

**UNIVERSITY OF NORTH CAROLINA PEMBROKE
CONTRACT AMENDMENT CHECKLIST
To Be Completed by Purchasing**

CONTRACT: _____

DEPARTMENT/CONTACT: _____

DATE OF REVIEW: _____

SIGNATURE – DIRECTOR OF PURCHASING: _____

Contract Provision	Requested Action (Removal, Modification and/or Amendment)
Section _____ Subjects UNCP to liability beyond the scope	Request the addition of the following language , “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.”
Section _____ Hold Harmless/Indemnification language	Request the addition of the following language , “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.” OR sign CONTRACT ADVISORY and department assumes responsibility.
Section _____ Substantive law or jurisdiction of another state (forum or venue)	Alter the provision to reflect the application of the laws of the State of North Carolina, i.e., “This Agreement shall be governed by and construed under the laws of the State of North Carolina, which shall also be the forum for any lawsuits arising from or incident to this Agreement.” OR In the alternative, remove the provision in its entirety to allow the contract to remain silent on the applicable state law.
Section _____ Requires binding arbitration or other mandatory dispute resolution	Request the removal of the provision, OR In the alternative, the University can agree to the addition of the following: “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 mutually agreed upon by the parties.”
Section _____ Requires University to pay attorney fees, court costs or other litigation expenses	Request the Removal the provision – A state agency 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 or for an amount greater than the Tort Claims Act or different from the tort claim liability, e.g. attorney fees.
Section _____ Contains non-compete clause	Request the Removal the provision. State agencies are bound to comply with competitive bidding requirements under State law. Therefore, if the University 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.
Section _____ Clause that prohibits University from hiring service provider’s employees	Request the removal of the provision. A covenant that the University will not hire a service provider’s employees should be deleted on public policy grounds. The policy of the State of North Carolina is to hire into each position the individual whose education and experience make him or her the person best able to perform the specific requirements of the job. Writing the proposed covenant into any of our contracts with service providers makes it impossible to carry out that public policy. The "best-qualified individual" may in any particular case be the service provider's present employee, and, consistent with the State policy, the University needs to be in a position to hire that person.
Section _____ Confidentiality Provision	Insert the following language at the end of that clause: “. . . unless disclosure is required by law.”
Section _____ Payment of late fees, finance charges and/or all payments are due upon breach of contract (acceleration clause)	Request the removal of the provision. 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. OR sign CONTRACT ADVISORY and departments assumes responsibility.
Section _____ Contains automatic renewal clause	Request that the provision be modified. A contract must be for a term specific and should not automatically renew unless some action is taken by the University.

<p>Section _____ Defense or settlement provisions</p>	<p>Request the removal of the provision; nothing shall act to limit the statutory rights, responsibilities, or obligations of the Governor or the Attorney General of the State of North Carolina. In the alternative, the University can agree to the addition of the following: “PARTY’S assertion of a right to exclusive control of any investigation, defense or settlement of any claim filed against UNCP is subject to the advance approval of the Attorney General of the State of North Carolina.”</p>
<p>Section _____ Limitation of Liability or waiver/expansion of University liability</p>	<p>Request the removal of the provision. 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. OR sign CONTRACT ADVISORY and departments assumes responsibility.</p>
<p>Section _____ Limit on contractual damages</p>	<p>Request the addition of the following language: “Any limitation on Party’s liability in this Agreement will not act to limit liability for physical damage to tangible property or for bodily harm, to the extent caused by Party.”</p>
<p>Section _____ Provision or law not applicable to the University, e.g. UCC</p>	<p>Request the removal of the provision. Nothing shall act to limit statutory or common law exclusions or exceptions, or expand statutory or common law liabilities, which would otherwise apply to a North Carolina state entity or the University of North Carolina.</p>
<p>Section _____ Intellectual property infringement warranties</p>	<p>Request the addition of the following language: “In the event an intellectual property right or other claim is brought against UNCP for use of the software, products, or services in accordance with this Agreement, Party agrees to indemnify and hold UNCP harmless from and against any lawsuit, claim, damage, liability, or expense (including reasonable attorneys’ fees) incurred by UNCP as a result of the claim.”</p>
<p>Section _____ Modification of normal application of NC law, e.g. violate the state of limitation by providing less than 3 years for breach of contract claim</p>	<p>Request the removal of the provision. 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. OR sign CONTRACT ADVISORY and departments assumes responsibility.</p>
<p>Section _____ Breach of contract would cause irreparable harm and justify injunctive relief</p>	<p>Request the removal of the provision. 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.</p>
<p>Section _____ Provide for liquidated damages or cancellation fees</p>	<p>Request the removal of the provision. 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 University, as a State agency, cannot agree to a clause providing for liquidated damages or cancellation fees.” OR sign CONTRACT ADVISORY and departments assumes responsibility.</p>
<p>Section _____ Right to exclusive control of any investigation, defense or settlement of any claims filed against the University</p>	<p>Request the addition of the following: PARTY’s assertion of a right to exclusive control of any investigation, defense or settlement of any claim filed against UNCP is subject to the advance approval of the Attorney General of the State of North Carolina.”</p>
<p>Section _____ Allows the other party to use the University’s name in advertising, endorsement or promotions</p>	<p>Request the addition of the following: PARTY will not appropriate or make use of UNIVERSITY’s name or any of UNIVERSITY’s trade or service marks or property, in any advertising or otherwise, without prior written consent of UNIVERSITY. If UNIVERSITY grants written consent to use UNIVERSITY’s name and/or trade or service marks, for advertising, endorsement, or promotion, UNIVERSITY shall have the right to reject any such use proposed by PARTY which in UNIVERSITY’s sole discretion violates UNIVERSITY’s standards of advertising or is inconsistent with UNIVERSITY’s role and reputation as a public institution of higher education. UNIVERSITY’s permission to permit particular advertising shall not be unreasonably withheld.”</p>