.

An Accredited PEO shall have the right to request the recusal of any Compliance Committee member. Such request shall be made in writing and shall set forth the justification for such recusal along with any supporting evidence. Requests for recusal shall be acted upon by majority vote of the entire Board and shall be granted liberally for just cause based on factual information provided by the requesting PEO.

Reporting of an Allegation of a Default or Failure to Comply

Allegations or complaints involving an Accredited PEO may be reported to ESAC by e-mail, fax, courier, or mail, or by telephone followed by a method of written verification.

An alleged failure may be discovered and reported by ESAC staff, by the PEO's clients, worksite employees, insurers, or government regulators, or by any other third party. A \$250 filing fee is required to discourage frivolous allegations in the case of an allegation made by a third party not having a material interest in the PEO's affairs through a client service agreement, employment relationship, insurance policy, ESAC accreditation or related program participation, or by regulatory authority. The complainant shall pay such filing fee at the time of filing the written complaint. If the allegation is found to be true, the filing fee will be returned to the complainant. If the allegation is found to be untrue, the filing fee will be paid to the accused PEO.

Procedure for Handling an Allegation of a Default or Failure to Comply

The following general procedure will be followed by ESAC upon discovery or receipt of an allegation of a possible default or failure to comply with the *Standards and Procedures* or the Participation Agreement, excluding (a) a "Substantial Failure" of an Accredited PEO to perform its employer "Financial Obligations" or (b) the failure to pay a "Compliance Assessment" to ESAC within ten (10) days of written notice, as such terms are defined in the Participation Agreement.

- 1) ESAC staff shall gather preliminary facts by telephone from the complainant and the accused Accredited PEO and report such findings to the Compliance Committee ordinarily within 2 business days of discovery or receipt of the allegation.
- 2) At any time during the proceedings, from the time the written complaint is received until a final determination is made, the Accredited PEO may decline to contest some or all of the allegations. In order to do so, the Accredited PEO must provide ESAC with written assurance that it will not contest in any manner the allegation of the specific violation(s). The Compliance Committee shall then determine if further investigation is warranted and the penalty, if any, to be assessed as provided below under "Penalties."
- 3) The Compliance Committee shall consider the information gathered by staff, conduct such additional investigation as it deems appropriate, and make a determination of probable cause. If the Compliance Committee determines that probable cause does not exist, the matter shall be dismissed and a report of findings shall be distributed to the accused PEO, the complainant(s), if any, and the ESAC Board.
- 4) Upon a finding by the Compliance Committee of probable cause that a default or failure to comply has occurred ("Probable Cause Finding"):
 - a. The Compliance Committee shall schedule and conduct a mediation hearing by telephone or in person, in its sole discretion, within 20 business days of the probable cause determination, provided however, such mediation hearing shall be held within 5 business days of receipt of a "Reported Failure" of an Accredited PEO to perform its employer "Financial Obligations" made by a client, worksite employee, insurer, taxing authority or other regulator of the accused PEO.
 - b. As a condition of contesting a Probable Cause Finding, the accused PEO agrees that (a) it will bear its own costs in connection with any such contest and will not seek to recover any portion of such costs from ESAC, the Compliance Committee, or any representative of either, and (b) it will pay the expenses incurred by ESAC in connection with any contest of the Probable Cause Finding, including without limitation ESAC's attorney fees and other direct costs incurred in connection with the investigation of the alleged default or failure to comply through the final resolution of any contest of the Probable Cause Finding regardless of the outcome of such contest ("ESAC Expenses").

- c. The Compliance Committee shall determine the amount of a retainer ("Retainer") that shall be required of the accused PEO, which Retainer shall be used to pay ESAC Expenses. Throughout the pendency of the contest of the Probable Cause Finding, in its discretion, the Compliance Committee may increase and/or require periodic replenishment of the Retainer.
 - d. The accused PEO shall pay the Retainer, including any increase(s) or replenishment(s), within five (5) business days of notice by the Compliance Committee or prior to the conduct of any mediation, arbitration or other hearing with respect to the contest of the Probable Cause Finding, if sooner. The failure of the accused PEO to make any required payment to the Retainer will result in the dismissal of the accused PEO contest of the Probable Cause Finding, in which case the alleged default or failure to comply may lead to disciplinary action up to and including termination of accreditation.
 - e. To the extent ESAC Expenses exceed the amounts paid into the Retainer, the accused PEO shall pay any such excess upon written notice from ESAC. Upon final resolution of the Probable Cause Finding, after payment of all ESAC Expenses, any remaining balance of the Retainer shall be refunded to the accused PEO. Should the accused PEO be completely exonerated of all allegations, ESAC reserves the right to (i) refund all or part of the Retainer and/or (ii) assess the complainant, if it is an Accredited PEO, with all or a portion of the costs.
- 5) If the matter is not resolved in the mediation hearing, the Compliance Committee shall conduct any other investigation that it deems appropriate and shall issue a written judgment of findings and required cures or penalties, if any. Such findings shall be distributed to the accused PEO, the complainant(s), if any, and to the ESAC Board. Provided, however, if the allegation was made by a client, worksite employee, insurer, taxing authority or regulator of the accused PEO and the matter was not resolved in the mediation hearing, the Compliance Committee shall schedule an arbitration hearing as soon as possible and within not more than 30 days after the mediation hearing, with at least 10 business days prior written notice to all parties involved.
 - 6) The arbitration hearing, if such is held, shall be conducted by the Compliance Committee according to the provisions of these Standards and to the extent not inconsistent, the rules of the American Arbitration Association, and a written report of findings shall be distributed to the accused PEO, the complainant(s), if any, and the ESAC Board.
 - 7) Upon receipt of the Compliance Committee's final judgment following either a mediation or arbitration hearing, the accused PEO shall have 10 business days to file a motion to appeal the Compliance Committee's findings to the ESAC Board. The Board shall schedule the appeals hearing at such time and place as it deems appropriate with at least 10 business days prior written notice to all involved parties. The judgment of the Board at the end of the appeals hearing, if one is held, shall be final.

All information, communications, investigative reports, hearing records, findings and related materials, other than public information, shall be considered confidential and shall be kept in strictest confidence by ESAC, its Board, staff, advisors and service providers to the extent allowed by law except as specifically provided by these procedures and by the terms of Exhibit A, as may be amended from time to time.

Standards for Hearings

The following standards shall apply to the conduct of ESAC Hearings.

- 1) Types of Hearings: A hearing may be held for the purpose of mediation, arbitration, consideration of a motion for an extension of time to cure a violation, or appeal of a decision of the Compliance Committee to the ESAC Board.
- 2) Hearing Tribunal: The "Hearing Tribunal" shall consist of the ESAC Compliance Committee or the Board of Directors. The Board of Directors shall appoint a "Hearing Officer."
- 3) Location and Time: All hearings except those held for the purpose of arbitration or appeal may be conducted telephonically, or at ESAC headquarters or a mutually agreed upon location, at a time and date set by ESAC. Hearings held for the purpose of arbitration or appeal shall be held at a location, time and date set by ESAC.
- 4) Notice: Notice of a hearing shall be mailed confidentially to the parties by certified mail or overnight courier, return receipt requested. A copy of the written complaint and investigative report shall also be mailed to all involved parties.

- 5) Procedure: The Hearing Officer shall preside over the hearing making the final determination as to the procedures to be followed. The Hearing Tribunal shall consider all evidence it deems relevant to its final decision. Final decisions of the Hearing Tribunal shall be made by majority vote, documented in writing and signed by the Hearing Officer.
- 6) Representation: One or more members of management and other representatives, including legal counsel, may represent the Accredited PEO under investigation. The complainant and ESAC may also be represented by legal counsel.
- 7) Order of Presentation: The following is intended to serve as a general guide to the conduct of the hearing:
 - a. The opening statement by the Hearing Officer as to the guidelines of the hearing, its purpose, and the rights and privileges of parties involved.
 - b. The opening statement on behalf of the Accredited PEO under investigation, not to exceed 10 minutes in length, should concisely indicate what he/she intends to show. This statement may be deferred until the conclusion of the investigator's presentation at the option of the PEO.
 - c. The report of ESAC's investigation will be presented by the party(ies) who conducted the investigation and will not exceed 30 minutes. It shall set out all of the relevant matters contained in the investigative report, as discussed above.
 - d. ESAC investigator(s) shall present such testimony and exhibits as deemed appropriate, not to exceed one hour.
 - e. The PEO under investigation and related witnesses, if any, may present testimony and exhibits, not to exceed one hour.
 - f. Cross-examination of witnesses by opposing parties, not to exceed one-hour total for all witnesses, will be allowed and shall not count against the time permitted for a party to present its case.
 - g. If desired, the investigator(s) and the PEO under investigation may present a summation, not to exceed 15 minutes per party.
 - h. At the conclusion of the hearing, the Hearing Tribunal will make a finding of violation or lack of violation or a ruling as to continuance of investigation or hearing. In the event of a finding of violation, one or more of the penalties described below will be assessed. If the hearing is to be continued, the date shall be determined at the time of the hearing. The findings shall be set forth in a written order setting out the parties involved, the nature of the allegations, the findings, the actions required to correct any deficiency, and the assessment of penalty, if any.
- 8) Burden of Proof: The investigator shall have the burden of establishing a violation of a standard or required procedure by a preponderance of the evidence.
- 9) Admissibility: Statutory and case-made rules relating to the order of proof, conduct of the hearing, and presentation and admissibility of evidence shall not be applicable to such hearings. Any relevant evidence, including hearsay, shall be admitted by the Hearing Officer if it is the sort of evidence upon which responsible persons are accustomed to rely on in the conduct of business affairs, regardless of the admissibility of such evidence in a court of law.
- 10) Participants and Witnesses: Each participant is responsible for providing its own witnesses, including the payment of all expenses associated with their appearance at the hearings. All witnesses shall give testimony under oath or other affirmation administered by the Hearing Officer.
- 11) Exhibits: Not less than 5 business days prior to the hearing, the investigator shall provide the party under investigation with a list of witnesses that the investigator intends to call and copies of all exhibits the investigator intends to introduce at the hearing. At the hearing, both parties shall provide each member of the Hearing Tribunal with copies of exhibits when introduced in evidence. Documentary evidence must be of a size consistent with the ease of handling, transportation, and filing. Large exhibits may be used during the hearing, but reduced copies must be provided for the record.

- 12) Non-Responsiveness by the Investigated PEO: In the event that the PEO being investigated does not appear for the hearing or does not supply information requested as part of the investigative process, the PEO's accreditation status will automatically be suspended pending a final decision by the Hearing Tribunal as to further disciplinary actions.

Penalties

Upon an admission or finding of a violation of a standard or required procedure, ESAC shall stipulate and enforce any one or a combination of the following actions:

- 1) Letter of Warning: Such letter shall describe the nature of the offense and warn the Accredited PEO that a continued failure to comply shall result in further disciplinary action up to and including permanent revocation of accreditation and participation in ESAC programs. Under this action, ESAC may require documentation of the nature and date of actions taken to rectify the alleged violation, and repayment of the complainant's \$250 filing fee, if any. For repeated violations that are not materially severe in nature, but which result in additional expense to ESAC, a fine not to exceed \$1,000 per occurrence may be assessed. Failure of an Accredited PEO to comply with the terms of the warning letter and to pay any fine that may be assessed in a timely manner shall be subject to additional penalties.
- 2) Probation: Under this action, the PEO shall be given a specified period of time to cure any deficiency or violation of a standard or required procedure. ESAC may also stipulate a set of conditions or limitations for the PEO. Such conditions may range from requiring more frequent financial reporting to other requirements or limitations. Failure to abide by all the limitations and conditions of probation established by ESAC shall result in the suspension and possible revocation of the PEO's accreditation. The period of time allowed for curing a deficiency or violation shall vary according to the nature of the offense as follows:
 - a. Five business days for an Accredited PEO to fully cure a "Substantial Failure" to perform one or more of the "Financial Obligations" covered by the Client Assurance Program, provided however, if ESAC determines in its sole judgment that the PEO does not have the ability to fully cure the "Substantial Failure" within 5 business days, the PEO shall be found to be in default and subject to immediate and irreversible revocation of accreditation and program participation. Since swift and decisive action is essential in such an event, the Accredited PEO shall not have the right to request an extension of the time to cure or to appeal a final decision of the Compliance Committee that has been ratified by the ESAC Board of Directors.
 - b. Five business days for an Accredited PEO to fully cure a "Reported Failure" to perform one or more of the "Financial Obligations" covered by the Client Assurance Program or a violation of any other term or condition of the related Participation Agreement (Exhibit A). In such case, the Accredited PEO shall have a right to request an extension of the time to cure, not to exceed a total time to cure of 30 days and shall have a right to appeal a final decision of the Compliance Committee.
 - c. For all other violations or failures to comply, whether self-reported, detected by ESAC staff or service providers, or reported by others, the Accredited PEO shall have 45 days to fully cure the deficiency. In such cases, the Accredited PEO shall have the right to request a hearing to consider an extension of time to cure of up to an additional 30 days beyond the expiration of the 45-day period and shall have a right to appeal a final decision of the Compliance Committee.
 - d. The ESAC Independent Directors may grant one or more additional periods of probation and may otherwise impose such terms, conditions or restrictions upon an Accredited PEO as the Independent Directors shall determine is necessary or desirable in protecting the interests of ESAC, its programs, and the surety carrier.
- 3) Suspension: If an Accredited PEO shall fail to fully cure a deficiency within the time specified by ESAC and no additional extension of time to cure is available or is granted, the accreditation and participation of the PEO in ESAC programs shall be suspended subject to any right to appeal. If the suspended PEO fails to appeal, has no remaining right to appeal, or has its appeal denied, then the revocation of accreditation and participation of the suspended PEO shall be final on the day following the final day of suspension.
- 4) Revocation of Accreditation and Participation: Subject to any right to appeal expressly provided in these *Standards and Procedures*, this action is final and entails the complete and total loss of ESAC accreditation and termination of participation in ESAC-administered programs.

