

FIRSTSEARCH CENTRAL MEMBER TERMS

- 1. Terms.**
 - 1.1. Group Order.** Central Member orders Simultaneous Logons and/or quantities of searches and associated authorizations, passwords and copies of user documentation for the OCLC FirstSearch service and the Databases accessed thereby (which includes the Electronic Collections Online database ("ECO")), all as specified on this form and further described in prevailing OCLC price lists and product descriptions ("Services"). A "Simultaneous Logon" is a single terminal logged onto FirstSearch (e.g., a logical communication connection to the FirstSearch host computer), at any time that the FirstSearch service is generally made available to users. These Terms and the OCLC FirstSearch/Electronic Collections Online Service Terms govern all future arrangements, orders, Simultaneous Logons, and Databases ordered in connection with the group named in this order.
 - 1.2. Acceptance.** Upon acceptance of this order, OCLC shall activate the number of Simultaneous Logons, issue associated authorizations, passwords and user documentation, and provide Central Member and/or its permitted Subscribers (as defined in Section 1.3 of these Terms) access to and use of Services.
 - 1.3. Allocation of Authorizations and Passwords.** Central Member orders and allocates authorizations and passwords for Services for and to itself as provided on the order form, in which case Central Member shall be licensed itself to use and access Services, subject to these Terms and the OCLC FirstSearch/Electronic Collections Online Service Terms. Central Member also orders and allocates authorizations and passwords for the Services on behalf of other subscribers listed on the attachment to this order form ("Subscribers").
 - 1.4. Subscriber's Agreement.** Central Member shall either (a) obtain and submit to OCLC a written order signed by each such Subscriber, prior to OCLC distributing thereto any authorizations and passwords, on the then-current, OCLC-provided order form which shall govern the Subscriber's use of Services, or (b) if Central Member is indicated to be agent for Subscribers on this form, then Central Member hereby agrees as agent for each Subscriber that each Subscriber shall comply with the OCLC FirstSearch/Electronic Collections Online Service Terms for access to Services via Simultaneous Logon subscriptions or access to Services on a per-search basis. Under subclause (b), Central Member warrants that it is authorized to bind Subscribers thereto and shall indemnify OCLC from all loss, expense and damage arising from a breach of such warranty. Central Member shall provide each Subscriber with a copy of this Section 1.4 and the OCLC FirstSearch/Electronic Collections Online Service Terms prior to OCLC activation of authorizations therefor. Central Member shall ensure that Subscribers comply with such terms. Furthermore, Central Member shall not, and shall ensure that Subscriber shall not omit, obscure or hide from any Authorized User any notice of a limitation of warranty, disclaimer, copyright, patent, trademark, trade secret, usage limitation, or any logo, splash screen or any other terms and/or conditions intended to be displayed to an Authorized User of the FirstSearch service by OCLC or any database supplier thereto.
 - 1.5. Resale.** Central Member is not a buyer of Services for resale, and shall not charge Subscribers for Services, nor for its services as agent therefor, nor for other services provided by Central Member in connection with Services.
 - 1.6. Direct Contract.** Subject to OCLC acceptance, each order for Subscribers shall constitute a direct contract between OCLC and the Subscriber.
- 2. Payment.**
 - 2.1. Payment by Central Member.** Central Member shall pay for itself and collect from and pay on behalf of each Subscriber to OCLC or its designee or, if applicable, shall ensure that Subscriber pays to OCLC or its designee directly, all prevailing OCLC charges, in U.S. dollars, including the current charges set forth on this order form. Unless already advanced by Central Member to OCLC for the Subscriber, all payments of OCLC charges received by Central Member from Subscribers shall be remitted to OCLC by Central Member promptly following receipt, prior to which they shall be segregated and separately earmarked from all of Central Member's own funds and held in trust by Central Member for OCLC. Central Member shall not modify such OCLC charges nor invoice or include any other charges except that Central Member may collect OCLC charges (which are stated in U.S. dollars) from Subscribers in their local currency at a commercially reasonable, fixed exchange-rate acceptable to OCLC.
 - 2.2. Subscription Charges.** OCLC subscription charges are fixed during the initial subscription term hereof; other charges, including charges for blocks of searches, are those in effect at the time of an order (if prepaid) or otherwise at the time of the billable transaction. Unless otherwise expressly permitted by the OCLC FirstSearch/Electronic Collections Online Service Terms, Simultaneous Logons, individual databases or database packages may be canceled at the time of renewal only. These charges are exclusive of telecommunications equipment and other access mechanisms for which Subscriber arranges and pays separately.
 - 3. Databases.** Databases available under this Agreement are those set forth on this form provided that OCLC has obtained a written agreement satisfactory to it from any third-party licensor of a Database permitting OCLC to provide access to that Database hereunder. OCLC will notify Central Member of available Databases. The parties may add Databases to this order at any time by written agreement on OCLC-provided forms.
 - 4. General.**
 - 4.1. Relationship.** The relationship of the parties hereunder is that of independent contractors, and not employee/employer, agent/principal, partners, joint venturers or franchisor/franchisee. Central Member is not authorized to make any representations or contractual commitments on behalf of OCLC, nor to sign or negotiate any changes to any OCLC terms. Any modifications proposed by any Subscriber to the OCLC terms shall be submitted in writing to OCLC in advance for OCLC's written prior approval.

