

NC Division of Public Health  
Receipt-Based Contracts  
Basics

## Receipt-Based Contract (RBC) Definition

A receipt-based contract is a document that legally binds the NC Division of Public Health (DPH) to another party, where the other party initiates the legal instrument. It can take many forms including but not limited to Memoranda of Understanding (MOUs) or Memoranda of Agreement (MOAs), affiliation agreements, contracts for purchase, and contracts for grant-based initiatives or sponsored programs. A contract might or might not involve the payment of money. Some come in the format of an Open Window IMOA when a sister NC DHHS agency is the funder.

## Authority to Execute

Only the Division Director or Designee is authorized to sign a contract on behalf of DPH.

## DPH Review and Approval Process

All receipt-based contracts (RBCs) must be submitted to the DPH Contracts Manager for review and approval processing. Do not submit RBCs directly to the Division Director's office for signature. The length of time to review and approve, as well as the number of approvals, depend on the type and complexity of the RBC.

Program negotiates the draft contract with funding agency, using this guide as a reference.

Once contract is in its best form, submit with a completed "green sheet" to the Contracts Manager. (Agencies off-site may submit the documents via email or courier them to Six Forks Campus.)

The "green sheet" is the equivalent of the contract approval form – but for receipt-based contracts. It contains basic information about the contract, the receipt account and center into which the funds will be budgeted, and a place for approvers to sign. The form is so named because the Contracts Office prints the document on green paper to distinguish it from other contracts. It may be found on the DPH Employee Toolkit, under [Contracts Forms](#), in the Receipt-Based Contracts folder.

Once received, the Contracts Manager or delegate enters the RBC in the DPH Contracts Database and saves the soft copy files onto the Contracts I drive under the "DPH Contracting Services" folder, creating an appropriate subfolder.

DPH Contracts Manager reviews the contract materials and convenes with the Program and any other necessary parties including, but not limited to:

- DPH Privacy Officer
- DPH Legal Counsel
- DHHS Attorney General's Office
- Funding Agency

DPH Contracts Manager and any other reviewer should use "track changes" or insert comments when reviewing the document to facilitate better communication of edits and alterations to the funding agency. All revisions to the RBC should be saved separately with the editor's initials and date of edits.

Once the contract is in final form, the contract and green sheet will be routed to the DPH Budget Office, and any other necessary approvers, for signature.

Once all reviews and signatures have been obtained, the RBC will be routed to the Division Director for partial execution.

DPH Contracts Manager then routes the partially executed documents to the funding agency in the manner prescribed in the contract or in the funding agency's email to the Program.

DPH Contracts Manager or delegate will enter the routing information and status in the DPH Database and scan the final approved "green sheet" and partially executed RBC into the soft copy file. A hard copy file will be made with all pertinent documents and any originals. The final, executed contract will be scanned into the soft copy file with the document going in the RBC hard copy file.

## Types of RBCs

Is the contract related to a grant-based initiative or sponsored program?

In order to apply for grant funding, DPH Programs must follow the NC DPH [Grants Management Policies and Procedures](#) located on the DPH Employee Toolkit. NC DHHS has specific requirements in place for Programs that apply for private grants. Programs should coordinate with the DPH Grants Coordinator in the Budget Office to determine if prior Department approval is required before applying to any grant (public or private) and follow the applicable process.

When in receipt of an NOA for a private grant, Program must follow the prescribed grant process and then submit the NOA and a "green sheet" to the DPH Contracts Manager for review and approval processing.

Is the contract for the purchase of goods or services?

When in receipt of a purchase order for goods or services, Program must review the contract very carefully to ensure it agrees with the pricing structure and stipulations the Program included in their bid for the good or service. If it includes Salary & Fringe of a DPH Employee, Program must work with their Business Officer to ensure the current rates are used.

Once Program approves the purchase order, it must be submitted with a "green sheet" to the DPH Contracts Manager for review and approval processing.

Is the contract a mutual agreement with no funds exchanged?

Once Program has vetted the agreement and negotiated its requirements with the proffering agency, Program must submit the agreement and a "green sheet" to the DPH Contracts Manager for review and approval processing.

Does the contract involve receiving/providing data?

Data Use Agreements can be processed directly through DPH's Privacy Officer to ensure compliance with security requirements for the exchange of PHI, PII, and/or HIPAA data.

