

## LICENSING AGREEMENT FOR FACTS.COM INTERNET SERVICE

**1. FACTS.com Service and Content.** This agreement is between WRC Media Inc. ("Licensor") and Tallahassee Community College District Board of Trustees, on behalf of the College Center for Library Automation (CCLA) and the twenty-eight Colleges of the Florida Community College System ("Subscribing Institution") and their authorized users (see attached Addendum A). FACTS.com (the "Service") is an on-line research and reference information service owned and controlled by the Facts On File News Services unit of WRC Media Inc. (WRC). The "Product" made subject to this agreement consists of: (a) the "Databases" ordered by the Subscribing Institution as described in attached Addendum B and any updates made thereto; and (b) the "Software" consisting of the search and retrieval software produced and owned by WRC for use with the FACTS.com service. Subscribing Institution acknowledges and agrees that the contents, features, and other aspects of the Service may change from time to time. Additional content modules may from time to time be added to the Service that may not be included under this agreement. Licensor shall give prompt notice of any such changes to the Subscribing Institution. If such modifications render the licensed materials less useful to the Subscribing Institution or its authorized users, the Subscribing Institution may treat such modifications as a material breach subject to the early termination provisions of this agreement below.

**2. License to Use the Service and Scope of Use.** Subject to the terms and conditions of this Agreement and upon payment of the Subscription Fee, WRC grants to Subscribing Institution a non-exclusive, non-transferable, revocable license to access and use the Service solely for educational, research, scholarly, and personal uses. Only Authorized Users of Subscribing Institution shall be entitled to access and use the Service under the license granted in this Section 2. "Authorized Users" shall consist solely of Subscribing Institution's employees, staff, faculty, students officially affiliated with Subscribing institution, and other authorized users of Subscribing Institution's facilities (for example, "walk-in" library patrons). Authorized Users shall be entitled to search, retrieve, display, download, and print content contained in the Service solely for educational, research, scholarly, and personal uses, but may make no other uses of such content without the express written permission of WRC (or its authorized agent) of such content. Authorized Users shall be entitled to download and print single copies of individual works of content contained in the Service. Library staff at licensed institutions may fulfill occasional requests from other institutions (a practice commonly called Interlibrary Loan) or from non-affiliated patrons asking reference questions. Library staff at licensed institutions may deliver reasonable length extracts from licensed information to these non-affiliated parties, in compliance with current copyright law. Authorized Users shall be able to access the service remotely. WRC shall allow remote access through a Subscribing Institution's Internet home page using a unique identifier (e.g. library card number) and the validation method commonly known as "Referring URL". All rights not expressly granted to Subscribing Institution by this Agreement are expressly reserved by WRC and its licensors.

**3. Unauthorized Use.** Subscribing Institution shall not be responsible for unauthorized use or infringement of the Service, the content contained in the Service, or the WRC Software, provided, that: (i) such unauthorized use or infringement is without the consent of Subscribing Institution, (ii) Subscribing Institution promptly notifies WRC of any such unauthorized use or infringement of which it becomes aware, and (iii) Subscribing Institution takes all reasonable steps to cause such unauthorized use or infringement of which it is aware to stop. Subscribing Institution shall cooperate fully with WRC in any investigation of such unauthorized use or infringement. WRC shall have the sole right, at its discretion, to bring any action against any such unauthorized user or infringer, provided that Subscribing Institution shall not bring any action against any unauthorized user or infringer without first consulting WRC.

**4. Term of Agreement and Termination.** The term of this Agreement shall be for the Term Period of one (1) year beginning on the Effective Date. Either WRC or Subscribing Institution may terminate this Agreement at any time if the other party commits a material breach of any term or condition of this Agreement, and the breach remains uncured for thirty (30) days after written notice of the breach has been furnished to the breaching party. Upon any termination or expiration of this Agreement, the license granted in Section 2 shall terminate also. This agreement shall be renewable at the end of the current term for a successive one (1)-year term unless either party gives written notice of its intention not to renew no less than thirty (30) days before the expiration of the current term. Notwithstanding 30-day notice for renewal, continuation of contract and any subsequent renewals are subject to continued legislative budget appropriation. Licensor shall make every effort to keep renewal pricing increases to reasonable levels. If database content is not significantly enhanced, renewal pricing should not significantly increase over previous pricing, adjusted for inflation where necessary. When renewal pricing increases of more than three percent (3%) are anticipated, Licensor shall provide notice of increases to Subscribing Institution no later than sixty (60) days prior to the renewal date.

