

The FirstSearch/Electronic Collections Online Service Terms

1. This order is subject to written acceptance by OCLC Online Computer Library Center, Incorporated ("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. **(The foregoing sentence shall not apply to FirstSearch databases accessed on a per-search basis.)** 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.~~ **Notwithstanding the above restrictions, to the extent permitted by the relevant database publisher, Subscriber may utilize database content under the doctrine of "fair use" as defined under the copyright laws of the United States.**

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

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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)~~ **thirty (30)** 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, the FirstSearch service will be available to Subscriber based upon the number of Simultaneous Logons currently subscribed for at any time that the FirstSearch service is generally made available by OCLC to users. 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 shall make best efforts to prevent** ~~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 resulting from Subscriber's failure to exercise its best efforts as required by the foregoing sentence.~~ 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 **other than in accordance with applicable documentation and these Terms or in violation of applicable laws, regulations, rules and ordinances** 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.

OCLC shall defend, indemnify and hold harmless Subscriber from any all claims based upon or arising from a claim that Subscriber's use of the FirstSearch service in accordance with applicable documentation and these Terms infringes upon the trade secrets, trademark, copyright or patent rights of any third party (collectively, "Third-Party Rights"); provided Subscriber gives OCLC prompt written notice of any such claim, full authority to settle or defend such claim and reasonable assistance as requested by OCLC in settling or defending such claim. The foregoing sentence shall not obligate OCLC to defend, indemnify or hold Subscriber or any user of the FirstSearch service harmless from any action based on a claim that the manner in which Subscriber or any user uses any data accessed via the FirstSearch service infringes any Third-Party Rights

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. **Likewise, Subscriber may terminate this Agreement in the event that OCLC is in breach of its material obligations hereunder and does not cure such breach within thirty (30) days after receipt of notice of such breach from Subscriber. In the event of termination due to OCLC's uncured material breach, Subscriber shall be entitled to a pro-rata refund of subscription fees paid or its unused prepaid per-search amounts.**

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 Florida 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.

18. OCLC will provide Subscriber with usage statistics covering the databases included hereunder. If consistent with OCLC's business plans, OCLC will use its commercially reasonable efforts to provide such usage statistics complying in whole or in part with the specifications of the COUNTER Code of Practice.

19. Subscriber may use database content to fulfill requests from Authorized Users asking reference questions or, to the extent permitted by the relevant publisher, fulfill interlibrary loan requests. To the extent permitted by the relevant database publisher, staff at non-affiliated libraries who are participating in a collaborative digital reference service may access database content hereunder in order to assist Authorized Users.

ADDITIONAL TERMS APPLICABLE TO SUBSCRIBERS TO ELECTRONIC COLLECTIONS ONLINE DATABASE: For Subscribers who order the Electronic Collections Online ("ECO") database as part of their FirstSearch subscription and subscribe to publications accessible by means of such database, the following provisions shall apply in addition to those set forth above. Subscriber's consent to these additional provisions is a condition of Subscriber's rights under its separate subscription agreement with Publisher for access to the subscribed to publications (the "Collections") via the ECO database, which Subscriber agrees constitutes adequate consideration for OCLC's rights under these provisions.

20. SUBSCRIPTION TO COLLECTIONS ACCESSIBLE VIA ECO DATABASE

Subscriber and Publisher have entered into a separate agreement (the "Subscription Agreement") for subscriptions to certain Collections to be accessed via the ECO database. Subject to the Terms, the subscriptions permit Subscriber and Authorized Users to access the subscribed to Collections (and an archive of those Collections as described in Section 19 hereof) via the FirstSearch service and ECO database (as such service and database are described in OCLC's prevailing, published product descriptions) during OCLC's generally prevailing hours of FirstSearch availability.

21. ARCHIVE OF COLLECTIONS

a. Archive. Subscriber and Authorized Users will also be permitted to obtain ongoing access to an online archive of those Collections to which Subscriber has subscribed, in accordance with this Section 19. OCLC will maintain for Subscriber a subscription profile ("Profile") detailing each publication to which Subscriber has subscribed, the subscription start date and, if applicable, the subscription end date. During the period in which Subscriber maintains its access to the ECO database through one of the methods offered by OCLC (regardless of whether Subscriber has any active subscriptions to Collections offered in the ECO database), Authorized Users will be entitled to access archived copies of those Collections to which Subscriber has subscribed corresponding to the periods during which Subscriber

maintained active subscriptions for such Collections, all as indicated on Subscriber's Profile.

b. Integrity and Long-Term Accessibility of Archive. For purposes of maintaining the integrity and long-term accessibility of the archive, OCLC will, at its sole discretion and based on available technology and usage information, migrate archived Collection files to new data formats as the current formats in which the Collections are presented become outmoded. (In those instances where OCLC, in its sole discretion, elects not to migrate one or more archived Collection files to a new data format, OCLC will provide Subscriber with access to such archived Collection files through an adequate and available mechanism chosen solely by OCLC.) In addition, if deemed necessary in OCLC's sole discretion and then according to a reasonable timetable, standards and specifications established solely by OCLC, OCLC may migrate the archive and/or the ECO database to new technology of its choosing sufficient to maintain the efficiency and convenience of the archive and/or database.

c. Discontinuance of Service by OCLC. OCLC will use its best efforts to secure in its agreements with Publishers participating in the ECO database the right to provide Subscriber with digital copies of the archived editions of its subscribed to Collections (as indicated on Subscriber's Profile) in a format that will enable such archived editions to be locally mounted and accessed using then-current technology in the event the archive becomes unavailable due to OCLC's discontinuance of the archive and/or the ECO database.

d. Discontinuance of Service by Subscriber. In the event Subscriber utilizes a non-OCLC electronic publications service for accessing current Collections materials and wishes to maintain its access to the ECO database to provide Authorized Users with access to the archived Collections indicated on its Profile, OCLC will use its best efforts but shall not be obligated to support single-point access for Subscriber.

