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Contract Waivers [1]

The University of Colorado requires supplier contracts to comply with applicable Federal laws and regulations, State of Colorado statutes, Regent policy, and University policy. As part of this process, the Procurement Service Center (PSC) reviews supplier contracts and works with suppliers to negotiate terms that do not meet University requirements.

In some cases, a supplier will not negotiate certain required terms, such as, but not limited to, governing law, indemnification, limitations of liability, or required data, privacy, or information security provisions (for example, FERPA, HIPAA, or University IT security requirements).

When negotiation efforts are unsuccessful, a contract waiver *may be* reviewed and considered on a case-by-case basis, subject to the appropriate risk assessment and approvals.

Important Reminder

Departments are not authorized to:

- Sign contracts
- Accept supplier terms on their own, whether online or on paper.

All contracts must go through the PSC for review and approval.

Frequently Asked Questions

1. **Why does this process exist?**
    a. The University of Colorado is required to follow state laws and University policies when entering into contracts. The Procurement Service Center (PSC) reviews all supplier agreements and works with suppliers to make sure contract terms protect the University.
2. **Why would I need a contract waiver?**
    a. Most of the time, the PSC can negotiate contract terms with suppliers. However, some suppliers won't agree to certain required terms like:
        i. Governing law in Colorado
        ii. Prohibition on indemnification by the University
        iii. Limitations on liability
        iv. Data protection and other provisions required by the University's IT security teams
    b. When any of these happens, a contract waiver *may be* considered so the

University can still move forward.

3. **What will I need to do?**
    a. If a waiver is needed, the PSC will guide you through a waiver questionnaire and the PSC will manage the review process. You'll be asked to:
        i. Explain the business need for the purchase
        ii. Confirm you understand the risks of moving forward with the supplier's terms
        iii. Obtain approval from your Department Supervisory Upline Approver on the completed questionnaire.
4. **What happens behind the scenes?**
    a. Once you submit your information, the PSC will:
        i. Review your request
        ii. Prepare any required documentation
        iii. Coordinate review with the appropriate offices (such as University Counsel, the Controller's Office, or the Chancellor)
    b. You don't need to route anything yourself, the PSC will handle that for you.
5. **How long does this process take?**
    a. Waivers take additional time (up to 8 weeks) because they involve risk review and multiple leadership level approvals.
    b. **Tip**: The earlier you engage the PSC, the more time we have to negotiate and explore options before a waiver is needed.
6. **What does "accepting risk" mean?**
    a. A waiver means the University is agreeing to move forward without some of its standard protections, and the supplier's contract terms are accepted as written.
    b. By supporting a waiver, your department is acknowledging that:
        i. There may be increased legal, operational or financial risks
        ii. In some cases, your department *could be* responsible for costs that would normally fall to the supplier
    c. The PSC will help you understand these risks before anything is approved.
7. **What is a "click-through" or "click-wrap" agreement?**
    a. A click?through is an agreement where you accept a supplier's terms and conditions by clicking a button or checking a box, such as "*I Agree," "Accept," or "Continue*", instead of signing an agreement or contract. Click?throughs are legally binding and can obligate the University in the same way as a signed agreement.
    b. Common examples include:
        i. Creating an online account
        ii. Downloading or using software, apps, or cloud services
        iii. Signing up for "free" trials or demos
        iv. Entering payment information on a website
        v. Approving quotes, renewals, or invoices that reference online terms
    c. Because click?throughs create binding agreements, they must be reviewed and processed through the PSC before acceptance.
8. **Additional considerations for data and compliance?related waivers.**
    a. Some waiver requests involve data, technology, or information security risks. This may include, but is not limited to, situations where a supplier will not agree to required terms related to:
        i. Data ownership or use
        ii. Information security standards

iii. Breach notification and response obligations
iv. FERPA, HIPAA, or other regulatory requirements

b. When a waiver involves these types of terms, the requesting department is acknowledging that accepting the contract waiver may increase the University's exposure to regulatory, financial, and reputational risk. In certain cases, the department may be responsible for costs or impacts associated with legal processes, data incidents, security events, or compliance obligations that would otherwise be addressed through standard contract protections.

9. **Are waivers always approved?**
    a. No. Each request is reviewed carefully and:
        i. May be approved
        ii. May be approved with conditions
        iii. May be denied

Every situation is different.

Contract Waiver Misconceptions and Clarifications

"If I request a waiver, it will be approved."

Not necessarily. Waivers are reviewed on a case-by-case basis and may be approved, approved with conditions, or denied depending on the level of risk.

"A waiver is just a formality to move things faster."

Contract waivers often take more time, not less. They require additional review and approvals because the University is considering accepting risk.

"The PSC is blocking my contract by not approving a waiver."

Waiver decisions are not made by the PSC. There are multiple parties involved in determining whether a waiver is approved, approved with conditions, or denied.

The PSC's role is to review agreements, work to negotiate acceptable terms, and facilitate the waiver process when needed. The PSC partners with the department and other stakeholders to guide the request through review and support a final outcome.

The PSC's responsibility is to help assess and protect the University from risk while supporting you to find the best path forward. In some cases, that may mean continuing negotiations or exploring alternatives instead of accepting high-risk terms.

"If the supplier says they can't change their terms, a waiver is the only option."

Not always. The PSC may still be able to negotiate acceptable alternatives or suggest different suppliers. A waiver is typically considered after all reasonable negotiation efforts and alternative suppliers have been exhausted.

“Accepting a waiver means the risk goes away.”

It’s actually the opposite. A waiver means the University is accepting additional risk by proceeding without standard protections.

“My department won’t be affected if something goes wrong.”

In most cases, departments will be responsible for financial or operational impacts that would normally be covered by standard contract terms.

“I can sign the contract and deal with the waiver later.”

No. Departments are not authorized to sign contracts or accept terms independently. All agreements must be reviewed and approved through the PSC before a contract is signed or agreed upon

“This process only applies to large or complex contracts.”

Waiver considerations are based on contract terms and risk, not dollar amount or complexity.

“Starting a waiver early will slow things down unnecessarily.”

Engaging the PSC early actually helps avoid delays. It gives more time for negotiation and, if needed, a smoother waiver review process.

We’re here to help.

We understand this process can feel complex or frustrating. Our goal is to partner with you to:

- Find solutions
- Reduce risk
- Keep your project moving forward

If you think you may need a contract waiver, reach out to the PSC early. We’re happy to help as we can assist in helping you understand the risks with proceeding, and suggest alternatives if appropriate.

Sub Title:
What to Expect

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