Employer Services Assurance Corporation



Bylaws
of a Non Profit Corporation
(Section 501(c)(6) of the IRS Code)

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EMPLOYER SERVICES ASSURANCE CORPORATION

BYLAWS

ARTICLE I –Name

Section 1.1 Name. The name of the Corporation is the Employer Services Assurance Corporation ("ESAC").

ARTICLE II – Purpose

Section 2.1 Purpose. ESAC's purpose is to build integrity and trust and provide assurance for the professional employer organization (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, 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.

ARTICLE III -- Confidentiality and Security

Section 3.1 Confidentiality. ESAC shall develop, implement and maintain such procedures and measures as the Board of Directors ("Board") determines are desirable to maintain the confidentiality of non-public information received with respect to applicants and accredited PEOs. All information received or obtained by ESAC with respect to an applicant or accredited PEO ("protected party") shall be treated as "non-public information" except information which (1) was or becomes generally available to the public; or (2) was or becomes available to ESAC on a non-confidential basis from a source other than the protected party or its authorized representative, provided that such source is not known by ESAC to be bound by a confidentiality agreement with the protected party. Such procedures shall include, without limitation, requiring non-disclosure/confidentiality agreements be executed by each member of the Board and by ESAC staff, advisors and service providers involved in verifying a company's compliance with accreditation requirements. Industry Directors shall not have access to another PEO's non-public information and shall not have a right to vote on any matter pertaining to a PEO's initial application or ongoing accreditation compliance, unless the PEO specifically requests a formal appeal hearing before the entire Board as part of its rights to due process. An applicant or accredited PEO shall have the right to request the recusal of any Director with a potential conflict of interest.

Section 3.2 Security. ESAC shall develop, implement and maintain such policies, procedures and systems as the Board determines are desirable to maintain the security of all information and proceedings that are not intended to be disseminated to unauthorized third parties. Such policies and procedures shall include, without limitation: (1) maintaining secure data networks protected by industry standard security monitoring, intrusion prevention and password protection systems, (2) maintaining reliable and secure offsite data backup, storage and retrieval systems, and (3) maintaining adequate physical security for ESAC offices and offsite Internet service and information storage facilities.

ARTICLE IV – Offices

Section 4.1 Registered Office and Agent. The registered office of ESAC required by the Texas Non-Profit Corporation Act to be maintained in the state of Texas shall be 350 North St. Paul Street, Suite 2900, Dallas, Texas 75201. The address of the registered office may be changed from time to time by the Board. The registered agent of ESAC at such registered address shall be CT Corporation Systems.

Section 4.2 Other Offices. ESAC may also have offices at such other places both within and without the state of Texas as the Board may from time to time determine or the business of ESAC may require.

ARTICLE V -- ESAC Accredited PEOs

Section 5.1 General. Firms engaged in the business of providing professional employer services ("PEOs") are eligible to apply to become accredited by ESAC so long as they are in compliance with, and agree to remain in compliance with, the *Standards and Procedures* established by ESAC and agree to pay fees required pursuant to these Bylaws, the *Standards and Procedures*, and those ESAC programs in which the PEO shall participate. PEOs that are duly accredited by ESAC shall be known as "Accredited PEOs." The Board shall have the authority, in its sole discretion, to establish, amend from time to time, and maintain *Standards and Procedures* that shall govern all matters related to PEO accreditation and other programs administered by ESAC.

Section 5.2 Accreditation Application Consideration. The application of a PEO (an "Applicant") to become an Accredited PEO shall be reviewed by ESAC's Accreditation Committee in order to protect the non-public information of Applicants and to avoid a conflict of interest. .

Section 5.3 Voting Rights. Each Accredited PEO will be entitled to one vote on each matter submitted to a vote of the Accredited PEOs.

Section 5.4 Transfer of Accreditation. ESAC accreditation is not transferable.

Section 5.5 Termination of Accreditation. A PEO shall cease to be an Accredited PEO upon an Agreed Termination of Accreditation, Involuntary Termination of Accreditation, or Voluntary Relinquishment of Accreditation as provided in the *Standards and Procedures*, at which time such PEO shall no longer have any rights of an Accredited PEO. All determinations concerning termination of accreditation shall be made solely by a majority vote of the Independent Directors based upon a recommendation of the Compliance Committee, as more fully set forth in the *Standards and Procedures*. Except in the case of either (i) a "Substantial Failure" of an Accredited PEO to perform its employer "Financial Obligations" or (ii) the failure to pay a "Compliance Assessment" to ESAC within ten (10) days of written notice, as such terms are defined in the *Standards and Procedures*, any PEO whose accreditation is terminated by a majority vote of the Independent Directors, shall have the right to appeal such decision to the entire Board in accordance with the provisions of the *Standards and Procedures.*

ARTICLE VI -- Meetings of the Accredited PEOs

Section 6.1 Annual Meeting. An annual meeting of the Accredited PEOs shall be held at such time and day and at such location or via teleconference as may be designated by the Board, at which time the Accredited PEOs shall elect a Board and transact such other business as may properly be brought before the meeting. If the election of the Directors is not held on the day of the annual meeting, the Board must cause the election to be held at a special meeting of the Accredited PEOs as soon thereafter as is convenient.

Section 6.2 Special Meetings. Special meetings of the Accredited PEOs may be called by the Chairman, the Board, or not less than one fourth of the Accredited PEOs having voting rights.

Section 6.3 Place of Meeting. The Board may designate in a notice to the Accredited PEOs the meeting logistics for any annual meeting or for any special meeting called by the Board. Alternatively, a waiver of notice signed by all of the Accredited PEOs entitled to vote at a meeting may designate any place for such meeting. If no designation is made or if a special meeting is otherwise called, the place of meeting will be the principal office of ESAC. However, if all of the Accredited PEOs meet at any time and place and consent to the holding of a meeting, such meeting will be valid without call or notice, and at such meeting any corporate action may be taken.