**5. Payment to WRC.** Subscribing Institution shall pay the Subscription Fee in full within forty-five (45) days of the Effective Date unless Subscribing Institution and WRC expressly agree otherwise in writing. All payments to WRC by Subscribing Institution shall be in United States dollars. Subscribing Institution's failure to pay the Subscription Fee to WRC when due shall give WRC the right to suspend Subscribing Institution's license granted in Section 2 and to terminate this Agreement.

**6. Rights in the Content and the Service.** All content provided by WRC on the Service is protected by copyright, trademark, and other applicable intellectual property and proprietary rights laws and is owned, controlled, and/or licensed by WRC. The Service is protected by copyright, patent, trademark, and other applicable intellectual property and proprietary rights laws and is owned, controlled, and/or licensed by WRC, World Almanac and Book of Facts, Facts On File, Issues and Controversies On File, Today's Science On File, Editorials on File, Funk & Wagnalls, and WRC are trademarks of WRC. All other trademarks appearing on the Service are the property of their respective owners.

**7. Quality of Service.** Licensor shall use reasonable efforts to ensure that the Licensor's server or servers have sufficient capacity and rate of connectivity to provide the Subscribing Institution and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Subscribing Institution's locale.

Licensor shall use reasonable efforts to provide continuous service with an average of ninety-nine percent (99%) up-time per month. The one percent (1%) down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or services outside the control of Licensor, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Subscribing Institution and its Authorized Users.

**8. Usage Data.** Licensor shall make every attempt to provide the Subscribing Institution with usage statistics that are compliant with the current International Coalition of Library Consortia (ICOLC) Guidelines. Statistics provided shall comply with all ICOLC requirements including, but not limited to, use elements, privacy and user confidentiality, institutional or consortia confidentiality, access, delivery, and report formats.

**9. Warranties, Disclaimers, and Limitation of Liability.** WRC warrants that it has the authority to enter into this Agreement and to grant all licenses made under this Agreement. Subscribing Institution warrants that it has the authority to enter into this Agreement and to perform all of its obligations under this Agreement. **DISCLAIMER OF WARRANTY: THE SERVICE IS LICENSED "AS IS" WITHOUT WARRANTY OF ANY KIND WHATSOEVER, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, OR RESULTS THAT MAY BE OBTAINED BY USING THE SERVICE. NEITHER WRC OR ITS AFFILIATES WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICE WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. THE SUBSCRIBING INSTITUTIONS ASSUMES THE ENTIRE RISK WITH RESPECT TO THE QUALITY AND PERFORMANCE OF THE SERVICE.**

**LIMITATION OF LIABILITY: WRC'S (LICENSORS', AND DISTRIBUTORS') ENTIRE LIABILITY TO SUBSCRIBING INSTITUTION AND SUBSCRIBING INSTITUTION'S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES OR ANY LOSS IN ANY WAY CONNECTED TO THE SERVICE OR THE CONTENT CONTAINED IN THE SERVICE SHALL BE LIMITED TO THE AMOUNT OF THE SUBSCRIPTION FEE ACTUALLY PAID TO WRC. NEITHER WRC, ANY OF THE LICENSORS, NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THIS PRODUCT SHALL BE**

LIABLE FOR ANY DIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, SUCH AS BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR BENEFITS, RESULTING FROM THE USE OR INABILITY TO USE THE PRODUCT EVEN IF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL APPLY TO ANY CLAIM OR CAUSE.

INDEMNIFICATION: WRC AGREES TO INDEMNIFY SUBSCRIBING INSTITUTION FROM ANY CLAIMS THAT ARE THE RESULT OF ANY ACTS OR OMISSIONS OF WRC'S OFFICERS, EMPLOYEES, AGENTS, ASSOCIATES, OR AFFILIATES.

