

MICROMEDEX
Customer License Agreement

This agreement ("Agreement") is effective as of this 12th day of December, 2003 ("Effective Date") between Tallahassee Community College ("Licensee"), on behalf of the College Center for Library Automation ("CCLA") and the facilities listed herein, with offices at 444 Appleyard Drive, Tallahassee, Florida 32304 ("Facility"), and MICROMEDEX, a business of Thomson Healthcare Inc. ("Micromedex"), a Florida corporation with offices at 6200 S. Syracuse Way, Suite 300, Greenwood Village, Colorado 80111-4740.

WHEREAS, Micromedex both creates and licenses from third parties, markets, sublicenses, distributes and supports certain medical and industrial computer database/software products, which may be accompanied by documentation (individually and collectively referred to herein as the "Products"); and

WHEREAS, Licensee wishes to license certain Products from Micromedex for use at its Facility pursuant to the terms and conditions of this Agreement and separate invoices issued by Micromedex.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. License.

- A. Micromedex hereby grants to Licensee a nonexclusive, limited license to use the Products requested from Micromedex ("Subscription") pursuant to the terms and conditions set forth in this Agreement and separately issued invoices. The Products shall only be loaded on Licensee's own CPUs ("Authorized Hardware"). For Products for which Licensee pays the appropriate fees for access via an Internet application, the preceding sentence shall not apply.
- B. The Products may only be used by Licensee's employees, students, contractors, and/or physicians having privileges at Licensee's Facility, who are trained or training in the fields for which the Products are being utilized ("Authorized Personnel"). However, only Authorized Personnel who are competent healthcare professionals who rely on their clinical discretion and judgment in diagnosis and treatment may use the Products for medical diagnosis or treatment purposes. As between Licensee and Micromedex, Licensee hereby assumes full responsibility for ensuring the appropriate use and reliance upon the Products in view of all attendant circumstances, indications and contraindications.
- C. Micromedex or its representative ("Distributor") shall periodically deliver updated versions of the Products ("Updates") to Licensee. Updates are Products and subject to the terms of this Agreement. Licensee will install the Updates within seven (7) days of receipt. Licensee shall be allowed to keep one (1) copy of the superceded material for archival purposes; all additional copies of the Products shall be destroyed by Licensee. Micromedex reserves the right to embed an automatic shutdown feature in the Products which will render the Products inoperable beyond the scope of the Agreement. For those Products for which Licensee pays Micromedex the appropriate fees for access via an Internet application, the preceding three sentences shall not apply.
- D. With respect to patient education documents only, Authorized Personnel may: (i) distribute to patients one (1) printed copy of any document produced using such Product, and (ii) modify information content within the functionality of such Product.
- E. Micromedex reserves the right to make changes to the Products, including, without limitation, ceasing to distribute a Product or a portion of a Product. If Micromedex ceases to distribute a Product, Micromedex shall provide as much notice as is reasonably possible, whereupon, the Subscription shall terminate as to such Product. Micromedex or its Distributor shall return to Licensee a pro rata refund of the portion of the prepaid Subscription Fee (defined below) attributable to the terminated Product.
- F. The Products may only be employed for Licensee's own internal uses. By way of clarification, and not intending to limit the foregoing, Licensee may not, (except as expressly permitted for in this Agreement):
 - (i) copy, download, upload or in any other way reproduce the Products in any form, except that: (a) one (1) copy of the Products may be made to the hard drive of the Authorized Hardware and/or one (1) copy of the Product may be made for backup purposes only, (b) limited excerpts of information from the Product may be copied into any other medium for internal use only, and (c) information derived therefrom may be printed for

- internal use only (for Products for which Licensee pays the appropriate fees for access via an Internet application, subsection (a) shall not apply);
 - (ii) sell, distribute, sublicense, provide access to, or transfer the Products, in whole or part, to a third party (including, without limitation, by facsimile);
 - (iii) create compilations or derivative works of the Products;
 - (iv) use any version of the Products other than the most current version;
 - (v) use the Products for the benefit of a third party or give any third party beneficial use of the Products, including, without limitation, any parent or subsidiary company, without the express written consent of Micromedex;
 - (vi) reverse engineer, decompile or disassemble any part of the Products; or
 - (vii) modify or remove any proprietary markings or restrictive legends placed on the Products.
- G. Licensee may not access or use, or permit others to access or use, the Products on a multi-user computer system, such as a network, Internet, intranet or multi-user accessible mainframe, unless Licensee has paid to Micromedex the appropriate multi-user Subscription Fees; and then only those such Products. Licensee may make and maintain during the Subscription sufficient copies of such Products in electronic form for appropriate multi-user system and back-up purposes.

