



The H.W. Wilson Company

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*Celebrating
100 years of Service*

H. W. WILSON COMPANY DATABASE AND SOFTWARE LICENSE

1.0 THE PARTIES

- a) The parties to this license are the H. W. Wilson Company ("Wilson") and Tallahassee Community College, acting on behalf of the College Center for Library Automation ("CCLA") and its member libraries ("Customer"). Wilson grants the authorized users of participating member libraries the right to access and use the licensed Wilson databases via Wilson's WilsonWeb online service. The licensed databases and the participating member libraries licensing each database are listed in Attachment 1. "Authorized Users" are, for access within a participating member library site, a user of that site, i.e., walk-in traffic is allowed to access the licensed databases. For access from outside the member library site, "Authorized Users" are duly enrolled students, faculty members or employees of the participating member site, who are eligible in accordance with the terms of this license, and are authorized by the participating member library site, to access the Databases. Remote access is therefore allowed but Customer shall make reasonable efforts to restrict that access to students, faculty and staff of the participating member libraries.
- b) This license applies to Databases and Software. "Databases" are those searchable electronic databases published by Wilson which are listed in Attachment 1. "Software" is proprietary search retrieval software incorporated in and utilized under WilsonWeb.
- c) In granting this license to Customer, Wilson is also acting on behalf of Information Partners and Technology Partners. "Information Partners" are entities that have licensed to Wilson the information in a Database. "Technology Partners" are entities that have licensed to Wilson search, retrieval or other software used with the Databases. Each Information Partner or Technology Partner retains its right to enforce its trademarks, copyrights, patents, trade secrets, and other rights directly against Customer, the participating member libraries and their authorized users.

2.0 USER LICENSE

- a) Wilson grants to the Customer and participating member libraries a non-exclusive, non-transferable license to access the Databases by means of the Software.
- b) The Databases, the Software, and the associated materials (other than portions in the public domain), including the documentation, are the property of Wilson, an Information Partner, or a Technology Partner and are protected by copyright laws and by international treaties.
- c) No title is transferred by this license or by the payment of any fee.

- d) The Customer and participating member libraries' rights are limited to itself alone and do not extend to subsidiary or parent corporations, or to any other related or affiliated organizations.
- e) The Customer and its participating member libraries shall make reasonable effort to permit only Authorized Users to access the Databases. Remote access to the Databases shall be provided through a secure method such as Referring URL, scripted username and password, or IP Address.
- f) Any rights not expressly granted in this license are reserved to Wilson, the Information Partners, or the Technology Partners.

2.1 WHAT YOU MAY DO

You MAY:

- a) make searches of the Database.
- b) make a limited number of hard or electronic copies of any search output that does not contain a significant segment of a Database, which copies may be used internally or for personal use and may be used to fulfill interlibrary loan requests but may not be sold.
- c) use the Databases to create electronic reserves.
- d) use the Databases to create coursepacks, but the material must be taken down at the end of the semester.
- e) Use the Databases in coordination with your preferred Document Delivery service; Wilson provides up to three custom links which can be used for such services.
- f) Use the Databases in coordination with Z39.50, Open URL, or other linking technologies. Wilson has its own Z39.50 server, and provides its own Open URL service as part of your WilsonWeb subscription, at no cost.
- g) Staff at participating member libraries may use the Databases to fulfill occasional requests from non-affiliated patrons asking reference questions. Staff at non-affiliated libraries who are participating in collaborative digital reference services may access the Databases in order to assist Authorized Users affiliated with the participating member libraries and who are legitimately allowed access to the Databases.

2.2 WHAT YOU MAY NOT DO

You may NOT:

- a) decompile or reverse engineer the Software.
- b) sell, distribute, or commercially exploit the Databases, the Software, or associated material.
- c) transfer, assign, or sublicense this license.
- d) use any Database in any way unless you have agreed to this license.
- e) Notwithstanding the above restrictions, paragraphs 2.1 and 2.2 shall not restrict the use of materials under the doctrine of "fair use" as defined by the laws of the United States.

