

## Checklist for management, service, cost sharing, tax-allocation, rental, or lease agreement

**NOTE:** The provisions required by Texas Administrative Code Section 7.204(a)(2)(D) may be inserted into an Insurance Regulatory Provisions Section in the contract.

### ▶ Section 1: Name of Entities

**Name of insurer:**

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### ▶ Section 2: List the location in the agreement for each provision:

1. Provision identifying the party(s) providing services and describing the services provided. (Examples of services under tax agreement: Parent performing tax calculations, preparing and filing the consolidated return, remitting taxes to IRS, collecting refunds, representing the tax consolidation group before the IRS, reporting, recordkeeping. Examples of services under lease agreement: Lessor providing facilities/equipment for the business operations of lessee.)

Location in agreement: \_\_\_\_\_

2. Provision for allocation of expenses on an equitable basis in conformity with customary insurance accounting principles consistently applied (and IRS regulations if federal tax agreement). Identify and describe the method of allocation.

Location in agreement: \_\_\_\_\_

3. Provision for timely settlement at least every 90 days with a specified due date in compliance with the Accounting Practices and Procedures Manual published by the National Association of Insurance Commissioners. (For a federal tax agreement, all payments between the insurer and affiliate should correlate with payments due to the IRS and receipt of refunds from the IRS.)

Location in agreement: \_\_\_\_\_

4. Statement that insurer may not advance funds to affiliate except to pay for the services defined in the agreement. (Example for tax agreement: Insurer may not advance funds to parent except in accordance with the provisions of this agreement.)

Location in agreement: \_\_\_\_\_

5. Statement that insurer will oversee the functions provided to it by the affiliate and will monitor those functions annually for quality assurance.

Location in agreement: \_\_\_\_\_

6. Statement that books and records of insurer include all books and records developed or maintained under or related to the agreement.

Location in agreement: \_\_\_\_\_

7. Statement that all books and records of insurer are the property of the insurer, are subject to the control of the insurer, and will remain so.

Location in agreement: \_\_\_\_\_

8. Statement that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer, and are subject to the control of the insurer.

Location in agreement: \_\_\_\_\_

9. Provision specifying standards for termination of the agreement with and without cause. (Example for tax agreement: This agreement will remain in effect for each consolidated return year, unless terminated by the mutual written agreement of all the parties. In the event that any party ceases to be affiliated within the group, this agreement automatically terminates only with respect to that member. This agreement will also terminate if the group fails to file a consolidated federal income tax return for any tax year of this agreement. Each party to this agreement may terminate this agreement without cause, but only with respect to such party, upon 30 days prior written notice. Each party to this agreement may terminate this agreement for cause, but only with respect to such party, upon 10 days prior written notice if the reason for such cause has not been cured during the notice period. Notwithstanding the termination of this agreement, its provisions will remain in effect with respect to any period of time during the tax year in which termination occurs for which the income of the terminating party must be included in the consolidated federal income tax return.)

Location in agreement: \_\_\_\_\_

10. Provision specifying that the insurer will be indemnified in the event of gross negligence or willful misconduct by the affiliate providing the services. (Example for tax agreement including Texas Administrative Code Section 7.204(a)(2)(E) requirement: Insurer must be adequately indemnified by the parent in the event the IRS levies upon the assets of Insurer for unpaid taxes in excess of the amounts paid by the insurer under terms of this agreement and for any loss suffered by the insurer resulting from or related to the gross negligence or willful misconduct of the parent.)

Location in agreement: \_\_\_\_\_

11. If the insurer is placed in receivership or seized by the Commissioner under Texas Insurance Code Chapter 443 (or applicable State Receivership Act if commercially domiciled):

a. All of the rights of the insurer under the agreement extend to the receiver or Commissioner.

Location in agreement: \_\_\_\_\_

b. All books and records developed or maintained under and related to this agreement will immediately be made available to the receiver or the Commissioner and must be returned over to the receiver or Commissioner immediately upon the receiver or the Commissioner's request.

Location in agreement: \_\_\_\_\_

12. Affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to Texas Insurance Code Chapter 443 (or applicable State Receivership Act if commercially domiciled).

Location in agreement: \_\_\_\_\_

13. Affiliate will continue to maintain any systems, programs, or other infrastructure supporting this agreement notwithstanding a seizure by the Commissioner under Texas Insurance Code Chapter 443 (or applicable State Receivership Act if commercially domiciled), and will make them available to the receiver, as applicable, for so long as affiliate continues to receive timely payment for services rendered (or the insurer performs its obligations under this agreement if tax agreement.)

Location in agreement: \_\_\_\_\_