Agreements that contain the exchange of data along with other requirements must be submitted with a "green sheet" to the DPH Contracts Manager for review and approval

processing – which will include the review and approval of the DPH’s Privacy Officer to ensure compliance with security requirements for the exchange of PHI, PII, and/or HIPAA data.

## Reviewing the Contract Clauses

### Prohibited Clauses

If the following terms are in the RBC, they must be modified or abandoned:

1. Liability beyond the Tort Claims Act

Does the contract subject DPH to tort liability beyond the limits of the Tort Claims Act (\$1,000,000 cap for negligence of state employee/agent acting within scope of employment), or otherwise waive State's sovereign immunity?

Any clause that provides for Division liability or "assumption of risk" or "responsibility" for damages, accidents, claims, etc. may violate this prohibition.

If YES, either modify the contract or abandon it. Click [here](#) for language to use to modify or negotiate the removal of this clause from the contract.

2. Indemnification / Hold Harmless

Does the contract provide for the Division to "hold harmless," or "save harmless," or "indemnify" the contractor, or otherwise assume responsibility for paying the contractor's liabilities?

If YES, either modify the contract or abandon it. Click [here](#) for language to use to modify or negotiate the removal of this clause from the contract.

3. Does the contract contain clauses that would make it subject to either the substantive law or the jurisdiction (also referred to "forum" or "venue") of another state?

If YES, either modify the contract or abandon it. Click [here](#) for language to use to modify or negotiate the removal of this clause from the contract.

4. Does the contract require binding arbitration or any mandatory dispute resolution other than legal action in North Carolina courts? (A mediation clause is acceptable.)

If YES, either modify the contract or abandon it. Click [here](#) for language to use to modify or negotiate the removal of this clause from the contract.

5. Does the contract allow the other party to assign its right to payment to a third party without subjecting the third party to all the defenses and claims the Division would have against the original contracting party?

If YES, either modify the contract or abandon it. Click [here](#) for language to use to modify or negotiate the removal of this clause from the contract.

6. Does the contract provide for the Division to pay attorney fees, court costs, or other litigation expenses of other parties if there is a dispute?

If YES, either modify the contract or abandon it. Click [here](#) for language to use to modify or negotiate the removal of this clause from the contract.

7. Does the contract provide for personal liability of the signer or any other DPH employee?

If YES, either remove the clause or abandon the contract. The Division cannot protect an employee from personal liability; the Defense of State Employees Act applies only to liabilities within the course and scope of an employee's State employment.

8. Does the contract include a "non-compete" clause, which requires, for instance, that the Division may not contract with a similar service or product provider for a specified length of time after the expiration or termination of the contract?

If YES, either remove the clause or abandon the contract. State agencies are bound to comply with competitive bidding requirements under State law. Therefore, if DPH determines that it needs a particular service, it is required to competitively bid for that service, and cannot agree to a non-compete clause that prohibits such bidding.

9. Does the contract include a clause or covenant providing that DPH will not hire a service provider's employees who work with us in the provision of services?

If YES, remove the clause or abandon the contract. Same explanation as #8

10. Does the contract contain a provision that all payments are immediately due upon breach of the contract or default (also known as an "acceleration clause")?

If YES, remove the clause from the contract or abandon it. Acceleration clauses implicate the State's obligation to operate within a fixed budget, forcing the Division to make payments for which no money has been appropriated or budgeted and are not due in a particular fiscal year. Therefore, DPH may not enter into an acceleration clause.

11. Does the contract contain information about late payment penalties or finance charges?

If YES, either remove the clause or abandon the contract. Same explanation as #10.

12. Does the contract alter the normal application of North Carolina general law of contract by including clauses that:

- a. Violate the statute of limitations by providing less than three years for the Division to file a legal claim or sue for breach of contract?
- b. State that breach would cause irreparable harm and justify injunctive action?
- c. Provide for liquidated damages or cancellation fees?

If YES, either remove the clause or abandon the contract. Click [here](#) for language to use to negotiate the removal of this clause from the contract.

13. Does the contract include a clause or covenant that might cause DPH to violate another State law? (Examples include but are not limited to conflicts or potential conflicts with whistleblower laws, executive orders, rates set by the General Assembly.)

If YES, either modify the clause to include the provision “to the extent permitted by North Carolina State law” or abandon it. Alternatively, a clause may be included in the “Termination” section to cover all potential conflicts. An example of such a clause may be found [here](#).