- 5) In determining the amount of penalty(ies) to be assessed, if any, ESAC shall consider the seriousness of the violation, any history of previous violations, the amount necessary to deter future violations and to protect affected third parties, efforts made to correct the violation, and any other matters that justice may require.
- 6) ESAC shall specify in its written finding the sanctions imposed against an Accredited PEO and shall provide a copy of such findings to the PEO by certified mail or overnight courier, with return receipt requested, at its address of record. Except for a “Substantial Failure” to perform “Financial Obligations” or failure to pay a “Compliance Assessment” to ESAC within ten (10) days of written notice, as provided above, an Accredited PEO is entitled to request a hearing in all cases where ESAC warns or proposes to fine, places on probation, suspends or revokes the PEO’s accreditation and program participation.

Appeals Procedure

The following procedures shall apply to allow for the appeal of a final judgment rendered by the Compliance Committee:

- 1) The Accredited PEO that is adversely affected by a finding of the Compliance Committee, and that appeared at the hearing, if any, may file a motion for appeal, except in the case of either (a) a “Substantial Failure” of an Accredited PEO to perform its employer “Financial Obligations” or (b) the failure to pay a “Compliance Assessment” to ESAC within ten (10) days of written notice, as such terms are defined in the Participation Agreement, in which case a decision of the Compliance Committee that has been ratified by the Board of Directors shall be final. Such motion for appeal must be filed within 10 business days of the party’s receipt of the written finding. All motions to appeal shall be considered by the ESAC Board.
- 2) The Compliance Committee may file a response to a motion to appeal within 10 business days of service of the motion to appeal.
- 3) Such motions and responses will be filed in writing with ESAC with copies provided to all involved parties.
- 4) A finding of the Compliance Committee shall not be effective until the time to file a motion to appeal has expired or until a motion to appeal has been denied.
- 5) Failure to file a motion to appeal within the specified time limit will constitute waiver of the right to do so.
- 6) Upon the timely filing of a motion for appeal and following the time period within which a response may be filed, or following the filing of a timely response, the Board shall consider the motion and response, if any, and shall either grant or deny an appeal hearing. Consideration by the Board of such motion and response, if any, may be by telephone conference. If an appeal is granted, the Board shall set a date, time and location for the appeal hearing.
- 7) The Accredited PEO making the appeal shall have the burden of showing that the findings of the Compliance Committee were clearly erroneous.
- 8) Filing a motion to appeal shall automatically stay the effective date of the finding until the ESAC Board issues a finding on the motion.
- 9) All findings on matters of appeal shall be final and not subject to further reconsideration or appeal.
- 10) Any motion filed pursuant to these procedures shall contain a concise statement of the grounds for appeal.

Fees

All fees are established by ESAC’s Board of Directors and are non-negotiable. Fees are due in full within 30 days of the invoice receipt by the PEO.

Application Fee

An Applicant must pay an Application Fee equal to \$5,000 prior to initiating the formal accreditation application process. This fee will be credited to the Bond and Accreditation Fees upon approval of the Applicant’s accreditation and participation in the Client Assurance Program.

Accreditation Fee

An Accredited PEO or PEO Group must pay an annual Accreditation Fee for initial and renewal accreditation and for participation in the Client Assurance Program. A PEO's annual Accreditation Fee is based upon the fee schedule established by the ESAC Board of Directors and the PEO's annual gross wages as reported to the IRS on the PEO's most recently filed Form 940. The amount of the Accreditation Fee is shown in the following schedule as may be amended from time to time. A current fee calculation schedule is available at ESAC.org.

Accreditation Fee Schedule	
Annual Gross Wages	Accredited PEOs
\$0 to \$50 million	\$7,500 plus \$185 per million over \$10 million
\$50 to \$100 million	\$15,000 plus \$200 per million over \$50 million
\$100 to \$250 million	\$25,000 plus \$80 per million over \$100 million
\$250 to \$500 million	\$37,000 plus \$30 per million over \$250 million
\$500 million to \$1 billion	\$44,500 plus \$15 per million over \$500 million
\$1 billion to \$5 billion	\$52,000 plus \$5 per million over \$1 billion
\$5 billion and above	\$72,000 plus \$2 per million over \$5 billion

Bond Fee

Each Accredited PEO / PEO Group and Separately Accredited PEO / PEO Group must pay the annual premium for a surety bond provided by ESAC's surety with the Employer Services Trust as the Principal ("Accredited PEO Bond"). The amount of the Accredited PEO Bond shall be the greater of \$250,000 or 5% of the PEO or PEO Group's total state and federal employment taxes for the prior calendar year rounded up to the nearest \$250,000 and not to exceed \$1 million. The annual fee for the Accredited PEO Bond will be equal to 1% of the bond amount ("Bond Fee"). A \$15 million surety bond underwritten by the same surety with the Employer Services Trust as Principal will provide excess coverage for the Accredited PEO Bond at no additional cost to the Accredited PEO or PEO Group.

Acquisition Fee

If an Accredited PEO or an Affiliate of an Accredited PEO acquires assets or engages in an Acquisition of either a non-Accredited or Accredited PEO, an Acquisition Fee will be due to ESAC. However, an Acquisition Fee will not be due for the following exceptions:

- i. Separately Accredited PEOs: If the acquired PEO is an Accredited PEO or becomes an Accredited PEO, and the PEOs operate as Separately Accredited PEOs, each PEO will pay its respective annual Accreditation Fee and an Acquisition Fee will not be due. However, if such PEOs cease operating as Separately Accredited PEOs, the surviving PEO will pay an Acquisition Fee.
- ii. Assets-Only Acquisitions: If the Accredited PEO acquires only the assets of another PEO, an Acquisition Fee will not be due. However, if the Accredited PEO transfers or acquires any master employee benefits or workers' compensation policies because of the transaction, a fee of \$1,000 will be charged to reimburse ESAC for direct costs.

The Acquisition Fee will be based on the most recently reported IRS Form 940 wages for the acquired PEO or PEO Group and calculated using the Accreditation Fee schedule. The newly acquired PEO's or PEO Group's wages will not be included in the calculation of the Accredited PEO's annual Accreditation Fee until after 12 months subsequent to the Acquisition date.

The determination of whether an Acquisition has occurred and whether an Acquisition Fee is payable shall be made by ESAC in its sole discretion.

Delinquent Reporting Penalties

Accurate and complete accreditation maintenance reports must be submitted to ESAC by no later than the deadlines published in the “Application and Maintenance Procedures” section of this manual. Submission of materially inaccurate or incomplete reports shall be disregarded for purposes of compliance and treated as delinquent reports. Should an extension be necessary for completion of a report, the PEO is required to contact ESAC in writing at least five (5) business days prior to the deadline to request an extension. The extension must be approved by ESAC staff in writing before the extension will be granted. Failure to submit accurate and complete accreditation maintenance reports by the deadline, or to obtain an approved extension, shall result in the immediate assessment of a \$500 delinquent report penalty plus an additional \$250 penalty assessed every seven (7) days thereafter. If a report is more than 30 days late or if more than one reporting deadline has been missed in a calendar year, the Accredited PEO will be referred to the Compliance Committee for further disciplinary action. ESAC shall be allowed to deviate from these disciplinary actions in instances of aggravating or mitigating circumstances, such as habitual offenders or unexpected, one-time events.

Reimbursement of Direct Costs

Each new PEO Responsible Person application will incur a \$600 reimbursement fee. Each new PEO entity that is not the result of an acquisition or merger will incur a \$250 entity addition fee. Requests for changes in an Accredited PEO's group name or address will incur a \$150 name/address change fee. Termination of accreditation will incur a \$500 termination fee plus any direct costs for ESAC's delivery of required client notifications. To the extent ESAC's directly related outside costs incurred in responding to subpoenas, regulatory inquiries, and litigation to which ESAC is not a party, exceed any amounts paid to ESAC by the issuing party, the PEO or PEO Group relating to the subject information shall promptly pay such costs upon written notice from ESAC. In like manner, to the extent an ESAC compliance verification inquiry or investigation is triggered by an Accredited PEO being under governmental investigation or where a 3rd party involved in litigation with an Accredited PEO causes ESAC to incur out-of-pocket expense, upon written notice from ESAC, the subject PEO or PEO Group shall promptly pay the expense.

Denial of Application and Treatment of Pending Applications

In the event an Applicant is not approved for accreditation within 3 months following the Applicant's submittal of the online application and all requested supporting documentation, and satisfactory completion of any corrective action needed to meet an accreditation requirement, the Application Fee will be fully refunded. If the Applicant (1) fails to complete its application within 6 months; or (2) withdraws its application for any reason during the accreditation process; or (3) fails to complete all required action to qualify for accreditation, the Application Fee shall be retained by ESAC to cover its application processing costs and the application shall be terminated. If accreditation and participation are not denied but a final decision is pending receipt by ESAC of additional or modified materials, then the Application Fee will be retained by ESAC until the application is acted upon by ESAC or withdrawn by the Applicant.

If an Applicant that has been denied accreditation chooses to re-apply or if an application is pending further action by the Applicant, the Responsible Person application(s) will remain valid and will be considered current for a period of 6 months from the date of receipt of the initial application by ESAC. After a period of 6 months, the Responsible Person applications as well as the PEO's application must be updated and the applicable Reimbursement of Direct Costs fees must be paid. Such additional fees are necessary because background investigations must be repeated along with a current financial evaluation to make the application again current.

EXHIBIT A: PEO PARTICIPATION AGREEMENT

THIS AGREEMENT is made and entered into by and between the Employer Services Assurance Corporation (“ESAC”), and
____ (“Participant”).

A. PURPOSE.

The purpose of this Agreement is to set forth the rights and obligations of the Participant and ESAC under the terms of the Client Assurance Program and the Employer Services Trust (“Trust”).