Section 6.4 Notice of Meetings. Written notice stating the place, day, and hour of any meeting of Accredited PEOs must be delivered in a manner permitted by these Bylaws to each Accredited PEO entitled to vote at such meeting, not less than 10 nor more than 60 days prior to the date of the meeting, by or at the direction of the

Chairman, or the officers, or persons calling the meeting. In case of a special meeting or when required by statute or by these Bylaws, the purpose or purposes for which the meeting is called will be stated in the notice.

Section 6.5 Informal Action by Accredited PEOs.

(a) Any action required by law to be taken at a meeting of the Accredited PEOs, or any action that may be taken at a meeting of Accredited PEOs, may be taken without a meeting, without prior notice, and without a vote, if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of Accredited PEOs as would be necessary to take that action at a meeting at which all of the Accredited PEOs were present and voted.

(b) Every written consent shall bear the date of signature of each Accredited PEO who signs the consent. No written consent shall be effective to take the action that is the subject of the consent unless, within sixty (60) days after the date of the earliest dated consent delivered to ESAC in the manner required by this Section, a consent or consents signed by the Accredited PEOs having not less than the minimum number of votes that would be necessary to take the action that is the subject of the consent are delivered to ESAC by delivery to its registered office, its principal place of business, or an officer or agent of ESAC having custody of the books in which proceedings of meetings of Accredited PEOs are recorded. Delivery shall be addressed to the principal executive officer of ESAC.

(c) Electronic transmission with electronic signature or similar transmission by an Accredited PEO, or a copy of a writing signed by an authorized representative of an Accredited PEO, shall be regarded as signed by the Accredited PEO for purposes of this Section.

(d) Prompt notice of the taking of any action by Accredited PEOs without a meeting by less than unanimous written consent shall be given to those Accredited PEOs who did not consent in writing to the action.

Section 6.6 Quorum and Action. A quorum shall be present at a meeting of the Accredited PEOs if a majority of the Accredited PEOs entitled to vote is represented at the meeting in person or by proxy. Unless otherwise provided in these Bylaws, once a quorum is present at a meeting of Accredited PEOs, the Accredited PEOs represented in person or by proxy at the meeting may conduct such business as may be properly brought before the meeting until it is adjourned, and the subsequent withdrawal from the meeting of any Accredited PEO or the refusal of any Accredited PEO represented in person or by proxy to vote shall not affect the presence of a quorum at the meeting. The act of a majority of the Accredited PEOs at any meeting at which a quorum is present shall be the act of the Accredited PEOs unless the act of a greater number is required by law, the Articles, or these Bylaws. Unless otherwise provided in these Bylaws, the Accredited PEOs represented in person or by proxy at a meeting of Accredited PEOs at which a quorum is not present may adjourn the meeting until such time and to such place as may be determined by a vote of the majority of the Accredited PEOs represented in person or by proxy at that meeting.

Section 6.7 Proxies.

(a) Electronic transmission with electronic signature or similar transmission by an Accredited PEO, or a copy of a writing signed by an authorized representative of an Accredited PEO shall be regarded as signed by the Accredited PEO for purposes of this Section. At any meeting of Accredited PEOs, an Accredited PEO entitled to vote may vote by proxy executed in writing by the Accredited PEO or by its authorized attorney-in-fact. An electronic transmission with electronic signature by the Accredited PEO or a copy of a writing signed by an authorized representative of an Accredited PEO shall be treated as an execution in writing for purposes of this Section. Proxies shall be filed with the Secretary/Treasurer immediately after the meeting has been called to order.

(b) No proxy will be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

(c) In the event that any instrument in writing shall designate two (2) or more persons to act as proxies, a majority of such persons present at the meeting or, if only one shall be present, then that one, shall have and may exercise all of the powers conferred by such written instrument upon all the persons so designated unless the instrument shall otherwise provide.

Section 6.8 Voting by Mail. Where directors or officers are to be elected by Accredited PEOs, such election may be conducted by mail, email, or secure electronic transmission in such manner as the Board determines.

Section 6.9 Telephone Meetings. Accredited PEOs may participate in and hold a meeting of the Accredited PEOs by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 6.10 Organization.

(a) The Chairman shall preside at all meetings of the Accredited PEOs. In the absence of the Chairman, the Vice Chairman, Secretary/Treasurer, or President shall preside. In the absence of these individuals, any Accredited PEO or the duly appointed proxy of any Accredited PEO may call the meeting to order and a chairman shall be elected from among the Accredited PEOs present.

(b) The Secretary/Treasurer of ESAC shall act as secretary at all meetings of the Accredited PEOs. In his/her absence, the presiding officer may appoint any person to act as secretary of the meeting.

ARTICLE VII -- Directors

Section 7.1 Number, Term and Qualification. The number of directors shall be as fixed from time to time by resolution of the Board adopted by the affirmative vote of a majority of the members of the entire Board. Each director shall meet one of the following four classifications:

(a) Directors with state or federal regulatory experience or other experience relevant to the regulation of PEOs and who do not have an affiliation with any PEO (“Independent Directors”);

(b) Directors who currently serve as a PEO officer or an executive whose area of expertise is needed on ESAC’s board as determined by the Executive Committee (“Industry Directors”); and

(c) Directors who currently are engaged in providing professional services to a wide range of PEOs and who possess professional expertise and experience relevant to ESAC’s mission (“Professional Advisory Directors”).

(d) The President of ESAC or any successor to the office of ESAC’s President shall serve as a Director, *ex officio*, without voting rights.