2. Property Rights.

- A. The Products, the copyrights thereto, and the trademarks utilized in connection therewith are and shall remain the sole property of Micromedex or its third-party licensors.
- B. Micromedex regards the Products, or any part thereof, as proprietary information (“Proprietary Information”). Licensee shall not, nor permit others to, provide, disclose, or otherwise make such Proprietary Information available to, or accessible by, any person other than Authorized Personnel. Licensee shall take appropriate security precautions to effect its obligations under this Section 2(B).
- C. Upon expiration or termination of any Subscription under this Agreement, Licensee shall, within seven (7) days of such expiration or termination, delete all copies of the Products from the Authorized Hardware. No copies of the applicable Products, except for those kept for archival purposes, may be retained by the Facility following such expiration or termination. Notwithstanding the foregoing, the Facility shall have no obligation to destroy work product of Authorized Personnel produced in accordance with the terms and conditions of this Agreement.
- D. During the period of this Agreement, and for a period of no more than twelve (12) months following termination thereof, Licensee agrees to permit Micromedex to inspect, during regular business hours and upon prior notice, the point or points at which the Products are or were used and to furnish whatever assistance is reasonably necessary to permit Micromedex to determine Licensee’s compliance or the extent of Licensee’s noncompliance with Sections 1 and 2 of this Agreement.

3. Fees and Payment.

- A. Licensee shall pay Micromedex or its Distributor all applicable fees due for each Subscription (“Subscription Fees”) and any applicable one-time, nonrefundable software license fees (“Software License Fees”) invoiced to Licensee.
- B. All Subscription Fees and Software License Fees are exclusive of applicable state or local sales, use, ad valorem, personal property taxes or other taxes not based upon the net income of Micromedex. Licensee shall pay any such taxes, unless exempt. However, this Section 3(B) does not apply to, and Licensee has no obligation under this Agreement or otherwise to pay or reimburse Micromedex for, any taxes imposed on Micromedex’ income or any withholding taxes of a similar nature imposed on payments from Licensee to Micromedex.
- C. All amounts due under this Agreement are payable in United States currency (unless otherwise stated on the invoice) within thirty (30) days after the date of the invoice. Any amount not paid when due may be subject to a late payment fee equal to the lesser of 1½ % of the unpaid amount per month, or the maximum rate allowed by applicable law. Failure to pay the entire amount when due may also result in either the withholding of Updates until Licensee’s account is current, or in the deactivation of Licensee’s password access to the Products until Licensee’s account is current.

4. Term.

- A. This Agreement shall take effect as of the Effective Date, and shall continue to be in effect until all the required