B. DEFINITIONS.

1. **“Affidavit of Compliance Bond”** means any bond posted or deposited with or provided to any state agency by ESAC or on ESAC’s behalf for the benefit of its accredited PEOs, where such bond is intended to be in lieu of certain financial responsibilities or obligations of the Participant under applicable state licensing or registration laws to which the Participant is subject.
2. **“Business Days”** means Monday through Friday excluding those legal holidays on which national banks are closed.
3. **“Client Participation Certificate”** means the certificate setting forth the terms and conditions pursuant to which the Trust and ESAC Surety(ies) may be obligated to the Covered Client, the current version of which is attached hereto as Attachment A, as the same may be amended from time to time.
4. **“Client Assurance Program”** means the obligations of the Trust, as funded by Surety Bonds, pursuant to the Client Participation Certificate, a copy of which is attached hereto as Attachment A.
5. **“Client Assurance Program Obligation”** means the payment obligations by the Trust and ESAC Surety(ies) with respect to a Covered Client of the Financial Obligations of the Participant in the event of a Default, subject to the terms, conditions and limitations set forth in the Client Participation Certificate (Attachment A).
6. **“Complaint”** means a written or oral communication received by ESAC from any person alleging, or information developed or obtained by ESAC that could result in, a Failure by the Participant to perform one or more Financial Obligations.
7. **“Covered Client”** means a client of the Participant that has executed a written service contract with the Participant pursuant to which Worksite Employees provide services to such client and that has been enrolled in the Client Assurance Program by Participant notifying and providing ESAC the requisite information concerning such client.
8. **“Compliance Committee”** means the committee of ESAC, as constituted according to its bylaws, the function of which under this Agreement shall be to determine if a Default has occurred.
9. **“Default”** by a Participant means the failure of the Participant to perform any of its Financial Obligations.
10. **“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.
11. **“Failure”** means either a “Reported Failure” or a “Substantial Failure.”
12. **“Financial Obligations”** means any or all of those obligations set forth below:
 - a) **“Employee Benefit Obligation”** means the obligation of the Participant to collect and properly remit any elective or voluntary contributions by Worksite Employees with respect to any employee benefit plan as defined in Section 3(3) of ERISA sponsored or co-sponsored by the Participant. Employee Benefit Obligations are Financial Obligations to the extent such contributions were collected by the Participant but not paid over to the policy, plan or other funding vehicle for such employee benefit plan. Notwithstanding any provision of this Agreement: the obligations of the Trust are not “plan assets”; and, ESAC, the Trust or their agents are not “fiduciaries” within the meaning of ERISA.
 - b) **“Employment Tax Obligation”** means the Participant’s obligation with respect to Worksite Employees to report and pay in a timely and accurate manner the amount of its liability under applicable law for payment and withholding of federal, state and local income taxes and employment taxes, and FICA and Medicare taxes, but not including any gross receipt taxes, sales taxes or use taxes.
 - c) **“Life and Health Insurance Premium Obligation”** means the obligation of the Participant to pay when due premiums, not subject to a good faith reasonable dispute, for life or health insurance coverage pursuant to a Fully Insured group life insurance plan, as defined in Section 79 of the Internal Revenue Code, or a Fully Insured group health plan, as defined in Section 5000 of the Internal Revenue Code, sponsored by the Participant for the benefit of its Worksite Employees.
 - d) **“Wage Obligation”** means the obligation of the Participant to pay wages due to its Worksite Employees according to applicable law on or before the date when such payment is due. “Wages” means cash compensation payable to Worksite Employees in the ordinary course of business for which a Covered Client has paid all PEO service fees related to such compensation.
 - e) **“Workers’ Compensation Insurance Premium Obligation”** means the obligation of the Participant to pay when due workers’ compensation premiums, not subject to a good faith reasonable dispute, with respect to a Fully Insured workers’ compensation policy issued to the Participant for the benefit of its Worksite Employees.
 - f) For the purposes of this Agreement, “Fully Insured” insurance plan means any plan of insurance that is fully insured by a duly licensed carrier. If a portion of the premium cost is determined retrospectively, the Financial Obligation is limited to that portion of the premium that was due to be paid in advance or within a policy period without regard to the amounts of claims.
13. **“ESAC”** means the Employer Services Assurance Corporation.
14. **“ESAC Surety(ies)”** means any duly licensed entity that has issued a Surety Bond to the Trust.
15. **“Participation Fees”** means those fees set by ESAC for accreditation and participation in the Client Assurance Program and contained in the *Standards and Procedures* as may be amended from time to time.
16. **“Participant”** means a professional employer organization that is accredited by ESAC and has become a participant in ESAC’s Client Assurance Program by executing and complying with the terms of this Agreement.
17. **“Regulatory Agency”** means any federal, state or local agency whose function includes or pertains to the regulation of professional employer organizations or their operations.
18. **“Reported Failure”** means one or more Complaints, provided the number of such Complaints does not constitute a Substantial Failure, if such Complaint(s) are not dismissed as provided in Article J, Section 4 below.
19. **“Standards and Procedures”** means the standards and procedures for accreditation and participation in the Client Assurance Program established by ESAC, as amended from time to time.
20. **“Substantial Failure”** means (a) Complaints made by, or on behalf of, the greater of five (5) Covered Clients or one percent (1%) of Covered Clients of the Participant, if such Complaint(s) are not dismissed as provided in Article J, Section 5 below or (b) Complaints determined by the Compliance Committee to pose a substantial risk to the Client Assurance Program.
21. **“Surety Bond”** means a surety bond of which the Participant is the principal and the Trust for the benefit of Covered Clients is the obligee.
22. **“Trust”** means that certain trust indenture initially entered into the 22nd day of December 1999, known as the “Employer Services Trust,” by and between ESAC and the Trustee(s) who have executed the instrument, as may be amended from time to time.

23. **“Trustee”** means the person who holds the office of Trustee under the Trust.
24. **“Worksite Employee”** means any person whose employment status with the Participant has been recognized by completion of Internal Revenue Service Form W-4, who is treated as an employee of the Participant on its payroll records, and who provides services for a Covered Client.

C. TERM.

This Agreement shall commence on the date on which the Agreement is executed by a duly authorized representative of ESAC, following execution by a duly authorized representative of the Participant. The Agreement shall remain in effect until terminated in accordance with the provisions of Article L as set forth below.

D. CONDITIONS OF PARTICIPATION.

The following shall be conditions which a Participant must meet on the effective date of this Agreement and which must be continually met during the term of participation:

1. **ESAC Accreditation.** The Participant must be accredited in good standing by ESAC, maintain such accreditation, and abide by ESAC’s *Standards and Procedures* during the term of this Agreement. If the Participant ceases to be accredited for any reason, it shall immediately cease to be a Participant.
2. **Representations and Warranties.** The representations and warranties contained in Article G shall be true and correct as of the date of this Agreement and shall continue to be true and correct at any time while this Agreement is effective.
3. **Surety Indemnification Agreement and Bond.** The Participant has executed and complied with an Indemnity agreement in favor of the ESAC Surety(ies) in the form set forth in Attachment B and has executed as the Principal the bond form set forth in Attachment B.
4. **Payment of Accreditation Fees and Assessments.** The Participant agrees to pay when due all Accreditation Fees and Assessments as provided in this Agreement.

E. ASSESSMENTS.

1. **Compliance Assessment.** In addition to the Accreditation Fees, the Participant agrees to pay a special assessment (“Compliance Assessment”) in the event that any state agency gives notice to ESAC of the agency’s intent to file a claim against an Affidavit of Compliance Bond because of an alleged default by the Participant. In such case, the Participant shall pay to ESAC, within ten (10) days of written notice, a cash deposit equal to the lesser of (i) the Affidavit of Compliance Bond(s) against which ESAC has received notice of intent to claim, or (ii) the amount of such claim(s). The obligation set forth in this Section E.1. shall be absolute and unconditional upon receipt of written notice described above. However, ESAC shall cooperate with the Participant so as to permit the Participant who has made such a cash deposit to exercise all of its legal rights to contest the validity or enforceability of the claim made against such Participant. ESAC shall promptly return to the Participant any portion of any cash deposit returned to ESAC from an applicable state agency or court. Failure to pay a Compliance Assessment to ESAC within ten (10) days of written notice shall result in an immediate Involuntary Termination of Accreditation, as defined in the *Standards and Procedures*, which is not subject to appeal.
2. **Recovery Assessments.** In addition to any other fees and assessments, the Participant agrees to pay a recovery assessment (“Recovery Assessment”) in the event that Participant provides services to an entity that was a Covered Client of a Participant PEO that defaulted (“Defaulted PEO”) within 365 days of the date of such Default. Participant agrees to pay the Trust or its subrogees the monthly Recovery Assessment by not later than the 15th day of the month following the month in which wages were paid. The Recovery Assessment shall equal twenty-five percent of all administrative fees paid by such client, or its successors in interest. Participant shall pay the Recovery Assessment until (i) the client or successor in interest is no longer a client of the Participant, or (ii) the Trust or its subrogees have recovered 100% of the aggregate of all claims paid related to the Default of the Defaulted PEO, considering all amounts received by the Trust other than the proceeds of any Surety Bond. Participants shall provide documentation to verify the amount of

wages upon which the Recovery Assessment is based and shall provide access to such other records as deemed relevant by ESAC for such verification.

3. **Disputed Recovery Assessments.** In the event a Participant, in good faith, has a bona fide dispute as to the amount of any assessment permitted under this Agreement, Participant shall notify ESAC within five (5) Business Days following receipt of notice of such assessment of the amount that it disputes and the basis and grounds for such dispute. Such notice shall be in writing. The Participant further agrees to provide any additional information regarding such dispute as may be requested by ESAC. Participant further agrees to pay any amount of such assessment, or any additional assessments, for which it does not have a good faith dispute. Any unresolved dispute regarding assessments shall be submitted to mediation and arbitration under this Agreement.
4. Recovery Assessments shall be payable to ESAC within the later of (i) thirty (30) days following the due date of payment of such Recovery Assessments, or (ii) ten (10) Business Days following the final determination of any disputed Recovery Assessments.

F. INFORMATION PROVIDED TO PARTICIPANTS.

In order to maximize the opportunity to collect Recovery Assessments to offset any losses that the Trust and ESAC Surety(ies) may incur due to a Default of a Participant PEO (“Defaulted PEO”), ESAC shall assist any interested Participant PEOs in making service proposals to the clients of a Defaulted PEO as quickly and efficiently as possible. On determining that a Participant is in Default, ESAC shall endeavor to collect from all clients of the Defaulted PEO information required for Participant PEOs to make a proposal for services. ESAC shall furnish a copy of such information to all Participants. The nature and form of the information necessary for preparing proposals will be that which has been previously developed and approved by the majority of Participants.

G. PARTICIPANT’S REPRESENTATIONS AND WARRANTIES.

The Participant makes the following representations and warranties that shall remain true and correct so long as this Agreement shall be in effect:

1. The Participant shall not utilize capital (whether equity or debt or a combination thereof) to be invested, advanced or loaned to the Participant until the third party making such investment is legally bound to do so pursuant to one or more writings that are enforceable against such third party by the Participant. Further, the Participant shall not incur obligations for which the ability to repay is contingent upon such a future investment, advance or loan unless and until the third party to make such investment, advance or loan is legally obligated to do so pursuant to one or more writings enforceable by the Participant against such third party.
2. Participant shall adopt payment and credit policies and monitoring procedures that represent reasonable practices and procedures within the industry. Participant shall require all clients to agree to adhere to such policies and procedures. Such credit policies and monitoring procedures shall substantially conform to the following standards:
 - a) Credit will not be extended to any client for the payment of service fees except under one of the following conditions:
 - i. Client has a timely credit payment history as verified by its history with the Participant or by other reliable credit firm(s).
 - ii. Client provides a surety indemnification, cash deposit, bank certificate of deposit, bank letter of credit, or some other acceptable surety for the estimated service fee amount to be extended as credit.
 - iii. Client provides the personal guarantee of its officer(s) or owner(s) whose credit worthiness has been verified by audited financial statements, tax returns, or background credit check.
 - b) The payment of invoiced client service fees will be made by all clients each pay period in accordance with the terms of the client service agreement and will be monitored and enforced in the following manner:
 - i. All invoiced service fees shall be paid in full by all clients such that verifiable funds are received by the Participant within not more than one (1) Business Day after each payday for Worksite Employees assigned to the client.

- ii. A receivables report covering all clients will be reviewed by a responsible PEO manager each Business Day for verification of the timely payment of all invoiced amounts by each client.
 - iii. Any client, except those approved for credit as provided for in 2(a) above, that has not paid all invoiced amounts in a timely manner will be contacted immediately and shall not be given more than one pay period to cure the default, with notice that failure to cure the default will result in immediate termination of the service agreement and termination or transfer of the assigned Worksite Employees. Nothing herein shall prevent an accredited PEO from establishing or enforcing a more conservative accounts receivable collections policy.
 - iv. In the case of any termination of a client service agreement for any reason, all Worksite Employees assigned to the client will be immediately notified in writing of their termination or transfer to another client worksite of the Participant.
3. As of the date of this Agreement, the Participant has consulted with counsel duly qualified to advise it in the area of federal, state and local regulations pertaining to the operation of a professional employer organization; and Participant shall at all times comply with applicable law and regulations regarding its business and operational procedures and will take such steps as it deems reasonably necessary in order to limit its exposure to adverse fines and penalties to which it might otherwise become subject.
4. Participant shall create, maintain and adhere to pricing procedures and models, business plans, and internal control and audit procedures reasonably prudent in order for a professional employer organization to prevent acts of infidelity by either owners or employees and to maintain its financial and operational integrity.
5. The annual audited financial statements and internal financial statements required to be presented to ESAC and to its Surety(ies) as set forth in the *Standards and Procedures*, are true and correct and fairly representative of the Participant's financial condition and other results of operations for the period reported.
6. Except as disclosed on Attachment C attached hereto, during the five (5) years ending with the effective date hereof, Participant has not incurred a loss or claim in excess of \$25,000 on account of fraud or dishonesty of any officer or employee.
7. Except as disclosed on Attachment C attached hereto, during the five (5) years ending with the effective date hereof, Participant has not incurred a loss or claim in excess of \$25,000 on account of errors or omissions of the type for which coverage is generally available under the errors and omissions policy required to be maintained by the Participant in accordance with *Standards and Procedures*.
8. Except as disclosed on Attachment C, attached hereto, Participant has no knowledge of any facts or circumstances that may give rise to a claim that, if it had occurred within the past five (5) years, would require disclosure pursuant to Sections 6 or 7 of this Article.