From time to time the Board shall consider the number of directors and whether to make changes to maintain or effect good balance among the various classifications of directors, provided that the number of Independent Directors should be no less than 25% of the total Directors serving on the Board.

A director's term shall be three (3) years for Independent Directors, one (1) year for Industry Directors and two (2) years for Professional Advisory Directors. No decrease in the number of directors or a change in these Bylaws shall have the effect of shortening the term of office of any incumbent Director. Each Director must have attained 21 years of age. Subject to the Articles of Incorporation and these Bylaws, each Director shall hold office until his/her successor shall have been elected and qualified, or until his/her death, resignation, or removal in the manner hereinafter provided. There shall be no limit on the number of terms that an Independent Director may serve. An Industry Director shall serve no more than four (4) consecutive terms and a Professional Advisory Director shall serve no more than two (2) consecutive terms unless such Industry Director or Professional Advisory Director is elected as an officer, in which case the director shall be eligible for re-election as a director so long as he or she serves as an officer. Notwithstanding the preceding term limitations, the Board is authorized to extend the term of any Director as needed up to a maximum of four (4) years, to avoid excessive Director term expirations within a single year with respect to any classification of directors. Nothing in these Bylaws shall prohibit an individual from serving as a Director of ESAC while also serving as a director, officer, or staff member of another related industry organization.

In addition to the above Directors, a non-voting Board Liaison position is to be filled annually by a designee chosen by the National Association of Professional Employer Organizations (NAPEO) and approved by ESAC’s

Accreditation Committee. The purpose of the Board Liaison is to ensure that both ESAC and NAPEO can identify and consider in a timely manner opportunities for cooperation where it is the best interest of the PEO industry.

Section 7.2 Attendance. Any member of the Board unable to attend a meeting shall, in a letter or email addressed to the President, state the reasons for his or her absence.

Section 7.3 Resignation. Any Director may resign at any time by giving written notice to the Chairman, President or Secretary/Treasurer. Such resignation shall take effect at the time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.4 Removal. At any special meeting of the Accredited PEOs called expressly for that purpose, any Director or Directors, including the entire Board, may be removed, either with or without cause, and another person or persons may be elected to serve for the remainder of their term by a vote of a majority of the Accredited PEOs entitled to vote. In case any vacancy so created shall not be filled by the Accredited PEOs at such meeting, such vacancy may be filled by the Directors as provided in Section 7.5. Additionally, any Board member may be removed by the Board by a two thirds (2/3) vote of the entire Board.

Section 7.5 Vacancies.

(a) Any vacancy occurring in the Board (except by reason of an increase in the number of Directors) shall be filled by the affirmative vote of a majority of the remaining Directors even if less than a quorum of the Board.
(b) Any such Directorship to be filled by reason of an increase in the number of Directors shall be filled by election at an annual meeting or at a special meeting of Accredited PEOs called for that purpose.
(c) A Director elected to fill a vacancy shall be elected for the unexpired term of his/her predecessor in office

Section 7.6 Nominations for Director. The Nominating Committee shall nominate (a) Directors to be elected by the Accredited PEOs in the event there is an increase in the number of Directors or in the event a Director decides not to stand for reelection upon the expiration of his/her term; and (b) Directors to fill vacancies referred to in Section 7.5 (c) above. When preparing a slate of Industry Director nominees, the Nominating Committee shall select nominees who hold senior management positions in accredited PEOs while maintaining diversification as to representation of accredited PEOs of various sizes, time in business, and geographic location.

Section 7.7 General Powers. In addition to the powers and authorities expressly conferred upon them by these Bylaws, the Board may exercise all such powers of ESAC and do all such lawful acts and things as are not prohibited by law or by the Articles or by these Bylaws. Industry Directors and Professional Advisory Directors shall not have access to confidential or competitively-sensitive information about any Applicant or Accredited PEO and shall not vote on any matter affecting the accreditation of any PEO, except as could occur under a PEO's right to appeal a termination of accreditation decision to the entire Board in accordance with the provisions of Section 5.5 of these Bylaws and the *Standards and Procedures*. Industry Directors and Professional Advisory Directors participate, along with Independent Directors, in decisions pertaining to the direction and policy of ESAC. However, the exclusive power and authority to consider and determine all matters involving the accreditation or discipline of an Applicant or Accredited PEO is vested in the Board's Independent Directors; and any accreditation or disciplinary proceeding or appeal of same which ESAC's *Standards and Procedures* indicate are to be handled by the Board (or even the "entire Board"), shall be exclusively under the purview and determined by the Board's Independent Directors, except as set forth in Section 5.5 of these Bylaws.

Section 7.8 Compensation. Independent Directors may receive compensation for their services as established by the Board. Industry Directors and Professional Advisory Directors shall not receive any compensation. Nothing contained herein shall be construed to preclude any Director from serving ESAC in any other capacity and receiving compensation therefor.

ARTICLE VIII -- Meetings of the Board

Section 8.1 Type of Meetings. Meetings of the Board of Directors shall be either a meeting of the entire Board or a meeting of the Independent Directors and may be either regular or special meetings as defined below.

Section 8.2 Place of Meetings. The Directors of ESAC may hold their meetings, both regular and special, either via teleconference and either within or without the state of Texas.

Section 8.3 Regular Meetings. Regular meetings of the Board may be held without notice at such time and place as shall from time to time be determined by the Board.