- obligations with regard to termination, as set out in Section 2(C), are completed with regard to each existing Subscription.
- B. In the event of a breach of this Agreement by either party, the other may, in addition to pursuing all other legal remedies, terminate the Subscription to which the breach is applicable, or all Subscriptions under this Agreement, upon thirty (30) days' prior written notice unless such breach is cured within such time. In the event the breaching party is Licensee, Micromedex may elect to cease distributing Updates until the breach is cured. In the event Licensee terminates a Subscription due to a breach by Micromedex, Licensee shall be entitled to a pro-rata refund of the applicable prepaid Subscription Fees.
- 5. Warranties.**
- A. For a period of ninety (90) days after the date the Products are shipped to the Facility ("Warranty Period"), Micromedex warrants that the media will be free from defects in material and workmanship and will be of a quality suitable to provide access to the data content when used on the Authorized Hardware. For Products for which Licensee pays the appropriate fees for access via an Internet application, this section shall not apply.
- B. The sole obligation of Micromedex under the warranty set forth above is to replace the nonconforming media within a reasonable time, or give Licensee a pro rata refund of the Subscription Fee, at the option of Micromedex, provided that Licensee has given Micromedex written notice of such defect within the Warranty Period. For Products for which Licensee pays the appropriate fees for access via an Internet application, this section shall not apply.
- C. Micromedex shall indemnify Licensee and hold it harmless against all claims and damages (including, without limitation, reasonable attorneys' fees) which Licensee incurs as a result of any claim against Licensee that the Products infringe any copyright or proprietary right of any third party, provided that: (i) Licensee notifies Micromedex promptly in writing of the assertion of such claim; (ii) Micromedex has sole control over the defense or settlement of such claim; and (iii) use of the Products has been in accordance with the terms of this Agreement. Notwithstanding the foregoing, Micromedex shall not be so obligated should the infringement occur as the result of: (a) a combination with, or the addition of, products not developed or supplied by Micromedex, and/or (b) a modification of the Products after delivery by Micromedex, if the infringement would not have occurred without such combination, addition and/or modification. In the event of a claim for infringement, Micromedex reserves the right to terminate Licensee's right to the allegedly infringing Products and to either replace such with substantially similar products or to provide to Licensee a pro rata refund of the applicable portion of the Subscription Fees.
- D. Micromedex warrants that the information contained in the Products (except with respect to any information contained therein which has been modified, as permitted hereunder) has been obtained from what it believes are reliable sources. However, except as set forth above, the Products are provided "as is," and NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE WHATSOEVER IS MADE REGARDING THE PRODUCTS. MICROMEDEX MAKES NO WARRANTY THAT THE PRODUCTS WILL PERFORM WITHOUT INTERRUPTION OR FREE FROM ERRORS.
- E. In no event will Micromedex be liable for any direct, indirect, incidental, special or consequential damages arising from or caused by use of, reliance on, or inability to access and use any information contained in the Products, even if Micromedex has been previously advised of the possibility of such damages or losses.
- F. In any action against Micromedex arising out of, related to, or in any way connected with this Agreement or with respect to the Products, services, or any other products and/or services furnished to Licensee under this Agreement or otherwise, Licensee shall not be entitled to recover any sum as damages, reimbursement, contribution, indemnity or otherwise, in excess of the total of all payments made by Licensee to Micromedex under this Agreement during the twelve (12) months immediately preceding the date on which the claim arose.
- G. Regardless of the form of action, no action arising from this Agreement may be brought by Licensee more than twelve (12) months after the cause of action arises.
- H. Licensee agrees to indemnify Micromedex and hold it harmless against all claims and damages including, without limitation, reasonable attorneys' fees, arising out of, related to, or in any way connected with any use of the Products, unless such claims or damages result from the infringement of any copyright or other proprietary right of any third party (except if due to a combination, addition or modification, if applicable).


6. Miscellaneous.


- A. This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. This Agreement shall not be modified, amended or changed except by a writing signed by both parties, and shall supersede the terms and conditions of any purchase order, trial agreement or similar instrument relating to the license of the Products.
- B. This Agreement shall be binding upon Licensee, its employees, officers and agents. The rights and obligations of Licensee hereunder may not be transferred, sublicensed or assigned to any other person, entity or individual without the express written approval of Micromedex, which approval shall not be unreasonably withheld. Micromedex further reserves the right to terminate this Agreement upon receipt of a notice of change of ownership or control of Licensee.
- C. This Agreement shall be construed and the rights and liabilities of the parties determined in accordance with the laws of the State of Colorado, without giving effect to any body of law or precedent relating to conflicts of laws.
- D. Licensee acknowledges that a violation of any term of this Agreement could result in irreparable injury to Micromedex and its business, and Micromedex may be entitled to equitable remedies, including an injunction for threatened or continuing breach of this Agreement, in addition to any other remedy that Micromedex may have at law or in equity.
- E. Every notice required or contemplated by this Agreement to be given by either party may be delivered in person or may be sent by courier, express or overnight mail, or postage prepaid certified or registered air mail (or its equivalent under the law of the country where mailed), addressed to the party for whom it is intended, at the address previously set forth herein. Either party may change its address for notice by giving notice to the other party of the change.
- F. This Agreement and License is subject to any and all export laws of the United States Government. Compliance with such laws, and compliance with the laws of any foreign countries, shall be Licensee's responsibility.
- G. Notwithstanding the expiration or termination of this Agreement for any reason whatsoever, the provisions of Sections 2 and 5 shall survive and bind the parties indefinitely.
- H. In the event that any provision of this Agreement is adjudged by a court to be invalid, void or unenforceable, the remainder of this Agreement shall remain valid and enforceable according to its terms.
- I. The failure of either party to give notice of nonperformance, breach or termination, or to otherwise enforce any rights hereunder, shall not constitute a waiver of any terms or conditions of this Agreement.
- J. Any terms or conditions appearing on the face or reverse side of any of Licensee's purchase orders, acknowledgments or confirmations that are different from or in addition to those required hereunder shall not be binding on the parties, even if signed and returned, unless both parties hereto expressly agree in a separate writing to be bound by such separate or additional terms and conditions.

