



## **FLORIDA SCHOOL CONTRACT & NHSA LICENSE TERMS AND CONDITIONS**

### AGREEMENT

This Contract is made and entered into on MAY 5, 2020 by and between National Highway Safety Administration, LLC, Florida limited liability company (hereinafter called "NHSA") with an address of 398 NE 79<sup>th</sup> Street Miami, Florida 33138 and HAMILTON CO. SCHOOL DISTRICT (hereinafter called the "Customer"), whose principal place of business is 5683 US HIGHWAY 129 SOUTH, SUITE 1, JASPER, FL 32052.

### DEFINITIONS

In this Agreement, the following terms shall have the respective meanings ascribed to them as follows:

- "Licensed Materials" means NHSA's Course Content and the NHSA LEARNING MANAGEMENT SYSTEM (LMS) used to deliver the course content.
- "Learning Management System or LMS" means the software based system ("Platform") that must be utilized to access the Licensed Course Content.
- "Course Content" means all components of NHSA's Course Content which includes images, videos, audio files and textual data that is used as instructional material in the course presented to the student.
- "Agreement" means this agreement between NHSA and the Customer.
- "Billable Enrollment" means any student that achieves 100% course completion regardless of grade received.
- "Intellectual Property Rights" includes all worldwide intellectual and industrial property rights including all rights in each country to copyrights, trademarks, service marks, patents, inventions, industrial designs, trade secrets, trade dress, and all other proprietary rights.
- "Licensee" – The Customer indicated above who has agrees to abide by this contract as indicated by the representative's authorized signature below, and as a result, is authorized to use NHSA's Licensed Materials, as limited herein.
- "Confidential Information" means (i) all information of either party or its Affiliates or of third persons to whom the party owes a duty of confidence that is marked confidential, restricted

or proprietary or that may reasonably be considered as confidential from its nature or from the circumstances surrounding its disclosure; and (ii) the Licensed Materials

#### **RESPONSIBILITIES OF NHSA**

- Provide training for teachers, school facilitator(s), guidance counselors, and administrators in our online platform and learning support strategies.
- Provide teachers for the course upon request.
- Provide ongoing virtual support.
- Provide progress monitoring tools at student and school level.
- Provide invoicing for applicable enrollments.
- Provide the needed data for student's Full Time Equivalent (FTE) reporting by school/district.

#### **RESPONSIBILITIES OF CUSTOMER**

- Provide driver education endorsed teachers for classes unless the Customer chooses to use an NHSA driver education endorsed teacher.
- Abide by NHSA Terms and Conditions.
- Ensure student taking courses have access to the internet and a computer meeting the requirements to take an online course.
- Provide payment as specified in this Agreement.
- Report course completions for high school credit.

#### **NHSA ENROLLMENT FEES (See Addendum)**

- **Enrollment Fees:** The Customer agrees to pay NHSA for course enrollments (as defined herein):
  - **Course Fee:** For each billable enrollment the Customer shall pay NHSA \$75.00.
- If Customer *optionally* chooses to use an NHSA driver education endorsed teacher for instruction, then for each billable enrollment the Customer shall pay NHSA an additional \$150.
- **Billable Enrollments:** Enrollments are counted and billed per student per semester. The Customer will only be billed for completed enrollments where the student has met all course requirements and has successfully passed the course in its entirety.
- **Student Withdrawal:** If a student withdraws from a course prior to completing the course the enrollment will NOT be billed.

### **NHSA INVOICING**

- NHSA will provide the Customer an invoice for Billable Enrollments at the end of each term after course completions for the term have been calculated.
- Customer shall pay to NHSA the enrollment and license fees described above in "NHSA Enrollment and License Fees". These fees shall be due and paid within 30 days of NHSA invoicing.
- Failure to pay the license fees when due shall be grounds for the immediate termination or, at NHSA's option, suspension of all services due by NHSA in this agreement, until full payment has been achieved.

