



New York • Dublin

## The H.W. Wilson Company

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### H.W. Wilson General Database License Agreement

**1.0 The Parties.** This Agreement is between the Subscriber and H.W. Wilson Company ("Wilson"). Wilson agrees to provide Authorized Users with a non-exclusive, nontransferable license to have access to and use of the Wilson Products indicated in the Invoice. The Subscriber agrees to pay fees to Wilson according to the terms of this Agreement and to use all Wilson Products only in the manner set forth herein.

If the Subscriber is a library that is part of or affiliated with an institution of higher learning (example - a college or technical school), "Authorized Users" means: (i) on-site: staff, employees and duly enrolled students and walk-in users of the library; (ii) remote access: limited to staff, employees and duly enrolled students for personal, non-commercial use. Special user classes such as alumni require prior approval from H.W. Wilson and are not considered Authorized Users until permission is granted from Wilson. (For approval information, email Wilson's Director of Vendor Relations [Jtavaska@hwwilson.com](mailto:Jtavaska@hwwilson.com).)

If the Subscriber is a library that is part of or affiliated with a school serving students grades kindergarten through grade 12, or its equivalent, "Authorized Users" means school staff, employees and duly enrolled students. Remote access is included for these Authorized Users for personal, non-commercial use.

If the Subscriber is a public library, "Authorized Users" means: (i) on-site: library staff, library patrons, including walk-in patrons that are not registered borrowers of the library as well as registered borrowers; (ii) remote access is for staff and registered borrowers for personal, non-commercial use.

If the Subscriber is a special library, "Authorized Users" means patrons, on-site staff and employees of the Subscriber.

#### 2.0 Wilson's Duties

**2.1 Wilson's Services.** Subject to the terms and conditions set forth herein and in the Invoice, Wilson shall make the WilsonWeb Subscription Site available for searches of the Subject Database by Authorized Users as such searches are described in Section 3.2.

**2.2 Privacy of Subscriber Information.** The Subscriber's and each Authorized User's information and use of the WilsonWeb Subscription Site as well as any other website operated by Wilson shall be subject to Wilson's Privacy Policy [www.hwwilson.com/about/hwwprivacy.htm](http://www.hwwilson.com/about/hwwprivacy.htm), as it may be changed, updated or amended by Wilson from time to time, which policy is hereby incorporated as a part of this Agreement.

**2.3 Unauthorized Access.** In the event that Subscriber determines that another party has gained unauthorized access to the WilsonWeb Subscription Site or any other Wilson Product, Subscriber shall immediately inform Wilson of the same. Thereafter, Wilson shall take action as may be needed to maintain the restricted access to the Wilson Products contemplated hereby.

**2.4 Availability of Access.** If the Subscriber has a license to the WilsonWeb Subscription Site, Wilson shall use reasonable efforts to notify Subscriber by posting or e-mailing any scheduled maintenance or upgrade work which may make the WilsonWeb Subscription Site unavailable for periods of time greater than two (2) hours. Wilson does not warrant that the WilsonWeb Subscription Site will be available to Subscriber on a continual twenty-four hour basis.

### **3.0 Subscriber's Duties**

**3.1 Payment.** Subscriber agrees to promptly (in no case later than the payment date set forth on the Invoice) pay Wilson the fee during the term of this Agreement as set forth in the Invoice. All payments shall be made in U.S. Dollars.

#### **3.2 The Subscriber may do the following:**

- a. Make searches of the Subject Database
- b. Make a limited number of hard copies of any search output that does not contain a significant segment of the Subject Database, of which copies may be used internally or for personal use but may not be sold, rented, licensed, published or otherwise transferred to any third party for value
- c. Make one copy of any search output in electronic form (i.e., diskette, hard disk, or tape) to be used for editing or temporary use only
- d. Use the Subject Database to fulfill interlibrary loan requests
- e. Use the Subject Database to create electronic reserves
- f. Use the Subject Database to create course packs provided that the material is removed at the end of the semester
- g. Use the Subject Database in conjunction with document delivery services

#### **3.3 The Subscriber may not do the following:**

- a. Decompile, disassemble or reverse engineer the Software
- b. Sell, distribute, or commercially exploit the Subject Database(s), the Software, or associated material.
- c. Transfer, assign, or sublicense this license
- d. Use the Subject Database(s) in any way unless and until the Subscriber has agreed to this license

**3.4 Electronic Uptime Monitoring by Subscriber.** Subscriber may not monitor the WilsonWeb Subscription Site or any other online Wilson Product for availability and performance for any purpose whatsoever including, but not limited to, the collection of performance samples over a period of time in a manner that, in Wilson's sole and absolute discretion, puts an unreasonable load on Wilson's online resources or any other resources or adversely impacts other Subscribers or Authorized Users. Any Subscriber seeking to engage in such monitoring must notify Wilson of the same at least ten (10) days prior to engaging in any such activities and obtain Wilson's prior written consent with respect thereto (which consent may be given or withheld at Wilson's sole discretion). Such request must be sent by Subscriber by email to the following address: [techmail@hwwilson.com](mailto:techmail@hwwilson.com).