Section 8.4 Special Meetings. Special meetings of the Board may be called by the Chairman, Vice Chairman, Secretary/Treasurer or President on 10 days' notice to each Director given either personally, by email or by mail. Special meetings shall be called by the Chairman, Vice Chairman, Secretary/Treasurer or President in like manner and like notice on the written request of any Director. Neither the purpose of nor the business to be transacted at any special meeting of the Board need be specified in the notice or waiver of notice of such meeting. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

Section 8.5 Quorum and Action. At all meetings of the Board the presence of a majority of the Directors in the classification(s) entitled to vote on the matter(s) being considered shall be necessary and sufficient to constitute a quorum for the transaction of business. And the act of a majority of the Directors entitled to vote at any meeting at which a quorum is present shall be the act of the Board and shall be sufficient to decide any question brought before the Board unless the act of a greater number is required by law, the Articles of Incorporation or these Bylaws. If a quorum shall not be present at any meeting of Directors, the Directors present may adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum shall be present. In the case of a meeting of the entire Board of Directors, where it becomes necessary to hear and determine matters that are only to be considered by Independent Directors, the Independent Directors shall withdraw into an Independent Directors' Board meeting that will not be open to the public, but will be open to one or more authorized representatives of an Applicant or Accredited PEO whose accreditation or compliance is the subject of such meeting as provided by ESAC's *Standards and Procedures.*

Section 8.6 Presumption of Assent to Action. A Director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his/her dissent shall be entered in the minutes of the meeting or unless he/she shall file his/her written dissent to such action with the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of ESAC immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 8.7 Telephone Meetings. Directors may participate in and hold a meeting of the Board by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 8.7 shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 8.8 Action without Meeting. Any action required or permitted to be taken at a meeting of the Board, or any committee thereof, may be taken without a meeting if such action is communicated to, and receives a written response from, all the members of the Board, or committee, as the case may be. Electronic communications that are dated such as e-mail shall be considered written communication provided the director transmits such electronic communication. Such action shall have the same force and effect as a vote at a meeting provided that a sufficient number of directors or committee members reply in the affirmative as would be necessary to take that action at a meeting at which all of the directors or committee members were present and voted.

ARTICLE IX -- Committees of the Board

Section 9.1 Membership and Authorities. The Board of Directors, by resolution adopted by a majority of the full Board, may create committees for any purpose it deems advisable, each of which committees, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board in the business and affairs of ESAC, except in those cases where the authority of the Board is specifically denied to the committee or committees by applicable law, the Articles of Incorporation or these Bylaws. The Chairman and President shall have the authority to designate a committee chairperson and two (2) or more Directors to constitute each committee. The designation of a committee and the delegation thereto of authority shall not operate to relieve the Board, or any member thereof, of any responsibility imposed upon it or him/her by law. There shall be six standing committees ("Standing Committees") whose membership and purpose shall be established as follows:

(a) Accreditation Committee – Chaired by the President and including not less than three (3) Independent Directors selected by the President. The Accreditation Committee shall be responsible for reviewing an Applicant's accreditation application to determine accreditation qualification and making a recommendation to all Independent Directors for acceptance or denial of the application.

(b) Compliance Committee – Chaired by the President and including not less than three (3) Independent Directors selected by the President based on the nature of the issue to be addressed. The Compliance Committee shall be responsible for conducting or supervising investigations by staff or professional advisors, determining probable cause, conducting mediation and arbitration hearings, reporting findings, establishing appropriate penalties and corrective measures, and rendering final judgments.

(c) Standards Committee – Chaired by the President and including not less than two (2) Independent Directors and not less than two (2) Industry Directors. The Standards Committee shall be responsible for reviewing and making recommended changes to ESAC's *Standards and Procedures*.

(d) Claims Committee – Chaired by the President and including not less than four (4) Independent Directors selected by the President. In the event of an Accredited PEO default, the Claims Committee shall be responsible for determining proper claims documentation and obligations covered by the Client Assurance Program and shall also be responsible for resolving conflicting claims or disputes concerning the validity or claim amount.

(e) Nominating Committee – Appointed annually by the Chairman, who shall also designate a Nominating Committee chairman, and including not less than three Industry Directors or representatives of Accredited PEOs. The Nominating Committee shall be responsible for reviewing submittals for Director nominations and preparing a slate of Director nominees for ratification by the Board of Directors and election by Accredited PEOs during their annual meeting.

(f) Executive Committee - Chaired by the Chairman and including the Vice Chairman, Secretary/Treasurer, President and the Immediate Past Chairman (if available to serve).

The Board's Executive Committee may establish ad hoc committees as necessary to develop recommendations to the Executive Committee or to the Board on various matters relative to the operations and strategic planning of ESAC. In the President's absence, the Accreditation, Compliance, Standards and Claims Committees shall be chaired by a temporary chairman appointed by the majority vote of the Independent Directors or by the VP Operations if such vote by the Independent Directors is not practical within the time frame required.

Section 9.2 Minutes. Each committee designated by the Board shall keep regular minutes of its proceedings and report the same to the Board when required.

Section 9.3 Vacancies. The Board or the Executive Committee shall have the power at any time to fill vacancies in, change the membership of, or dissolve any committee, except for the Standing Committees, which can only be dissolved by an amendment to these Bylaws.

Section 9.4 Telephone Meetings. Members of any committee designated by the Board may participate in or hold a meeting by use of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section 9.4 shall

constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 9.5 Action without Meeting. Any action required or permitted to be taken at a meeting of any committee designated by the Board may be taken without a meeting if such action is communicated to, and receives a written response from, all the members of the committee. Electronic communications that are dated such as email shall be considered written communication provided the committee member transmits such electronic communication. Such action shall have the same force and effect as a vote at a meeting provided that a sufficient number of committee members reply in the affirmative as would be necessary to take that action at a meeting at which all of the committee members were present and voted.

ARTICLE X -- Officers and Staff

Section 10.1 Officers. The officers of ESAC shall be a Chairman, a Vice Chairman, a Secretary/Treasurer, an Immediate Past-Chairman and the President.

