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"); the Customer (New England Law Library Consortium (NELLCO)), and the Authorized User (see Appendix A). The "Customer" is the person or organization that orders and will pay the fee for access to one or more Databases. The "Authorized User" is the employee or registered patron of the Customer who is eligible in accordance with the terms of this license, and is authorized by the Customer to access the Databases. Paragraphs 1 through 6 of this license apply both to the Customer and any Authorized User, except where a particular term expressly refers only to one or the other. Paragraphs 7 through 13 of this license apply to the Customer only.

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-transferrable 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's 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 may permit only Authorized Users to access the Databases.

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 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 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.

if you are the Customer, make one copy of the Software, for archival purposes only.

Nothing in this Agreement limits or restricts fair use rights of Subscribers as provided by statute in 17 USC 107 and 504. Copyright provisions are clearly stated for the Subscribers and Authorized Users by Wilson on screen before print or download commands are taken.

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) transfer, assign, or sublicense this license.

e) use any Database in any way unless you have agreed to this license.

2.3 Single-User Access

If the Customer has paid the fee for a single user, the Databases and the Software may be used only by one Authorized User at a time, but that usage may be on either a standalone computer or on a computer connected to a network, including remote access.

2.4 Multi-User Access

a) Wilson shall provide access to and use of the service by students, instructors, faculty members, library members, and institutional staff members of the subscriber. Access may be provided by subscriber to its authorized users who are permitted to access the secure network from within the premises of the subscriber and from such other places where authorized users work or study, including without limitation, halls of residence, lodgings, homes, and offices. Subscriber will not actively promote the use of the Service to unauthorized users. Wilson will not consider immaterial amounts of access to the Service by unauthorized users (e.g., walk-in traffic in the library) as a breach of the Agreement.

b) NELLCO and Subscribers shall exert reasonable efforts to inform Authorized Users of restrictions on use of the Service; however, neither NELLCO nor the Subscribers shall be liable for the actions of individual Authorized Users who act without the knowledge or consent of NELLCO or Subscribers. Except as specifically provided herein, Subscriber may not use the Internet Service or Service in any fashion that infringes the copyright or proprietary interests therein. Subscribers may not remove or obscure the copyright notice or other notices contained in Service retrieved from the Internet Service.

c) Wilson will provide, on a monthly basis beginning October 1, 1999, electronic reports in Netscape or IE detailing monthly usage of the Service. Wilson shall determine the form of the reports. NELLCO would like Wilson to consider the ICOLC (Appendix B) recommendations on statistical reporting. The reports will be available no later than forty-five (45) days after the end of the calendar quarter.

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2.5 Multi-User Upgrade

a) In the event that the Customer has a single-user license and wishes to upgrade its license to a multi-user license, or if 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.

b) Institutions which are members or potential members of NELLCO that are not Subscribers at the time of the Agreement is executed may be added on the first day of any calendar month with ten (10) days prior written notice to Wilson. All additional billing will be at the NELLCO rate in effect at the beginning of the applicable Term (Initial or Renewal) subject to pro rata adjustment based on the remaining months in the applicable Term.

3.0 LIMITATION OF WARRANTIES AND LIABILITY

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.

Wilson will use reasonable efforts to make the Service available 24 hours a day, 365 days a year, except during routine downtime when Wilson is adding/deleting data from the Product. Wilson reserves the right to add to or remove any of the Information on the Service at any time. Whenever possible, Subscriber will receive notification of these downtimes at least 24 hrs. in advance. In the event, due to causes within its reasonable control, Wilson is unable to provide Subscribers, i.e., all NELLCO members participating in the Wilson license, with access to the service for a period exceeding forty-eight (48) consecutive hours, Wilson agrees to provide NELLCO a prorated amount of the then currently yearly Service fee paid for the period access is denied. Should Wilson discontinue access to thirty (30) percent or greater of the content of the Service within the term of this Agreement, Wilson shall provide at least thirty (30) days prior written notice to NELLCO and to the Wilson users via the Wilson web site. Wilson shall provide a written pro-rata credit. Pro-rata credit may be applied to the next year's renewal or cash to be refunded, if requested by NELLCO. All credits/refunds will be processed between Wilson and NELLCO, and not with individual subscribers. 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) THE WARRANTIES EXPRESSED IN PARAGRAPHS 3, A), B), AND C) 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.