4.2. Notice. Any notices desired or required to be given by either party pursuant to this agreement shall be in writing and shall be deemed sufficient if delivered by hand or if sent by certified or registered mail, return receipt requested, to the address of the other party set forth below or to such other address as has been furnished by means of a notice given in accordance with this Section or via facsimile with a copy by U.S. mail:

If to OCLC: OCLC Online Computer
Library Center, Inc.
6565 Frantz Road
Dublin Ohio 43017-3395
Attention: Vice President Reference
Services
FAX: 614-764-0740

with a copy sent by regular U S. mail to:

Vice President and General Counsel
OCLC Online Computer Library
Center, Inc.
6565 Frantz Road
Dublin Ohio 43017-3395
FAX: 614-764-0740

If to Central Member, see address on front of form.

4.3. Non-exclusivity. OCLC's retention of Central Member's assistance in making Services available hereunder shall be on a non-exclusive basis, and nothing herein shall limit OCLC's right to distribute services independent of Central Member, including to Subscribers.

4.4. Other Terms. OCLC shall have the rights and the benefit of all terms set forth in the OCLC FirstSearch/Electronic Collections Online Service Terms, as amended by OCLC from time to time, with respect to this order as a whole and for Central Member and each Subscriber individually. For example, OCLC may terminate this Agreement if it terminates all subscriptions subject to the OCLC FirstSearch/Electronic Collections Online Service Terms.

4.5. Entire Agreement. This order form, these Terms and the OCLC FirstSearch/Electronic Collections Online Service Terms are the final, complete and exclusive agreement between the parties concerning their subject matter, and shall be governed by the laws of the State of Ohio and the United States of America.

4.6. Confidential Terms. Central Member agrees to keep the terms and prices of this order as confidential except as to Subscribers, and to impose the same duty upon each Subscriber

FIRSTSEARCH SERVICE TERMS AND CONDITIONS

1. This order is subject to written acceptance by OCLC Online Computer Library Center, Inc ("OCLC"). OCLC's written acceptance may be indicated by issuance to Subscriber (i.e., entity purchasing access to the FirstSearch service on a fixed-fee, per-search or some other basis) of authorization numbers and passwords by which Subscriber and/or Authorized Users (as defined herein) may access and use the FirstSearch service ordered by Subscriber as such service is described in OCLC's prevailing, published product descriptions. The FirstSearch service, documentation and dial-access telecommunications connections ordered by Subscriber will be subject to the following terms and conditions ("Terms"). OCLC reserves the right to determine Subscriber type to determine and/or define an eligible site, operational entity, library system or similar limitations with respect to any prospective Subscriber and to refuse to accept any order for any reason in OCLC's sole discretion.

