



Human Subjects

Office of Research

UNIVERSITY OF GEORGIA

End User License Agreements/ Terms of Service



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What are EULAs and ToS?

- EULAs and ToS are legally-binding contracts between a software, consumer electronics or other service provider (such as a website or online platform) and a user of those products or services.
- EULAs/ToS can be:
 - “take it or leave it”, click through agreements that a user must “accept” (by clicking a button) in order to use or access the product; or
 - Passive agreements (e.g., available on a webpage, and a user’s use of the product or service constitutes agreement to the terms.
- Referred to as “contract of adhesion” because user has no opportunity to negotiate.
- EULAs/ToS grant a user the software and other IP licenses necessary to use a product in exchange for the user agreeing to certain terms, such as:
 - Consent to collection and use of user data (often in reference to a companion Privacy Policy)
 - Prohibited uses (e.g., reverse engineering, illegal conduct)
 - Limitations of liability

EULA's/ToS and Privacy Policies and Limitations of Liability

Privacy Policies

- EULA/ToS will often require the users consent to the product or service collecting the user's data and allow the licensor to use that data for their own purposes

Limitations of Liability

- EULA/ToS will also assert extensive limitations of liability

For example:

- Personal injury;
- Corruption or loss of data
- Any incidental, special, indirect, or consequential damages.

General Requirements for Informed Consent

Common Rule (45 CFR 46.116(a)(6))

No informed consent may include any exculpatory language through which the subject or the legally authorized representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability of negligence.

FDA Regulations (21 CFR 50.20)

No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability for negligence.

Example: All of Us Research Program Terms of Service



***All of Us* Research Program Enrollment Website/Apps and Participant Portal Terms of Service**

Effective date: May 20, 2018

The *All of Us* **enrollment website/apps** are where you join the *All of Us* Research Program. The *All of Us* **participant portal** is where you access your *All of Us* account.

Vibrent Health (11325 Random Hills Road Fairfax, VA 22030) provides the enrollment website/apps and participant portal. These are the Terms of Service for the *All of Us* Research Program enrollment website/apps and participant portal provided by Vibrent Health.

Who can use the *All of Us* enrollment website/apps and participant portal?

1. You must be 18 years old (19 in Alabama, 21 in Puerto Rico) to use the enrollment website/apps and participant portal.
2. You are not allowed to use the enrollment website/apps or participant portal if you are in prison.

All of Us Terms of Service,
available at <https://www.joinallofus.org/en/terms-of-service>

Recommendations for IRB to Consider

While it is not a consent form, to join a study that uses the app or wearable in questions, participants must agree to the binding terms.

- The IRB should understand the terms sufficiently to understand risks and benefits
- The IRB should ensure that the Privacy and Confidentiality sections of the consent do not contradict the EULA/ToS
- The IRB should ensure that the Privacy and Confidentiality sections of the submission are consistent with the EULA/ToS