**10. Software License.** For any software for the Service provided by WRC to Subscribing Institution ("WRC Software"), WRC grants Subscribing Institution and the Authorized Users a non-exclusive, non-transferable, revocable license to copy and use the WRC Software solely to establish a connection to and access and use the Service in accordance with the provisions of this Agreement. The WRC Software and all proprietary rights within the software are the sole and exclusive property of WRC and/or its licensors. This license to use the WRC Software terminates automatically upon the termination or expiration of this Agreement. Subscribing Institution and the Authorized Users may not modify the WRC Software in any manner, nor may they reverse engineer, decompile, translate, disassemble or make any derivative works from the WRC Software. **WRC'S ENTIRE LIABILITY TO SUBSCRIBING INSTITUTION AND ITS SOLE AND EXCLUSIVE REMEDY REGARDING THE WRC SOFTWARE SHALL BE THE REPLACEMENT OF THE WRC SOFTWARE PROGRAM BY WRC.**

RESTRICTED RIGHTS LEGEND. Any software or documentation that is either downloaded from the Service or otherwise provided under an agreement for or on behalf of the United States of America, its agencies and/or instrumentality's ("U.S. Government"), including the WRC Software, is provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is WRC, 11 Penn Plaza, New York, N.Y. 10001.

## **11. General.**

Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to its subject matter.

Modifications, Amendments, and Waivers. Any modifications or amendments to this Agreement shall be effective only in a written instrument agreed to and signed by the authorized representatives of both parties. Failure by either party to enforce any provision

of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision.

Severability. If any provision of this Agreement is found invalid or unenforceable pursuant to a decree or decision of competent jurisdiction, the remainder of this Agreement shall remain valid and enforceable according to its terms.

Notices. All notices under this Agreement shall be in writing and may be delivered personally, by fax (with confirmation originals by mail), or by certified mail - return receipt requested, to the addresses and fax numbers specified in this Agreement, or to those other addresses and fax numbers the parties are subsequently notified of in accordance with this Section 11. Any notice given as provided for shall be deemed to have been given on the date of delivery against the fax, if the sender receives confirmation initiated by or from the sender's office that such transmission was received, or certified mail receipt or on the date of actual receipt, whichever is earlier. Notices shall be addressed to the party to be so notified as follows:

If to Facts on File:

Facts on File News Services  
Attention: Ben Sadowsky  
512 7<sup>th</sup> Avenue -- 22<sup>nd</sup> Floor  
New York, NY 10018  
Phone: 1-800-363-7976 x4617      Fax: 1-800-36307978  
E-Mail address: bsadowsky@facts.com

If to Subscribing Institution:

Tallahassee Community College  
Attention: Liz Maryanski  
444 Appleyard Drive, Room 240A  
Tallahassee, FL 32304  
Phone: (850) 201-8590      Fax: (850) 201-8596  
E-Mail address: maryansl@tcc.cc.fl.us

With cc to:

College Center for Library Automation  
Attention: Executive Director of CCLA  
1238 Blountstown Highway  
Tallahassee, FL 32304  
Phone: (850) 922-6044      Fax: (850) 922-4869

Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without giving effect to its principles of the conflicts of laws. The federal or state courts located in Leon County in the State of Florida shall have jurisdiction to hear any dispute under this agreement.

Assignment. This Agreement shall be binding upon and inure to the benefit of WRC and Subscribing Institution and their successors, trustees, and permitted assigns. Except in the case of a merger, acquisition, or sale of substantially all of the assets of a party, neither party may assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the other party and such consent shall not unreasonably be withheld.

Execution of Agreement by Fax. Copies of this Agreement as executed by Subscribing Institution and sent to WRC by fax shall be legally binding on Subscribing Institution as if an original, manually executed copy of this Agreement was presented in lieu of such copies.

LICENSOR:

WRC Media Inc./Facts on File

By: Mindy Hatton  
Name: Mindy Hatton  
Title: Director, Sales and Circulation

SUBSCRIBING INSTITUTION:

Tallahassee Community College District Board of Trustees

By: Liz Maryanski  
Name: LIZ MARYANSKI  
Title: VP Admin Svcs