DEFINITIONS: **Public Library** Subscribers (nonacademic) are defined by geographic/service area and are limited to a single main library and its branches (i.e., the libraries under a single director/board of trustees). Authorized Users are limited to library patrons accessing the FirstSearch service while in the library and by remote access, provided that remote access requires the patron to first log on to the library system's local computer using a current authorized library card or other library-controlled authorization before accessing the FirstSearch service. **Academic Library** Subscribers are limited by geographic site and Authorized Users. Each geographically distinct campus shall be treated as a separate site for purposes of the FirstSearch service. Authorized Users at academic institutions are limited to currently enrolled students of the licensed campus, current faculty and staff who are primarily affiliated with the licensed campus and authorized on-site patrons of Subscriber's library. Remote access is permitted by currently enrolled students of the licensed campus and current faculty and staff who are primarily affiliated with the licensed campus. **Special Library** means a single corporate or other special library (e.g., law firm). A separate order is required for each geographically distinct operational entity. Authorized Users are limited to current employees of the institution which is served by the Special Library. **K-12 (Kindergarten through 12th grade school)** Subscribers are defined by geographic site and Authorized Users. Each geographically distinct school building or campus shall be treated as a separate site. Authorized Users at K-12 schools shall be limited to currently enrolled students of the licensed school building or campus and current faculty and staff who are primarily affiliated with the licensed school building or campus.

2. Databases available by means of the FirstSearch service and the FirstSearch service itself are subject to OCLC and/or third-party claims of copyright and other rights. Subscriber's access to and use of such databases and copying and transfer of data therefrom are subject to this Section 2 and to changes or additions thereto published by OCLC from time to time (including supplemental terms, online screen display and/or FirstSearch product descriptions and documentation). Such changes and additions shall govern over these Terms.

Subscriber and/or Authorized Users may view screen displays of data accessed via the FirstSearch service, and may make one (1) copy per screen display of any portions of such data for that person's internal or personal, noncataloging and noncommercial purposes. In addition, such copies of limited portions of such data may be transferred or sold as an incidental part of the attorney-client, consultant-client or similar relationship, or used for identifying materials to be ordered via interlibrary loan, where the principal purpose is not the distribution of data. Screen displays of such data may be electronically downloaded and temporarily stored in machine-readable form by the person so viewing the data solely as required for that person's use and/or copying of the data as permitted under this Section 2; provided that such machine-readable copies of data shall be erased after such temporary use and/or copying and shall not be transferred to, shared with or accessed by any other person.

Subscriber and Authorized Users acquire no ownership rights to any data or portions thereof provided in any form by the FirstSearch service. No part of any data provided in any form by the FirstSearch service may be disclosed, reproduced, transferred or transmitted in any form without the prior written consent of OCLC except as expressly permitted hereunder. **Use of the FirstSearch service for cataloging purposes is expressly prohibited.** Subscriber may not resell or otherwise transfer the FirstSearch service. Authorizations and passwords will be restricted to accessing that data available via the FirstSearch service for which Subscriber has a currently paid-up subscription or for which Subscriber has prepaid per-search fees. Subscriber shall not omit, obscure or hide from any Authorized User any notice of a limitation of warranty, disclaimer, copyright, patent, trademark, trade secret, usage limitation or any logo, splash screen or any other terms and/or conditions intended to be displayed to an Authorized User of the FirstSearch service by OCLC or any database supplier thereto.

3. Access to certain databases available by means of the FirstSearch service requires a separate agreement between Subscriber and the third-party database provider from whom the database is obtained, as indicated in the FirstSearch product descriptions. Subscriber agrees that it shall utilize the FirstSearch service to access and use such databases only as it has been authorized by such database provider under, and only as permitted by, the terms of the applicable separate agreement and in conformance with prevailing, published OCLC rules with respect thereto, as amended from time to time. Such OCLC rules may be provided by online screen display and/or in the FirstSearch product descriptions and documentation. In addition, any third-party database supplier shall have the right to assert or to enforce any of the provisions of these Terms directly on its own behalf.

4. Within thirty (30) days after the date of each OCLC invoice, Subscriber shall pay or prepay to OCLC the applicable OCLC charges for services selected by Subscriber based upon OCLC's prevailing price list. If Subscriber orders the FirstSearch service on a per-search basis, all use of the FirstSearch service initiated by Subscriber's authorization codes and passwords shall be credited against prepayments made. Charges are exclusive of taxes and Subscriber shall pay any such taxes invoiced other than taxes on OCLC's net income. Accounts not paid within thirty (30) days after the date of invoice shall be deemed delinquent and are subject thereafter to interest charges of twelve percent (12%) per annum on the unpaid balance. OCLC reserves the right to suspend availability of the FirstSearch service to a delinquent account without prior notice. Payments shall be made in U.S. dollars unless otherwise required by OCLC for non-U.S. Subscribers as indicated in invoices, price lists, or other written notices.