### Risky Clauses

14. Does the contract allow for the termination of the contract by the other party and not for the Division?

If YES, modify the clause to give DPH the same termination rights for convenience (not for cause) as the other party. This is typically anywhere from 30 to 90 days with written notice, depending on the good or service being provided.

15. Does the contract provide the other party with ownership or other rights, such as intellectual property?

If YES, work with the DPH Contract Manager to procure DPH/DHHS Legal review.

16. Has the other party requested that the Division sign a “Business Associate Agreement” under HIPAA?

If YES, STOP. Work with the DPH Contract Manager to procure DPH Privacy Officer review.

## General Contract Provision Checklist

1. Did the person in the Program, most knowledgeable about the background and facts, review the contract?  
 Yes  No. (Discuss the Contract with the person most knowledgeable and proceed with review.)
2. Is the contract document complete? Are all attachments or documents referenced in the contract attached?  
 Yes  No (If no STOP REVIEW until all documents are obtained and attached.)
3. Has the Division been identified properly by name?
  - a. The Division should always be identified in the contract as follows:  
The North Carolina Department of Health and Human Services, Division of Public Health ("DPH")
  - b. The State Lab should always be identified in the contract as follows:  
The North Carolina Department of Health and Human Services, Division of Public Health, for its State Laboratory of Public Health ("SLPH") Yes  No (STOP REVIEW, revise and then continue with review.)
4. Is the name and authority of the other party's representative provided? Are they identified by a corporate or individual name? If corporate, is their state of incorporation included? Are abbreviations used and are they consistent throughout the document and in the signature blocks?  
The Division should always be identified in the contract as follows:  
The North Carolina Department of Health and Human Services, Division of Public Health  
 Yes  No (STOP REVIEW, revise and then continue with review.)
5. Does the contract clearly establish who will execute the contract for the other party, and in what capacity? Are the names, addresses, telephone, and fax numbers of each party's point of contact included  
The Division's signatory should always be identified in the contract as follows:  
Name of Division Director, Division Director  
 Yes  No (STOP REVIEW, obtain and then continue with review.)
6. Does contract contain a clause setting forth that the contract is the complete agreement of the parties? Does the Contract clearly and accurately state the "consideration"? (Note: "Consideration" is a legal term meaning the cause, motive, price or compelling influence which induces a contracting party to enter into a contract. Any benefit conferred or agreed to be conferred to which a party is already legally entitled does not constitute consideration for a contract.)  
 Yes  No (Insure parties do not have any oral or "side" agreements and then include clause, if applicable.)

7. Does contract have a clearly stated beginning date, ending date and effective date?  
 Yes  No (Determine dates and include.)
  
8. Does contract contain a provision stating that time is of the essence in performance of this contract by the other parties?  
 Yes  No (Insure parties do not have any oral or "side" agreements and then include clause.)
  
9. Is there a provision for notification of default, a method to cure such default and specific steps provided for notice to parties?  
 Yes  No (If no notice or method for cure is included, review purpose of Contract. If no specific steps are included for notice to parties, include a provision.)
  
10. Does the contract clearly establish time, place, and method of payment?  
 Yes  No (Include a clause establishing time, place, and method of payment.)
  
11. If applicable, is the Division able to meet with the invoicing requirements of the contract?  
 Yes  No (If applicable, work with Program to determine how they will invoice and alter the provision if necessary.)
  
12. Are payment terms at least NET 30 upon receipt and approval of invoice (meaning that the funder has up to 30 days to pay the invoice in full)?  
 Yes  No (Modify to reflect NET 30 terms unless Division allows otherwise.)
  
13. Does the contract contain a force majeure clause ("act of God clause") effective as to both parties?  
 Yes (Is clause consistent with the Contract purpose?)  
 No (Determine how acts of God are likely to impact the Contract, negotiate and insert clause, if applicable.)
  
14. Does the contract contain confidentiality or non-disclosure provisions?  
 Yes (Add clause to make it subject to the NC Public Records Act and route to DPH privacy Officer for review.)  No
  
15. Does the contract provide for automatic renewal, or renewal unless DPH takes affirmative action to terminate?  
 Yes (Review with Contracts Manager.)  No
  
16. Does the contract assume or refer to information or documents outside those included with the contract?  
 Yes (Determine if such information is needed for proper Contract interpretation, and include if required.)  No