H. CLIENT ASSURANCE PROGRAM.

1. **Extent of Client Assurance Program.** So long as this Agreement is in effect, any person who is a Covered Client of the Participant and who is in compliance with the conditions of coverage set forth in the Client Participation Certificate (Attachment A) shall, if a Default with respect to the Participant has occurred, be entitled to reimbursement or payment of any Client Assurance Program Obligations, subject to the terms, conditions and limitations set forth in the Client Participation Certificate (Attachment A).
2. **Representations by Participant.**
 - a) Participants shall not make any statement that contains a material misrepresentation of the terms, conditions or benefits of the Client Assurance Program provided to a Covered Client by the Trust.
 - b) Representations by the Participant shall be limited to those specifically contained in this Participation Agreement, the Bylaws of ESAC, the Client Participation Certificate (Attachment A), or other material published by ESAC.
 - c) Violation of the terms of 2.a) or 2.b), above, by the Participant or its representative shall constitute a Default of this Agreement.
3. **Applicable Procedures.** In order for ESAC's Surety to provide bond coverage for its clients, a Participant must maintain with ESAC a list of all PEO clients, updated at least monthly, including such

information as ESAC shall require to enroll clients in ESAC's Client Assurance Program, and information required by state licensing and registration agencies as a condition of approving ESAC ("PEO Client List"). Participant must also provide each new client an electronic copy of the Participant's Certificate of Accreditation and the Client Participation Certificate (Attachment A). A Participant retains primary responsibility to provide this information to each of its Covered Clients and to notify its Covered Clients in this regard. However, upon a Participant's request and consent, ESAC agrees to provide the Participant's clients with the Certificate of Accreditation and Participation Certificate as part of its accreditation services. The Participant may also elect to have ESAC send to its Covered Clients periodic electronic confirmations of the Participant's continuing accreditation. ESAC will provide clients methods to independently verify the Participant's continued accreditation and the client's enrollment in the Client Assurance Program.

I. INDEMNIFICATION AND RELEASE.

Participant agrees to indemnify, protect and hold harmless ESAC, the Trust, ESAC's Compliance Committee members, Claims Committee members, ESAC accredited PEOs and their representatives with respect to actions of their representatives while serving in any official volunteer capacity with ESAC and ESAC Surety(ies), and the respective affiliates, officers, directors, employees, attorneys, agents, trustees, representatives, successors and assigns of each (all of the aforementioned indemnified parties referred to as "Indemnified Parties") from and against any and all liability, expense (including court costs and attorneys' fees), and claims for damage of any nature whatsoever, whether known or unknown as though expressly set forth and described herein, which Indemnified Parties may incur, suffer, become liable for, or which may be asserted or claimed against one or more Indemnified Parties as a result of one or more Defaults or alleged Defaults, as defined herein, or as a result of performing responsibilities related to the Client Assurance Program caused by such Default by the Participant. The duty to indemnify includes the duty to pay any award imposed by an administrative agency or judgment or settlement reached in a court action.

The indemnification contained in this Agreement shall specifically include all costs, including court costs, reasonable attorneys' fees and expenses incurred in connection with the enforcement of any such indemnification. If it is necessary for an Indemnified Party entitled to indemnification to pay any judgment, order or decree, all costs and expenses thereof incurred by Indemnified Party entitled to indemnification, including all court costs and reasonable attorney's fees, costs and expenses, and further including any such attorneys' fees or expenses incurred in enforcing the provisions of such indemnification, shall be paid by the Participant to Indemnified Party entitled to indemnification within ten (10) Business Days from receipt of written demand by Indemnified Party entitled to indemnification, together with interest from the date of payment of the amount to be indemnified paid at 5% per annum plus the federal primary credit rate on advances to member banks in effect at the Federal Reserve Bank of St. Louis on the date or dates of payment.

No Indemnified Party shall be liable for any decision, election or other action or nonaction taken or not taken including without limitation, the exercise or non-exercise of any discretionary authority granted or available to such Indemnified Party pursuant to this Agreement, ESAC Bylaws, or the *Standards and Procedures*, as such may be amended from time to time, provided such person acted in good faith in so acting. On behalf of itself, its affiliates, officers, directors, agents, representatives and successors and assigns, the Participant releases each and every ESAC Indemnified Party for any decision, election or other action or nonaction taken or not taken provided such person acted in good faith in so acting, without regard to fault or negligence.

Participant, on behalf of itself and its successors and assigns, releases any person, including without limitation, a Covered Client, its officers, directors, and agents, and Worksite Employees from any claim that Participant, its affiliates, officers, directors, employees, agents, representatives, successors or assigns might have, either now or in the future on account of, or arising out of, any allegation of a Default hereunder so long as such person acted in good faith. It is intended that the foregoing release shall constitute qualified immunity from liability

for defamation, libel and slander. Such qualified immunity shall not apply only if it is shown by Participant that such allegation was false and made willfully with the intent to damage or injure Participant or was otherwise made with malice.

J. DEFAULT.

1. Upon the discovery or receipt of an allegation of a Default or a possible occurrence of a Default, the Compliance Committee and the Participant shall be immediately notified of the allegation or occurrence.
2. In the case of one or more Complaints, the Participant shall be deemed to be in Default (a) in the case of a Reported Failure, at such time as set forth in Section 4 below; or (b) in the case of a Substantial Failure, at such time as set forth in Section 5 below. In either case, at such time as determined in Section 4 or 5 as the case may be, the Compliance Committee shall commence Default Proceedings pursuant to Article K.
3. In the case of a Complaint received during the claims period following a Voluntary Relinquishment of Accreditation or an Agreed Termination of Accreditation, the Complaint shall be treated in the same manner as a Complaint described in Section 2 of this Article.
4. In the case of a Reported Failure:
 - a) Within two (2) Business Days after receipt by the Compliance Committee, the Compliance Committee shall attempt to establish an informal conference ("Initial Conference") with the Participant.
 - b) If the Complaint cannot be resolved to the satisfaction of the Compliance Committee at such Initial Conference, then a Mediation Hearing shall be scheduled within not more than five (5) Business Days following the date of the Initial Conference.
 - c) The mediation hearing shall be conducted by the Compliance Committee. The Participant shall have a representative present. If a Covered Client has made or joined in the Complaint, the Covered Client shall be invited to provide a representative. If the Complaint has been made by a Regulatory Agency or other third party, such Regulatory Agency or other party shall be invited to provide a representative.
 - d) If the Complaint cannot be resolved to the satisfaction of the Compliance Committee through mediation, and if a Covered Client, Regulatory Agency, or Insurer, has made or joined in the Complaint, then the matter shall be submitted to arbitration in accordance with Article N, Section 2. Unless otherwise agreed by the parties or ordered by the arbitrator, the arbitration hearing shall be scheduled within not more than thirty (30) Business days following the Mediation Hearing.
 - e) The arbitration shall be conducted by the Compliance Committee in accordance with the arbitration procedures specified in Article N, Section 2. The Participant and any Covered Client, Regulatory Agency, or Insurer, who has made or joined in a Complaint may attend and may be represented by counsel.
 - f) If at such time as the determination of the arbitrators becomes final, and providing such additional time, if any, is provided in the determination of the arbitrators for the Participant to cure any Reported Failure, the Participant has not cured any such Reported Failure, then the Participant shall be in Default, in which case, after the decision has been ratified by the Board of Directors, the Compliance Committee shall commence Default Proceedings.
 - g) If the Complaint cannot be resolved to the satisfaction of the Compliance Committee at a mediation hearing and if a Covered Client, Regulatory Agency, or Insurer has not made or joined in the Complaint, then the Compliance Committee, in its sole discretion, shall make a determination of whether the Complaint has been resolved to the satisfaction of the Compliance Committee. In making such determination, the Compliance Committee shall be entitled, but not required, to conduct such investigation, including, but not limited to, receiving statements from persons with relevant knowledge and receiving written documents and instruments as the Compliance Committee shall deem necessary or desirable to enable it to resolve the Complaint. At the conclusion of such determination, the Compliance Committee shall release a written report of its findings. If at such time as the report of the Compliance Committee is issued, and providing such additional time, if any, is provided in such report for the Participant to cure any Reported Failure, the Participant has not cured any such Reported Failure, then the Participant shall be in Default, in which case, after the decision has been ratified by the Board of Directors, the Compliance Committee shall commence Default Proceedings.
5. In the case of a Substantial Failure:
 - a) Within twenty four hours (or as soon as practicable) after receipt by the Compliance Committee of a Complaint concerning a Substantial Failure, the Compliance Committee shall attempt to establish a conference ("Initial Conference") with the Participant.
 - b) The Participant shall be in Default and Default Proceedings may be started if the Compliance Committee determines: (1) that a Substantial Failure has occurred; and (2) that the Substantial Failure cannot be cured within five (5) Business Days, or at the end of the five (5) Business Days, the Substantial Failure has not been cured.
 - c) The Compliance Committee shall have sole discretion to determine: (1) whether a Substantial Failure has occurred; (2) whether a Substantial Failure is capable of cure within five or fewer Business Days; and, (3) whether a Substantial Failure has in fact been cured with the five Business Day period.
 - d) The Compliance Committee shall investigate all complaints alleging a Substantial Failure. The Compliance Committee may interview persons, take statements, and request documentation. The Participant shall cooperate fully with the investigation of the Compliance Committee. The Compliance Committee may declare a Participant in Default based on its investigation, even if the Complaint or Initial Conference does not establish that a Substantial Failure has occurred.
 - e) The Compliance Committee shall notify any Covered Client that has made a Complaint if: (1) the Compliance Committee determines that there has not been a Substantial Failure; or (2) the Substantial Failure has been resolved to the satisfaction of the Compliance Committee. The Compliance Committee may also notify any Regulatory Agency or Insurance Carrier that has a legitimate interest in the Complaint. Such notice shall be in writing and shall clearly state that such Complaints have been resolved to the satisfaction of the Compliance Committee and that no further action shall be taken by ESAC with respect to such Complaints.
6. In connection with handling a Complaint, Reported Failure, or Substantial Failure, the Compliance Committee may rely upon and use the provisions of the section "Procedures for Handling Alleged Failures, Violations, Defaults & Claims" of the *Standards and Procedures*, to the extent such provisions do not conflict with the provisions of this Section J.
7. In the event of a Default, the defaulting Participant releases each and every ESAC Indemnified Party, all Covered Clients, together with their respective directors, officers, employees and agents, and all other Participants in the Client Assurance Program and all other ESAC accredited PEOs, together with their respective directors, officers, employees and agents from and against any act or omission of any Indemnified Party related to (i) the termination of a Client's relationship or contract with the defaulting Participant on or after a Default; (ii) the gathering and dissemination of information as contemplated in Section F; and (iii) contracting with, or providing services by a Participant to a Covered Client at any time after the Default. The Participant further agrees that any client or Covered Client at the time of a Default shall be entitled to immediately terminate its contract or agreement with the defaulting Participant without breach or penalty.

K. DEFAULT PROCEEDINGS.

In the event of a Default, the following procedures shall apply:

- a) Notification in writing of the Participant's Default shall be sent to all Covered Clients, the Trust and applicable Regulatory Agencies and ESAC Surety(ies).
- b) Initiation of procedures to fulfill the obligations of ESAC and the Trust under the affected Client Participation Certificates (Attachment A).
- c) Initiation of procedures to recover any claim-related losses.

L. TERMINATION.

1. This Agreement shall be terminated upon (a) a Default, (b) failure to pay an Affidavit of Compliance Assessment as provided in Article E.1., (c) the cessation of accreditation, (d) not less than thirty (30) days written notice from ESAC, or (e) upon termination without renewal or replacement of any Surety Bond covering any Financial Obligations of the Participant. In the event of any such termination of this Agreement, ESAC will endeavor to provide notice as soon as practical to the Participant and to the Covered Clients of the Participant.
2. The termination of this Agreement shall not affect the obligations of the Participant, including without limitation, the Representations and Warranties contained in Article G above and the Indemnifications contained in Article I hereof, all of which shall survive the termination of this Agreement.

M. LIMITATION OF LIABILITY.

No ESAC Indemnified Party (as defined in Article I) shall be liable for any decision, election or other action or nonaction taken or not taken in their official capacities, provided such person acted in good faith, without regard to fault or negligence. No other participant in the PEO Client Assurance Program and no other ESAC accredited PEO has any liability or obligation, as a guarantor, surety, participant or otherwise, to the Participant, the Participant's Covered Clients, ESAC, the Trust or any other person whatsoever with respect to the obligations of ESAC or the Trust with respect to this agreement.

