

LICENSE TERMS AND CONDITIONS THE CHRONICLE OF PHILANTHROPY WEB SITE

- A. The Chronicle of Philanthropy is the operator of an online information service available on a subscription basis which provides news and information services of interest to executives and employees of charitable organizations, fundraisers, development directors, grant researchers, faculty members, and others.
- B. Subscriber is an organization that desires to obtain from The Chronicle an institutional subscription license to the Licensed Content available through The Chronicle Site and The Chronicle is willing to grant the license on the terms and conditions set forth below

NOW, THEREFORE, in consideration of the recitals, covenants and conditions herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

- 1. Definitions. For purposes of this Agreement, the following definitions apply:

“Authorized Site” is an organizational unit confined to a single geographic location as more specifically described in Addendum A (the order form). For purposes of clarification, for an organization with multiple campuses or locations within one city or in more than one city, only those locations under the same immediate administrative unit are part of the Authorized Site, and all other campuses or locations may require separate licenses.

“Authorized User(s)” means (a) an individual who is either a faculty member, an employee, contractor, or an enrolled student (whether full-time or part-time) of the Subscriber at the Authorized Site, (b) an individual who is either a full or part-time employee, contractor, or board member of the Subscriber at the Authorized Site, (c) visitors to the Subscriber’s physical facilities at the Authorized Site who have been expressly granted by Subscriber the right to access the library resources, and (d) all of the above authorized individuals while accessing the Subscriber library resources remotely through their campus or company network, provided that their access to the Subscriber’s network at the Authorized Site is administered and controlled from the Authorized Site.

“The Chronicle Site” means the Internet site with the URL <http://philanthropy.com>.

"Licensed Content" means the electronic version of news, data, and commentary from the most recent printed edition of the publication known as The Chronicle of Philanthropy, made available online by The Chronicle within three business days after publication of each print edition, complete content (news, data, and commentary) from Chronicle back issues starting with the October 16, 1997 issue, online supplemental news reports and information, as well as content and features on issues relating to nonprofit organizations made available by The Chronicle from time to time exclusively through The Chronicle Site, with supplemental materials not available in the printed edition of The Chronicle of Philanthropy. The Chronicle Guide to Grants is included and considered part of the licensed content.

“Renewal Date” means each yearly anniversary of the Service Commencement Date.

“Service Commencement Date” means the first date on which The Chronicle has activated service to Subscriber at the Authorized Site under this Agreement after Subscriber has provided to The Chronicle its authorized IP addresses for access to the Licensed Content, which Service Commencement Date shall generally occur within two business days of receipt by The Chronicle of payment and the required IP addresses.

“Subscription Administrator” means the individual designated by the Subscriber as noted on Addendum A (the order form) and any replacements designated by Subscriber with prior written notice to The Chronicle to be the contact person with The Chronicle, handle matters relating to this Agreement, complete the activation process for the Licensed Content, update authorized IP addresses for access to the Licensed Content, and

ensure the confidentiality of passwords and data exchanged in connection with this Agreement, all as more specifically set forth below.