17. Does the contract create rights in parties other than DPH and the funding agency?  
 Yes (Review with Contract Manager and Legal.)  No
18. Does the contract grant any party other than DPH any "exclusive right," so that the contract would limit for a period of time DPH's capacity to grant similar rights to other persons or organizations?  
 Yes (Consult with Contracts Manager and Legal to check for conflicts.)  No
19. Does the contract involve the creation or modification of any intellectual property (copyright, patent, trademark) by the party providing consulting or other personal services?  
 Yes (Ensure that the Contract provides that any such intellectual property rights are owned entirely by the Division.)  No
20. Does the contract require that the Division provide the funding agency with personal identifiers as listed in N.C.G.S. §132-1.10 and in N.C.G.S. §14-113.20(b) or any other legally confidential information including "personally identifiable information" from student education records as defined by the Family Educational Rights and Privacy Act (FERPA)?  
 Yes (Review with Contracts Manager and DPH Privacy Officer to include proper clauses are included.)  
 No
21. Does the Contract allow the price or other terms to be changed in the future?  
 Yes  No (Either may need to be modified, depending on circumstances.)
22. Does the contract allow the other party to use the Division's name in any advertising, endorsement, or promotion?  
 Yes (Modify the Contract to require advance written approval of content from the Nc DHHS Office of Communications.)  No
23. Does the contract require DPH to "ensure," use "best efforts," "warrant," or otherwise guarantee anything (e.g., security of property or confidentiality of information)?  
 Yes (Replace that requirement with wording that DPH will use "reasonable efforts.")  No
24. Does the contract require personnel, space, or equipment in addition to what is presently available for the project, or does it require alterations to physical plant, installation, or maintenance of equipment?  
 Yes
- a. You are required to obtain approval from the DPH Chief Budget Officer that such requirements can be provided within the limits of funds available.
  - b. If the contract requires the purchase of equipment, you are required to determine that such equipment is not already available for the project, and that purchases will be made in accordance with State procurement laws.
- No

25. Does the contract fall within Division's mission or legal mandate?  
\_\_\_Yes \_\_\_ No (Approval by Division Director is required.)
26. Is there any part of the Contract that the Program does not understand?  
\_\_\_Yes (Indicate what part and discuss with Contracts Manager.) \_\_\_No
27. Must the Contract be signed in multiple originals?  
\_\_\_Yes (Ensure correct number of "originals" exist.) \_\_\_No
28. Must the Contract originals be returned or is an email scan of the partially executed document acceptable?  
\_\_\_Originals (Ensure correct recipient/address.) \_\_\_Email (Ensure correct recipient /email.)

## Appendix A – Alternate Clauses and Negotiation Tips

### Prohibited Clauses #1, 2, & 6:

Insert the following language at the end of any clause providing that the Division will take assumption of risk, have responsibility, hold harmless, save harmless, or indemnify, or a clause subjecting the Division to liability beyond the limits of the Tort Claims Act (including attorneys fees):

"Only in the manner and to the extent permitted under North Carolina law, including but not limited to the NC Tort Claims Act, GS 143-291, et seq., and without waiver of its sovereign immunity,...."

In negotiating the removal of an indemnity, assumption of risk, or hold harmless clause or a clause subjecting the Division to liability beyond the limits of the Tort Claims Act (including attorneys fees), you may use the following language in a letter to explain the Division's limitations:

"North Carolina laws and regulations provide that contract provisions such as limitations on the other party's liability, waivers of the limits of the Division's liability, and hold harmless or indemnification clauses in favor of the other party are contrary to public policy and are therefore void. Specifically, under the North Carolina Tort Claims Act (N.C. Gen. Stat. 143-291 et seq.) a State entity cannot waive the State's sovereign immunity and assume liability for actions not covered by the Tort Claims Act, in a forum other than the Industrial Commission, for an amount greater than the Tort Claims Act (\$1,000,000), or for liabilities different from the liabilities allowed under the Tort Claims Act (such as attorney's fees). Agreeing to such terms in violation of the Tort Claims Act would render that agreement void."

### Prohibited Clause #3:

If the contract contains clauses that would make it subject to either the substantive law or the jurisdiction of another state, either:

- Remove the clause; or
- Remove the clause and add a clause making the Contract subject to the law and jurisdiction of the State of North Carolina, such as:

"This Agreement shall be construed, governed, and enforced by and in accordance with the internal laws of the State of North Carolina. Each party expressly consents to the jurisdiction of the Superior Court of the State of North Carolina should litigation arise between the parties."