N. DISPUTE RESOLUTION.

1. **Mediation.** If a dispute arises out of or relates to this Agreement, or breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to attempt in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association before resorting to arbitration, litigation, or other dispute resolution procedure.
2. **Arbitration.** If at any time during the course of this Agreement or following the termination of the Agreement, there shall arise a dispute arising out of or under this Agreement or with respect to its terms, its interpretation, a breach thereof, any aspect of the parties' relationship and the transactions contemplated herein, or any action cognizable under the Federal Arbitration Act, the parties agree to submit to alternative dispute resolution through arbitration. Such arbitration shall be conducted by the American Arbitration Association. However, in the case of a Reported Default, arbitration shall be conducted by the Compliance Committee in accordance with the Rules of the American Arbitration Association. No civil action concerning any dispute within the scope of this arbitration provision, which the parties intend to be broad in scope, shall be instituted before any court but shall be submitted to final and binding arbitration as herein provided. Such arbitration shall be conducted in accordance with the rules of such Association before a single arbitrator. All arbitration proceedings shall take place at a location mutually agreed by the parties, otherwise in Little Rock, Arkansas. All costs of arbitration, including attorneys' fees and other costs attendant thereto, shall be allocated among the parties according to the arbitrator's discretion, who may award all costs to one party or allocate the costs between the parties. Further, the arbitrator's award resulting from such arbitration may be confirmed and entered as a final judgment in any court of competent jurisdiction and enforced accordingly. The parties expressly agree that proceeding to arbitration and obtaining an award thereunder shall be a condition precedent to bringing or maintaining any action in any court with respect to any dispute arising under this Agreement, except for the

institution of a civil action to maintain the status quo, subject to each party's right of adequate protection, during the pendency of any arbitration proceeding.

O. CONFIDENTIALITY.

1. Except as provided below, "Confidential Information" means any information, including, without limitation, any technical, financial, product, marketing and/or client information and any information relating to the present and future business operations or financial condition of Participant, whether such information is written or oral, and which is (i) if in writing, clearly marked as "confidential" or "proprietary," or (ii) if not in writing, designated as confidential or proprietary in writing at the time of disclosure to ESAC. All client names and addresses and financial statements, other than those of a Participant that is subject to reporting under the 1934 Securities and Exchange Act, as amended, shall be subject to the rebuttable presumption that they are Confidential Information. It is understood that the term "Confidential Information" does not include information which:
 - a) has been or becomes published or is now or is in the future in the public domain through no action of ESAC;
 - b) subsequent to disclosure hereunder, is lawfully received by ESAC from a third party with no restriction of rights to disseminate and without other notice of any restriction;
 - c) is disclosed with the prior written approval of the Participant, including without limitation an on-going or blanket approval;
 - d) is obligated to be produced under order of a court of competent jurisdiction or a valid administrative or congressional subpoena;
 - e) is obligated to be produced to federal or state regulatory authorities as required by law;
 - f) following a Default, is disclosed pursuant to Articles F, J and K, or otherwise by ESAC in carrying out its obligations under this Agreement; or
 - g) in the event of mediation or arbitration or a legal proceeding involving the Participant or a successor or assignee thereof, to the extent necessary to prosecute or defend any claim in such proceeding.
2. Except as permitted in Section 1 above, ESAC shall not disclose any Confidential Information to any party other than to its directors, officers, employees, or agents who have executed a nondisclosure agreement prohibiting the disclosure of Confidential Information as necessary to accomplish ESAC's responsibilities in administering the Client Assurance Program and ESAC accreditation as provided for in this Agreement, its Bylaws, and the *Standards and Procedures*, as such may be amended from time to time. ESAC shall cause all of its own directors, officers and employees to be bound by this confidentiality provision and shall use its best efforts to obtain a substantially similar agreement from its independent contractors, including without limitation, ESAC Surety(ies), that ESAC reasonably believes may come in contact with Confidential Information.

P. GENERAL.

1. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives or heirs of the respective parties.
2. **Captions.** Captions used in this Agreement are for convenience only and shall not be construed in interpreting this Agreement.
3. **Counterparts.** This Agreement may be executed in counterpart copies, all of which shall constitute but a single instrument.
4. **Governing Law, Jurisdiction and Venue.** This Agreement shall not be effective until accepted and executed by ESAC in Little Rock, Pulaski County, Arkansas; and shall be governed by and construed in accordance with the laws of the State of Arkansas. Subject to the provisions requiring Mediation and Arbitration as set forth in Article N above, this Agreement may be enforced in the Circuit or Chancery Courts of Pulaski County, Arkansas in Little Rock, Arkansas. By execution of this Agreement, the parties agree to the jurisdiction of the Circuit and Chancery Courts of Pulaski County, Arkansas, to enforce the provisions of this Agreement, and agree that this Agreement is one that will be performed, in part, within the State of Arkansas, and that the Circuit and Chancery Courts of Pulaski

County, Arkansas shall have personal jurisdiction over it in any action or actions.

5. **Integration.** This Agreement together with any Attachments, which are hereby incorporated by reference word for word, constitutes the entire Agreement between the parties with regard to the subject matter, and no other agreement, statement, promise, or practice between the parties relating to the subject matter shall be binding upon the parties. All prior and contemporaneous agreements, whether written or oral, are merged herein. This Agreement may be changed only by written amendment in accordance with Section P.6. below.
6. **Amendment.** ESAC may amend the terms of this Agreement at any time in its sole discretion, effective upon ninety (90) days prior written notice via an ESAC bulletin to Participant or the Participant's earlier written consent, except in the case of any amendment required by ESAC Surety(s) or any Regulatory Agency, in which case such amendment shall be effective on the date set forth in the notice of amendment. The Participant's continued accreditation from the date of such notice shall be deemed to constitute its affirmative acknowledgment of, and agreement to abide and be bound by, the modified terms. A current version of this Agreement is always available at ESAC.org.
7. **Notices.** Notices to the parties with respect to this Agreement shall be delivered in the form of (a) certified mail, return receipt requested, (b) overnight courier service, (c) hand delivery with receipt, (d) e-mail, with delivery confirmation and read receipt or (e) facsimile or telephone followed by one of the above methods of written verification.
- Notices for PEO Participants shall be sent to the contact information associated with the individual authorized and designated by the PEO Participant as its "Recipient of Legal Notice" as a part of Participant's accreditation reporting within ESAC's eFile system.

Notices for ESAC shall be sent to:

ESAC
One Financial Centre, Suite 327
650 S. Shackleford Road
Little Rock, Arkansas 72211
Phone: (501) 219-2045 • Fax: (501) 219-2603
E-mail: legal@ESACmail.org

8. **Survival.** The representations, warranties, and indemnities provided herein shall survive the termination of this Agreement.
9. **Third Party Beneficiaries.** The parties specifically agree that no persons, other than the parties hereto, have any interest in this Agreement, no persons shall be considered intended third party beneficiaries and no persons, other than the parties hereto, shall be entitled to rely upon the provisions of this Agreement for any purpose.
10. **Waiver.** Failure of either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement, or any part hereof, shall not prejudice either party as to any subsequent performance, actions, or breaches.
11. **Supremacy.** A Default by the Participant shall be handled according to the terms of this Agreement. Any other failure to comply with the terms and conditions of, or a breach of any representation or warranty contained in, this Agreement is grounds for disciplinary action pursuant to the *Standards and Procedures*.
12. **Acknowledgement.** The undersigned, a duly authorized Responsible Person (as that term is defined in the *Standards and Procedures*) of Participant, enters into this Agreement on behalf of Participant, acknowledging that he/she has freely done so after having read and understood all of the terms and conditions contained herein, and after the opportunity to consult with legal counsel.

IN WITNESS WHEREOF, this Agreement has been executed on the dates written below.

Participant: _____

By: _____

(Signature)

(Type or print name and title)

Date: _____

ESAC:

By: _____

(Signature)

(Type or print name and title)

Date: _____

This certificate ("Certificate") may be accessed from the website of the Employer Services Assurance Corporation ("ESAC") at www.ESAC.org by an enrolled client of an employer services firm ("Service Firm") who participates in ESAC's Client Assurance Program.

1. What Is the Purpose of this Certificate?

This Certificate contains the terms of the Client Assurance Program that ESAC administers through the Employer Services Trust ("Trust") and the conditions under which you may be eligible for reimbursement if your Service Firm does not perform certain employer responsibilities.

2. What Technical Terms Are Defined?

Technical terms are defined in section 15 of this Certificate. Additional terms are defined as they first occur in the text. Defined terms are capitalized when they are used below.

3. How Long Does This Certificate Last?

This Certificate takes effect automatically when your Service Firm enrolls you in the Client Assurance Program. The Certificate terminates automatically if you cease to be a client of your Service Firm or if your Service Firm's participation is terminated. In addition, you may terminate by giving written notice to ESAC; and ESAC may terminate the Certificate or the Client Assurance Program by giving written notice to you. Termination does not affect any claims that are incurred before the effective date of termination.

4. What Are My Benefits?

According to the terms of this Certificate, the Trust will reimburse you for, or pay, if your Service Firm fails to pay, any of the following:

- Wage Obligations
- Life and Health Insurance Premium Obligations
- Employee Benefit Obligations
- Employment Tax Obligations
- Workers' Compensation Insurance Premium Obligations

The failure to pay any of these obligations is a default ("Default").

5. How Are Benefits Paid?

- a) The benefits are provided solely by surety bond(s) ("Coverage") held by the Trust. Neither ESAC, the Trust, nor the Trustee is an insurer, fiduciary, or guarantor of the benefits.
- b) In case of a Default, proceeds from the Coverage will be paid to the Trust on behalf of your Service Firm's clients. The Trust will distribute the proceeds for claims that are accepted by ESAC's claims committee ("Claims Committee").

6. What Are the Obligations of ESAC and the Trust?

The obligations of ESAC and the Trust are limited to standards compliance monitoring of your Service Firm, obtaining the Coverage, investigating alleged Defaults, and managing and paying any claims. Neither ESAC nor the Trust guarantees any benefits or any of your Service Firm's Financial Obligations, and this Certificate is not a policy of insurance. The Coverage held by the Trust on behalf of the clients of your Service Firm is the only source of financial assurance under this Certificate. Other Service Firms that participate in the Client Assurance Program do not have any responsibility for the obligations of your Service Firm, ESAC or the Trust.

7. What Do I Have to Do to be Eligible for Benefits?

To be eligible for payment of a claim as a covered client ("Covered Client"), you must first satisfy all these requirements:

- a) report any Default and file a claim as required by section 8;
- b) if a Default occurs, terminate your service agreement with your Service Firm before filing a claim (the termination is invalid if it is set aside by a judicial proceeding);
- c) have paid all amounts that you owe to your Service Firm for all pay periods prior to the Default;
- d) assign your claim to the Trust and the Surety and execute any other documents that ESAC determines are reasonably necessary under the Client Assurance Program or the Trust; and
- e) for each Wage Obligation or Employee Benefit Obligation that you are claiming, have the Worksite Employee assign his or her claim to the Trust and the Surety.

8. How Do I Report a Default and File a Claim?

- a) If you know about a possible Default, or if one of your officers or managers knows about a possible Default, then you must immediately notify ESAC by phone or emailing legal@ESACmail.org.
- b) To file a claim, you must provide completed claims forms to ESAC within 30 days after you receive notice of a Default from ESAC; and

supplement your claims filing with any additional information that ESAC requests in order to decide on the claim. ESAC will provide claims forms on request.

9. How Are Disputes Over a Claim Resolved?

If you or your Service Firm disputes the validity or amount of a claim or there are conflicting claims, the Claims Committee may resolve the dispute in its discretion or may submit any unsettled dispute to arbitration under section 13. If the Claims Committee chooses to resolve the dispute, either you or your Service Firm can submit the dispute to arbitration under section 13. The Claims Committee may also, at its option, interplead any amounts otherwise payable by depositing these amounts with a court that will resolve the dispute.

10. What Are the Limits on Coverage and on Paying Claims?

a) The Trust holds an underlying surety bond ("Specific Coverage") to cover Financial Obligations exclusively for the benefit of your Service Firm's clients who are covered by the Client Assurance Program. The Trust also holds a \$15 million surety bond ("Excess Coverage") to cover the collective Financial Obligations of all ESAC accredited PEOs. These two bonds together constitute the total amount of Coverage as of the date of this Certificate. The amount of the Coverages may be changed from time to time, but ESAC will endeavor to notify you of any decrease in any component of the Coverage. The amount of Coverage in effect at any time may be verified at www.ESAC.org or by calling or writing ESAC.

b) If a Default occurs, the Trust will pay the Financial Obligations for all of your Service Firm's Covered Clients based on all claims received within the filing period specified in section 8. After the claims period ends and disputed amounts are decided, if the total amount of approved claims for a Default exceeds the amount of Coverage available, the Trust will pay the claims in the following order:

- i. Wage Obligations;
- ii. Life and Health Insurance Premium Obligations;
- iii. Employee Benefit Obligations;
- iv. Employment Tax Obligations;
- v. Workers' Compensation Insurance Premium Obligations

If there is not enough Coverage available to pay all of a class of obligations, the Trust will pay each approved claim within a class on a prorated basis. In the event of a Default by more than one ESAC accredited entity, the Excess Coverage will be used to pay claims in excess of the Specific Coverage according to the dates of occurrence, with claims related to the earliest Default being paid first.

c) The Claims Committee has the sole discretion to decide which claims are properly documented and which obligations the Client Assurance Program covers.

d) The Client Assurance Program does not cover indirect or special or consequential damages, penalties, interest, the cost of legal representation, lost profits, goodwill, exemplary damages, or other forms of claims or damage other than the Financial Obligations listed in section 4 and defined in section 15.

e) The Trust may pay certain claims as follows:

- i. for Employment Tax Obligations, payment may be made directly to the taxing authority;
- ii. for Life and Health Insurance Premium Obligations and Workers' Compensation Insurance Premium Obligations, payment may be made directly to the insurance carrier;
- iii. for Wage Obligations and Employee Benefit Obligations, payment may be made directly to the applicable Worksite Employee, unless the employee has validly assigned to you the right to those payments.

f) Any Life and Health Insurance Premium Obligation or Workers' Compensation Insurance Premium Obligation is limited to premium payable not more than 60 days before the applicable Default.