**3.5 The Order.** Subscriber shall provide to Wilson truthful and factually accurate information with respect to all aspects of an order and shall inform Wilson of any inaccuracies or material changes with respect to any such information within two business days of Subscriber's learning of the same.

**3.6 Intellectual Property Ownership.** Subscriber acknowledges and agrees that the entire content of the Wilson Products are the copyrighted or trademarked intellectual property of Wilson or that Wilson has the right to use the same from the owners thereof. Subscriber shall not make any use whatsoever of any copyrighted or trademarked material from any Wilson Product except in accordance with the terms hereof. Subject to the terms set forth herein, Wilson grants to the Subscriber a non-exclusive, non-transferable license to access the Wilson Product or Wilson Products identified in the order. The Wilson Products and the associated materials (other than portions in the public domain), including the documentation, are the property of Wilson or other third parties and are protected by law, including, but not limited to, US copyright laws and international treaty provisions. Subscriber hereby acknowledges that Wilson is the sole owner of or otherwise has rights to the Wilson Products and the associated materials and that as such Wilson has the right to grant the license hereunder. No title is transferred by this license or by the payment of any fee. Wilson retains title to and/or rights in the entirety of the Wilson Products including, without

limitation, the WilsonWeb Subscription Site, the Subject Databases and any other materials hereunder, including, without limitation, all copies and audiovisual aspects thereof and all rights to patents, copyrights, trademarks, trade secrets and other intellectual property rights inherent therein and appurtenant thereto. The Subscriber's rights are limited to itself and its Authorized Users alone and do not extend to subsidiary or parent corporations, or to any other related or affiliated organizations. The Subscriber may permit only Authorized Users to access the Subject Database or utilize the Wilson Products as identified in the Invoice. Any rights not expressly granted under this Agreement are reserved to Wilson. The parties to this license agree that it in no way limits uses by Authorized Users, which are defined by the US Copyright Act, Section 107 (Fair Use).

**3.7 Availability of Access.** Subscriber recognizes that the traffic of data through the Internet may cause delays during the download of information from the WilsonWeb Subscription Site and shall not hold Wilson liable for delays, which are ordinary in the course of Internet use. Subscriber recognizes that the WilsonWeb Subscription Site may not be available on a continual twenty-four hour basis due to such delays and due to delays caused by Wilson's upgrading, modification, or standard maintenance of the WilsonWeb Subscription Site. Wilson will not be responsible for any delay or failure in performance resulting from any cause beyond its control.

#### **4.0 Term and Termination**

- a) The parties agree that the term of this Agreement shall be determined on a product by product basis for the time period set forth in the order, provided, however, that the following shall apply to all Wilson Products:
  - (i) For subscription-based Wilson Products accessed via the WilsonWeb Subscription Site, this Agreement shall continue until the expiration date listed on the invoice and shall thereafter renew for an equivalent period on similar terms and conditions unless the Subscriber provides Wilson a written notice of a change in terms, or non-renewal at least 30 days prior to such renewal date.
  - (ii) In the case of Wilson Products for which a one-time license fee is paid for continual or perpetual access to the materials, the license shall terminate only upon Subscriber breach of this Agreement. This license applies to any perpetual use by installation of the Wilson Products in a local load device and, in Web or online format for the initial year following perpetual license of the Product. Access via Web or online in subsequent years must be maintained by paying the appropriate access fee. If, after the initial year of Web access, Subscriber chooses not to continue that access, or does not pay the access maintenance fee, Wilson will deliver the electronic data to the Subscriber for perpetual local load use upon request.
- b) Wilson reserves the right to terminate this Agreement should Subscriber violate any term of this Agreement, or, at Wilson's sole discretion, for any reason other than a breach of this Agreement, provided that Wilson notifies Subscriber not less than thirty (30) days in advance. A pro-rated refund of paid up fees shall be given to Subscriber in the event of any such termination by Wilson other than a termination for breach of this Agreement in which case Subscriber will not be entitled to any refund whatsoever.

