

ARCHIVEGRID TERMS AND CONDITIONS

This order is subject to written acceptance by OCLC Online Computer Library Center, Inc. ("OCLC"). OCLC's written acceptance may be indicated by sending an electronic message to Subscriber informing Subscriber that its subscription to ArchiveGrid has commenced. Subscriber's subscription to ArchiveGrid is subject to the following terms and conditions (the "Terms") and the Documentation (as defined below). OCLC reserves the right to determine whether a party submitting an order for a subscription to ArchiveGrid is eligible to make use of ArchiveGrid and to refuse to accept any such order for any reason in OCLC's sole discretion.

1. DEFINITIONS

- A. "Subscriber" means the library, information agency (i.e., a historical society, archive, museum or similar organization) individually, or a group of the same subscribing to ArchiveGrid by executing these Terms below, and submitting the accompanying Order Form to OCLC. Should a Subscriber be part of a group, said Subscriber is accepting these terms on behalf of the entire group and the group they represent, as well as each authorized user, is bound by the terms and conditions herein for use of ArchiveGrid.
- B. "Content Object" means one or more collection descriptions in formats specified as acceptable by OCLC which is described by one ArchiveGrid Record.
- C. "Authorized User" means an employee, staff, faculty, student, or researcher of Subscriber who is responsible for undertaking activities related to Subscriber's research activities or an independent contractor retained by Subscriber for such purpose who has agreed in a writing provided to OCLC to be bound by these Terms and to act in accordance with Documentation.
- D. "End-User" means any individual authorized by Subscriber to Access Subscriber's Content Objects.
- E. "Access" means the use of the ArchiveGrid website to view a collection description in the database.
- F. "Documentation" means information provided to Subscriber from time to time by OCLC for purposes of: (i) informing Subscriber about ArchiveGrid, including functionality, acceptable formats, applicable procedures and other specifications; (ii) instructing Subscriber regarding the use of ArchiveGrid; and/or (iii) establishing procedures and guidelines for the use of ArchiveGrid, and the orderly administration and operation of the database.

2. RIGHT TO USE

Subject to these Terms, OCLC grants Subscriber a nonexclusive, nontransferable and non-assignable right to access and make use of the information available for use through ArchiveGrid in accordance with Documentation solely for the following non-commercial purposes: (i) to view, print, download and/or store single records from the Service for information, instruction, research, or scholarship, and otherwise use records within the limits set by the U.S. copyright laws on fair use, and (ii) providing End-Users with Access to Subscriber's Content Objects. Use of ArchiveGrid on behalf of Subscriber is restricted to Authorized Users. ArchiveGrid will be made available to Subscriber as specified in the Documentation and OCLC's then-current published service descriptions applicable to ArchiveGrid.

3. RESTRICTIONS ON USE OF ARCHIVEGRID

Subscriber shall use ArchiveGrid solely as authorized herein. Neither ArchiveGrid nor its contents may be disclosed, reproduced, distributed or transmitted in any form without the prior written consent of OCLC except as expressly permitted by these Terms. Neither ArchiveGrid nor its Contents may be resold or transferred. Subscriber shall not omit, obscure or hide from any Authorized User or End-User any disclaimers, proprietary rights notices or any other terms and/or conditions intended to be displayed to an Authorized User or End-User by OCLC. Neither Subscriber nor Authorized Users acquire ownership rights to ArchiveGrid or its Contents. Subscriber shall not use ArchiveGrid in any manner which circumvents security measures implemented by web site owners/operators or which interferes with the functioning of any web site or computer system.

Subscriber understands that ArchiveGrid is maintained for the benefit of Subscribers as a whole with the goal of providing a thorough research tool for material on family and corporate histories, personal papers, and historical records. Accordingly, Subscriber agrees to make only good faith use of ArchiveGrid in accordance with Documentation and these Terms that demonstrates respect for the rights of other Subscribers. Accordingly, Subscriber shall take no action or make any omission which wastes, diminishes or causes harm to the shared resources that make up ArchiveGrid.

4. AUTHORIZATIONS AND PASSWORDS

Upon acceptance of Subscriber's order, Subscriber's OCLC authorization number and password will be enabled to permit Subscriber to access ArchiveGrid. Subscriber is solely responsible for maintaining the confidentiality of such authorization numbers and passwords and for all use, including unauthorized use (and all claims arising therefrom), of ArchiveGrid initiated by such authorization numbers and passwords other than such use as results from OCLC's failure to fulfill its obligation set forth in the last sentence of this Section 6. Subscriber shall pay OCLC at OCLC's prevailing rates for any such unauthorized use of ArchiveGrid. Subscriber shall promptly notify OCLC in writing of lost or stolen passwords and authorization numbers. OCLC's sole obligation with respect to passwords and authorization numbers shall be to exert reasonable efforts to maintain the confidentiality of Subscriber's passwords and authorization numbers in OCLC's possession and to terminate lost or stolen passwords and authorization numbers upon receipt of Subscriber's notice.