11. Who Can Act for Me, and What Assignments Am I Making?

By participating in the Client Assurance Program:

- a) you appoint the Trustee of the Trust and ESAC as your attorneys-in-fact, and you authorize either the Trustee or ESAC to take any action

concerning the Coverage or the Surety that you could take, including the power to:

- i. receive proceeds on your behalf from the Coverage held by the Trust, and to hold and pay out any proceeds for your benefit;
 - ii. compromise or settle any claim or conduct any other dealings with the Surety on your behalf;
 - iii. sign a document of subrogation concerning any claim or benefit under the Client Assurance Program; and
 - iv. hold, as your agent, any interest in any Coverage held by the Trust.
- b) you assign to the Trust and the Trustee all the interest you may have or acquire in any Coverage held by the Trust, and in the proceeds from this Coverage and in any other trust assets. The Trust will use the proceeds to pay your claims and the claims of other Covered Clients of your Service Firm.
- c) you will sign any other document that ESAC requests to reaffirm or acknowledge the appointments and assignments in this section 11.
- d) nothing in this Certificate limits any actions you may take to recover any amounts due to you from your Service Firm, except for your assignment of claims made under the terms of this Certificate as a condition of being eligible for reimbursement by the Trust. Your rights and benefits under the Client Assurance Program are in addition to, and not in place of, any rights you may have under the service agreement with your Service Firm.

12. How Does ESAC Notify Me?

To notify you, ESAC will use the address and contact information provided by your Service Firm as part of its ongoing accreditation requirements and its enrollment of you into the Client Assurance Program. ESAC has no liability for using the latest address of record for you. The Trust, Trustee and Surety are entitled to rely solely on ESAC for all notices to you that this Certificate requires. You may confirm your enrollment, the accuracy of your contact information, and print a copy of this Certificate from your Service Firm's accreditation verification page or from ESAC's website at www.ESAC.org.

13. How Are Disputes Resolved?

- a) If there is a dispute among you, ESAC, the Claims Committee, Trust, Trustee or your Service Firm about any matter related to this Certificate, the Trust, Coverage held by the Trust, or the Client Assurance Program, the parties must make a good-faith effort to resolve the dispute by direct discussion on the telephone or in person. Any unresolved dispute must be resolved exclusively through final and binding arbitration under the Federal Arbitration Act. This requirement to arbitrate only applies to matters related to this Certificate and the Client Assurance Program. By accepting this Certificate and participating in the Client Assurance Program, you agree to arbitration.
- b) If you want to seek arbitration, you must file a demand with the American Arbitration Association within the applicable statute of limitations. A copy of the demand must be simultaneously served on all other parties.
- c) The American Arbitration Association will administer the arbitration under its Commercial Arbitration Rules, using a single arbitrator. The arbitration proceedings will take place at a location that the parties mutually agree on. If they cannot agree, the proceedings will take place in Little Rock, Arkansas. The substantive law of Arkansas and of the United States will bind the arbitrator.
- d) The arbitrator may award any relief available under law. The cost of arbitration—including attorneys' fees, the American Arbitration Association's fees, the arbitrator's fees, and the cost of a hearing room—are subject to the arbitrator's award. Any judgment on the award may be entered and enforced in any court with jurisdiction.
- e) As the sole exception to arbitration, any party may seek injunction to preserve the status quo before and during arbitration.
- f) This requirement to arbitrate survives the breach or termination of this Certificate by any party for any reason.
- g) You do not have standing to dispute any claims or obligations to other Covered Clients of your Service Firm.

14. General Provisions:

- a) **Binding Effect.** This Certificate is binding on and inures to the benefit of the respective successors and assigns of you, ESAC, the Claims Committee, Trust, Trustee or your Service Firm.
- b) **Governing Law.** The laws of Arkansas govern this Certificate and the terms of the Client Assurance Program.
- d) **Integration.** This Certificate constitutes the entire terms of the Client Assurance Program. No other agreement, statement, promise, or

practice concerning the subject matter is binding on you, ESAC, the Claims Committee, Trust, Trustee or your Service Firm.

- e) **Amendment.** ESAC may amend this Certificate at any time, by giving you 90 days' prior written notice. But if the Surety providing Coverage under the Client Assurance Program or any regulatory agency requires an amendment, ESAC may amend the Certificate on the date that it gives you written notice.
- f) **Notices to ESAC.** Except as provided in section 8(a) and (b), you must give notice to ESAC by one of the following means: (i) certified mail, return receipt requested; (ii) overnight courier service; (iii) hand delivery with receipt; or (iv) facsimile, e-mail or telephone, followed by one of the above. You must send the notice to ESAC's address provided on the Certificate of Coverage, unless this information is updated by written notice to you.
- g) **Third Party Beneficiaries.** Only you, ESAC, the Claims Committee, Trust, Trustee or your Service Firm have an interest in the Client Assurance Program. More specifically, there is no intended third-party beneficiary, and only you, ESAC, the Claims Committee, Trust, Trustee or your Service Firm are entitled to rely upon this Certificate.

15. Definition of Technical Terms:

- a) *Employee Benefit Obligation* means the obligation of your Service Firm to collect and remit any elective or voluntary contributions by Worksite Employees with respect to any employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), if the plan is sponsored or co-sponsored by your Service Firm or your Service Firm is otherwise contractually obligated pursuant to an express provision of a written contract to pay such contributions on behalf of the Worksite Employee and clients. Employee Benefit Obligations are covered by this Certificate to the extent the contributions are collected by your Service Firm but not paid over to the policy, plan, or other funding vehicle for the employee benefit plan. The obligations of the Trust are not "plan assets," and ESAC, the Trust, and their agents are not "fiduciaries" within the meaning of ERISA.
- b) *Employment Tax Obligation* means your Service Firm's obligation with respect to Worksite Employees to report and pay in a timely and accurate manner the amount of its liability under applicable law for payment and withholding of federal, state, and local income taxes and employment taxes, and FICA and Medicare taxes, but not including any gross receipt taxes, sales taxes or use taxes.
- c) *Life and Health Insurance Premium Obligation* means the obligation of your Service Firm to pay when due premiums, not subject to a good faith reasonable dispute, for life or health insurance coverage under a Fully Insured group life insurance plan, as defined in Section 79 of the Internal Revenue Code, or a Fully Insured group health plan, as defined in Section 5000 of the Internal Revenue Code, sponsored by your Service Firm for the benefit of its Worksite Employees.
- d) *Wage Obligation* means the obligation of your Service Firm to pay wages to its Worksite Employees according to applicable law. Wages are limited to cash compensation payable to Worksite Employees in the ordinary course of business for which you have paid your Service Firm its service fees.
- e) *Workers' Compensation Insurance Premium Obligation* means the obligation of your Service Firm to pay when due workers' compensation premiums, not subject to a good-faith reasonable dispute, with respect to a Fully Insured workers' compensation policy issued to your Service Firm for the benefit of its Worksite Employees.
- f) *Financial Obligation(s)* means any or all of the obligations of your Service Firm described in a) through e) above.
- g) *Worksite Employee* means any person whose employment status with your Service Firm has been recognized by completing Internal Revenue Service Form W-4, who is treated as an employee of your Service Firm on its payroll records, and who provides services to you.
- h) *Fully Insured* insurance plan means any plan of insurance that is fully insured by a duly licensed carrier. If a portion of the premium cost is determined retrospectively, the financial obligation is limited to that portion of the premium due to be paid in advance or within a policy period without regard to the amount of claims.

ATTACHMENT B: EMPLOYER SERVICES ORGANIZATION SURETY BOND

KNOW ALL MEN BY THESE PRESENT THAT, we _____ (PEO name) (including any PEO operations by any subsidiary or affiliate, now owned or hereinafter acquired, which are combined for the purposes of accreditation by ESAC) of _____ (PEO address), as

Principal, hereinafter called Principal, and Platte River Insurance Company, a Nebraska corporation, as Surety, hereinafter called Surety, are held and firmly bound unto Employer Services Trust, (the Trust) of One Financial Centre, 650 S. Shackleford Rd., Suite 327, Little Rock, Arkansas 72211-3503, as designated agent of the Covered Clients, as hereinafter defined, as Obligees, hereinafter called Obligees, in the sum of _____ (\$ _____) (surety bond amount) for which we hereby bind ourselves, our Administrators, Executors, Heirs, Successors and Assigns firmly by these presents.

Covered Client shall mean a client of the Principal that has executed a written service contract with the Principal pursuant to which Worksite Employees provide services to such client and has been enrolled by Principal in the Client Assurance Program of the Employer Services Assurance Corporation, a nonprofit corporation ("ESAC").

WHEREAS, the Trust has been formed and is maintained for the purpose of acting as the agent of the Covered Clients with respect to this Surety Bond, together with any renewals or replacements and any proceeds thereof; and

WHEREAS, the Client Participation Certificate in the form approved by the Surety and provided to each Covered Client sets forth the terms and conditions under which such Covered Client would be eligible for financial reimbursement, or payment on behalf of, for certain documented losses incurred by such Covered Client as a result of the Principal's failure to perform specific employer responsibilities defined therein as Section 4 of the Client Participation Certificate: Benefits Available to Client: a. "Wage Obligations," b. "Life and Health Insurance Premium Obligations," c. "Employee Benefit Obligations," d. "Employment Tax Obligations," and e. "Workers' Compensation Insurance Premium Obligations."

WHEREAS, each Covered Client by accepting the Client Participation Certificate and participating in the Client Assurance Program:

- a) has assigned to the Trust all of its rights, title and interest in and to this Surety Bond, together with any renewals or replacements and any proceeds thereof, for the purpose of collecting any proceeds thereof in the event of a claim against such obligation and distributing such proceeds among the Covered Clients and their designees;
- b) has designated the Trust as its agent to collect any proceeds of this Surety Bond in the event of a claim against such obligation and distributing such proceeds among the Covered Clients and their designees;
- c) has designated the Trust to act as its agent for the purpose of holding any certificate or evidence of its status as Obligee; and
- d) has designated the Trust as its agent for the purposes of all dealings with the Surety and this Surety Bond, including without limitation, the right to receive notice from Surety on behalf of such Covered Client and to enter into further agreements, compromises, settlements or similar arrangements, as well as execute any further instruments, including subrogation agreements, as the Trust may determine is in the best interest of such Covered Client.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall reimburse the Obligee for all loss paid by the Obligee pursuant to the Client Participation Certificate and as a result of the failure of the Principal to perform specific employer responsibilities as hereinbefore defined, then this obligation to be void, otherwise to remain in full force and effect until cancelled as hereinafter provided.

FURTHER CONDITIONED:

1. This bond is effective on the date signed by the surety below and will continue in force until cancelled by the Surety giving ninety (90) days notice to the Obligee and the Principal at their addresses indicated above.
2. The liability of the Surety shall cease simultaneously with the termination of the Participation Agreement as provided in Section D. Conditions of Participation, of that certain Participation Agreement between Principal and Obligee, Subsection 1. ESAC Accreditation.

3. The Surety, however, will remain liable for any default occurring during the period up to the expiration of said ninety (90) days notice and prior to the date the Principal ceases to be a Participant in the Client Assurance Program of ESAC.

4. The Obligee shall notify the Surety of any default of the Principal hereunder, at the earliest possible time following the discovery of such default and in any event not later than thirty (30) days after such discovery by the Obligee.

5. In the event of the payment by the Surety of any claims hereunder, the Surety shall be subrogated to all the rights of the Obligee with respect to such claims and the Obligee shall execute or have executed whatever documents may be deemed necessary in this regard.

6. Regardless of the number of years this bond remains in force, the number of premiums paid, or the number of claims or claimants, in no event shall the total aggregate liability of the Surety under this bond exceed the above referenced surety bond amount.

