

CONTRACT ADVISORY

RELATING TO CONTRACT BETWEEN THE UNIVERSITY OF NORTH CAROLINA PEMBROKE
AND

(NAME OF VENDOR)

This Contract, which has been submitted for approval and signature, contains one or more provisions that are normally unacceptable to the University. These provisions are normally unacceptable because they: (a) potentially impose liability on the University beyond that which is deemed to be appropriate for a state agency; (b) limit the vendor's normal liability for its own breach or other wrongdoing; (c) violate a provision of State law or University policy; or (d) do all of the above. Negotiations with the Vendor to remove the provisions listed below have been unsuccessful.

It is the department's responsibility to review and evaluate all risks associated with the assumption of the following items. The specific paragraphs of the contract for which this advisory are issued and the reason the paragraph is not normally acceptable, are as follows:

	Limits other party's liability	Nothing shall act to limit the contractual and tort obligations or liabilities of a person or entity when contracting with a State of North Carolina entity, or be construed as a waiver of any statutory, contractual, or tort defense, remedy, or limitation on liability, including a defense of sovereign immunity, to which UNCP would otherwise be entitled.
	Acceleration clause and interest fees	Acceleration, late fee and payment penalty clauses all implicate the State's obligation to operate within a fixed budget forcing the State to make payments for which no money has been appropriated or budgeted and are not due in a particular fiscal year.
	Late payment penalties	Acceleration, late fee and payment penalty clauses all implicate the State's obligation to operate within a fixed budget forcing the State to make payments for which no money has been appropriated or budgeted and are not due in a particular fiscal year.
	Statute of limitations	Any contract between the University 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 University, as a State agency, cannot agree to a clause providing less than the statutory three years for the University to file a legal claim or sue for breach of contract.
	Injunctive relief or liquidated damages	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 University, as a State agency, cannot agree to a clause providing that breach would cause irreparable harm and justify injunctive action.

The Attorney General of North Carolina has provided written advice recommending that such terms be deleted and the University of North Carolina Pembroke Office of the General Counsel concurs in this advice. However, the decision of whether or not to assume risks of contractor non-performance, default, defect and other liabilities is left to the UNCP supervisor (department head or higher) of the unit that wants the product or service being provided under the contract.

By signing below, the affected unit indicates its desire to enter the contract without deleting the provision(s) that have been identified as normally unacceptable. Any damages or costs that result from the presence of these clauses in the contract are to be paid from the affected unit's budget. The unit acknowledges that it has done a business risk analysis on the unit's monetary exposure under the above identified contract terms and the unit accepts the potential for the maximum monetary liability.

This Contract Advisory is an internal University document intended to make the affected unit aware of the risks of agreeing to the identified clause(s) and to alert the unit to the potential impact on its budget under certain circumstances. In no way is it intended to make any individual personally liable under this contract. This Contract Advisory may be used to address any of the normally unacceptable clauses that are identified as being among those clauses that may be accepted by the University upon execution of a Contract Advisory.

I hereby accept provisions in the proposed Contract even though they present risks that legal counsel has advised against accepting. I understand that my decision exposes my department to possible losses, damages or inability to collect damages that would otherwise be owed. I acknowledge that I am accepting those special risks identified above and desire to enter into this Contract in spite of those risks.

Name of Unit seeking the Product or Service: _____

Contact Person in Unit _____ Phone Extension _____

Division Official with Budgetary Authority - Signature _____ Date _____

Division Official with Budgetary Authority - Printed Name _____

Department Head's Signature _____ Date _____

Department Head's Printed Name _____

Department Head's Title _____