Section 10.2 Election, Term of Office and Qualification. Except for the President and as otherwise specified in these bylaws, each officer of ESAC shall be nominated by a Nominating Committee appointed by the current Chairman and shall be elected by the Accredited PEOs for a one (1) year term. Each officer so elected shall hold office until his/her successor shall have been duly chosen and has qualified or until his/her death or his/her resignation or removal in the manner provided in Section 10.5 hereof. The Board is authorized to extend the term of any such officer for an additional year if, in the opinion of the Nominating Committee or Board, a qualified candidate for the position is not available or willing to serve. No officer shall serve more than two (2) consecutive terms, except for the President, who shall not be affiliated with any PEO and who may serve an unlimited number of terms subject to the provisions of Section 10.7. Nothing in these Bylaws shall prohibit an officer from serving in more than one officer capacity, except one person cannot serve as Chairman or President while also serving as Secretary/Treasurer. Nothing in these Bylaws shall prohibit an Industry Director from serving as an officer of ESAC while also serving as a director, officer, or staff member of another related industry organization. No change in these Bylaws shall have the effect of shortening the term of office of any incumbent officer.

Section 10.3 Staff. The Executive Committee may appoint such staff as it shall deem necessary that shall hold their positions for such terms, have such authority and perform such duties as the Executive Committee may from time to time determine. The Executive Committee may create staff positions and shall have the power to appoint any such subordinate staff or agent or to delegate this and other such responsibilities to the President or Chairman. In performing their duties, the officers of ESAC may call upon the assistance of staff.

Section 10.4 Resignation. Any officer may resign at any time by giving written notice thereof to the Chairman, President or Secretary/Treasurer of ESAC or by written notice to the Board. Any such resignation shall take effect at the time specified therein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 10.5 Removal. Any officer may be removed by the Board at any time with or without cause. An officer who ceases to be a Director shall also be removed as an officer on the same day. Any staff may be removed at any time with or without cause by the Executive Committee or by the Board.

Section 10.6 Vacancies. A vacancy in any office shall be filled for the unexpired portion of the term by the Board, but in case of a vacancy occurring in a staff position filled in accordance with the provisions of Section 10.3, such vacancy may be filled by the Executive Committee.

Section 10.7 President. The President shall be appointed by a majority vote of the Board of Directors and shall hold office until his/her successor shall have been duly chosen and has qualified or until his/her death or his/her resignation or removal. The President shall serve as ESAC’s chief executive officer and chief operating officer

with respect to all matters involving the accreditation and compliance of accredited PEOs and shall be responsible in the Chairman's absence for any duties assigned by the Board to the Chairman, except for matters involving officer or director compensation, which shall be the responsibility of the Executive Committee. He or she shall preside at all meetings of the Directors involving any matter affecting the accreditation of a PEO, including the review, approval or denial of applications for accreditation, compliance or disciplinary matters, and matters involving ESAC standards and procedures. The President shall serve as chairman, without voting privileges, of the Accreditation Committee, Compliance Committee, Standards Committee and the Claims Committee, as a voting member of the Executive Committee, and as an ex officio member, with voting rights, of all other committees. The President shall have all authority and perform all duties incident to the office of President. In addition, the President shall perform whatever duties and shall exercise all powers that are given to him/her by the Board. Except as provided herein, the duties of the President may be changed from time to time by the Board.

Section 10.8 Chairman. The Chairman shall serve as ESAC's highest officer with respect to the business, industry and public affairs of ESAC, working with the other officers on matters such as strategic planning, budgeting, financial operations, personnel matters and industry and government affairs. The Chairman's position may be filled by an Industry Director, a Professional Advisory Director or an Independent Director. The Chairman shall preside at all meetings of the Accredited PEOs and all meetings of the Directors, except for meetings or portions of meetings involving any matter directly affecting the accreditation of a PEO or the compliance of a PEO with ESAC standards and procedures if the Chairman is not an Independent Director, or is otherwise affiliated with any PEO. The Chairman also shall chair the Executive Committee and shall be an ex officio member of all other committees except for the Accreditation Committee, Compliance Committee and Claims Committee. The Chairman shall work with the President on all matters involving the general management of the business of ESAC, with full power to see that duties are properly performed and shall see that all orders and resolutions of the Board are carried into effect. If the Chairman is an Industry Director or is otherwise affiliated with any PEO, he/she shall not participate in or obtain information not otherwise available to an Industry Director, including without limitation, confidential information about any PEO. He/She may sign, with any other proper officer, any deeds, bonds, mortgages, contracts and other documents that the Board has authorized to be executed, except where required by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board or these Bylaws to some other officer or agent of ESAC. The Chairman also shall be responsible in the President's absence for any duties assigned by the Board to the President, except for matters involving the accreditation or non-public information of a PEO or matters involving the Accreditation, Compliance or Claims Committees, if the Chairman is not an Independent Director or is otherwise affiliated with any PEO. Except as provided herein, the duties of the Chairman may be changed from time to time by the Board.

Section 10.9 Secretary/Treasurer. The Secretary/Treasurer, when available, shall attend all meetings of the Board of Directors and Accredited PEOs and ensure all votes and the minutes of all proceedings are recorded. He/She shall give, or cause to be given, notice of all meetings of the Accredited PEOs and special meetings of the Board as required by law or these Bylaws, and shall perform such other duties as may be prescribed by the Board or Chairman, under whose supervision he/she shall be. He/She may sign, with any other proper officer, certificates, cards or other instruments evidencing Accredited PEO rights, if any, voting rights, if any, or ownership rights as may be authorized by the Articles of ESAC. Upon approval of the Board, the Secretary/Treasurer may delegate any of his/her duties to any staff member he/she chooses. The Secretary/Treasurer shall review financial records provided by staff to monitor the financial condition of ESAC. He/She may sign, with any other proper officer, any deeds, bonds, mortgages, contracts and other documents that the Board has authorized to be executed, except where required by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board or these Bylaws to some other officer or agent of ESAC. In the absence of the Chairman and the Vice Chairman, and at the request of the Executive Committee, the Secretary/Treasurer shall perform all the duties of the Chairman, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman.