7. The Surety shall not be liable under this bond unless Covered Client has satisfied all of the requirements to be eligible for reimbursement or payment of a claim in accordance with Section 7 of the Client Participation Certificate, which has been made available to the Covered Client via a link on the Principal's accreditation verification page or on ESAC's website at www.ESAC.org.

8. That the Surety shall not be subject to any suit, action or proceeding hereunder instituted later than twenty-four (24) months following the termination hereof unless, prior to or within such twenty-four (24) month period, the Obligee has notified the Surety of a default of the Principal hereunder.

9. The Surety shall not be liable for any loss directly or indirectly arising out of, or in any way connected with the use of any arbitrary, ambiguous or incompletely defined data in any data, software or embedded programming, whether or not owned or in the possession of the Principal, or any measures taken with the intention of averting or minimizing any of the above.

10. In case of default under this bond, no principal other than the principal causing such default shall be liable for the loss, and the Surety will only look to the principal causing the default to indemnify the loss.

PRINCIPAL:

By: _____

(Signature)

(Type or print name and title)

Date: _____

SURETY:

By: _____

(Signature)

(Type or print name and title)

Date: _____

ESAC EXCESS SURETY BOND

KNOW ALL MEN BY THESE PRESENTS: That the Principals named on attached Schedule A hereinafter referred to as Principal, and Platte River Insurance Company, a Nebraska corporation, hereinafter referred to as Surety, hereby bind themselves to Employer Services Trust of One Financial Centre, 650 S. Shackleford Rd., Suite 327, Little Rock, Arkansas, 72211-3503, as designated agent of the Covered Clients, hereinafter referred to as Obligees, in an amount not to exceed Fifteen Million Dollars (\$15,000,000.00) in the aggregate on behalf of any one Principal or combination of Principals, for any one loss or combination of losses regardless of the number of years this bond remains in force or the number of premiums paid.

WHEREAS, each listed Principal is accredited in good standing with the Employer Services Assurance Corporation and has an underlying surety bond, and

WHEREAS, a "SURETY BOND APPLICATION AND INDEMNITY AGREEMENT" has been made by each Principal listed on Schedule A attached, and

WHEREAS, the execution of such "SURETY BOND APPLICATION AND INDEMNITY AGREEMENT" which includes a request for this Excess Bond, by a Principal attaches liability as if the Principal had executed this excess bond as Principal.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall reimburse the Obligees for all loss paid by the Obligees pursuant to the Client Participation Certificate and as a result of the failure of the Principal to perform specific employer responsibilities as therein defined, then this obligation to be void, otherwise to remain in full force and effect until cancelled as hereinafter provided.

FURTHER CONDITIONED:

1. This bond is effective on January 1, 2014 and will continue in force until cancelled by the Surety giving ninety (90) days written notice to the Obligees at their address indicated above and the Principal at their address indicated on Schedule A.
2. The liability of the Surety shall cease simultaneously with the termination of the Participation Agreement as provided in Section D, Conditions of Participation, of that certain Participation Agreement between Principals and Obligees, Subsection 1. ESAC Accreditation.
3. The Surety, however, will remain liable for any default occurring during the period up to the expiration of said ninety (90) days notice and prior to the date the Principal ceases to be a Participant in the Client Assurance Program of ESAC.
4. The Obligees shall notify the Surety of any default of the Principal hereunder, at the earliest possible time following the discovery of such default and in any event not later than thirty (30) days after such discovery by the Obligees.
5. In the event of the payment by the Surety of any claims hereunder, the Surety shall be subrogated to all the rights of the Obligees with respect to such claims and the Obligees shall execute or have executed whatever documents may be deemed necessary in this regard.

6. Regardless of the number of years this bond remains in force, the number of premiums paid, or the number of claims or claimants, in no event shall the total aggregate liability of the Surety under this bond exceed Fifteen Million Dollars (\$15,000,000.00) regardless of when discovered and whether or not previously reported to the Surety.
7. The Surety shall not be liable under this bond unless Covered Client has satisfied all of the requirements to be eligible for reimbursement or payment of a claim in accordance with Section 7 of the Client Participation Certificate, which has been made available to the Covered Client via a link on the Principal's accreditation verification page or on ESAC's website at www.ESAC.org.
8. That the Surety shall not be subject to any suit, action or proceeding hereunder instituted later than twenty-four (24) months following the termination hereof unless, prior to or within such twenty-four (24) month period, the Obligees has notified the Surety of a default of the Principals hereunder.
9. Under no circumstance shall this bond pay if the underlying bond for defaulting principal does not pay and the Surety must have paid the full amount of the underlying bond.
10. If a default does occur by a Principal, the method of indemnity is limited to that described in the underlying bond and the Participation Agreement, although the dollar amount shall include all amounts paid out or costs and expenses incurred by the Surety company under this excess bond and the underlying surety bond.
11. In case of default under this bond, no principal other than the principal causing such default shall be liable for the loss, and the Surety will only look to the principal causing the default to indemnify the loss.
12. The aggregate limit of liability shall be reduced by the amount of any payment made under the terms of this bond.
13. The aggregate limit of liability shall not be increased or reinstated by any recovery made by the Surety.

Platte River Insurance Company

By: _____

Michael Garcia, Attorney-in-Fact

Date: 1/8/14

SURETY BOND APPLICATION AND INDEMNITY AGREEMENT

This General Indemnity agreement applies to the ESAC underlying surety bond and the ESAC excess bond as well as any other bonds requested by the principal. The Undersigned, individually, jointly and severally and on behalf of any of its subsidiaries, affiliates or divisions or their subsidiaries, affiliates or divisions now in existence or hereafter formed or acquired; or on behalf of individuals, partnerships or corporations that have a substantial interest in the Principal obtaining bonds, are hereby bound by this agreement.

Each of the undersigned, hereinafter called the Indemnitor(s), hereby affirms that the statements made and answers given are the truth without reservation, and are made for the purpose of inducing Platte River Insurance Company, hereinafter referred to as the Company or Surety, to execute or procure the execution of a certain bond(s) herein applied for or requested in the future, and any and all extensions, modifications or renewals thereof, additions or substitutions therefor, any and all such instruments separately and collectively being hereinafter called the Bond(s).

To indemnify and keep indemnified the Surety, and hold and save it harmless from and against any and all damages, loss, costs, charges and expenses of whatever kind or nature, including counsel and attorney's fees, which the Company shall or may at any time sustain or incur by reason or in consequence of having executed said Bond(s).

That the Surety has the right in its sole discretion to decline any Application or to decline to issue any bonds at any time for whatever reason. That the Surety has the right to conduct such investigations of indemnitors including the examination of assets, books, records and credit history as the Surety deems appropriate.

WE HAVE READ THIS AGREEMENT CAREFULLY. THERE ARE NO SEPARATE AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY MANNER LESSEN OUR OBLIGATIONS HEREIN.

WITNESS; The following signature(s):

PEO Name: _____

Attest: _____

(Signature)

By: _____
(Signature)

_____, Secretary
(Type or print name)

_____, President/CEO
(Type or print name)

Parent Entity Name (if any): _____

By: _____
(Signature)

(Type or print name and title)

A. Personal Indemnity may be required if any of the following are true:

1. The applicant or accredited PEO does not meet ESAC's financial standards after exclusion of any receivables due from an affiliate unless such receivable meets an exception as defined in ESAC Financial Standard #6.
2. The applicant's latest fiscal year end audited financial statements demonstrate negative net income, which net loss, if reoccurred in the next two reporting periods would result in a violation of one or more of ESAC's Financial Standards, absent any curative action by the PEO.
3. The applicant or accredited PEO is unable to demonstrate that it meets the requirements of A.1 and 2., above, by providing an audited financial statement covering at least 12 consecutive months of PEO operations.
4. The accredited PEO has a self-insured major medical insurance plan or has workers' compensation or major medical plans that are not operating in compliance with ESAC Financial Standard #5.

B. Personal Indemnity is defined as the following:

1. The personal indemnity of the Majority Stockholder (51%), but if none,
2. The personal indemnity of the Principal Stockholder owning at least 20% that is active in a controlling executive capacity of the day-to-day operations.
3. If neither B.1. nor B.2. are true, then the personal indemnities of enough owners to account for 51% ownership are required. If the stock is owned by an entity other than an individual, then track up the ownership structure until there is an entity in sound financial condition, in the opinion of the surety underwriters, and provide the indemnity of that entity.
4. Public Corporations: the nature of these entities preclude personal indemnity; however, indemnity of the parent corporation will be required. If the parent corporation is also a subsidiary, then track up the ownership structure until there is an entity in sound financial condition, in the opinion of the surety underwriters, and provide the indemnity of that entity.

C. Release of Personal Indemnity: The personal indemnity shall remain in effect until a written release signed by a duly authorized representative of the Surety is provided to the Principal. Personal indemnity will be released when/if (i) the condition(s) that caused the requirement of personal indemnity is proven to have been corrected by a future fiscal year end audited financial statement, (ii) the PEO has provided evidence acceptable to the Surety, in its sole discretion, that the condition is likely to remain corrected, (iii) the PEO is meeting all of ESAC's financial standards, and (iv) ESAC has requested that the Surety release the personal indemnity.

Additional Indemnitor (if required): _____

Additional Indemnitor (if required): _____

By: _____
(Signature)

(Type or print name)

By: _____
(Signature)

(Type or print name)

Affiliate Entity Name(s) (if any): _____

Affiliate Entity Name(s) (if any): _____

By: _____
(Signature)

(Type or print name and title)

By: _____
(Signature)

(Type or print name and title)

ATTACHMENT C: PARTICIPANT DISCLOSURE

- 1.** Provide the following information for each loss or claim in excess of \$25,000 incurred by the Participant during the previous five (5) years on account of fraud or dishonesty of any officer or employee: year of occurrence, description of loss, amount of claim or loss, ultimate resolution or current status. If none, so state “None.”

- 2.** Provide the following information for each loss or claim in excess of \$25,000 incurred by the Participant during the previous five (5) years on account of errors or omissions of the type for which coverage is generally available under the errors and omissions policy required to be maintained by the Participant as a condition of accreditation: year of occurrence, description of loss, amount of claim or loss, ultimate resolution or current status. If none, so state “None.”

- 3.** Provide the date, facts and circumstances related to any prior situation related to the Participant that may give rise to a claim that, had it occurred within the past five (5) years, would have required disclosure pursuant to 1. or 2. above. If none, so state “None.”

Exhibit B: Ethical Conduct Guidelines Example

An Accredited PEO must maintain and promote to its internal staff ethical conduct guidelines in accordance with ESAC's Standards of Ethical Conduct. An example statement follows:

As a Professional Employer Organization, (PEO Name) is committed to operating with the highest ethics and honesty and in compliance with the laws of the state(s) and nation in which we conduct business. Every owner and employee shall manage the affairs of (PEO Name) in an honest, trustworthy and ethical manner so as to benefit clients and worksite employees in the performance of (PEO Name's) employer functions and financial responsibilities. (PEO Name) shall not affiliate with any entity that does not maintain these standards. If any employee has reason to believe that these standards are not being maintained by (PEO Name), he/she is encouraged to consult with appropriate management or to file a complaint in accordance with the complaint resolution procedure contained in the Employee Handbook.

Exhibit C: Financial Guaranty Form

For value received, I hereby guarantee payment to the Employer Services Assurance Corporation and/or the Employer Services Trust and their respective successors and assigns ("Obligees"), which sponsor the Client Assurance Program for (PEO Name):

for all indebtedness now owing or incurred between _____ (effective date of Guaranty)
and _____ (ending date of Guaranty, but in no case less than 15 months), but not to exceed the sum of
_____ dollars (\$ _____).

I hereby attest to the fact that such amount is at least one hundred and fifty percent (150%) of the amount of capital deficiency of the above named PEO required to meet the Adjusted Net Worth and Financial Liquidity Standards of the Employer Services Assurance Corporation.

I waive diligence on the part of said Obligees in the collection of any indebtedness and agree that said Obligees shall be under no obligation to notify me of the acceptance of the guaranty or of any credit extended on the face of this Guaranty or of any renewals or extensions of any indebtedness. Such Obligees shall have the privilege of granting such renewals and extensions as it may deem proper. I further expressly waive notice of nonpayment, protest, and notice of protest with respect to the indebtedness covered by this Guaranty. I further agree to pay any costs of collection, including attorney's fees incurred by said Obligees in connection with the enforcement of this Guaranty. A certified written notice from either Obligor requesting that this Guaranty be funded, delivered to the address listed below, shall be evidence in full to the Guarantor to pay the amount requested by said notice, not to exceed the above stated amount. Upon such request by Obligor(s), funding of this Guaranty shall be made by Guarantor to Obligees(s) within five (5) business days of receipt of notice in a form and delivered to an address provided in the notice.

