

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 the Customer. The "Customer" is the person or organization that orders and will pay the fee for access by Authorized Users to one or more Databases. "Authorized Users" are a) for access within the customer site, a user of the customer site; and b) for access from outside of the customer site, a student, faculty member or employee of the Customer, who is eligible in accordance with the terms of this license, and is authorized by the Customer, to access the Databases. The Customer Sites included in this Agreement are the University of California campuses at Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, San Francisco, Santa Barbara, Santa Cruz, and the Office of the President. Only those IP addresses provided will have access. This license is an agreement between Wilson and the Customer.
- b) This license applies to Databases and Software. "Databases" are those searchable electronic databases published by Wilson for which the customer has paid the appropriate fee or has been authorized for a period of trial access. "Software" is proprietary search retrieval software incorporated in and utilized under WilsonWeb and/or WILSONDISC.
- c) In granting this license to the 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 the Customer or Authorized User.

2.0 USER LICENSE

- a) Wilson grants to the Customer 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 will make reasonable efforts to permit only Authorized Users to access the Databases.
- e) 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 Databases.
- b) make a limited number of hard copies of any search output that does not contain a significant segment of a Database, which copies may be used only internally but may not be sold.
- 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) if you are the Customer, make one copy of the Software, for archival purposes only.
- e) copy data from the Database for the purpose of preservation or creation of a useable archive. This data shall be limited to the proprietary content of Wilson, i.e., abstracting and indexing content and biographical full text. Licensed content such as periodical full text and photograph libraries shall not be included.

- f) provide electronic links to the Databases from Customer's web page(s), and is encouraged to do so in ways that will increase the usefulness of the Databases to Authorized Users. Wilson staff will provide assistance to Customer upon request in creating such links effectively. Customer agrees to make changes in the appearance of such links and/or in statements accompanying such links as reasonably requested by Wilson. Wilson will also provide means for Customer to link directly records in Customer's bibliographic computing systems to content in the Databases at the title, issue, and article levels, using the standard internet communications and applications protocols, and such other methods as may be agreed to by Wilson and the Customer. Other than the creation of such links, Customer shall not modify, manipulate, or create a Derivative Work of the Database without prior written permission of Wilson.
- g) include printed or electronic copies of items from the Databases in: anthologies or coursepacks for sale and/or distribution to Authorized Users for use in connection with courses or classroom instruction provided by Customer; and in reserves set up by Customer's libraries for access by Authorized Users in connection with courses provided by a Customer. Any electronic copies included in such anthologies, course packs or reserves shall be removed or deleted by Customer at the end of the semester or term in which the relevant course concludes.

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) make the Databases or the Software available on a network or through remote access technology, except in accordance with Paragraph 2.4.
- d) use any Database in any way unless you have agreed to this license.

2.3 Multi-User Access

Payment of a fee for a specific number of simultaneous users gives the Customer the right to provide access to the Databases on any computer workstation within the Customer's facilities or on one central processing or master unit ("CPU") and on any computer connected to such CPU that is within the Customer's facilities for up to that number of simultaneous users only. In addition to access by Authorized Users physically on the Customer's premises, the Customer may provide remote access but only to Authorized Users.

2.4 Multi-User Upgrade

In the event that the Customer wishes to increase the number of simultaneous users in its multi-user license, the Customer hereby agrees to so notify Wilson and pay Wilson's charge therefore. Upon notification and payment to Wilson, the 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 any disc containing a Database or Software provided hereunder is free from defects in materials and workmanship under normal use. Wilson will replace defective discs free of charge upon their return to it.
- b) If the Customer has paid to access the Databases via the Internet, Wilson warrants to the Customer that the total 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 2% per calendar month. In addition, Wilson shall use reasonable efforts to provide continuous service 7 days a week with an average of 98% uptime per month. The 2% downtime includes scheduled maintenance and repair. Scheduled downtime will be performed at a time to minimize inconvenience to customers worldwide. In the event that the total downtime during this period directly attributable to the Internet-Access Software or server availability exceeds the equivalent of 2%, the 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.

