

:: SUBSCRIPTION ACCESS ::
TO THE ARCHIVISION DIGITAL RESEARCH LIBRARY
SUBSCRIPTION ACCESS PROVIDER AGREEMENT – WITH ARCHIVISION
IN MDID ON AN ARCHIVISION SERVER

(the “Agreement”)

Draft Version May 3, 2011

Name of Institution(s): _____

of campuses requesting access: _____ Campus names: _____

If a consortium, official name: _____

Total number of students (full & part time) at your institution: _____ year: _____

If a consortium, list total # of students per institution (or email us list): _____

Contact address: _____

Contact name & title: _____ email: _____

Phone: _____ fax: _____

Existing Module client of Archivision (circle)? YES / NO Sales rep. if any? _____

Archivision Library Modules you have licensed to date, if any (circle): **BASE / ONE / TWO / THREE / FOUR / FIVE / SIX / SEVEN**. Note: Ownership of modules does not change your Subscription Fee.

Local image delivery system currently in use, if any: _____

YOUR ANNUAL SUBSCRIPTION FEE IS: \$_____ for the duration of _____ annual term(s)

Note: If you wish to pay up front for more than one annual term or are a formal consortium of two (2) or more institutions please ask for a quote first (sales@archivision.com).

1) Introduction

- (a) Scott Gilchrist B. Arch., M. Arch., holds a library of architectural, archaeological, historical, art and artistic digital images, videos, and QuickTime VR scenes (collectively the “**Images**”). When Images are combined with our extensive, researched metadata within a database delivery system the library is called the Archivision Digital Research Library (the “**Library**”). The Library is divided into Modules and periodically grows via the addition of new Addition Modules.
- (b) Scott Gilchrist is the photographer for the majority of the Images in the Library. Scott Gilchrist and Archivision Inc. are the owner of all copyrights in the Images.
- (c) Archivision Inc. (“**Archivision**”) also administers and enforces copyrights to the Images and grants licenses or subscription access to use the Images on behalf of Scott Gilchrist.

This Agreement sets forth the terms under which the Subscriber may obtain subscription access to the Library and the permitted use and limitations of all Images with such access.

2) Definitions

- (a) “**Addition Module(s)**” is defined as a Module added to the Library at any time, of which Addition Modules One through Five, containing roughly 6,000 Images each, are currently available.
- (b) “**Addition Ownership Term**” is defined as an aggregate two (2) year Subscription Term (whether continuous or discontinuous) following the end of the Base Ownership Term, entitling

the Subscriber to the Ownership of an Addition Module.

- (c) **“Annual Term”** is defined as a one year period of time for which Subscription has been paid for, which is the default Subscription Term under this Agreement.
- (d) **“Base Module”** is defined as the charter portion of the Library, containing roughly 16,000 Images.
- (e) **“Base Ownership Term”** is defined as an aggregate four (4) year Subscription Term (whether continuous or discontinuous), entitling the Subscriber to the Ownership of the Base Module.
- (f) **“Image”** is defined as the architectural, archaeological, historical, art and artistic digital images, videos, and QuickTime VR scenes made available to the Subscriber under this Agreement.
- (g) **“Library”** is defined as the aggregate of all Images, combined with extensive, researched metadata within a database delivery system made available by Archivision, which currently includes the Base Module as well as Addition Modules One through Five, for an aggregate total of exactly 47,000 Images.
- (h) **“License Agreement”** is defined as the agreement governing the use of Images, once subject to Ownership by Subscriber.
- (i) **“Licensed User(s)”** is defined as but not limited to registered students, faculty and staff at the Subscriber institution and members of alumni and the walk in public that are given access to the Library or any portion thereof by the Subscriber.
- (j) **“Module(s)”** is defined as specific divisions of the Library, consisting of the Base Module of 16,000 Images and Addition Modules, each of which currently includes approx. 6000 images.
- (k) **“Ownership”** is defined as the right to host, download, make copies of, and generally use the images for the personal use of the Subscriber and its Licensed Users, but shall not include the right to sell, rent, alter or share (other than with the Licensed Users) the Images or any other similar action, including those actions specifically prohibited under paragraph 3h) of this Agreement.
- (l) **“Rental Fee”** is defined as the fee Archivision charges to a Subscriber for rental access to the Library for one year’s use by the Subscriber and its Licensed Users, included in the Subscription Fee along with the Service Provider Fee.
- (m) **“Service Provider(s)”** is defined as any sanctioned commercial entity, currently including Archivision, which provides access to the Library via this Agreement and on its own server using their database and interface. The Service Provider will load new Addition Modules, as and when such Addition Modules are made available by Archivision, as well as make annual updates to Images and data supplied by Archivision, when made available.