2.3 User Access Levels

The Wilson Databases are accessed on a site license basis, i.e., concurrent access by an unlimited number of users, or on simultaneous users basis, i.e., limited by a specified number of simultaneous users, which can also be defined as user sessions. In the event that the Customer wishes to upgrade its licensed number of users on one or more Databases, Customer agrees to so notify Wilson and pay Wilson's charge therefore. Upon notification and payment to Wilson, Customer will be deemed to have accepted the additional relevant licensing terms therein.

3.0 LIMITATION OF WARRANTIES AND LIABILITY

- a) **Wilson warrants to the Customer that the total WilsonWeb downtime directly attributable to the Software developed by Wilson or its Technology Partners for providing access via the Internet (the "Internet-Access Software") will amount to less than the equivalent of one full day per calendar month. In the event that the total downtime during this period directly attributable to the Internet-Access Software exceeds the equivalent of one full day per calendar month, Customer may cancel the subscription and receive a pro-rata refund. This warranty does not apply to downtime that results from improper or unskilled use of the Internet-Access Software by the Customer, participating member libraries or their Authorized Users.**
- b) **Wilson and the Information Partners or Technology Partners warrant and represent that they have the right to enter into this Agreement and to deliver "as is" the Databases and the Software.**
- c) **THE WARRANTIES EXPRESSED IN PARAGRAPHS 3. A) and B) ABOVE REPRESENT THE ENTIRE LIABILITY OF WILSON AND ITS INFORMATION PARTNERS AND SOFTWARE PARTNERS WITH RESPECT TO THIS LICENSE, AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH WILSON AND ITS INFORMATION PARTNERS AND TECHNOLOGY PARTNERS DISCLAIM.**
- d) **IF THE DATABASE INCLUDES ABSTRACTS, AUTHORIZED USERS SHOULD CONSULT THE FULL TEXT MATERIALS BEFORE REACHING OR SUGGESTING CONCLUSIONS.**
- e) **THE PRESENCE IN OR ABSENCE FROM THE DATABASE OF ANY REFERENCE TO INFORMATION, DATA, EVENTS, RESEARCH, OR DEVELOPMENTS DOES NOT IMPLY THE SPECIFIC EXISTENCE OR THE NON-EXISTENCE THEREOF, NOR DOES WILSON, ITS INFORMATION PARTNERS, OR ITS TECHNOLOGY PARTNERS CLAIM COMPREHENSIVENESS OR THE ABSENCE OF ERRORS.**
- f) **IN VIEW OF THE ABOVE, ALL LIABILITY IS DISCLAIMED FOR THE ACCURACY, COMPLETENESS OR FUNCTIONING OF THE DATABASES.**
- g) **WILSON AND THE INFORMATION PARTNERS AND TECHNOLOGY PARTNERS ASSUME NO RESPONSIBILITY FOR THE USE OF THE DATABASES BY THE COSALC, ITS OR BY ANY AUTHORIZED USER, AND WILSON AND THE INFORMATION PARTNERS AND TECHNOLOGY PARTNERS SHALL NOT BE LIABLE FOR LOSS OF PROFITS, LOSS OF USE, OR INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES AS A RESULT OF SUCH USE, EVEN IF MADE EXPRESSLY AWARE OF THE POSSIBILITY THEREOF.**
- h) **IN NO EVENT MAY ANY ACTION BE BROUGHT AGAINST WILSON, THE INFORMATION PARTNERS, OR THE TECHNOLOGY PARTNERS ARISING OUT OF THIS AGREEMENT MORE THAN ONE YEAR AFTER THE CLAIM OR CAUSE OF ACTION ARISES, DETERMINED WITHOUT REGARD TO WHEN THE CUSTOMER SHALL HAVE LEARNED OF THE DEFECT, INJURY, OR LOSS.**
- i) **NEITHER WILSON NOR THE INFORMATION PARTNERS OR TECHNOLOGY PARTNERS SHALL IN ANY EVENT BE LIABLE FOR MORE THAN THE LICENSE FEE PAID (WHETHER SUCH LIABILITY ARISES FROM BREACH OF WARRANTY, BREACH OF THIS CONTRACT OR OTHERWISE, AND WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY.**
- j) **SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO EACH CUSTOMER OR AUTHORIZED USER.**
- k) **THE PROVISIONS OF THIS PARAGRAPH 3 WILL SURVIVE ANY TERMINATION OF THIS LICENSE.**

4.0 Entire Understanding

This Agreement and its addenda constitute the entire understanding of the parties with respect to the subject matter hereof. Without limiting the generality of the foregoing, it is expressly agreed that the terms of any prior Customer purchase order will be subject to the terms of this license and that any acceptance of a purchase order by Wilson will be for acknowledgment purposes only and none of the terms set forth in the purchase order will be binding upon Wilson. Any representation, promise, warranty, covenant, or undertaking not expressly set forth in this license shall not be deemed part of the agreement or otherwise legally effective.

