

Acceptance of Risk Form for Software “Click Wrap” Agreements Not Approved by University Counsel

University policies and procedures to review prior to filling out this Form: (1) [Policy on Contract Review and Approval](#); (2) [List of Approved Click-Wraps and Procedure for Entering into Non-Approved Click-Wrap Agreements](#); and (3) [Authority for contract negotiations and signature approval](#)

Name of Software: _____

Software Vendor: _____

University unit¹ desiring to use Software: _____

Product Description: _____

Business Need: _____

Associated Risks: _____

Other alternative products (if any): _____

Risk Mitigation: _____

Set forth the Business Case for Use of Non-Approved Software, i.e., why the unit must have the product even though the click-wrap agreement is in violation of State law:

I certify that I and/or my unit have made a good faith effort to request the assistance of University Counsel in negotiating the problematic terms identified by University Counsel and allowed University Counsel sufficient time to pursue negotiations with the vendor. I certify that the unit has investigated and considered alternative products and/or vendors but has been unable to find a suitable alternative

¹ The term “unit” as used in this form refers to any University department, center or division that wishes to enter into a click-wrap agreement. The term “unit” may also refer to the entire University in those cases where the intent is to obtain University-wide approval for a click-wrap.

that does not have connected to it a contract that has equally or more problematic terms. I understand that it is unit's responsibility to review and evaluate all risks associated with this agreement. Any damages or costs that result from the presence of prohibited clauses are to be paid from the unit's budget. I understand that the unit may not recoup what it might be entitled to under the law and it may have to hire outside legal counsel in the event a dispute arises out of the Agreement. On behalf of the unit, I acknowledge that a business risk analysis on the unit's monetary exposure under the attached identified prohibited contract terms has been conducted and the unit accepts the potential for the maximum monetary liability.²

Name and Title (please print or type)

Authorized Signature(s)

Date Signed

Where University-wide approval is sought, acknowledgement by the Chancellor is also required:

Chancellor

Date Signed

² A list of clauses that violate State law and a summary of the potential exposure to the unit of which University Counsel is aware may be obtained from University Counsel and attached to the form. However, University Counsel's summary is only part of the business risk analysis that the unit must complete. A proper risk analysis includes the unit's analysis of the business need versus the risks associated with entering into a contract that violates State law. For example, if a unit is going to accept a limitation of liability clause, it must be done knowing that it is allowing the vendor to limit its damages and understanding what financial impact that decision could have on the unit, i.e., the unit's recoverable damages for breach by the vendor may be far below the amount of damages actually sustained by the unit. Or, if a unit is going to accept a contract with court jurisdiction in a state other than North Carolina, is the unit willing to expend the money to litigate in that forum, i.e., the State Attorney General and the University may refuse to hire counsel to defend a lawsuit brought in a state other than North Carolina. These are decisions that have to be made by the unit that desires to enter into the agreement. As the click-wrap process describes, the business risk analysis is done in the unit and the documentation remains there.