2. Permitted Uses. Subject to the terms and conditions of this Agreement, The Chronicle hereby grants to Subscriber, and Subscriber accepts, a non-exclusive, non-transferable license (with no sublicense rights). Licensee and Authorized Users may make all use of the Licensed Materials as is consistent with the Fair Use Provisions of United States and international law. Nothing in this Agreement is intended to limit in any way whatsoever Licensee's or any Authorized User's rights under the Fair Use provisions of United States or international law to use the Licensed Materials. The Licensed Materials may be used for purposes of research, education, or other non-commercial use as follows:
 - (a) to allow Authorized Users to access, download and reproduce a reasonable number of copies of the Licensed Content solely for purposes of research, education or other non-commercial use during the term of this Agreement; and
 - (b) to allow library personnel within the scope of their employment at the libraries located at the Authorized Site periodically to make and lend an electronic or print copy of individual items of the Licensed Content in order to fulfill requests for such item by a third party library or other institution under the Subscriber's then-current inter-library loan agreements applicable to the Authorized Site, provided that (i) such copies are not routinely or systematically provided (whether in one occasion or over a period of time) in such a manner or in such quantities as to substitute for a subscription by the receiving library or the end user, (ii) all copies reproduce any proprietary legends included on the material by The Chronicle, (iii) the reproduction and lending is made without any purpose of direct or indirect commercial advantage, and (iv) the Subscriber and its personnel has had no notice that the copy(ies) would be used for any purpose other than private study, scholarship or research.
 - (c) to allow Authorized Users to use a reasonable portion of the Licensed Content for use in connection with specific courses of instruction by Licensee.
 - (d) to allow Authorized Users to extract or use information for educational, scientific or research purposes, including extraction and manipulation of information for purposes of illustration, explanation, example, comment, criticism, teaching, research, or analysis.
 - (e) to allow Authorized Users to provide electronic links to the Licensed Content from Licensee's and/or Authorized Users web page(s) and/or in e-mail communications.
3. License Limitations. Subscriber acknowledges and agrees that The Chronicle Site and the Licensed Content will be for the internal use of Authorized Users only, and Authorized Users do not have the right to modify, adapt, retransmit, resell, redistribute or compile the Licensed Content, in whole or in part, including for purposes of creating course books or educational materials, or for any other commercial endeavors, except as approved in advance in writing by The Chronicle. It is strictly prohibited for the Licensee to download content for archival use. The Licensee may incorporate article-level links to the Licensed Materials in Electronic Reserve collections for the use of Authorized Users in the course of instruction at the Licensee's institution, but not for commercial use. Each such item shall carry appropriate acknowledgement of the source. The Chronicle and its suppliers reserve all rights and licenses in and to the Licensed Content not expressly granted to Subscriber hereunder. All copies of any Licensed Content made by or on behalf of Subscriber under this Agreement shall bear all proprietary rights and other legends of The Chronicle and its suppliers as reflected on the electronic copy. Products and services offered by or through The Chronicle now or hereafter other than the Licensed Content are not included in this Agreement. The Chronicle reserves the right to determine the scope and selection of content that is made available as part of the Licensed Content at any time while this Agreement is in effect. In the event that The Chronicle removes content in a way that is systematic, for example a class of material rather than scattered articles, The Chronicle will notify the Subscriber of the nature and extent of removal within ten days. If the removal has a material effect on the usefulness of the Licensed Content, the Subscriber will have the right to cancel the service and receive a prorated refund. The Subscriber is notified that Licensed Content and the printed *The Chronicle of*

Philanthropy are available for subscription by end users and other libraries at a reasonable price, and the Subscriber may notify end users and other libraries of this.

4. Access to Licensed Content. In order for Authorized Users to access The Chronicle Site and the Licensed Content, Subscriber will provide to The Chronicle the valid IP addresses which shall be allowed access to the Licensed Content. Subscriber is responsible for updating the list of IP addresses provided to The Chronicle. Subscriber will make all reasonable efforts to ensure that access to The Chronicle Site will be limited to only Authorized Users and to give notice to Authorized Users of the license use limitations under this Agreement. Subscriber agrees to notify The Chronicle promptly of any instances of which Subscriber becomes aware whereby non-Authorized Users may have obtained access to The Chronicle Site, or whereby Authorized Users may have exceeded or intend to exceed the scope of the license granted above in Section 2, and further agrees to make reasonable efforts to assist The Chronicle in identifying the source of the unauthorized use and addressing the matter. The Chronicle reserves the right to suspend access through any single Subscriber IP address (e.g. 123.45.678.912) in the event of unauthorized or illegal use, to protect its systems, or as otherwise required by court order.
5. Management of Chronicle Site. The Chronicle Site will be located on The Chronicle's server or the server of a third party as determined by The Chronicle. The Chronicle reserves the right, at its sole discretion, to block or remove from The Chronicle Site any content which The Chronicle believes may be illegal or harmful to The Chronicle in any way or which conflicts with The Chronicle's obligations to third parties. Although The Chronicle may from time to time monitor or review discussions, chats, postings, transmissions, bulletin boards and other user generated pages on The Chronicle Site, The Chronicle is not under any obligation to do so. Subscriber acknowledges that The Chronicle does not control the information available on bulletin boards, chat rooms and other user generated pages and that any opinions, advice, statements, services, offers or other information or content presented or disseminated on any bulletin board, chat room or on any other user generated pages are those of their respective authors who are solely liable for their content. The Chronicle reserves the right, in its sole discretion, to edit, refuse to post or remove any material submitted to or posted on the chat rooms, bulletin boards or on any other user generated pages, and to terminate or suspend access by Authorized Users who make unauthorized or illegal use of The Chronicle Site. In the event that the Chronicle removes content in a way that is systematic, for example a class of material rather than scattered articles, The Chronicle will notify the Subscriber of the nature and extent of removal within ten days. If the removal has a material effect on the usefulness of the Licensed Content, the Subscriber will have the right to cancel the service and receive a prorated refund.
6. Terms of Payment. Subscriber agrees to pay The Chronicle for the rights granted in this Agreement a non-refundable (except as set forth in Section 8(a), a subscription fee to be paid annually based on the pricing set forth by The Chronicle. Payment is due before institutional access is provided. Renewal fees shall be in accordance with Section 8(a). Subscriber will be responsible for the payment of all taxes and duties assessed in connection with the license granted herein.
7. Ownership, Confidentiality, and Reporting.
 - (a) Licensed Content and Trademarks. Subscriber acknowledges that The Chronicle and its suppliers own all worldwide right, title, and interest in and to the Licensed Content, and all related information, software, data, layouts and formats made available by The Chronicle by or through The Chronicle Site, including, but not limited to, all copyrights (including without limitation audiovisual works and moral rights), patents, and other worldwide intellectual property rights therein. The Chronicle and its licensors own all right, title, and interest in and to their respective trademarks, service marks, and logos ("Marks") worldwide and such Marks cannot be used by Subscriber without the prior written approval of The Chronicle.
 - (b) Usage Data. All data collected by or on behalf of The Chronicle relating any use of The Chronicle Site or the Licensed Content by any users is and shall remain at all times the sole property of The Chronicle.
 - (c) Confidentiality. Subscriber hereby agrees that the user name and password provided or made accessible by The Chronicle to Subscriber shall be and remains at all times the confidential property of The Chronicle and shall not be disclosed by Subscriber to any persons other than the Subscriber Administrator and those of its