Section 10.10 Vice Chairman. At the request of the Chairman, or in his/her absence or disability, the Vice Chairman shall perform the duties and exercise the powers of the Chairman, and when so acting, shall have all

the powers of and be subject to all the restrictions upon the Chairman. The Vice Chairman position is allowed to be filled by the same individual for up to two 1-year terms, but is not required to be filled at all times. In the absence of a Vice Chairman, the Executive Committee is authorized to assign the position's duties to either the Secretary/Treasurer or the Immediate Past-Chairman.

Section 10.11 Immediate Past-Chairman. In the absence of the Chairman and the Vice Chairman, and at the request of the Executive Committee, the Immediate Past-Chairman shall perform all the duties of the Chairman, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman. The Immediate Past-Chairman position is authorized to be filled by the same individual for up to two 1-year terms, but is not required to be filled at all times. In the absence of an availability or willingness to serve by the immediate past Chairman, the position may be filled by the Executive Committee with a prior Chairman who is available and willing to serve.

Section 10.12 Compensation. The salary or other compensation of the President shall be fixed on an annual basis by the Executive Committee plus at least one Independent Director, subject to budgetary approval by the Board, and with the President recusing himself regarding matters involving the President's compensation. The Executive Committee may delegate to the Chairman or President the power to fix from time to time the salary or other compensation of any staff and agents appointed in accordance with the provisions of Section 10.3 or sections hereof.

ARTICLE XI -- Indemnification

Section 11.1 Definitions. In this Article:

(a) *"Indemnitee*" means (i) any present or former Director, advisory director, officer or employee of ESAC, (ii) any person who while serving in any of the capacities referred to in clause (i) hereof served at ESAC's request as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, and (iii) any person nominated or designated by (or pursuant to authority granted by) the Board or any committee thereof to serve in any of the capacities referred to in clauses (i) or (ii) hereof.

(b) "*Official Capacity"* means (i) when used with respect to a Director, the office of Director of ESAC, and (ii) when used with respect to a person other than a Director, the elective or appointive office of ESAC held by such person or the employment or agency relationship undertaken by such person on behalf of ESAC, but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

(c) *"Proceeding"* means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit or proceeding.

Section 11.2 Indemnification. ESAC shall indemnify every Indemnitee against all judgments, penalties (including excise and similar taxes), fines, amounts paid in settlement and reasonable expenses actually incurred by the Indemnitee in connection with any Proceeding to which he/she was, is or is threatened to be named defendant or respondent, or in which he/she was or is a witness without being named a defendant or respondent, by reason of his/her serving or having served, or having been nominated or designated to serve, in any of the capacities referred to in Section 11.1(a), if it is determined in accordance with Section 11.4 that the Indemnitee (a) conducted himself in good faith, (b) reasonably believed, in the case of conduct in his/her Official Capacity, that his/her conduct was in ESAC's best interests and, in all other cases, that his/her conduct was at least not opposed to ESAC's best interests, and (c) in the case of any criminal proceeding, had no reasonable cause to believe that his/her conduct was unlawful; *provided, however,* that in the event that an Indemnitee is found liable to ESAC or is found liable on the basis that personal benefit was improperly received by the Indemnitee, the indemnification (i) is limited to reasonable expenses actually incurred by the Indemnitee in connection with the Proceeding and (ii) shall not be made in respect of any Proceeding in which the Indemnitee shall have been found liable for willful or intentional misconduct in the performance of his/her duty to ESAC. Except as provided in the immediately preceding proviso to the first sentence of this Section 11.2, no indemnification shall be made under

this Section 11.2 in respect of any Proceeding in which such Indemnitee shall have been found liable on the basis that personal benefit was improperly received by him/her, whether or not the benefit resulted from an action taken in the Indemnitee's Official Capacity, or found liable to ESAC. The termination of any Proceeding by judgment, order, settlement or conviction, or on a plea of nolo contendere or its equivalent, is not of itself determinative that the Indemnitee did not meet the requirements set forth in clauses (a), (b) or (c) in the first sentence of this Section 11.2. An Indemnitee shall be deemed to have been found liable in respect of any claim, issue or matter only after the Indemnitee shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom. Reasonable expenses shall include, without limitation, all court costs and all fees and disbursements of attorneys for the Indemnitee. The indemnification provided herein shall be applicable whether or not negligence or gross negligence of the Indemnitee is alleged or proven.

Section 11.3 Successful Defense. Without limitation of Section 11.2 and in addition to the indemnification provided for in Section 11.2, ESAC shall indemnify every Indemnitee against reasonable expenses incurred by such person in connection with any Proceeding in which he/she is a witness or a named defendant or respondent because he/she served in any of the capacities referred to in Section 11.1(a), if such person has been wholly successful, on the merits or otherwise, in defense of the Proceeding.