In negotiating the removal or change of a jurisdiction or choice of law clause, you may use the following language in a letter to explain the Division's limitations:

"Clauses requiring the Division to consent to litigation in a jurisdiction other than North Carolina are prohibited under N.C. Gen. Stat. § 22B-3. Clauses permitting suit in another state implicate the State's sovereign immunity and the Attorney General's authority to represent the State agency. Therefore, the Division, as a State agency, cannot agree to a clause subjecting the Division to either the substantive law or the jurisdiction of another state. In addition, choice of law provisions implicate the State's right to assert sovereign immunity and limit negligence claims to the Tort Claims Act. Therefore, they are tantamount to unauthorized waivers of sovereign immunity."

#### Prohibited Clause #4:

If the contract requires binding arbitration or any mandatory dispute resolution other than legal action in North Carolina courts, either:

- Remove the clause; or
- Remove the clause and add a clause requiring mediation in North Carolina, such as:

"Any dispute arising under this Agreement may be settled by mediation in the State of North Carolina in accord with such procedures as may be acceptable to the parties."

In negotiating the removal of an arbitration clause, you may use the following language in a letter to explain the Division's limitations:

"Any contract between the Division and another party includes by implication the existing law of the State of North Carolina. The waiver of sovereign immunity therefore is limited to the waiver of immunity for contracts that include the law of North Carolina. To preserve its sovereign immunity the Division may not agree to waive provisions of North Carolina law. A clause requiring binding arbitration or any mandatory dispute resolution other than legal action in North Carolina courts change the law under which sovereign immunity for breach of contract was waived. Therefore, the Division, as a State agency, cannot agree to binding arbitration or any mandatory dispute resolution other than legal action in North Carolina courts."

#### Prohibited Clause #5:

If the contract allows the other party to assign its right to payment to a third party without subjecting the third party to all the defenses and claims the Division would have against the original contracting party, modify the Contract by removing the assignment language and inserting the following clause:

"This Contract is not assignable by either party."

In negotiating the removal of an assignment clause, you may use the following language in a letter to explain the Division 's limitations:

"An assignment clause constitutes a waiver of defenses and recourse and implicates the exclusive emoluments clause because the assignee receives State funds without providing public service. It might also change the assumption that the State will always have its regular contract defenses available to it. Therefore, the Division, as a State agency, cannot agree to an assignment clause."

#### Prohibited Clause #12:

In negotiating the removal of a clause providing less than three years for the Division to file a legal claim or sue for breach of contract, you may use the following language in a letter to explain the Division's limitations:

"Any contract between the Division and another party includes by implication the existing law of the State of North Carolina. The statutory minimum in North Carolina for filing legal claims on a contract or suing for breach of contract is three years. Therefore, the Division, as a State agency, cannot agree to a clause providing less than the statutory three years for the Division to file a legal claim or sue for breach of contract."

In negotiating the removal of a clause providing that breach would cause irreparable harm and justify injunctive action, you may use the following language in a letter to explain the Division's limitations:

"A clause requiring that breach would cause irreparable harm and justify injunctive action may implicate the Attorney General's obligation to exercise duties regarding civil litigation. N.C. Gen. Stat. § 114-6. Therefore, the Division, as a State agency, cannot agree to a clause providing that breach would cause irreparable harm and justify injunctive action."

In negotiating the removal of a clause providing for liquidated damages or cancellation fees to be paid by the Division, you may use the following language in a letter to explain the Division's limitations:

"A clause providing for liquidated damages or cancellation fees may implicate the Attorney General's obligation to exercise duties regarding civil litigation. N.C. Gen. Stat. § 114-6. Therefore, the Division, as a State agency, cannot agree to a clause providing for liquidated damages or cancellation fees."

### Prohibited Clause #13:

In negotiating the addition of a clause safeguarding the Division against the violation, or potential violation, of North Carolina State law, you may add the following language (typically in the "Termination" section of the contract:

"Where the Contractor identifies a clause, provision, term, condition, or other language that would cause the Contractor, its employees, or subcontractors to violate North Carolina law as that law currently exists or may be hereafter amended; the Contractor must notify the Contracting Officer in writing of the conflict before not performing that aspect of the Contract. Provided, however, that the Contractor is excused from performance on matter(s) barred by North Carolina law until such matter(s) is/are resolved to the extent that the violation(s) is/are removed. If no resolution is achieved within thirty (30) days of the written notice, either of the parties may immediately terminate this contract without such being a breach. Under no circumstance will the Contractor be required to violate North Carolina law."