5. SUBSCRIPTION FEE

Within thirty (30) days after invoice, Subscriber shall pay the applicable Annual Subscription Fee and any other applicable fees for Services ordered. Annual Subscription Fees and other fees shall be paid in U.S. dollars (or such other currency as OCLC may agree in writing is acceptable) at the address stated on the invoice. Fees specified under these Terms are exclusive of any taxes. If OCLC, Subscriber's OCLC-affiliated regional network or OCLC's authorized distributor is required to collect a tax payable by Subscriber, Subscriber shall pay such tax to such party, as appropriate, on demand. Subscribers claiming exemption from taxation shall supply a valid exemption certificate upon request.

6. WARRANTIES AND LIMITATION OF LIABILITY

- A. OCLC warrants to Subscriber that it possesses all rights necessary to grant Subscriber a license to use ArchiveGrid in accordance with these Terms and Documentation. In the event of any claim that such use by Subscriber violates any third-party copyright or other intellectual property right, OCLC's liabilities and Subscriber's remedies shall be as provided in Section 9 below.
- B. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, OCLC MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AND DISCLAIMS ALL SUCH WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, AS TO: (A) THE CONTENTS OR NONINFRINGEMENT OF CONTENT OBJECTS; (B) ARCHIVEGRID AND/OR ITS CONTENTS; OR (C) THE RESULTS OBTAINED BY USING ARCHIVEGRID, THE SERVICES OR CONTENT OBJECTS ACCESSIBLE VIA ARCHIVEGRID. IN ADDITION, OCLC MAKES NO WARRANTIES OR GUARANTEES, EITHER EXPRESS OR IMPLIED, THAT CONTENT OBJECTS WILL BE OR REMAIN VIRUS-FREE. Rather, OCLC agrees to check Content Objects for viruses at the time of input into ArchiveGrid and periodically while Content Objects are in ArchiveGrid using available methods which are consistent with then-current industry standards.
- C. OCLC SHALL HAVE NO LIABILITY FOR ANY DOWNTIME OR UNAVAILABILITY OF ARCHIVEGRID OR ITS SERVICES DUE TO CIRCUMSTANCES BEYOND ITS REASONABLE CONTROL, OR ACTIONS TAKEN BASED ON INSTRUCTIONS RECEIVED FROM SUBSCRIBER IN ACCORDANCE WITH DOCUMENTATION ON WHICH OCLC REASONABLY RELIED. OCLC SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES HEREUNDER, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR INFORMATION OF ANY KIND OR LOST PROFITS OR BUSINESS, HOWEVER CAUSED, WHETHER CLAIMED UNDER CONTRACT, TORT OR ANY OTHER LEGAL THEORY AND WHETHER OR NOT OCLC IS MADE AWARE OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL OCLC'S AGGREGATE LIABILITY HEREUNDER EXCEED THE FEES PAID TO OCLC BY SUBSCRIBER PURSUANT TO THESE TERMS FOR THE MOST RECENT SUBSCRIPTION YEAR.

7. THIRD PARTY CLAIMS

- A. OCLC, at its own expense, shall defend any action brought against Subscriber, to the extent that it is based on a claim that use of ArchiveGrid in accordance with these Terms and Documentation infringes a United States copyright or other intellectual property right and shall hold Subscriber harmless from any liability for damages, reasonable attorneys' fees and other payments ordered by a court as a result of such a claim or resulting from the settlement thereof, provided Subscriber notifies OCLC promptly in writing of the action and OCLC has sole control of the defense and all negotiations for its settlement or compromise. Subscriber shall have the right to appoint an attorney to participate in such defense at Subscriber's expense, provided that such participation shall not derogate from OCLC's sole control of the defense and negotiations for settlement or compromise of the claim. In the event that ArchiveGrid or its Services become, or OCLC is advised by counsel that they are likely to become, the subject of an infringement claim, OCLC may at its option either secure Subscriber's right to continue using ArchiveGrid or the relevant Service, replace or modify ArchiveGrid or the relevant Service to make it non-infringing, or if none of the foregoing alternatives is reasonably available to OCLC, discontinue ArchiveGrid and/or the relevant Service. In the event of such discontinuation by OCLC, Subscriber shall be entitled to a prorata refund of the Annual Subscription Fee or the portion of such Fee allocable to the discontinued service (as applicable). OCLC shall have no liability for any claim of infringement to the extent based on a Content Object or the alteration of any ArchiveGrid Service by Subscriber. THE FOREGOING STATES THE ENTIRE LIABILITY OF OCLC AND SUBSCRIBER'S SOLE REMEDY WITH RESPECT TO INFRINGEMENT OF THIRD-PARTY PROPRIETARY RIGHTS BY ARCHIVEGRID OR ANY PORTION(S) THEREOF.
- B. To the extent permitted by the laws of the State (or Country, if Subscriber is located outside of the United States) in which Subscriber is located, Subscriber agrees to be responsible for all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) and other payments arising or resulting from: (i) Subscriber's breach of any and all warranties and representations it has made in these Terms or; (ii) any failure of Subscriber to comply with or fulfill its obligations under these Terms.
- C. Notwithstanding anything in these Terms to the contrary, OCLC's obligation to indemnify Subscriber shall not extend to claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) or other payments arising or resulting from: (i) Subscriber's breach of any and all warranties and representations it has made in these Terms or any other agreement applicable to ArchiveGrid or; (ii) any failure of Subscriber to fulfill its obligations under such Terms or agreements.