5. OCLC may determine, add to, delete from or change at any time (i) which data and databases are available by means of the FirstSearch service (consistent with OCLC's ECO archival obligation stated in Section 19 below if applicable), (ii) the technical and

functional specifications, form and formats or availability of features and databases accessible by means of the FirstSearch service (consistent with OCLC's ECO archival obligation stated in Section 19 below if applicable), (iii) database license rights and obligations and rules hereunder and (iv) any of these Terms. Subscriber shall be bound thereby upon OCLC giving notice, which may be accomplished by online screen display or in the FirstSearch service product descriptions and documentation.

If OCLC materially reduces Subscriber's rights with respect to any database to which Subscriber is currently subscribed as a result of any revision for which notice is required to be given hereunder, Subscriber may terminate its subscription for that database by giving written notice to OCLC within ten (10) days after receiving notice from OCLC of such revision. In such case, Subscriber shall receive a refund of subscription fees prepaid and unearned for the remainder of the subscription term calculated on a prorata basis or per-search fees prepaid for unused searches.

For subscription-based use (depending on the features of the relevant subscription), the FirstSearch service will be available to Subscriber at any time that the FirstSearch service is generally made available by OCLC to users: (i) based upon the number of Simultaneous Logons currently subscribed for; and/or (ii) on an unlimited basis based on full-time equivalents (Academic, K-12) or patrons served (Public). Subscriber may maximize subscription usage by electronically queuing Authorized Users attempting to log on to the FirstSearch service, provided that Subscriber shall not utilize any mechanism which would enable the number of Authorized Users concurrently accessing the FirstSearch service via Subscriber's subscription to exceed the number of Simultaneous Logons subscribed for (e.g. Subscriber shall not multiplex (interleave) message traffic once the Simultaneous Logon connection has been established between the Authorized User's terminal and the FirstSearch service). For per-search-based use, the FirstSearch service shall be available during all times that the OCLC System is generally available to OCLC users, subject to OCLC modification.

6. Subscriber is solely responsible for all security for and all use, including unauthorized use, of the FirstSearch service initiated by Subscriber's FirstSearch service authorization numbers and passwords, and shall promptly notify OCLC in writing of lost or stolen passwords and authorization numbers. Subscriber shall pay OCLC at OCLC's prevailing rates for unauthorized use of the FirstSearch service hereunder. Subscriber's obligations under this Section 6 are material to this agreement. 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. Upon such termination, OCLC will issue new passwords and authorizations to Subscriber provided that Subscriber is in compliance with these Terms and the lost or stolen passwords or authorization numbers were initially provided by OCLC.

7. OCLC shall exert its reasonable best efforts to provide the FirstSearch service in accordance with then-current published product descriptions. Subscriber shall notify OCLC of nonconformities between the FirstSearch service and such descriptions, and of any errors or inaccuracies in the databases of which Subscriber becomes aware. It is understood that, while OCLC and its suppliers and licensors have attempted to minimize inaccuracies and defects in the data and services furnished, the data and services are provided AS IS. OCLC, ITS SUPPLIERS AND/OR LICENSORS MAKE NO EXPRESS WARRANTIES AND DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE, WITH RESPECT TO THE FIRSTSEARCH SERVICE AND OTHER PRODUCTS AND SERVICES PROVIDED HEREUNDER.

8. Neither party shall be liable for any failure or delay in performance hereunder (other than of an obligation to pay money) due to any cause beyond its reasonable control including, but not limited to, acts of God or public enemy, fire, explosion, accident, strikes, governmental actions, delay or failure of suppliers, or delay or failure of the OCLC systems or carriers or other difficulties with telecommunications networks provided that the party so affected notifies the other promptly of the commencement, nature and estimated duration of the cause.