22. SUSPENSION OR TERMINATION OF ECO DATABASE ACCESS.

OCLC may suspend Subscriber's access to the ECO database upon written notice at any time that Subscriber is in breach of its material obligations under provisions in these Terms applicable to the ECO database, provided that, in the event that Subscriber cures such material breach within thirty (30) days, OCLC shall restore such access. If Subscriber fails to cure its breach within thirty (30) days, OCLC may (i) continue to suspend Subscriber's access to the ECO database until such breach is cured; and (ii) require Subscriber to submit a request for reinstatement of its access account, which shall be granted at OCLC's discretion. If reinstatement is granted, OCLC will associate Subscriber's existing Profile with the reinstated access account to reestablish access to the archived Collections as listed on Subscriber's Profile. OCLC may terminate Subscriber's access to the ECO database and/or the archive if OCLC decides to discontinue the FirstSearch service or the ECO database, without liability to Subscriber, upon thirty (30) days prior written notice. (In the event of such termination, OCLC will comply with its obligations under Section 19.c hereof, to the extent permitted by its respective agreements with participating Publishers.) In the event of such termination, OCLC shall promptly refund to Subscriber on a prorata basis monies actually paid to OCLC for access to the ECO database.

Subscriber may terminate this agreement as it relates to the ECO database as of the date it terminates by right its Subscription Agreement(s) with Publisher, by giving OCLC the same prior written notice as Subscriber is required to give to Publisher.

23. USE AND COPYING

24. Electronic Collections Online Per-Article Purchases.

Certain third-party suppliers have agreed to permit the purchase of journal articles available in the FirstSearch Electronic Collections Online database by non-subscribers for a per-article fee. The FirstSearch administrative module allows Subscriber to customize the FirstSearch interface to permit Authorized Users to make such per-article purchases. Subscriber is billed monthly for all such purchases initiated using its FirstSearch authorizations and passwords.

As a method of controlling the aggregate amount of per-article charges incurred by its users, the FirstSearch administrative module gives Subscriber the ability to specify a maximum aggregate amount of per-article purchases to be allowed each month. Subject to the updating policy stated below, per-article purchases which exceed this amount

Notwithstanding Section 2 above, Subscriber's use of the data contained in the Collections subscribed to by Subscriber and accessed via the ECO database, including archived data, is governed by its Subscription Agreement(s) with Publisher(s). In the event terms and conditions governing the use of such data are not established by such Subscription Agreement(s), the following shall apply: (i) downloading of data is permitted solely for Subscriber's internal or personal, noncommercial use to the same extent as permitted with respect to the printed version of the Collections; and (ii) recompiling, redistribution, resale, copying in excess of one copy, publication and/or republication of data or any other downloaded information, or any portion thereof, in any form whatsoever, (except as may be permitted under the copyright laws of the United States) is prohibited. Without limiting Publisher's and/or OCLC's remedies, to the extent permitted by applicable law, Subscriber consents to injunctive relief to stop any unauthorized use of such data, which Subscriber hereby acknowledges will cause irreparable injury to Publisher and/or OCLC.

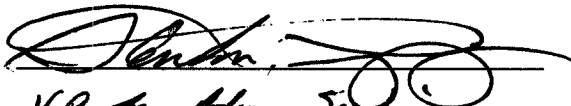
Subscriber agrees to take necessary steps, by instruction, notification or otherwise, in making the Collections available via the ECO database to Authorized Users to assure that the same liability exclusions and limitations applicable to claims by Subscriber shall apply equally to claims by such Authorized Users against Publisher or OCLC arising out of the use of the Collections and the ECO database. Subscriber also agrees to be responsible for all claims made by Authorized Users to whom the Collections are made available via the ECO database, except to the extent that Publisher or OCLC would be liable to Subscriber for such claims pursuant to the Terms.

OCLC assumes no liability for any errors, omissions or other misprints or mistakes in the display, licensing, and/or printing of the Collections contents caused by the use of any Subscriber and/or user furnished software, interface, hardware, browser, viewer, and/or printer, or any Subscriber and/or user controlled or configurable setting or adjustment which results in or induces such defects.

will be disallowed. Please note, however, that the aggregate amount of the per-article purchases made under Subscriber's FirstSearch authorization numbers and passwords is updated only once every twenty-four (24) hours. Given this updating schedule, it is possible that per-article purchases made between daily updates could cause Subscriber's specified monthly maximum to be exceeded before the overage is detected by the FirstSearch Service. For this reason and because Subscriber is nevertheless responsible for paying for all per-article purchases (whether exceeding Subscriber's specified maximum aggregate amount or not) initiated under its FirstSearch authorization numbers and passwords, it is recommended that Subscriber choose a monthly maximum aggregate of per-article purchases that is somewhat below the actual amount of such purchases it is willing to pay for each month.

COLLEGE CENTER FOR LIBRARY AUTOMATION

By:



Title:

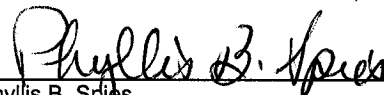
VP for Adm Services

Date:

6-22-04

OCLC ONLINE COMPUTER LIBRARY CENTER, INC.

By:



Title:

Phyllis B. Spies
Vice President

Date:

6-17-04