8. TERM AND TERMINATION

- A. Subscriber's subscription shall automatically renew annually until terminated by Subscriber or OCLC in accordance with this Section 8. No less than sixty (60) days prior to the end of each annual subscription period, OCLC will notify Subscriber by electronic mail message or regular mail that Subscriber's subscription to ArchiveGrid will automatically renew at the end of the current annual subscription period. If Subscriber notifies OCLC, in writing, at least thirty (30) days prior to the renewal date that it does not wish to renew its subscription to ArchiveGrid, Subscriber's subscription will terminate at the end of the current annual subscription period. If Subscriber does not provide OCLC with such notice, Subscriber's subscription to ArchiveGrid will be renewed for a new annual subscription period and Subscriber will be invoiced for the then-current applicable Annual Subscription Fee.
- B. Subscriber may terminate its rights under these Terms, without cause, at any time by notice to OCLC, provided that in the event of such termination, any Annual Subscription Fees previously unpaid or other amounts due shall become immediately due and payable and Subscriber shall not be entitled to a refund of any Annual Subscription Fees or other amounts paid.
- C. In the event of material breach of these Terms, the non-breaching party may, in addition to any other remedies that it may have, at any time terminate these Terms by not less than twenty (20) days' prior notice to the breaching party specifying any such breach, unless within the period of such notice all breaches specified therein have been remedied. In the event of termination due to OCLC's uncured material breach, Subscriber shall be entitled to a prorata refund of the Annual Subscription Fee paid by Subscriber.
- D. Notwithstanding anything in these Terms to the contrary, OCLC reserves the right to suspend or refuse any provision of ArchiveGrid to Subscriber for any reason on conditions generally applicable to Subscribers. In the event ArchiveGrid becomes unavailable to End-Users due to OCLC's discontinuance of ArchiveGrid, OCLC will provide Subscriber with a prorata refund of the Annual Subscription Fee paid by Subscriber.

9. MISCELLANEOUS PROVISIONS

- A. Neither these Terms nor any rights hereunder, in whole or in part, shall be assignable, sub-licensable or otherwise transferable by Subscriber by operation of law or otherwise. OCLC may transfer or assign this Agreement or any rights or obligations under this Agreement upon thirty (30) days' written notice to Subscriber. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- B. These Terms and Conditions and the defined Documentation for use of ArchiveGrid are the complete and exclusive statement of the agreement between the parties concerning the subject matter hereof and may not be amended except by the written agreement of the parties. Any terms set forth on any Subscriber purchase order or ordering document will not apply and are superseded by these Terms and Documentation. In the event of conflict between these Terms and Documentation, such documents will apply in the following order of precedence: (i) these Terms and Conditions; (ii) Documentation.
- C. No waiver of any right or consent to any breach hereunder shall be effective unless in writing and signed by the party claimed to have waived or consented. No waiver of any right or consent to any breach shall constitute a waiver of any other right or consent to any other breach.
- D. These Terms shall be governed by and construed in accordance with the laws of the State of Ohio and the United States of America without regard to principles of conflicts of law.
- E. Any notice of breach or termination under these Terms shall be in writing, signed by the party giving notice, and shall be deemed properly given upon delivery into the mail of the country of the party giving notice, postage prepaid, registered or certified return-receipt-requested, or upon delivery to an established international courier (i.e., Federal Express, DHL, UPS), with a signature acknowledging receipt required, to the parties at the addresses set forth on the accompanying order form.
- F. Neither party shall be liable for any failure or delay in performance under these Terms (other than a delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused (a) by causes beyond that party's reasonable control and occurring without its fault or negligence, or (b) by the failure of the other party to substantially meet its performance obligations under these Terms, provided that, as a condition to the claim of nonliability, the party experiencing the difficulty shall give the other party prompt written notice, specifying the cause of the delay, following the occurrence of the cause relied upon.
- G. The provisions of these Terms are to be deemed severable, and the invalidity or unenforceability of any provision shall not affect or impair the validity of the remaining provisions. In substitution for any provision held unlawful, there shall be substituted a provision of similar import reflecting the original intent of the parties hereto to the extent permissible under law.
- H. All use of ArchiveGrid shall be in full compliance with U.S. export regulations. Subscriber shall serve as the importer and exporter of record for ArchiveGrid delivered to it by OCLC outside the U.S., by electronic means or otherwise, and shall pay and/or comply with all applicable export and import laws, customs, regulations, tariffs, duties, and fees, and procurement, data and technology transfer laws. Subscriber shall be responsible to OCLC for all costs and damages arising from any failure to meet its obligations hereunder. OCLC's obligations hereunder are contingent upon necessary export licenses being obtained from federal agencies of the U.S.