- c) 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.
- d) Wilson warrants that it has the right to license the rights granted under this Agreement to use Databases, that it has obtained any and all necessary permissions from third parties to license the Databases, and that use of the Databases by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.
- e) Wilson shall use reasonable efforts to ensure that the online content is equivalent to the print products and represents complete, faithful and timely replications of the print versions. Wilson will cooperate with the Customer to identify and correct errors or omissions.
- f) THE WARRANTIES EXPRESSED IN PARAGRAPHS 3. A), B), C) and D) 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.
- g) IF THE DATABASE INCLUDES ABSTRACTS, AUTHORIZED USERS SHOULD CONSULT THE FULL TEXT MATERIALS BEFORE REACHING OR SUGGESTING CONCLUSIONS.
- h) 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.
- i) IN VIEW OF THE ABOVE, ALL LIABILITY IS DISCLAIMED FOR THE ACCURACY, COMPLETENESS OR FUNCTIONING OF THE DATABASES.
- j) WILSON AND THE INFORMATION PARTNERS AND TECHNOLOGY PARTNERS ASSUME NO RESPONSIBILITY FOR THE USE OF THE DATABASES BY THE CUSTOMER 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.
- k) 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.
- l) EXCEPT FOR CLAIMS ARISING FROM PROVISION 3.0D ABOVE, NEITHER WILSON NOR THE INFORMATION PARTNERS OR TECHNOLOGY PARTNERS SHALL IN ANY EVENT BE LIABLE FOR MORE THAN THE LICENSE FEE PAID. OTHERWISE, THE LIMITATION ON LIABILITY APPLIES 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.
- m) 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.
- n) THE PROVISIONS OF THIS PARAGRAPH 3 WILL SURVIVE ANY TERMINATION OF THIS LICENSE.

4.0 Authentication

The parties shall cooperate in the implementation of additional security procedures as they are developed.

5.0 ADA Compliance

Wilson shall continue to work toward full compliance with the Americans with Disabilities Act (ADA), by supporting assistive software or devices such as large print interfaces, voice-activated input, and alternate keyboard or pointer interfaces in a manner consistent with the WAI (Web Accessibility Initiative) Accessibility Guideline: Page Authoring, which may be found on the Web at <http://www.w3.org/wai/gl/wd-wai-pageauth>.

6.0 Y2K Compliance

Wilson certifies that the product being provided to the University of California is Year 2000 compliant; that is, it will operate properly in the Year 2000 and beyond and in situations where dates of the year 2000 are used.

7.0 Entire Understanding

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 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.

Neither party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonable withheld or delayed.

No notice, statement or disclaimer displayed to Authorized Users through Wilson's web site or by any other means shall supercede, limit or otherwise modify the provisions of this Agreement.

8.0 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.

9.0 Security; Audit

The 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 will make reasonable efforts to ensure that Authorized Users comply with this license. 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

10.0 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, the updated version will replace this version. Wilson reserves the right to cease offering the Customer the right to renew the subscription.

11.0 TERMINATION

If the Customer or Authorized User breaches any term of this agreement, Wilson, in addition to its other legal rights and remedies, may terminate the license granted hereunder on thirty (30) days' notice to

Customer. Any termination, whether or not for breach, will not affect any obligation or liability of a party arising prior to termination.

In the event of early termination, Customer shall be entitled to a refund of any fees or pro-rata portion thereof paid by Customer for any remaining period of the Agreement from the date of termination.

Upon termination of this agreement Wilson shall provide Customer with one (1) complete set of CD-ROMs (or their equivalent at Wilson's option) containing the Wilson proprietary content previously licensed by and accessible to Customer as of the date of such termination. Wilson proprietary content is abstracting and indexing and full-text biographical content. It does not included licensed content such as periodical full text and photographic libraries. Wilson hereby grants to Customer a nonexclusive, royalty-free perpetual license to use such content in accordance with the terms of this Agreement, which terms shall survive any termination of this agreement.

12.0 Force Majeure

Neither Wilson 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.

Organization Name California Digital Library

Address 300 Lakeside Drive, 6th Floor

City Oakland **State** CA **Zip/Postal Code** 94612-3550

Country USA

Authorized Signature _____

Print Name _____

Title Director, Shared Content

Date July 5, 2000

For The H.W. Wilson Company

Address: 950 University Ave.

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

Country: USA

Authorized Signature _____

Print Name: _____

Title: Director, Vendor Relations

Date: July 26, 2000

:University of California IP Addresses by Campus
:rev. 01/18/00

UC Berkeley

[Text deleted]

UC Davis

[Text deleted]

UC Irvine

[Text deleted]

UC Los Angeles

[Text deleted]

UC Riverside

[Text deleted]

UC San Francisco

[Text deleted]

UC Santa Barbara

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UC Santa Cruz

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UC San Diego

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UC DC - Washington D.C. Program

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