9. Except as otherwise expressly provided for herein: (a) OCLC, its suppliers and/or licensors shall not be liable for any loss or damage, lost profits, loss of business, loss of or damage to data, downtime or unavailability, of or in connection with Subscriber's use of the FirstSearch service and databases or data available over the FirstSearch service, or from lost or stolen passwords or authorization numbers; (b) OCLC, its suppliers and/or licensors shall have no liability or obligation to Subscriber, and Subscriber shall have no liability or obligation to OCLC hereunder for indirect, incidental, consequential or exemplary damages, whether based on contract, tort or any other legal theory and regardless of whether a party foresaw such damages; and (c) OCLC, its suppliers and/or licensors shall have no liability nor obligation with respect to the provision or use of databases available by means of the FirstSearch service, including, without limitation, for any claims based on infringement of copyright, patent, trade secret or other right, libel, slander or invasion of privacy or claims based on errors, inaccuracies or omissions in or loss of the data. In no event, even if the foregoing limitations are held to be not enforceable, shall OCLC's liability hereunder exceed the refund of subscription fees earned by OCLC and paid for by Subscriber for services and data hereunder for the most recent month.

10. Subscriber shall, to the fullest extent permitted under applicable law, indemnify and hold OCLC harmless from all claims based upon or arising from the use of the FirstSearch service and data and databases available over the FirstSearch service charged against Subscriber's passwords or authorization numbers except to the extent directly caused by a defect or malfunction in portions of the FirstSearch service under OCLC's direct control.

11. OCLC may suspend Subscriber's access to the FirstSearch service upon written notice at any time that Subscriber is in breach of its material obligations under these Terms, provided that in the event that Subscriber cures such material breach within thirty (30) days, OCLC shall restore such access. In the event that Subscriber fails to cure the breach within thirty (30) days, OCLC may terminate this agreement upon notice to Subscriber.

12. For per-search orders, either OCLC or the Subscriber may terminate this agreement and the Subscriber's FirstSearch service authorization numbers and passwords at any time, by giving thirty (30) days prior written notice. In the event of termination by OCLC pursuant to the preceding sentence, Subscriber shall receive a refund of its unused prepaid amounts.

If Subscriber has purchased on a subscription basis, Subscriber may terminate this agreement in its entirety upon written notice received by OCLC within the first thirty (30) days Subscriber is first granted access to the FirstSearch service hereunder. In such case, Subscriber shall be entitled to receive a prorata refund of subscription fees previously paid, subject to a minimum thirty (30) day charge based upon the original subscription. No partial cancellations (e.g. reduction in Simultaneous Logons or databases) or other terminations shall be allowed other than on Subscriber's effective renewal date.

13. Notwithstanding anything in these Terms to the contrary, OCLC reserves the right to suspend or refuse the provision of the FirstSearch service to Subscriber for any reason whatsoever and without prior notice, on conditions generally applicable to subscribers. In such case and unless otherwise provided for by these Terms, OCLC shall promptly refund to Subscriber on a prorata basis fees previously paid by Subscriber to OCLC with respect to the unexpired portion of the subscription term or its unused prepaid per-search amounts.

14. Telecommunications services, equipment and any OCLC support necessary for Subscriber to access the FirstSearch service may be available from OCLC subject to separate agreement(s) required by OCLC.

15. This order form constitutes the complete, final and exclusive statement of the parties' agreement with respect to the subject matter hereof. No purchase orders separately submitted by Subscriber shall apply to modify or supplement this agreement. Subscriber may not assign its rights or obligations under these Terms. This agreement shall be governed by the laws of the State of Ohio and the United States of America. The United Nations Convention on Contracts for the International Sales of Goods shall not apply.

16. Subscriber agrees that the FirstSearch service authorization numbers and passwords issued by OCLC hereunder may not be used outside the territorial limits of the country in which they were originally issued to Subscriber, as indicated by Subscriber's address on the front of this form, except in full compliance with U.S. export regulations. Subscriber shall be the exporter and importer of record of all the FirstSearch service products, services and data 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. To the extent permitted by applicable law, Subscriber shall indemnify OCLC from all costs and damages arising from any failure of Subscriber to meet its obligations under this Section 16. OCLC's obligations hereunder are contingent upon necessary export licenses being obtained from federal agencies of the U.S.

17. OCLC may remove or purge data stored with the FirstSearch service for more than thirty (30) days, without notice or liability. Subscriber agrees to remove at Subscriber's expense all data saved and stored by Subscriber and/or Authorized Users on the FirstSearch service in conjunction with termination of this agreement, and should OCLC be required to effect such removal due to Subscriber's failure to remove, Subscriber shall pay to OCLC its standard charges for OCLC's efforts associated therewith.