### **SOFTWARE SECURITY**

- The Customer will ensure all reasonable measures are taken to protect the Licensed Materials from any unauthorized use. Customer shall immediately report any and all breaches or suspected breaches or unauthorized uses to NHSA.
- NHSA will ensure all reasonable measures are taken to protect the Customer and Student data ("Data"). Reasonable measures include, but are not limited to, the Customer and Student data being stored on a secure server behind an internet firewall with role-based level password protection for any and all access to Data. NHSA shall immediately report to the Customer any and all breaches or suspected breaches of the Data.

### **TITLE TO LICENSED MATERIALS**

- Customer acknowledges and agrees that NHSA, shall retain all right, title and interest in and to the Licensed Materials and all copies thereof, including, without limitation, the Intellectual Property Rights therein, and that nothing herein transfers or conveys to Customer any ownership right, title or interest in or to the Licensed Materials or to any copy thereof or any right with respect to the Intellectual Property Rights therein. Nothing in this Agreement shall be construed as conferring upon the Licensee any right or interest in NHSA's intellectual property or in their registration or in any designs, copyrights, patents, trade names, signs, emblems, insignia, symbols and slogans or other marks used in connection with the software other than as provided in this Agreement.
- It is understood that the Licensed Materials and Course Content provided by NHSA are fully copy written, registered and protected by the United States Copyright Office. As such, NHSA

has exclusive rights for its use and distribution and this Agreement in no way constitutes permission to any other entity, including the undersigned school or school district, to use or share the Licensed Materials or course curriculum outside of the methods established in the terms of this Agreement.

#### **CONFIDENTIAL INFORMATION**

- To the extent permitted by law, each party agrees to maintain the Confidential Information of the other party.
- Confidential Student Information. For the limited purposes of the Agreement, NHSA is hereby designated a school official for the purposes of receiving limited confidential student information and NHSA shall remain under the direct control of the School Board with respect to the use and maintenance of the confidential student information.
- As NHSA will be receiving student information that is otherwise confidential, NHSA shall fully comply with the requirements of §1002.22 and §1002.221, Florida Statutes, and any other law or regulation, either federal or State of Florida, regarding confidentiality of student information and records. Further, NHSA for itself, and its officers, employees, agents, representatives, contractors, and subcontractors, shall fully indemnify and hold the School Board and its officers and employees harmless for any violation of this provision, including, but not limited to defending the School Board and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon the School Board, or payment of any and all costs, damages, judgments, or losses incurred by or imposed upon the School Board arising out of the breach of this provision by NHSA, or its officers, employees, agents, representatives, contractors, and subcontractors, to the extent that NHSA shall either intentionally or negligently violate this provision, or §1002.22 or §1002.221, Florida Statutes. This provision shall survive the termination of or completion of all obligations under this Agreement and shall be fully binding upon NHSA until such time as any proceeding which may be brought on account of this provision is barred by any applicable statute of limitations.
- Student data and personal identifiers ("Student Information") shall be and remain confidential, except to achieve and only to the extent necessary to achieve or enable:
  - Compliance with any applicable laws, rules or regulations of the State of Florida;
  - Reporting to permit the issuance of the TLSAE certification;

- Compliance with any court order or validly issued subpoena;
  - Appropriate reporting of the results of the Permit Test;
  - Billing and collection;
  - FDOE reporting or requirements;
  - Issuance of credits or reporting to the Customer of Course fulfillment;
  - NHSA or its vendors engaged in the performance of this Agreement, to receive student inquiries and to service student needs associated with the use of the Licensed Materials.
- NHSA acknowledges and agrees that it will not disclose the confidential Student Information to any other person or entity, except as expressly set out herein, and will only use the confidential Student Information for the purposes of performance under this Agreement and for no other purpose.
  - Upon termination or expiration of this Agreement, NHSA shall retain all Student Information as long as legally required to be able to comply with the terms hereof. Termination and/or expiration shall not affect these confidentiality provisions and they are specifically intended to survive any such expiration or termination.