7. U.S. Government Customers.

The Products are provided to the Federal government and its agency with RESTRICTED RIGHTS. USE, DUPLICATION OR DISCLOSURE BY THE GOVERNMENT IS SUBJECT TO RESTRICTIONS SET FORTH IN SUB-PARAGRAPH (c)(1)(ii) OF THE RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE CLAUSE AT DFARS 252.227-7013 OR THE COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS CLAUSE AT 48 CFR 52.227-19, AS APPLICABLE. CONTRACTOR/MANUFACTURER IS MICROMEDEX, a business of Thomson Healthcare Inc., 6200 S. Syracuse Way, Suite 300, Greenwood Village, Colorado 80111-4740, USA.

IN WITNESS WHEREOF, each of the parties, representing that it has the authority to enter into this Agreement, hereto has caused this Agreement to be executed by a duly authorized representative.

Thomson Healthcare Inc.
 By: 
 Printed Name: Julie Taylor
 Title: Manager
Intellectual Property
 Date: 12/18/03

Licensee
 By: 
 Printed Name: GERARD SCHILLING
 Title: ASST. VICE PRESIDENT
 Date: 12/15/03

MICROMEDEX
CUSTOMER LICENSE AGREEMENT
AMENDMENT

This amendment (the "Amendment") dated December 12, 2003 shall be attached to and be part of the Micromedex Customer License Agreement dated December 12, 2003 (the "Agreement") between Tallahassee Community College ("Licensee"), and MICROMEDEX, a business of Thomson Healthcare Inc. ("Micromedex"). Any capitalized term not defined herein shall have the meaning given it in the Agreement.

1. The definition of "Facility" in the second line of the Agreement is hereby amended to include The following institutions participating in this group licensing of the Subscription with Licensee, for which Licensee is assuming responsibility for hereunder:

Brevard Community College
Miami Dade College
South Florida Community College

Additional facilities may be added to this list by (i) executing an amendment to the Agreement, signed by both parties, listing the additional facility(ies), and (ii) by Licensee paying to Micromedex any additional fees which may be due, in accordance with the Micromedex multi-facility pricing then in effect.

2. **Section 1.B. License.** This section is hereby amended by deleting "who are trained or training in the field for which the Products are being utilized" from the first sentence. This section is further amended by expanding the definition of Authorized Personnel to include onsite users permitted by the Facilities to access the Products from designated terminals.

3. **Section 1.F. License.** This section is hereby amended by adding the following at the end of the section:

"The restrictions of Section 1(F)(v) notwithstanding, Licensee may make the Products available to its patrons, provided that: (i) Licensee has implemented reasonable methods to notify its patrons of use restrictions and (ii) such library is in full compliance with all the terms and conditions of this Agreement. As between Licensee and Micromedex, Licensee hereby assumes full responsibility for ensuring the appropriate use and reliance upon the information in view of all attendant circumstances, indications and contraindications.

4. **Section 1.H. License.** The following new section is hereby added to the Agreement as Section 1.H.:

"Micromedex will provide quarterly usage statistics detailing the following: (i) the number of active user sessions; (ii) the number of documents retrieved and printed by Authorized Personnel; and (iii) the number of searches performed during the previous quarter."

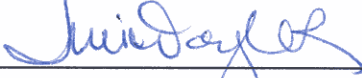
5. **Section 4.A. Term.** This section is hereby amended by inserting the following language at the end of the section:


"Within thirty (30) days of receipt of a renewal notice and/or invoice from Micromedex or its Distributor, Licensee shall have the option to terminate one or all Products of its Subscription. Notwithstanding the above, this Agreement shall remain in full force and effect until all obligations as set forth in Section 2(C) are completed with regard to each Product and/or Subscription."

6. **Section 5.C. Warranties.** Subsection (i) is hereby amended by replacing “promptly” with “within five (5) days.”
7. **Section 6.C. Miscellaneous.** This section is hereby amended by replacing “Colorado” with “Florida.”
8. **Section 6.D. Miscellaneous.** The first sentence is hereby amended to read as follows:
“Licensee acknowledges that a violation of *Section 1(F) and Section 2* of this Agreement could result in irreparable injury...”
9. **Section 6.E. Miscellaneous.** This section is hereby amended by adding the following information:
“Any official communication to the Licensee shall be copied to:
College Center fro Library Automation
Attention: Executive Director of CCLA
1753 W. Paul Dirac Drive
Tallahassee, FL 32301
Phone (850) 922-6044 Fax (850) 922-4869

All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, each of the parties hereto has caused this Amendment to be executed by a duly authorized representative.

Thomson Healthcare Inc.
By: 
Printed Name: Julie Taylor
Title: Manager
Intellectual Property
Date: 12/8/03

LICENSEE
By: 
Printed Name: GERALD S SULLIVAN
Title: ASST. VICE PRESIDENT
Date: 12/15/03