It shall not be necessary for said Obligees in order to enforce payment by me of the indebtedness, to first institute suit or to pursue or exhaust its remedies against the above listed PEO or against any other security which said Obligees may have.

I acknowledge that this Guaranty is in effect and binding on myself without reference to whether it is signed by any other person or persons. I agree that as to myself the Guaranty shall continue in full force and effect notwithstanding the death or the release by agreement or by operation of law of, or the extension of time to, any other guarantor or guarantors as to obligations then existing.

My liability hereunder shall not be affected or impaired by the existence, from time to time, of an indebtedness or liability of the above listed PEO to said Guarantor in excess of the amount of the Guaranty.

This agreement is to be performed in the County of _____, State of _____ and any suit on this Guaranty or for any breach of this guaranty may be brought and prosecuted in the courts of that county or of the County of Pulaski, State of Arkansas.

Guarantor is a:* _____ Company _____ Bank _____ Individual

Executed _____, 20 _____

Guarantor Name: _____

Guarantor Signature: _____

Guarantor Address: _____

Capacity of Guarantor or Authorized Representative:

*If Guarantor is a company or bank, attach Guarantor's most recent audited financial statements. If Guarantor is an individual, submit Guarantor's most recent signed personal financial statements and federal income tax return to ESAC's independent financial advisor, along with any other evidence required to verify sufficient income and unpledged liquid assets to secure the guaranty.

Exhibit D: Carrier's Estimate of Ultimate Liability

Important Note: "Ultimate Liability" is also referred to as the carrier's most recent "loss adjustment" amount.

Applicable ESAC Standard and Instructions:

1. *In lieu of an Accredited PEO demonstrating to ESAC that reserves are adequate and established based on actuarially developed estimates performed by an Independent Certified Actuary, the PEO may provide a carrier confirmation letter from each current or former workers' compensation carrier for which there is any potential remaining claim liability or any such carrier that continues to hold collateral for a potential claim liability.*
2. *The carrier's confirmation should include a transmittal letter on the carrier's letterhead signed by an authorized corporate manager or officer, with the form and content of such letter similar to the following example.*

Acceptable Form of Letter on Carrier Letterhead

ESAC
One Financial Centre
650 S. Shackleford Road, Suite 327
Little Rock, AR 72211

Re: <Name of PEO> - <Policy or plan number and effective date>

We estimate the above named PEO has a financial liability for all reported claims and the estimated incurred but not reported claims through <Date of Carrier's most recent loss adjustment> for the most recent policy year and for all prior policy years covered by our company equal to \$ _____.

This estimate is based on our consideration of the terms of our policy and claims funding arrangement with the PEO and appropriate application of generally accepted actuarial methods, including but not limited to incurred but not reported claims, incurred but unpaid claims, future claims development, retrospective premium adjustments, inflationary trends and the degree of risk. Our estimate includes consideration of all policy years insured by our company for which we consider there to be a potential for outstanding claim liability.

Our estimate of this PEO's financial liability under our policy(ies) or plan(s) is based on:

- a. ☐ The enclosed claims information and calculations; or
- b. ☐ Our internal calculations of the amount of collateral we determined the PEO needed to provide to our company to guarantee payment of the PEO's portion of its claims liability. The total amount of collateral that we now hold for this purpose is:

\$ _____ in the form of _____

This information is based on data analysis and information for our company's internal use and is being provided to <Name of PEO> for ESAC's use as a courtesy to our Policyholder. No guaranty or warranty regarding the use of information by ESAC, the PEO or any other entity is either directly or indirectly intended or implied.

Sincerely,

Signature of authorized Corporate Manager or Officer
Name and Title

Exhibit E: Tax & Benefits Payment Verification Procedures

All Accredited PEOs are required to engage an independent Certified Public Accountant to confirm quarterly the PEO's timely and accurate payment of worksite employee wages, state and federal employment taxes, employee retirement plan contributions, and workers' compensation and major medical premiums for all plans of insurance sponsored or co-sponsored by the PEO. ESAC will accept a copy of the CPA attestation required for IRS certification as verification of federal employment tax payments. Otherwise, all payment verifications can be provided via one or a combination of the following two options:

- **Examination Level Attestation:** The CPA may provide an examination level attestation of management's representations in accordance with standards established by the AICPA; or
- **Agreed Upon Procedures:** The CPA may perform the following agreed upon procedures and report findings in a procedures letter format as prescribed by the AICPA. As an alternative to all or any part of these procedures, the CPA may obtain confirmation letter(s) from payment recipients.
 - I. Where the nature of the PEO's records make conformance to the following procedures impractical or unreliable, ESAC authorizes the independent CPA to exercise professional judgment in modifying and performing the procedures as dictated by available records and in the manner most consistent with the objective to be accomplished, noting any differences between the procedures described below and the procedures used.
 - II. For the selected period (month or quarter) for each PEO group, all payments should be traced if there are no more than 5 payments in the period. If there are more than 5 payments in the period, trace 25% of the payments, selected at random but no less than 5 payments or more than 20 payments for each type of liability or payment for each company.
 - III. ESAC authorizes the independent CPA to exercise professional judgment in determining the materiality limits used in each Agreed Upon Procedure. The materiality limits used for each procedure shall be provided in the CPA's findings. For any material differences noted while performing an Agreed Upon Procedure, provide a date, amount, and description of the difference.

1. Agreed Upon Procedures for Quarterly Verification of Employment Tax Payments:

- a) Inquire of management as to whether all state and federal employment taxes and withholding taxes have been properly and timely reported and paid for the previous calendar quarter. Note any instances of known noncompliance.
- b) Inquire of management regarding any communications from the IRS or state agencies affecting employment taxes tested in this quarter or prior quarters. If any communications were received, review the IRS or state agency correspondence and, if material, attach a copy of such correspondence to your quarterly report.
- c) For federal employment taxes, the CPA may either provide an examination level attestation of management's representations in accordance with standards established by the AICPA and the SBEA of 2014, or perform the following procedures:
 - i. Obtain a copy of the most recent Form(s) 941 for each accredited PEO entity.
 - ii. For the quarter, trace the gross wages, federal withholding, social security and Medicare tax liabilities from Form 941 (or multiple 941s, in the case of a control group) to the payroll journal or similar source record and note any material differences.
 - iii. Randomly select a month in the quarter and select payments (as specified in Instruction II, above) from the deposits reported on the 941 Schedule B to the cash disbursements journal, or its equivalent, and note any material differences.
 - iv. For step iii. above, trace all such payments to the bank statement and note any payments that did not clear the bank.
 - v. Review results of the above step iv. conducted for the previous fiscal quarter and note any payments that have not yet cleared the bank.

d) For state unemployment taxes, the following procedures will be used:

- i. Obtain a schedule from the payroll journal or similar source record of the quarter's gross wages, state income tax liability, and state unemployment tax liability by state. Confirm total gross wages agree with the Form 941 (or multiple 941s, in the case of a control group) and note any unreconcilable differences.
- ii. From the schedule obtained above, select the state in which the PEO or PEO Group has the largest state tax liability. Also, select any other states where a state PEO licensing law or regulation requires such quarterly tax payment verification (currently Arkansas, Montana, New Hampshire, New Jersey, New York, Oklahoma, South Carolina and Tennessee). For all additional states in which there is a quarterly state tax liability of at least \$10,000, randomly select four states from this group for review.
- iii. For the selected states, obtain a state tax report detailing liabilities by processed payroll. Randomly select a month in the quarter and select liabilities (or a random sample thereof, as specified in Instruction II, above) and trace to the payroll journal or similar source record and note any material differences.
- iv. For the selected liabilities above, trace payment of each liability to the cash disbursements journal, or its equivalent, and note any material differences.
- v. Trace all such payments to the bank statement and note any payments that did not clear the bank.
- vi. Review results of the above step conducted for the previous fiscal quarter and note any payments that have not yet cleared the bank.

e) For state income taxes, repeat the procedures used for state unemployment taxes outlined in d), above.

2. Agreed Upon Procedures for Quarterly Verification of Payments to Employee Retirement Plans:

- a) Obtain a list of the retirement plans for which contributions were made during the quarter, which includes the total plan liability of each such plan. Confirm the total withholdings and contributions agree with the payroll journal or similar source record and note any differences
- b) From the schedule above, select at random a plan or plans representing at least 25% of the total contributions for all plans. For the selected plan(s), obtain a report detailing liabilities by processed payroll and perform the following procedures for the selected plan(s):
 - i. Randomly select a month in the quarter and trace liabilities (or a random sample thereof, as specified in Instruction II, above) to the cash disbursements journal, or its equivalent and note any material differences.
 - ii. Determine if all such withholdings were deposited to the plan no later than the 15th business day of the month following the month in which the amounts were withheld and note any material differences.
 - iii. Trace all such payments to the bank statement and note any payments that did not clear the bank.
 - iv. Review results of the above step conducted for the previous fiscal quarter and note any payments that have not yet cleared the bank.

3. Agreed Upon Procedures for Quarterly Verification of Payment of Fully Insured Major Medical Premiums:

- a) Obtain a schedule of the Fully Insured major medical insurance policies for which contributions were made during the quarter, including the amount of withholdings, premium liability, and any other contributions. Confirm the total withholdings and contributions agree with the payroll journal or similar source record and note any unreconcilable differences.
- b) From the schedule prepared above, select at random a major medical policy or policies representing at least 25% of the total premium liability for the quarter for all major medical policies sponsored by the PEO and perform the following procedures for the selected health policies:
 - i. Select at random a month within the quarter and trace the premiums owed for the selected policy or policies as shown on carrier premium invoices or as specified in policy documents to the general ledger recording of those premiums as a liability and note any material differences.

- ii. Trace the payment of recorded premium liabilities to the cash disbursements journal, or its equivalent, and note any material differences.
 - iii. Trace all such payments to the bank statement and note any payments that did not clear the bank.
 - c) Review results of the above step conducted for the previous fiscal quarter and note any payments that have not yet cleared the bank.
- 4. Agreed Upon Procedures for Quarterly Verification of Payment of Self Insured or Partially Self Insured Group Health Insurance Plan Funding Requirements:**
- a) Randomly select a month within the quarter using notices of contribution requirements or other information provided by the third-party claims administrator (“TPA”). Trace reported liabilities (or a random sample thereof, as specified in Instruction II, above) for all such plans to the general ledger recording of these liabilities and note any material differences.
 - b) Trace the total of withholding from employees (or a random sample thereof, as specified in Instruction II, above) to the recorded liability account in the general ledger, and subsequent payment through the cash disbursements journal, or its equivalent and note any material differences.
 - c) For the above step b) conducted for the previous fiscal quarter, compare the date of all such payments to the date the payment cleared the bank statement and note any payment that cleared the bank more than 15 business days after the date of the recorded payment.
 - d) Request from the TPA a written confirmation of the current amounts due to the TPA and verify that the payables have been properly recorded in the PEO’s general ledger. Note any payments that were not made timely or within the terms of the plan.
- 5. Quarterly Verification of Payment of Fully Insured Workers’ Compensation Insurance Premiums:**
- a) Obtain a schedule of the Fully Insured Workers’ Compensation insurance policies for which premiums were due during the quarter, including the amount of accrued liability and any payments. Confirm the liability with the payroll journal or similar source record and note any differences.
 - b) From the schedule prepared above, select at random a workers’ compensation policy or policies representing at least 25% of the total premium liability for the quarter for all workers’ compensation policies sponsored by the PEO and perform the following procedures for the selected policies:
 - i. Select at random a month within the quarter and trace the premiums owed for the selected policy or policies as shown on carrier premium invoices or as specified in policy documents to the general ledger recording of those premiums as a liability and note any material differences.
 - ii. Trace the payment of recorded premium liabilities to the cash disbursements journal or its equivalent and note any material differences.
 - iii. Trace all such payments to the bank statement and note any payments that did not clear the bank.
 - iv. Review results of the above step conducted for the previous fiscal quarter and note any payments that have not yet cleared the bank.
- 6. Quarterly Verification of Payment of Self Insured or Partially Self Insured Workers’ Compensation Insurance Plan Funding Requirements:**
- a) Randomly select a month within the quarter using notices of contribution requirements or other information provided by the third-party claims administrator (“TPA”). Trace contribution requirement (or a random sample thereof, as specified in Instruction II, above) of all such plans to the general ledger recording of these liabilities and note any material differences.
 - b) Trace each contribution requirement (or a random sample thereof, as specified in Instruction II, above) from the recorded liability account above to the cash disbursements journal or its equivalent and note any material differences.

- c) For the above step conducted for the previous fiscal quarter, note any payment that cleared the bank more than 15 business days after the date of the recorded payment.
- d) Request from the TPA a written confirmation of the current receivables due to the TPA and verify that the payables have been properly recorded in the PEO's general ledger. Note any payments that were not made timely or within the terms of the plan.