5.0 Severability

If a term or condition of this license is invalid or unenforceable, the remaining terms and conditions will remain in full force and effect.

6.0 Security; Audit

Customer will take reasonable action to restrict and control all use of the Databases and the Software, to enforce the restriction contained in Paragraph 2, and to permit access only to Authorized Users. The Customer grants Wilson the right to audit, during regular business hours, the use of the Databases and the Software to ensure compliance with this Agreement, including without limitation, the number of simultaneous users permitted to access the Databases.

7.0 Licensing Fees

The licensing fees for the first license year are listed in Appendix 1, based on the database and the number of participating member libraries licensing that databases. License fees in the second and third license year will not be more than 5% above the previous year for the same level of participation.

8.0 Term

This license applies to any use of a Database during the period or periods for which a fee has been paid and during authorized trial periods. When the Customer accepts an updated version of this Agreement in writing, the updated version will replace this version. Wilson reserves the right to cease offering the Customer the right to renew the subscription.

9.0 UPDATES

During its license period Customer will receive any WilsonWeb software or database updates. In the event of the termination of the license, Customer shall promptly erase all electronic storage. If the Customer fails to comply with any of its responsibilities under this license, the Customer may be denied future updates, without precluding Wilson from seeking any other remedies.

10.0 STATISTICS

Wilson confirms to the Customer that usage statistics covering the online usage of the Databases included in the license will be provided. Wilson further confirms that such usage statistics will adhere to the specifications of the COUNTER Code of Practice, including the data elements collected and their definitions; data processing guidelines; usage report content, format, frequency and delivery method.

11.0 INDEMNIFICATION

Excluding claims arising out of or relating to the violation by Wilson, the Information Partners, or the Technology Partners of any third-party copyright, trade secrets, or trademark the Customer, to the extent permitted by applicable law, agrees to indemnify Wilson, the Information Partners, and the Technology Partners and hold them harmless from and against any and all claims of Authorized Users or other third parties arising out of or related to the use of the licensed materials, regardless whether such claims were foreseeable by Wilson, the Information Partners, or the Technology Partners. The provisions of this Paragraph 11 will survive any termination.

12.0 TERMINATION

In the event of a material breach by either party or a participating member library of any of its obligations under this Agreement, that party shall have the right to remedy the breach within thirty (30) days upon receipt of written notice. Within the period of such notice the party in breach shall make every reasonable effort and document said effort to remedy such a breach and shall institute any reasonable procedures to prevent future occurrences of such breaches. If the party in breach fails to remedy such a breach within the period of thirty (30) days, the other party may (at its option) terminate this Agreement upon written notice. On termination of this Agreement by the Customer for cause, Wilson shall forthwith credit the proportion of the Fee that represents the paid but unexpired part of the Subscription Period. Upon any termination for breach, Customer will, unless otherwise agreed to in writing by Wilson, forthwith return to Wilson the Database, the Software, and any and all documentation pertaining thereto, and all copies thereof, and will erase all electronic storage of copies of the Software and search outputs or other electronic storage. Any termination, whether or not for breach, will not affect any obligation or liability of a party arising prior to termination, and the provisions of Paragraphs 11 and 12 will survive any termination.

13.0 Force Majeure

Neither party, nor the Information Partners or the Technology Partners, will be responsible for any delay or failure in performance resulting from any cause beyond their control.

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Authorized Signature Gerald Schilling
Print Name Gerald J. Schilling
Title Assistant Vice President of Administrative Services
Date 12/12/03

For The H.W. Wilson Company

Address: 950 University Ave _____

City: Bronx _____ State: NY Zip/Postal Code: 10452

Authorized Signature John R. Tavaska

Print Name: John R. Tavaska _____

Title: Director, Database Licensing/Vendor Relations _____

Date: December 2, 2003