There are currently two (2) sanctioned Service Providers: 1) Archivision Inc. 2) Luna Imaging, Inc.

- (n) **“Service Provider Fee”** is defined as a separate fee the Service Provider, including Archivision, sets and charges for providing access and use of their server and database interface. The fee also includes the loading of new Addition Modules and maintenance and costs of the database and server, etc.
- (o) **“Site License”** is defined as a separate license for the Ownership of the Library or of certain Modules, whether granted via successive Subscription Terms as specified in this Agreement or by purchase.
- (p) **“Subscriber”** is defined as _____(institution name)
- (q) **“Subscription”** is defined as rental access via Annual Terms or other Subscription Terms to the Library on a remote server, whether some or all Modules have been licensed in perpetuity and paid for by the Subscriber or not, and where this Agreement is on file with Archivision.

- (r) **“Subscription Fee”** is defined as the combination of the Rental Fee and the Service Provider Fee, invoiced directly to the Subscriber by Archivision. Archivision will invoice you for this single fee and pay any third party Service Provider their portion of the fee where appropriate.
- (s) **“Subscription Term”** is defined as the period of time for which Subscription has been paid for, as mutually agreed upon in writing by the parties, it being understood and agreed that the minimum subscription term shall be the Annual Term.
- (t) **“Term End Date”** is defined as the date the Subscription Term paid for ends.
- (u) **“Term Start Date”** is defined as the day the Subscription Term starts, being the date on which this Agreement is countersigned by Archivision, unless another date is mutually agreed upon in writing by the parties.

3) Terms and conditions

(a) Activation of Subscription

Subscription will be activated by your chosen Service Provider upon receipt of 1) your PO or payment to Archivision as per an invoice addressed to you from Archivision for your Subscription Term and 2) a signed copy of this Agreement, which we will counter sign and fax back to you, unless you are notified otherwise as per mutual agreement. Annual Subscription Fees paid cover the date from when this Agreement was countersigned and dated by Archivision until one calendar year has passed from that date and subsequent Annual Terms for which you have requested and paid for access and where no notice of change of terms is given by the Service Provider or you.

(b) Continuous subscription for four (4) years

If you renew your Subscription for Subscription Terms which equal, in the aggregate, four (4) consecutive years we will guarantee the annual Subscription Fee will not change during that four (4) year period. You may also pay up front for up to four (4) years of Subscription at a time. At the end of any Subscription Term(s) of four (4) consecutive years, Archivision will provide Subscriber with a new quote which, if accepted by Subscriber, shall become the revised Subscription Fee applicable for the next four (4) consecutive years.

(c) Cancellation, change of Service Provider

You may at any time cancel your Subscription. However, any Subscription Fees already paid are not refundable, unless a change in Service Provider is made within 30 days from the execution of this Agreement and before payment has been received and deposited, in which case a new Agreement must be signed.

(d) Ownership right

Upon expiry of the Base Ownership Term, Subscriber shall be granted Ownership of the Base Module. Once the Base Ownership Term is met, subscriber shall be granted Ownership of one additional Module (in module sequence only) following each Addition Ownership Term. Upon completion of the Base Ownership Term or of an Addition Ownership Term, as the case may be,, Archivision will send out to Subscriber the relevant Module’s content on a hard drive. Subscriber will need to sign a Site License before shipment of the Base Module, it being however understood that all Addition Modules subsequently acquired by the Subscriber shall also be governed by the License Agreement. North America subscribers will need to pay the standard shipping fee, currently at \$75 USD, and return the hard drive to us via our FedEx ground labels 9. For Subscribers outside North America the shipping fee

is \$350 USD and includes the hard drive. North America Subscribers might opt to keep the hard drive for an added fee.

(e) Ownership option

Before the Base Ownership Term is met, Subscriber may ask for a quote, in which case Archivision will subtract 50% of the Subscription Fee already paid by the Subscriber during the Base Ownership Term from the quoted Ownership fee.