e) IF THE DATABASE INCLUDES ABSTRACTS, AUTHORIZED USERS SHOULD CONSULT THE FULL TEXT MATERIALS BEFORE REACHING OR SUGGESTING CONCLUSIONS.

f) 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.

g) IN VIEW OF THE ABOVE, ALL LIABILITY IS DISCLAIMED FOR THE ACCURACY, COMPLETENESS OR FUNCTIONING OF THE DATABASES.

h) 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, FOR INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES AS A RESULT OF SUCH USE, EVEN IF MADE EXPRESSLY AWARE OF THE POSSIBILITY...
THEREOF.

i) 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.

j) 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.

k) 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.

l) THE PROVISIONS OF THIS PARAGRAPH 3 WILL SURVIVE ANY TERMINATION OF THIS LICENSE.

4.0 Applicable Law

This agreement will be governed and construed in accordance with the laws of the state of Massachusetts without giving effect to the principles of conflict of laws thereof, and to the extent permitted by applicable law, all parties consent to the jurisdiction of courts situated in Massachusetts in any action arising under this Agreement.

5.0 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.

6.0 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.

The following terms are applicable to the Customer only.

7.0 Security; Audit

NELLCO and Subscribers shall exert reasonable efforts to inform Authorized Users of restrictions on use of the Service; however, neither NELLCO nor the Subscribers shall be liable for the actions of individual Authorized Users who act without the knowledge or consent of NELLCO or Subscribers. Except as specifically provided herein, Subscriber may not use the Internet Service or Service in any fashion that infringes the copyright or proprietary interests therein. Subscribers may not remove or obscure the copyright notice or other notices contained in Service retrieved from the Internet Service. 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.

8.0 Term and Renewals

a) 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.

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b) Institutions which are members or potential members of NELLCO that are not Subscribers at the time of the Agreement is executed may be added on the first day of any calendar month with ten (10) days prior written notice to . All additional billing will be at the NELLCO rate in effect at the beginning of the applicable Term (Initial or Renewal) subject to pro rata adjustment based on the remaining months in the applicable Term.

9.0 UPDATES; UPDATED OR EXPIRED DISCS

The Customer will receive, or be given access to, the number of updates to the Database for which the appropriate fee has been paid. In the case of WILSONDISC subscriptions, or delivery via CD-ROM, upon receipt of an updated CD-ROM disc, or upon termination of this Agreement, the Customer is required to discontinue use of the outdated disc, or in the case of termination, the final disc, and promptly destroy such disc and erase all electronic storage. In the case of WilsonWeb subscriptions, or access via Internet, upon termination the 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 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 10 will survive any termination.

11.0 TERMINATION

If the Customer or Authorized User breaches any term of this agreement, Wilson may, in addition to its other legal rights and remedies, may terminate the license granted hereunder on seven (7) days’ notice to Customer. Upon any termination for breach, the 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 10 and 11 will survive any termination.

12.0 Force Majeure

Neither party shall bear any responsibility or liability for any losses arising out of any delay or interruption of their performance of obligations under this Agreement due to any act of the public enemy, or due to war, riot, flood, civil commotion, insurrection, labor difficulty, severe adverse weather conditions, lack of shortage of electrical power, malfunctions of equipment or software programs or any other cause beyond the reasonable control of the party delayed.

13.0 RESTRICTED RIGHTS APPLICABLE TO U.S. GOVERNMENT ONLY

Use, duplication, or disclosure of the Database, Software, and associated materials by the U. S. Government is subject to the restricted right applicable to commercial computer software (under FAR 52-227-19 and DFARS 252-227-7013 or parallel regulations. The manufacturer for this purpose is The H. W. Wilson Company, 950 University Avenue, Bronx, NY 10452

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