#### **PROTECTION AND PROPRIETARY RIGHTS**

- Customer shall not remove any proprietary copyright, patent, trademark, design right, trade secret, or any other proprietary rights legends from the Licensed Materials.
- Customer agrees not to disassemble, decompile, translate into human readable form or into another computer language, reconstruct or decrypt, or reverse engineer all or any part of the Licensed Materials in accordance with the law.
- Further, Customer shall not write or develop any derivative works or computer programs based upon any part of the Licensed Materials.
- The Customer hereby agrees that NHSA is the owner of any and all rights intellectual and otherwise for the Course Content that will be provided and has the legal right to charge a fee for the use of that material and the legal right for an injunction. The discretion of NHSA on all matters concerning the intellectual property shall be final, conclusive and binding on the Customer.
- Customer shall not copy the Licensed Materials for redistributing or using said materials in another format, whether it be print or electronic.

### LIMIT OF LIABILITY

- Customer claims for any breach or default by NHSA, or any of its Officers, Directors or management, of any of the provisions of this Agreement, or with respect to any claim arising here-from or related hereto are strictly limited as an essential element of the bargain and in consideration of the billing amount. NHSA's entire liability, regardless of the form of action, whether based on contract or tort, including negligence, shall in no event exceed: (I) the amount paid by the Customer hereunder for the licensed materials; (II) the amount paid by Customer for the renewal service that is the subject of the claim, if the claim relates to a breach or default by NHSA of the renewal provisions of the Agreement (III) the amount paid by Customer for installation service that is the subject of the claim, if the claim relates to a breach or default by NHSA of the provisions of this Agreement pertaining to installation service; or (IV) in the aggregate with respect to all claims under or related to this Agreement, the total amount paid by Customer to NHSA under this Agreement.
- In no event will NHSA be liable for special, incidental, indirect, or consequential loss or damage, lost business revenue, loss of profits, loss of data, failure to realize expected profits or savings, or any claim against Customer by another person (even if NHSA has been advised of the possibility of such damage).
- NHSA shall be liable to Customer as expressly provided in this agreement, but shall have no other obligation, duty, or liability whatsoever in contract, tort, or otherwise to Customer including any liability for negligence. The limitations, exclusions and disclaimers in this agreement shall apply irrespective of the nature of the cause of action, demand, or action by Customer, including but not limited to, breach of contract, negligence, tort, or any other legal theory and shall survive a fundamental breach or breaches or the failure of the essential purpose of this agreement or of any remedy contained herein.

### TERM

- This Agreement shall be effective on the Effective Date for a period of one (1) year, and shall be terminable in accordance with this Article. This Agreement shall be renewed automatically for succeeding terms of one (1) year each unless either party gives written notice to the other at least thirty (30) days prior to the expiration of any term.

## **TERMINATION**

- Either party may, by notice in writing, terminate this Agreement if: (i) the other party materially breaches or fails to observe or perform any of its obligations set out in the Agreement, including failure to pay Billable Enrollment fees, and fails to cure such breach or failure within thirty (30) days after written notice; or (ii) either party becomes insolvent, or makes an assignment for the general benefit of creditors, or any proceedings are commenced by or against either party under any bankruptcy or insolvency laws, or if proceedings for the appointment of a trustee, custodian, receiver, or receiver manager for either party are commenced, or if either party ceases or threatens to cease to carry on business; or (iii) upon ninety (90) days written notice by NHSA or Customer to the other party of its termination of the Agreement, which termination shall take effect only after completion of any then pending course plus a reasonable time for billing for the pending course. Termination shall not relieve the Customer from the duty to pay for Billable Enrollments. If the Customer interferes with completion of any course, the Customer shall be liable for the then enrolled students as if they achieved completion and passed the test.

