

CLICK-THROUGH AGREEMENT FAQ's - PASSHE

Introduction

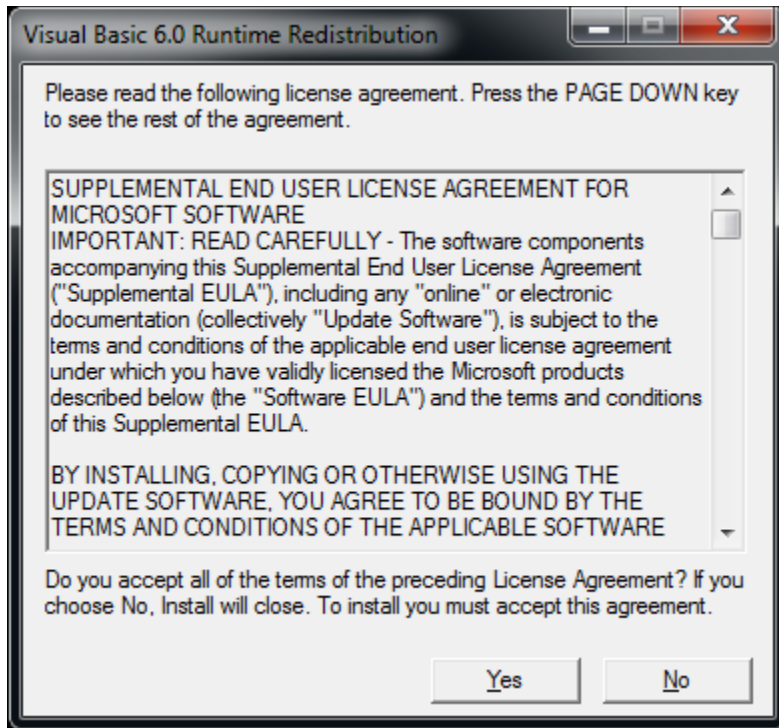
When a person encounters new computer applications (even “free” ones available online), that person is often required to “click-through” (click a button that says “yes” or “I agree”) an agreement to use the application. One may even receive this request to click-through an agreement when upgrading to the latest version of an existing application. Click-through contracts have become so common it's easy to forget that they're legal contracts. This document provides guidance on questions about click through agreements, when it is ok to accept the terms, what you should do if you want to use the application for professional use and how to minimize your personal liability.

Key points:

- A click through agreement is a contract
- By clicking – you may be accepting personal liability
- If you want to use a new software application, upgrade a version of an application you are already using, or use an online service (like Google Apps), check with your information technology organization and procurement to see if a contract exists or ask for one to be created

1. What is a click-through agreement?

A click-through agreement or End User License Agreement (EULA) is an electronic agreement that is frequently used by software providers or on-line service providers that require the user to agree to certain terms and conditions before they are able to use the provider's product. (Usually in a pop-up box such as this:)



For an example of an EULA click:

http://java.sun.com/j2se/1.4.2/j2re-1_4_2_02-license.html

2. What if I am using the product solely for my personal use?

If you are using the product solely for your personal use and you are using a university or System device, then you must follow your institution's acceptable use of technology policy. The acceptable use policy for your institution can be found on the institution web site or ask the information technology organization. An example of an acceptable use policy can be found at:

[Acceptable Use Policy - Indiana University of Pennsylvania](http://www.iup.edu/WorkArea/DownloadAsset.aspx?id=83045)
www.iup.edu/WorkArea/DownloadAsset.aspx?id=83045

3. What if I am using the application for University or System business (anything related to your university duties)?

If you are intending to use an application for business use that is not already available through technology offerings provided by your university, then you need to seek approval to utilize the product from your appropriate supervisor and/or the appropriate Vice-President. This discussion should include approval from institutional information technology.

Each university has a list of authorized application offerings; please contact your information technology organization or procurement for that list.

Approval times for using new applications may vary depending upon the type of procurement that is necessary and the ability to work through any legal contract issues.

If you are already using an application that has been approved and want to upgrade or are being prompted to upgrade to a newer version, you also need to seek approval to accept the contractual agreement.

4. Why do I need to seek approval?

As every state system university is an entity of the Commonwealth, who and under what circumstances contracts can be entered into are governed by state laws. **Click-through agreements are contracts.** There are very few campus employees that have the authority to enter into contracts on behalf of the university.

If you aren't one of the very few employees with authority to enter into contracts, you will be personally liable if a dispute arises.

If you click through any contract/agreement without seeking approval from your supervisor, procurement and/or the IT department, you could be putting yourself and possibly your students at risk.

5. Who are the typical employees who have that authority to enter into a contract?

The president is the only employee with this authority on campus, however they can delegate this authority and they usually do to procurement and/or the Vice President of F&A.

6. If I find an online service I want to use in class this week, how long will it take to get approval?

The approval process and timeframe will vary by institution. Each university should have assembled a list of applications that are approved as well as the workflow and expected timeline for the approval process for other applications.

7. What are the implications of agreeing to the terms and conditions?

As a Commonwealth entity, the University is precluded from agreeing to certain terms and conditions. Principally, most agreements indicate that in the case of a dispute, some other state's law will apply and the licensee (person who clicked through the agreement) agrees to litigate the dispute in another state. Other terms that are prohibited are agreements to indemnify and hold the provider harmless in the case of a legal dispute.

It's common that standard click through agreements contain language and terms that are not allowed by state law.

8. What it means for the employee who clicks through and agrees to these terms?

If you click-through an agreement without a University contract in place, you are responsible for any and all implications that result. If you want to utilize an application that is not offered by the University, speak to your supervisor and make arrangements to acquire the software through the established procurement process.

If you agree to a click through for which you're not authorized, you assume any legal and financial responsibility in a dispute." You will not be represented by university/System attorneys if a dispute arises. Your students could also be affected by your actions. If you use a service such as Google Apps for your class, you are inherently requiring all of your students to agree to Google's contract just as you did.

9. Why is having a valid contract important?

If it's a valid contract, and you use it within the scope of your duties, then you're provided with legal and financial protection by the university.

10. Who should I contact if I have any questions?

Please contact your Information Technology department or procurement to determine whether a current agreement exists, or if you have general questions. If you are seeking to utilize an application then you should contact your chairperson, supervisor and the procurement office to seek a formal contract with the provider.

11. Oops I clicked accept – now what do I do?

Contact your IT helpdesk immediately; they will be able to determine if software was downloaded to your device or if what you accidentally agreed to is a service on the Internet. If you downloaded software to your university owned computer, the IT organization will assist in removing all the unwanted software. If you agreed to an online service, they will work with the appropriate university departments (legal and procurement) to contact the company and explain the situation.