**5.0 Terms of Payment.** Subject to Section 3.1, Subscriber shall pay the fee set forth on the Invoice.

**6.0 Other Privacy Matters.** If the applicable transaction is processed in whole or in part through a website operated by or for Wilson, the order process may prompt the Subscriber to enter information to facilitate WilsonWeb access and billing. In such case the order process may ask the Subscriber to enter voluntary information, which shall be used solely for the purposes of determining the customer profiles of Wilson's Subscribers. This information may only be used in the manner described in the aforementioned privacy policy.

**7.0 Choice of Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York without giving effect to the rules or principles of conflict of laws thereof and to the extent permitted by applicable law, all parties consent to the exclusive jurisdiction of courts situated in New York County in the State of New York in any action arising under this Agreement.

**8.0 Indemnification.** Excluding claims arising out of or relating to the violation by Wilson of any third-party copyright, trade secrets, or trademark, the Subscriber, to the extent permitted by applicable law, agrees to indemnify Wilson and hold it 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 WilsonWeb site including, without limitation, the Subject Database, regardless of whether such claims were foreseeable by Wilson. The provisions of this Section 8 will survive any termination of this Agreement.

**9.0 Disclaimers.** Subject to the terms set forth above, the Wilson Products including, without limitation, the WilsonWeb Subscription Site, any other website operated by Wilson or any and all matters relating to the access of the Subscriber and any Authorized User to any such website or any Wilson Product or any of the content therein provided by Wilson are provided "AS IS", WITHOUT WARRANTY OF ANY KIND TO SUBSCRIBER, AUTHORIZED USERS OR ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY; FITNESS FOR SUBSCRIBER'S PURPOSE OR SYSTEM INTEGRATION; ACCURACY OF INFORMATIONAL CONTENT; NON-INFRINGEMENT; QUIET ENJOYMENT; AND TITLE. SUBSCRIBER AGREES THAT ANY EFFORTS BY WILSON TO MODIFY ITS SERVICES OR ANY WILSON PRODUCT SHALL NOT BE DEEMED A WAIVER OF THESE LIMITATIONS, AND THAT ANY WILSON WARRANTIES SHALL NOT BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. SUBSCRIBER FURTHER AGREES THAT WILSON SHALL NOT BE LIABLE TO SUBSCRIBER, AUTHORIZED USERS OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF WILSON WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR WAS GROSSLY NEGLIGENT. IF A SUBJECT DATABASE OR OTHER WILSON PRODUCT INCLUDES ABSTRACTS, SUBSCRIBER AND AUTHORIZED USERS SHOULD CONSULT THE CITED MATERIALS BEFORE REACHING OR SUGGESTING CONCLUSIONS. THE PRESENCE IN OR ABSENCE FROM THE SUBJECT DATABASE OR WILSON PRODUCT OF ANY REFERENCE TO INFORMATION, DATA, EVENTS, RESEARCH, OR DEVELOPMENTS DOES NOT IMPLY THE SPECIFIC EXISTENCE OR THE NON-EXISTENCE THEREOF, NOR DOES CLAIM COMPREHENSIVENESS OR THE ABSENCE OF ERRORS. IN VIEW OF THE ABOVE, ALL LIABILITY IS DISCLAIMED FOR THE ACCURACY, COMPLETENESS OR FUNCTIONING OF THE SUBSCRIPTION WEB SITE AND THE SUBJECT DATABASE OR ANY OTHER WILSON PRODUCT. WILSON ASSUMES NO RESPONSIBILITY FOR THE USE OF THE SUBJECT DATABASE OR ANY OTHER WILSON PRODUCT BY THE SUBSCRIBER OR BY ANY AUTHORIZED USER. IN NO EVENT MAY ANY ACTION BE BROUGHT AGAINST WILSON ARISING OUT OF THIS AGREEMENT OR RELATED TO ANY WILSON PRODUCT MORE THAN ONE YEAR AFTER THE CLAIM OR CAUSE OF ACTION ARISES, DETERMINED WITHOUT REGARD TO WHEN THE SUBSCRIBER SHALL HAVE LEARNED OF THE DEFECT, INJURY, OR LOSS. WILSON SHALL NOT IN ANY EVENT BE LIABLE FOR MORE THAN THE SUBSCRIPTION FEE PAID BY SUBSCRIBER 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. Some jurisdictions do not permit the exclusion or limitation of liability for consequential or incidental damages, and, as such, some portion of the above limitation may not apply to Subscriber. In such jurisdictions, Wilson's liability is limited to the greatest extent permitted by law. The provisions of this Section 9 will survive any termination of this Agreement.

**10.0 Severability.** If a term or condition of this Agreement is invalid or unenforceable, the remaining terms and conditions will remain in full force and effect; provided, however, that if the deletion of any provision hereof frustrates an essential purpose of this Agreement or material rights of a party, the parties

shall seek in good faith alternative provisions or arrangements to achieve the same purposes as the invalid, illegal or unenforceable provision.