## **FORCE MAJEURE**

- If the performance of this Agreement, or any obligation hereunder except the making of payments hereunder is prevented, restricted, or interfered with by any reason of fire, flood, earthquake, explosion or other casualty or accident or act of God; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, power; equipment or software from suppliers, war or other violence; any law, order, regulation, ordinance, demand or requirement of any government authority; or any other act or condition whatsoever beyond the reasonable control of the affected party. The party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction, or interference; provided however, that the party so affected shall take all reasonable steps to avoid or remove such cause of nonperformance and shall resume performance hereunder with dispatch whenever such causes are removed.

#### ENTIRE AGREEMENT

- This document incorporates and includes all prior representation<sup>5</sup>, negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein. The Parties agree that there are no representations, commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

#### AMENDMENTS

- No modification, amendment, or alter~~ation~~ation in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

#### WAIVER

- The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement, and therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach, and shall not be construed to be a modification of the terms of this Agreement.

#### NOTICE

- When any of the parties desires to give notice to each other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changes by written notice in compliance with the provisions of this paragraph. For the present, NHSA designates the following address for giving notice:

To NHSA: National Highway Safety Administration  
398 NE 79<sup>th</sup> St  
Miami, FL 33138



AUTHORITY

- Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last written date below (the "Effective Date").

District/School & Licensee Representative

Name: REX L. MITCHELL Title: SUPERINTENDENT

Signature: Rex L. Mitchell Date: 5/5/20

National Highway Safety Administration

Name: Magdiel Fernandez Title: Managing Member

Signature: Magdiel Fernandez Date: 03/24/2020



## FLORIDA SCHOOL CONTRACT COVID-19 ADDENDUM

This Addendum is made and entered into on MAY 5, 2020 by and between National Highway Safety Administration, LLC, Florida limited liability company (hereinafter called "NHSA") with an address of 398 NE 79<sup>th</sup> Street Miami, Florida 33138 and HAMILTON CO. SCHOOL DISTRICT, (hereinafter called the "Customer"), whose principal place of business is 5683 US HIGHWAY 129 SOUTH, SUITE 1, JASPER, FL 32052.

WHEREAS, the parties wish to modify the terms of the original stated contract as set forth herein.

NOW THEREFORE, in consideration of the mutual promises herein, the parties, intending to be legally bound, hereby agree that the following constitutes additional terms and conditions of the stated contract.

**MODIFICATION TO ORIGINAL CONTRACT:** As it applies to the original contract entitled "FLORIDA SCHOOL CONTRACT & NHSA LICENSE TERMS AND CONDITIONS" enclosed with this addendum, in order to support Florida School Districts during the COVID-19 2020 pandemic, NHSA agrees to wave charges for any and all course completions for the remainder of the 2019 – 2020 school year (course completions up through August 15<sup>th</sup>, 2020). If the Customer chooses to continue to enroll students during the 2020 – 2021 school year (course completions that occur after August 15<sup>th</sup>, 2020) the Customer will be billed at the standard rates stated in the contract under the section "NHSA ENROLLMENT FEES." As stated in our original contract, though, we never charge for courses a student does not complete.

The below services will be provided **free of charge and will not be billable**:

- Contract Signing Fees.
- Set-Up Fees.
- Teacher Training Fees.
- Counselor and School Administrator Training Fees.
- Customer Service Support.
- Cloud Computing Resources.
- Enrollment Fees (course completions that occur before August 15<sup>th</sup>, 2020).
- Fees charged by FLHSMV for the Traffic Law and Substance Abuse completion certificate.
- Fees charged by FLHSMV for the Florida Online Permit Test.

District/School & Licensee Representative

Name: REX L MITCHELL Title: SUPERINTENDENT

Signature: Rex L Mitchell Date: 5/5/20

National Highway Safety Administration Representative

Name: Magdiel Fernandez Title: Managing Member

Signature: Magdiel Fernandez Date: 03/24/2020