Section 11.4 Determinations. Any indemnification under Section 11.2 (unless ordered by a court of competent jurisdiction) shall be made by ESAC only upon a determination that indemnification of the Indemnitee is proper in the circumstances because he/she has met the applicable standard of conduct. Such determination shall be made (a) by the Board by a majority vote of a quorum consisting of Directors who, at the time of such vote, are not named defendants or respondents in the Proceeding; (b) if such a quorum cannot be obtained, then by a majority vote of a committee of the Board, duly designated to act in the matter by a majority vote of all Directors (in which designation Directors who are named defendants or respondents in the Proceeding may participate), such committee to consist solely of two or more Directors who, at the time of the committee vote, are not named defendants or respondents in the Proceeding; (c) by special legal counsel selected by the Board or a committee thereof by vote as set forth in clauses (a) or (b) of this Section 11.4 or, if the requisite quorum of all of the Directors cannot be obtained therefor and such committee cannot be established, by a majority vote of all of the Directors (in which Directors who are named defendants or respondents in the Proceeding may participate). Determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, determination as to reasonableness of expenses must be made in the manner specified in clause (c) of the preceding sentence for the selection of special legal counsel. In the event a determination is made under this Section 11.4 that the Indemnitee has met the applicable standard of conduct as to some matters but not as to others, amounts to be indemnified may be reasonably prorated.

Section 11.5 Advancement of Expenses. Reasonable expenses (including court costs and attorneys' fees) incurred by an Indemnitee who was or is a witness or was, is or is threatened to be made a named defendant or respondent in a Proceeding shall be paid by ESAC at reasonable intervals in advance of the final disposition of such Proceeding, and without making any of the determinations specified in Section 11.4, after receipt by ESAC of (a) a written affirmation by such Indemnitee of his/her good faith belief that he/she has met the standard of conduct necessary for indemnification by ESAC under this Article and (b) a written undertaking by or on behalf of such Indemnitee to repay the amount paid or reimbursed by ESAC if it shall ultimately be determined that he/she is not entitled to be indemnified by ESAC as authorized in this Article. Such written undertaking shall be an unlimited obligation of the Indemnitee but need not be secured and it may be accepted without reference to financial ability to make repayment. The provisions of this Article shall not be construed to apply to, or restrict in any way, the payment or reimbursement by ESAC of expenses incurred by an Indemnitee in connection with his/her appearance as a witness or other participation in a Proceeding at a time when he/she is not named a defendant or respondent in the Proceeding.

Section 11.6 Employee Benefit Plans. For purposes of this Article, ESAC shall be deemed to have requested an Indemnitee to serve as an employee benefit plan fiduciary whenever the performance by him/her of his/her

duties to ESAC also imposes duties on or otherwise involves services by him/her to the plan or participants or beneficiaries of the plan. Excise taxes assessed on an Indemnitee with respect to an employee benefit plan pursuant to applicable law shall be deemed fines. Action taken or omitted by an Indemnitee with respect to an employee benefit plan in the performance of his/her duties for a purpose reasonably believed by him/her to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose that is not opposed to the best interests of ESAC.

Section 11.7 Other Indemnification and Insurance. The indemnification provided by this Article shall (a) not be deemed exclusive of, or to preclude, any other rights to which those seeking indemnification may at any time be entitled under ESAC's Articles of Incorporation, any law, agreement or vote of the Directors, or otherwise, or under any policy or policies of insurance purchased and maintained by ESAC on behalf of any Indemnitee, both as to action in his/her Official Capacity and as to action in any other capacity, (b) continue as to a person who has ceased to be in the capacity by reason of which he/she was an Indemnitee with respect to matters arising during the period he/she was in such capacity, and (c) inure to the benefit of the heirs, executors and administrators of such a person.

Section 11.8 Construction. The indemnification provided by this Article shall be subject to all valid and applicable laws, including, without limitation, the Texas Non-Profit Corporation Act, and, in the event this Article or any of the provisions hereof or the indemnification contemplated hereby are found to be inconsistent with or contrary to any such valid laws, the latter shall be deemed to control and this Article shall be regarded as modified accordingly, and, as so modified, to continue in full force and effect.

Section 11.9 Continuing Offer, Reliance, etc. The provisions of this Article (a) are for the benefit of, and may be enforced by, each Indemnitee of ESAC, the same as if set forth in their entirety in a written instrument duly executed and delivered by ESAC and such Indemnitee and (b) constitute a continuing offer to all present and future Indemnitees. ESAC, by its adoption of these Bylaws, (x) acknowledges and agrees that each Indemnitee of ESAC has relied upon and will continue to rely upon the provisions of this Article in becoming, and serving in, any of the capacities referred to in Section 11.1(a) of this Article, (y) waives reliance upon, and all notices of acceptance of, such provisions by such Indemnitees and (z) acknowledges and agrees that no present or future Indemnitee shall be prejudiced in his/her right to enforce the provisions of this Article in accordance with their terms by any act or failure to act on the part of ESAC.

Section 11.10 Effect of Amendment. No amendment, modification or repeal of this Article or any provision hereof shall in any manner terminate, reduce or impair the right of any past, present or future Indemnitees to be indemnified by ESAC, nor the obligation of ESAC to indemnify any such Indemnitees, under and in accordance with the provisions of the Article as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

ARTICLE XII -- Certificates of Accreditation

Section 12.1 Certificate of Accreditation. The Board may provide for the issuance of certificates evidencing ESAC accreditation, which will be in such form as may be determined by the Board. Such certificates will be signed by an officer or staff member as approved by the Board. The name and address of each Accredited PEO and the date of issuance of the certificate will be entered on the records of ESAC.

Section 12.2 Issuance of Certificates. If the Board has provided for the issuance of accreditation certificates under the provisions of Section 12.1, when an Accredited PEO has been granted accreditation and has paid any accreditation fee that may then be required, an accreditation certificate in the Accredited PEO's name will be delivered to the Accredited PEO.