personnel involved with the implementation of this Agreement. Subscriber agrees to exercise reasonable commercial efforts to safeguard user name and password and keep them confidential

- (d) Usage Reports. The Chronicle agrees to provide to Subscriber's contact person as identified on Addendum A (the order form), usage reports regarding access to the licensed Content by Authorized Users, which report shall only include non-personally identifiable information. This report shall be accessible to the Subscriber electronically by using the assigned user name and password or in such other means reasonably determined by The Chronicle from time to time, and will be updated periodically. The reports shall not be distributed outside of the Subscriber's organization and, while believed accurate by The Chronicle, are provided without warranty.

8. Term and Termination.

- (a) Term/Renewal. The term of this Agreement shall commence on the Effective Date and be for twelve (12) months following the Service Commencement Date. Subscriber may renew this Agreement after the initial term by sending, prior to the Renewal Date, payment for an additional twelve months period (each a "renewal period"). The Chronicle will make a reasonable effort at least 60 days prior to the expiration of the then current term, to send to Subscriber at the last known address for billing as set forth on Addendum A (the order form) a "renewal notice" stating the price applicable to the renewal period. The licensed rights granted hereunder will not renew for any renewal period unless The Chronicle has received within thirty (30) days following the expiration date payment in full of the applicable renewal fee. The amount of each subsequent year's Annual Subscription Fee shall be determined by The Chronicle 60 days prior to the Renewal Date, and shall be due not later than thirty (30) days following the expiration date. Any renewal is subject to the then current form of these Terms and Conditions as then prescribed by The Chronicle and to be provided to Subscriber prior to renewal for signature in the event the terms have changed from these Terms. In the event The Chronicle reasonably determines that the Licensed Content can no longer be made available, it shall have the right to terminate or not renew this Agreement by notice to Subscriber, provided that it refunds the Annual Subscription Fee for the unexpired portion of any then-current term.
- (b) Termination. Either party may terminate this Agreement if the other party materially breaches any of its obligations hereunder and such breach remains uncured for thirty (30) days following the written notice of the breach to the breaching party. In the event Subscriber terminates pursuant to this section as a result of an uncured breach by The Chronicle, Subscriber shall be entitled to a refund of any fees paid by Subscriber for any unused portion of the then-current term, as Subscriber's sole and exclusive remedy for such breach. Upon any termination or expiration of this Agreement: (i) the license rights granted under this Agreement immediately terminate; (ii) Subscriber shall promptly discontinue any use of the Marks; and (iii) the provisions of Sections 7(a), 7(b) and 7(c) will survive any termination or expiration of this Agreement.