Similarly, before an Addition Ownership Term is met, Archivision will also apply 50% of the Subscription Fee already paid by the Subscriber during that Addition Ownership Term on the quoted price of the relevant Addition Module.

(f) Term, Renewal and Termination

This Agreement shall be for an Annual Term, commencing upon the date written below which is the date of signature unless Subscriber has requested a longer Subscription Term. You may renew your Subscription for a similar Term by paying your renewal Subscription Fee 60 days before your then current Subscription Term expires. We will terminate access with a final 30-day if no payment is received within 30 days from such final notice.

Upon cancellation of your Subscription, either by written statement to Archivision by you or non payment of your renewal Subscription Fee, your access to the Library will be automatically terminated, and you agree to give up the right for further use of the Images in your possession. You will destroy all Images copied on your servers or elsewhere, with the exception of Images for which Ownership was already granted via a signed Site License, if any. After a period of 60 days from the date you were notified of termination Archivision may request a written statement certifying that all copied Images have been destroyed. It is suggested that the Subscriber notify all Licensed Users that its Subscription has been or will soon terminate.

(g) Copyright

Archivision retains full copyright in all Images accessed and/or downloaded by the Subscriber and/or its Licensed Users, even where Ownership of Modules is granted to the Subscriber via a Site License. All Images are protected under international copyright law and other applicable intellectual and proprietary information laws.

(h) Permissible use

Images accessed via Subscription may be viewed online, downloaded and used exclusively for educational, research and personal use, on a not-for-profit basis only, e.g. in lectures, classroom seminars, student papers, assignments, presentations, theses and report covers and, provided that the Images be used for such purposes only, Subscriber and Licensed Users may download, print or duplicate and use Images, including use in conjunction with presentation software, e.g., PowerPoint, and in an online or off-line environment. An Image or collection of downloaded Images may also be (i) placed on a web page for classroom study or (ii) placed into Electronic Classroom Management Systems, such as Blackboard, so long as access to that page is restricted to Licensed Users only, including but not limited to, through the use of a password. Reasonable numbers of Images may be placed into electronic reserves for specific courses of instruction offered by the Subscriber, where access is restricted to Licensed Users, and such access is limited to the duration of the course. In all cases any permitted use of the Images is limited to the Term of your Subscription.

(i) Prohibited use

Neither the Subscriber nor its Licensed User will:

(i) rent, lease, publish, time-share or sub-license or in any other way use or authorize the use of any Archivision Image or derivative for profit;

(ii) use or authorize use of any Image, or any part thereof, as a trademark, logo or service

mark;

(iii) claim any proprietary right of any kind in any Image or derivative;

(iv) publish, disseminate, or authorize the publication or dissemination of any work or compilation or collective work including books and CD ROMs containing one or more Images or derivatives, where these works are for profit, without written agreement with Archivision, and an additional license fee being paid.

The Subscriber or its Licensed User may acquire other rights, including publication and commercial use rights, via our Royalty-Free website currently found at <http://stock.archivision.com/>.

(j) Service Liability

While every precaution has been taken to avoid service interruption Archivision is neither responsible nor liable in any manner for any interruption in access to the Library. Should Archivision need to terminate the access, for any reason, Archivision will, as per Subscriber's written request, 1) offer access with another Service Provider of Subscriber's choice (if available) and 2) transfer the portion of the Subscription Fee paid to Archivision for the outstanding portion of the then current Term to the new Service Provider reducing Service Provider Fee payable by Subscriber to the new Service Provider (if any and if possible). If no other Service Provider is available for such transfer, Archivision shall incur no further liability, and Subscriber shall not be entitled to any refund.

(k) Technical requirements/condition

Use of the Library under this Agreement shall be subject to the technical conditions and requirement set out in Schedule "A", which shall form an integral part of this Agreement. Subscriber shall complete the information set out in Schedule "A" (contact information of hosting administrator/IT specialist).

(l) Choice of law

The parties agree that this agreement shall be governed and construed in accordance with the laws of the State of _____(your US State or Canadian Province), to the exclusion of its conflict of law provisions.

(m) No Assignment

The Subscriber shall not assign this Agreement or any of its rights and obligations thereunder.