**11.0 Entire Agreement.** This Agreement constitutes 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 Subscriber purchase order will be subject to the terms of this Agreement 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 Agreement shall not be deemed part of this Agreement or otherwise legally effective. This Agreement may be amended or modified only in writing, and shall be effective only after affixation of both parties' signatures.

**12.0 Knowing Consent and Authority to Consent.** The parties knowingly and expressly consent to the foregoing terms and conditions. Each party is authorized to enter into this Agreement on behalf of its respective party.

### **13.0. Key Definitions**

#### **13.1 Authorized Users**

*See* Section 1.0 The Parties.

#### **13.2 Subject Database**

The database or databases owned or licensed by Wilson to which Subscriber has notified Wilson that Subscriber desires access to for its Authorized Users.

#### **13.3 Order Form**

The Form on which the Subscriber inputs certain information to facilitate access and billing or, alternatively, the invoice sent by Wilson to the Subscriber with respect to the applicable Wilson Product.

#### **13.4 Subscriber**

Those persons or entities that have assented to the terms of this agreement concerning the same subject matter, whereby they have been granted access to the Wilson Products.

#### **13.5 Subscriber Fee**

This is any fee, including access, maintenance, or service fee, paid or to be paid by the Subscriber which has been enumerated in the Invoice and which Subscriber shall pay or has paid to Wilson for access to the Wilson Products.

#### **13.5 Wilson Products**

The WilsonWeb Subscription Site or similar online service, FTP electronic feed, magnetic tape, CD-ROM, or any other electronic data comprising products provided by Wilson as listed on any order or Invoice now existing or hereafter arising between Wilson and the Subscriber.

#### **13.6 WilsonWeb Subscription Site**

A Web site containing Subject Databases offered by Wilson's service, WilsonWeb or any successor thereto.

#### **13.7 Secure Network**

A network (whether a standalone network or a virtual network within the Internet), which is only accessible to Authorized Users, approved by the Subscriber whose identity is authenticated at the time of login and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by Wilson.

#### **13.8 Server**

The server, either the Wilson server or a third party server designated by Wilson, on which the Licensed Materials are mounted and may be accessed. A proxy server is a server that acts as an intermediary between a workstation user and the Internet so that the enterprise can ensure security, administrative control, and caching service.

**13.9 Course Packs**

A collection or compilation of materials assembled by member of staff of the Subscriber for use by students in a class for the purpose of instruction.

**13.10 Electronic Reserve**

Electronic copies of materials made and stored on the Secure Network by the Licensee for use by students in connection with specific courses of instruction offered by the Subscriber to its students.

**13.11 Interlibrary Loan**

The process by which a library requests material from, or supplies material to, another library.

**13.12 Commercial Use**

Use for the purposes of monetary reward (whether by or for the Subscriber or an Authorized User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. For the avoidance of doubt, neither recovery of direct costs by the Licensee from Authorized Users, nor use by the Licensee or by an Authorized User of the Licensed Materials in the course of research funded by a commercial organization, is deemed to be Commercial Use.

**13.13 Intellectual Property Rights**

Any and all trademarks and trademark applications, issued patents and patent applications, copyrights and copyright registrations and applications, rights in ideas, designs, works of authorship, derivative works, and all other intellectual property rights, moral rights, and/or rights of publicity owned by Wilson and/or third parties with respect to Wilson.

**13.14 Password**

The password or passwords which Wilson provides, along with the User Name, to the Subscriber and its Authorized Users which allows such parties to gain access to the WilsonWeb Subscription Site.

**13.15 User Name**

The name or names which Wilson provides, along with the Password, to the Subscriber and its Authorized Users which allows such parties to gain access to the WilsonWeb Subscription Site.

**Organization Name** \_\_\_\_\_

**Address** \_\_\_\_\_

**City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip/Postal Code** \_\_\_\_\_

**Country** \_\_\_\_\_

**Authorized Signature** \_\_\_\_\_

**Print Name** \_\_\_\_\_

**Title** \_\_\_\_\_

**Email** \_\_\_\_\_

**Date** \_\_\_\_\_

**For The H.W. Wilson Company**

**Address: 950 University Ave.**

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

**Authorized Signature** \_\_\_\_\_

**Print Name: John R. Tavaska**

**Title: Director, Database Licensing/Vendor Relations**

**Authorized Signature** \_\_\_\_\_

**Print Name: Deirdre Simmons**

**Title: Manager, Sales & Marketing Administration**

**Date** \_\_\_\_\_