ARTICLE XIII -- General Provisions

Section 13.1 Notice and Waiver of Notice. Whenever, under the provisions of applicable law or of the Articles of Incorporation or of these Bylaws, any notice is required to be given to any Director or Accredited PEO, the following provisions shall apply:

(a) Notice shall be written and delivered personally, by mail with postage prepaid addressed to such person at the address of such person as reflected in the records of ESAC, by facsimile transmission to the facsimile number provided to ESAC by such person, or by email to an electronic message address provided by the person. If notice is mailed in accordance with the requirements above, the notice will be deemed to be delivered when deposited in the United States mail. If notice is given by facsimile or email in accordance with the requirements above, the notice will be deemed to be delivered when transmitted.

(b) A waiver of notice in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 13.2 Seal. If one be adopted, the corporate seal shall have inscribed thereon the name of ESAC and shall be in such form as may be approved by the Board. Said seal may be used by causing it or an image of it to be impressed or affixed or in any manner reproduced.

Section 13.3 Fiscal Year. The fiscal year of ESAC shall be fixed by resolution of the Board.

Section 13.4 Executing Corporate Contracts. Except as otherwise provided in the articles or in these Bylaws, the Board by resolution may authorize any officer, officers, agent, or agents to enter into any contract or to execute any instrument in the name of and on behalf of the Corporation. This authority may be general or it may be confined to one or more specific matters. No officer, agent, employee, or other person purporting to act on behalf of the Corporation shall have any power or authority to bind the Corporation in any way, to pledge the Corporation's credit, or to render the Corporation liable for any purpose or in any amount, unless that person was acting with authority duly granted by the Board as provided in these Bylaws, or unless an unauthorized act was later ratified by the Board.

Section 13.5 Checks, Notes, etc. All checks or demands for money and notes of ESAC shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

Section 13.6 Books and Records. ESAC shall keep correct and complete books and records of account and will also keep minutes of the proceedings of the Accredited PEOs, Board, and committees having the authority of the Board, and will keep at the registered or principal office a record giving the names and addresses of the Accredited PEOs entitled to vote. All books and records of ESAC may be inspected by any Accredited PEO, or its agent or attorney, for any proper purpose at any reasonable time.

Section 13.7 Financial Records and Annual Reports. ESAC shall, for each fiscal year, maintain current and accurate financial records with full entries made with respect to all financial transactions of ESAC, including all income and expenditures, in accordance with generally accepted accounting practices. Based on these records, the Board shall annually prepare or approve a report of the financial activity of ESAC for such fiscal year. The report shall conform to accounting standards as promulgated by the American Institute of Certified Public Accountants and shall include a statement of support, revenue, and expenses and changes in fund balances, a statement of functional expenses, and balance sheets for all funds. All records, books, and annual reports of the financial activity of ESAC for such fiscal year shall be kept at either the registered office or principal office of ESAC for at least three (3) years after the closing of such fiscal year and shall be available to any Accredited PEO having voting rights, or its agent or attorney, for any proper purpose at any reasonable time. ESAC may charge for the reasonable expense of preparing a copy of a record or report.

Section 13.8 Dividends Prohibited. No dividend shall be paid and no part of the income of ESAC shall be distributed to the Accredited PEOs, officers or directors, provided that ESAC may pay compensation in a reasonable amount to the officers and directors as otherwise provided in these Bylaws.

Section 13.9 Loans to Directors and Officers Prohibited. No loans shall be made by ESAC to Accredited PEOs, officers or directors.

ARTICLE XIV -- Amendments

Section 14.1 Amendment by Board of Directors. Subject to the limitations of the Articles of Incorporation, these Bylaws, and the Texas Non-Profit Corporation Act, concerning corporate actions that must be authorized or approved by the Accredited PEOs of ESAC, the Board shall have the power to alter, amend or repeal these Bylaws or adopt new Bylaws, subject to amendment, repeal or adoption of new Bylaws by action of the Accredited PEOs, if any, and unless the Accredited PEOs, if any, in amending, repealing or adopting a new Bylaw expressly provide that the Board may not amend or repeal that Bylaw. The Board may exercise this power at any regular or special meeting at which a quorum is present by the affirmative vote of a majority of the Directors present at the meeting and without any notice of the action taken with respect to the Bylaws having been contained in the notice or waiver of notice of such meeting. Unless ESAC's Articles of Incorporation or a Bylaw adopted by the Accredited PEOs, if any, provide otherwise as to all or some portion of the Bylaws, ESAC's Accredited PEOs, if any, may amend, repeal or adopt new Bylaws even though the Bylaws may also be amended by the Board. Notwithstanding the foregoing, the Board may not amend any provision of Article 11 of these Bylaws.

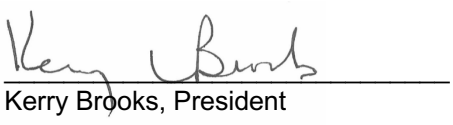
Section 14.2 Amendment by Accredited PEOs. These Bylaws may be amended, repealed, or added to, or new Bylaws may be adopted by the vote or written assent of a majority of the Accredited PEOs entitled to vote or by the vote of a majority of a quorum at a meeting called for the purpose according to the Articles or these Bylaws.

ARTICLE XV -- Subject to All Laws

Section 15.1 Subject to All Laws. The provisions of these Bylaws shall be subject to all valid and applicable laws, including, without limitation, the Texas Non-Profit Corporation Act as now or hereafter amended, and in the event that any of the provisions of these Bylaws are found to be inconsistent with or contrary to any such valid laws, the latter shall be deemed to control and these Bylaws shall be deemed modified accordingly, and, as so modified, to continue in full force and effect.

CERTIFICATE OF BYLAWS

The undersigned President of the Employer Services Assurance Corporation certifies that the foregoing Bylaws constitute the Bylaws of the Employer Services Assurance Corporation, as duly adopted and most recently amended by its Directors on the 29th day of July 2021.



Kerry Brooks, President