(n) Entirety of the Agreement

The terms and conditions of this Agreement supersede all prior oral and written agreements between the parties and shall constitute the entire agreement between the parties with respect to the matters contained herein. This Agreement shall not be modified or amended except by writing duly executed by authorized representatives of the parties.

(o) Scope of the Agreement

This Agreement shall apply to the entire Library, including any new Addition Modules that may be added from time to time following the date of execution of this Agreement.

IN WITNESS WHEREOF, the parties, Archivision and the Subscriber have caused this Agreement to be executed by their duly authorized representatives (**Head Librarian or signing officers / licensing is sufficient**) as of the respective dates mentioned below (the Term Start Date for your initial Subscription Term will commence in the date this Agreement is countersigned by Archivision).

Archivision Inc:

name of Institution

By: _____

Scott Gilchrist, President

By: _____

write name /
title: _____

Date: _____

Date: _____

By: _____

write name /
title: _____

Date: _____

NOTE: Please fax this agreement page back with your signature(s) to 514-332-1445 and we will counter sign and fax it back to you. Alternately, you can print out two (2) copies, sign both, and mail both copies to us for our counter signature – we will then mail one copy back to you. Please mail to:

Archivision Inc.
2878 Chamonix
Montreal, QC H4R 3B7
CANADA

FAX: 514-332-1445

toll free: 877-655-9855
contact@archivision.com

For Archivision use:

Client # _____

Term Start Date: _____

Term End Date: _____

SCHEDULE "A"

:: ARCHIVISION SUBSCRIPTION IN MDID - DETAILS ::

**Note: MDID (Madison Digital Image Database) is open source, there is no software license required to use this service (no back-end license required with unlimited use by the Subscriber).*

>> INTERFACE IS CURRENTLY IN THE LATEST VERSION OF MDID2; TESTING IS UNDERWAY FOR MDID3 AND DEPLOYMENT IS PLANNED FOR END OF 2011, ASSUMING TESTING IS COMPLETED ON SCHEDULE

Maximum download access is to a 1500 pixel file and derivatives in JPG format. Video files are compressed in H.264 format, to be streamed in a flash container once MDID3 is deployed. Access is provided to all published Archivision content including the full associated metadata.

Site wide access to the MDID service is controlled via a public IP address range provided by the Subscriber,. Further authentication is needed via username and password to access all features in MDID. This directory of users is managed by the Subscriber though we can assist you in tailoring the configuration. Remote or off-campus access, via a vpn server for example, is the responsibility of the Subscriber.

User Features

Should the Subscriber and its Licensed Users wish to access all features in MDID, they will need to authenticate via username and password. The Subscriber is responsible for disseminating this information among Licensed Users. Once you authenticate via username and password, both Subscriber and its Licensed Users will have the full ability to make MDID image groups and slide shows. There is no limit to the number groups they can make nor is there a limit (within reason) to the number of images they can compile and save in these groups on our MDID server. All image derivative sizes made available may easily download and transfer to PowerPoint or other off-line applications but must remain behind firewalls. Should you cancel Subscription we will not hold these groups.

Support Options

Free MDID support is available by joining the MDID user group listserv here: <https://listserv.jmu.edu/cgi-bin/wa?A0=MDID-L>

For questions about the use or set-up of a local Archivision MDID installation at your site, Archivision offers a paid support service by phone where you may talk with our IT Specialist at the rate of \$75 per incident with Visa or invoice where a PO is produced first (limit 2 hours per call and before 5PM EST).

Please note: Archivision plans the migration to MDID3 at the end of 2011 and consequently some aspects of the interface will change. Archivision reserves the right to make modifications and improvements to the software and database from time to time, such as larger thumbnails with "pull to full screen view", enhanced search queries, etc. Archivision reserves the right to once a year perform maintenance when needed and remove all image groups during the month of July. Any planned maintenance to the site that will limit access to the MDID server will be announced at least one week in advance on the announcement page and by email to the Subscriber's principal contact person. Archivision is the sole administrator of the MDID database; however, the Subscriber will be able to make statements on the announcement page. Further access to features and permission controls can be delegated on a case by case basis.

Designated local hosting administrator or IT specialist as contact:

You may attach a separate page with your IP range (please indicate which campus or campuses they are for and the class type)

Name: _____

Phone number: _____

Email: _____

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