

3341-6-55 Click-Through Contracts for Software.

Applicability	All University units
Responsible Unit	Vice President for Finance & Administration
Policy Administrator	Chief Information Officer – Purchasing

(A) Policy Statement and Purpose

The purpose of this policy is to address the purchasing or licensing or use of software that involves a click-through contract (also known as “click wrap” or “click and accept” or “web wrap” contract). These contracts frequently contain indemnity provisions, choice of law and forum provisions, and other terms that conflict with Ohio law.

The university will not be bound to any contract term or condition that conflicts with this policy or Ohio law.

(B) Policy Scope

This policy applies to all university employees when acting on behalf of the university to purchase or license or use software to be installed in a university-owned device.

Questions concerning the scope and application of the policy should be directed to the Office of General Counsel. Specific operational questions may be directed to the Chief Information Officer.

(C) Policy Definitions

For the purpose of this policy, a “click-through” contract is a type of agreement that requires a prospective licensee to click an “I accept” button (or equivalent) on a web page before software can be purchased or licensed or used.

A “click-through” contract also includes:

- (1) a shrink wrap agreement that accompanies packaged software, and
- (2) any form agreement to purchase or license or use software that the vendor will not amend to eliminate a conflict with this policy or Ohio law.

(D) Policy on Required and Impermissible Provisions

The Ohio Attorney General’s Office has directed state universities with regard to certain types of provisions commonly found in click-through contracts. Any provision of a click-through contract that conflicts with one or more of the following directions is impermissible and will not bind the university.

- (1) **Arbitration.** The liability of any state university in Ohio can only be determined by the Ohio Court of Claims. No state university will agree to binding arbitration.
- (2) **Choice of Law and Forum.** State universities are established and governed by the laws of the state of Ohio. A contract with a state university will be governed by Ohio law, without regard to choice of law and conflicts of law principles, and any dispute arising under the contract will be decided by an Ohio court of competent jurisdiction.
- (3) **Confidentiality.** A confidentiality provision in a contract with a state university must be consistent with Ohio public records law. No state university can agree to limit its duty under that law to respond to public records requests.
- (4) **Indemnification.** Under Ohio law, a state university cannot agree to a contingent liability that is uncertain as to amount or timing. No state university can agree to indemnify a vendor, hold a vendor harmless, or pay litigation costs or any other contingent liability.
- (5) **Legal Representation and Settlement Authority.** The Ohio Attorney General is the chief law officer for the state and the attorney for each state university. No state university can agree to provide legal representation to or obtain legal representation from a software

vendor, or to give a software vendor any authority to make decisions related to the settlement of a claim by or against the university.

(E) Implementation of Policy

Whenever a click-through contract includes any of the foregoing provisions, the Chief Information Officer will consult with the Office of General Counsel. If the software is reasonably necessary for a university function, and no available substitute can reasonably be obtained under an acceptable agreement, then the Chief Information Officer may proceed with the click-through contract and any provision in it that conflicts with this policy or Ohio law will not bind the university.

(F) Related Policies

- (1) 3341-1-7 Delegation of Contract and Signatory Authority

Registered Date: April 4, 2017