9. Limited Warranty and Disclaimers.

- (a) Warranties. The Chronicle warrants that it has the right and authority to enter into this Agreement and to grant to Subscriber the rights granted hereunder. The Subscriber warrants that it has the right and authority to enter into this Agreement. The Chronicle warrants that it will make commercially reasonable efforts to provide accurate and complete information through the Licensed Content and to provide to Subscriber the services set forth in this Agreement.
- (b) Disclaimer. EXCEPT AS SET FORTH IN SECTION 9(a) ABOVE, THE CHRONICLE AND ITS SUPPLIERS MAKE NO WARRANTY OF ANY KIND IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE LICENSED CONTENT AND ANY OTHER INFORMATION, SERVICES OR MATERIALS PROVIDED OR MADE AVAILABLE BY THE CHRONICLE HEREUNDER, AND THE CHRONICLE AND ITS SUPPLIERS HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL IMPLIED OR STATUTORY WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF INFORMATIONAL CONTENT, SYSTEM INTEGRATION, TITLE, NON-INFRINGEMENT AND NON-INTERFERENCE. THE CHRONICLE DOES NOT MAKE ANY WARRANTY THAT THE LICENSED CONTENT WILL BE AVAILABLE TOTALLY WITHOUT INTERRUPTION OR ERROR-FREE.

10. Limitation of Liability.

- (a) Exclusion of Damages. IN NO EVENT WILL THE CHRONICLE OR ITS SUPPLIERS BE LIABLE TO SUBSCRIBER, AUTHORIZED USERS OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS), ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE LICENSED CONTENT, OR THE CHRONICLE SITE, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT THE CHRONICLE OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SUBSCRIBER AGREES THAT THE CHRONICLE WILL NOT BE LIABLE FOR ANY CREDITS OR REFUNDS FOR SERVICE INTERRUPTIONS, LATENCY, INCOMPLETE CONTENT TRANSMISSION, GENERAL NETWORK FAILURES OR OTHER FAILURES REGARDING CONTENT ACCESS OR TRANSMISSION WHICH MAY FROM TIME TO TIME MAKE THE LICENSED CONTENT OR THE CHRONICLE SITE UNAVAILABLE TO AUTHORIZED USERS.
- (b) Total Liability. IN NO EVENT WILL THE CHRONICLE'S AND ITS SUPPLIERS' TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, EXCEED THE ANNUAL SUBSCRIPTION FEE OF THE YEAR IN WHICH THE CAUSE OF ACTION OCCURS.

11. General Provisions.

- (a) Assignment. Subscriber may not assign this Agreement, in whole or in part, without The Chronicle's prior written consent, which shall not be unreasonably withheld. Any attempt to assign this Agreement other than as permitted herein will be null and of no effect. Without limiting the foregoing, this Agreement will inure to the benefit of and bind the parties' respective successors and permitted assigns.
- (b) Dispute Resolution. The parties agree to make good faith, diligent and reasonable commercial efforts to resolve any disputes under this Agreement by designating one senior executive of each party to negotiate for a mutually agreeable period of at least ten days once a party has provided written notice of the dispute and the desire to negotiate as set forth herein. Nothing herein shall affect the right of either party to seek interim or emergency injunctive relief before a court of competent jurisdictions. The Chronicle reserves the right to suspend service hereunder pending resolution of a dispute unless Subscriber escrows any amounts in dispute (in the case of a payment dispute) or otherwise provides written assurance that continuation of service hereunder will not give rise to any claim of remedies or damages by Subscriber for the period service is provided while the dispute is pending.
- (c) Notice. Any notice under this Agreement will be in writing and delivered by personal delivery, express courier, confirmed facsimile, confirmed e-mail, or certified or registered mail, postage prepaid and return receipt requested. Notices will be deemed to be effective upon receipt. Notices will be sent to a party at its address set forth above or such other address as that party may specify in writing pursuant to this section.
- (d) No Agency. The Chronicle is only a licensor and an independent contractor of Subscriber. The parties will have no power or authority to assume or create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture. The arrangements contemplated by this Agreement are non-exclusive and nothing in this Agreement shall be construed as limiting the ability of the other party to enter into similar arrangements with other parties.

- (e) Entire Agreement. This Agreement, together with its exhibits, is the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreements, negotiations and communications regarding such subject matter. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

- (f) Counterparts. This Agreement may be executed in multiple counterparts (including facsimile), each of which, when so executed, shall be deemed to be an original copy hereof, and all such counterparts together shall constitute one single agreement

THE CHRONICLE OF PHILANTHROPY

SUBSCRIBER/INSTITUTION

Signature_____

Signature_____

Name_____

Name_____

Title_____

Title_____

Date_____

Date_____