

**NORTH CAROLINA DEPARTMENT OF INSURANCE
THIRD-PARTY ADMINISTRATOR AGREEMENT PROVISIONS CHECKLIST**

Company Name: _____

Entity(ies) Providing the Service: _____

Relationship to Company: _____

This checklist will always accompany either the Affiliated Management, Services & Cost-Sharing Agreement Checklist or the Unaffiliated Management & Services Agreement Checklist, if the service provider is acting as a third-party administrator (“TPA”) as defined in G.S. 58-56-2(5).

Insurer Functions (Check Applicable Functions Provided Under the TPA Agreement)

- A. Directly or Indirectly Soliciting or Effecting Coverage
- B. Underwriting
- C. Collecting Charges or Premiums
- D. Adjusting or Settling Clams

TPA Provisions:

The following must be addressed in every TPA agreement (as applicable).

Enter N/A for provisions related to services not provided under the TPA agreement.

(Column 1 must be completed by the Company.)

Column 1
Agreement
References

1. G.S. 58-56-6(b): The agreement shall include a statement of duties that the TPA is expected to perform on behalf of the insurer and the kinds of insurance the TPA is to be authorized to administer. The agreement shall provide for underwriting or other standards pertaining to the business underwritten by the insurer. _____

2. G.S. 58-56-6(c): The insurer or TPA may, with written notice, terminate the agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the TPA during the pendency of any dispute regarding the cause for termination of the agreement. The insurer must fulfill any lawful obligations with respect to policies affected by the agreement, regardless of any dispute between the insurer and the TPA. _____

3. G.S. 58-56-11: If an insurer uses the services of a TPA, the payment to the TPA of any premiums or charges for insurance by or on behalf of the insured party is considered payment to the insurer. The payment of return premiums or claim payments forwarded by the insurer to the TPA is not considered payment to the insured party or claimant until the payments are received by the insured party or claimant. This section does not limit any right of the insurer against the TPA resulting from the failure of the TPA to make payments to the insurer, insured parties, or claimants. _____

4. G. S. 58-56-16(a): Every TPA shall maintain and make available to the insurer complete books and records of all transactions performed on behalf of the insurer. The books and records shall be maintained in accordance with prudent standards of insurance record keeping and must be maintained for a period of at least five years after the date of their creation. _____

5. G. S. 58-56-16(b): The Commissioner shall have access to books and records maintained by a TPA for the purposes of examination, audit, and inspection. The Commissioner shall keep confidential any trade secrets contained in those books and records, including the identity and addresses of policyholders and certificate holders, except that the Commissioner may use the information in any judicial or administrative proceeding instituted against the TPA. _____

6. G.S. 58-56-16(c): The insurer shall own the records generated by the TPA pertaining to the insurer, but the TPA shall retain the right to continuing access to books and records to permit the TPA to fulfill all of its contractual obligations to insured parties, claimants, and the insurer. _____

7. G.S. 58-56-16(d): In the event the insurer and the TPA cancel their agreement, notwithstanding the provisions of subsection G.S. 58-56-16(a), the TPA may, by written agreement with the insurer, transfer all records to a new TPA rather than retain them for five years. In this case, the new TPA shall acknowledge, in writing, that it is responsible for retaining the records of the prior TPA as required in subsection G.S. 58-56-16(a). _____

8. G.S. 58-56-21: A TPA may use only the advertising pertaining to the business underwritten by an insurer that has been approved in writing by the insurer in advance of its use. _____

9. G.S. 58-56-26(a): If an insurer uses the services of a TPA, the insurer is responsible for determining the benefits, premium rates, underwriting criteria, and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters must be provided, in writing, by the insurer to the TPA. The responsibilities of the TPA as to any of these matters shall be set forth in the agreement between the TPA and the insurer. _____

10. G.S. 58-56-26(b): It is the sole responsibility of the insurer to provide for competent administration of its programs. _____

11. G.S. 58-56-26(c): In cases where a TPA administers benefits for more than 100 certificate holders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the TPA. At least one semiannual review shall be an audit of the operations of the TPA. The insurer may conduct that audit either on-site or virtually. On July 1, 2010, and annually thereafter, every insurer shall file with the Commissioner a certification of completion of the audits as required by this subsection and performed during the previous calendar year, in the format, content, and manner as specified by the Commissioner. The insurer shall maintain in its corporate records documentation of the audits conducted to support its certification of audits for a period of five years or, if a domestic insurer, until the completion of the next quinquennial examination.

12. G.S. 58-56-31(a): All insurance charges or premiums collected by a TPA on behalf of or for an insurer, and the return of premiums received from that insurer, shall be held by the TPA in a fiduciary capacity. These funds shall be immediately remitted to the person entitled to them or shall be deposited promptly in a fiduciary account established and maintained by the TPA in a federally or State insured financial institution. The agreement between the TPA and the insurer shall require the TPA to periodically render an accounting to the insurer detailing all transactions performed by the TPA pertaining to the business underwritten by the insurer.

13. G.S. 58-56-31(b): If charges or premiums deposited in a fiduciary account have been collected on behalf of or for one or more insurers, the TPA shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each insurer. The TPA shall keep copies of all the records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to the deposits and withdrawals.

14. G.S. 58-56-31(c): The TPA shall not pay any claim by withdrawals from a fiduciary account in which premiums or charges are deposited. Withdrawals from this account shall be made only as provided in the agreement between the TPA and the insurer. The agreement shall address, but not be limited to, the following:
 - (1) Remittance to an insurer entitled to remittance.
 - (2) Deposit in an account maintained in the name of the insurer.
 - (3) Transfer to and deposit in a claims-paying account, with claims to be paid as provided in G.S. 58-56-31(d).
 - (4) Payment to a group policyholder for remittance to the insurer entitled to the remittance.
 - (5) Payment to the TPA of its commissions, fees, or charges.
 - (6) Remittance of a return premium to the person entitled to the return premium.

15. G.S. 58-56-31(d): All claims paid by the TPA from funds collected on behalf of or for an insurer shall be paid only on drafts or checks of and as authorized by the insurer.

16. G.S. 58-56-36: A TPA shall not enter into any agreement or understanding with an insurer that makes the amount of the TPA's commissions, fees, or charges contingent upon savings effected in the adjustment, settlement, and payment of losses covered by the insurer's obligations. This does not prohibit a TPA from receiving performance-based compensation for providing hospital or other auditing services and does not prevent the compensation of a TPA from being based on premiums or charges collected or the number of claims paid or processed.

17. G.S. 58-56-41(a): When the services of a TPA are used, the TPA shall provide a written notice approved by the insurer to covered individuals advising them of the identity of, and relationship among, the TPA, the policyholder, and the insurer.

18. G.S. 58-56-41(b): When a TPA collects funds, the reason for collection of each item must be identified to the insured party and each item must be shown separately from any premium. Additional charges may not be made for services to the extent the services have been paid for by the insurer.

19. G.S. 58-56-41(c): The TPA shall disclose to the insurer all charges, fees and commissions received from all services in connection with the provision of administrative services for the insurer, including any fees or commissions paid by insurers providing reinsurance.

20. G.S. 58-56-46: Any policies, certificates, booklets, termination notices, and other written communications delivered by the insurer to the TPA for delivery to insured parties or covered individuals shall be delivered by the TPA promptly after receipt of instructions from the insurer to deliver them.
