

Defensive Driving Course Agreement

This Purchase Agreement (this "Agreement") is made and entered into on _____, 2019, (the "Effective Date"), by and between National Safety Council, Nebraska, a-not-for profit corporation headquartered at 11620 M. Circle, Omaha NE 68137 ("NSCN"), and the County of Lancaster, Nebraska, 555 South 10th Street, ("County") Lincoln, NE 68508 individually referred to as a "Party" and collectively as the "Parties".

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of such consideration being hereby acknowledged, the Parties agree as set forth in this Agreement.

1. Agreement. Subject to the terms and conditions of this Agreement, during the "Term" (hereinafter defined), NSCN hereby grants non-exclusive, non-transferable, royalty-free limited use of the Content solely for the purpose of training associated with its STOP traffic diversion program, and County agrees that it will not redistribute, modify, sell, rent, lease, create derivative works of the Content or otherwise transfer the Content to the general public or any other person or entity (the "Permitted Purpose"). "Content" means the National Safety Council's computer based learning course content for its Defensive Driving Course, 9th edition ("DDC online").
2. Modifications; Limitations. This Agreement does not obligate NSCN to prepare bug fixes, modifications, patches, enhancements, error corrections, new versions or other updates (collectively, "Modifications"); *provided, however*, if the National Safety Council prepares Modifications to the Content, NSCN shall make such Modified Content available to County at no additional cost. County shall update its system ("System") within a reasonable period of time to include the Modified Content (which shall be deemed Content for purposes of this Agreement). County shall not otherwise, in whole or in part, copy, rent, loan, decompile, transfer, or prepare derivatives of the Content. However, if County, despite its best efforts, is reasonably dissatisfied with the performance of the Content within County's System, then within sixty (60) days of the date hereof, County shall be allowed to return the Content to NSCN, destroy all copies of the Content remaining on County's computer systems, and obtain a full and complete refund (less shipping expenses, if any) upon certification of the foregoing by an authorized representative of County.
3. Term and Termination. This Agreement shall commence on the Effective Date and will remain in effect for one year thereafter (the "Term"). If both parties agree, this sole source contract can be renewed for up to three years on a year-by-year basis upon the mutual written consent of the parties. NSCN may terminate this Agreement if County attempts to assign or otherwise transfer its rights, obligations, or duties under this Agreement without NSCN's prior written authorization. Either Party may terminate this Agreement if the other Party: (a) files or has filed against it a voluntary or involuntary petition in bankruptcy or other similar law for the protection of creditors; (b) breaches or fails to perform any of its covenants, duties or obligations in any material respect under this Agreement, and such breach or failure continues uncured for ten

(10) business days after receipt of written notice. Additionally, either Party may terminate this Agreement for convenience upon sixty (60) days written notice to the other Party. Upon termination or expiration of this Agreement, County shall return the Content to NSCN and destroy all copies of the content remaining on County's computer systems and if requested, County shall provide a signed, written certification to NSCN certifying to the foregoing.

4. Pricing: Payment Terms and Orders.

- a. With the execution and delivery of this Agreement, County agrees to pay NSCN the sum of Ninety-One Thousand Dollars (\$91,000) which represents the purchase of 5,000 DDC online courses (a "Course") at a price of \$18.20 per Course. Payments will be generated on a quarterly basis. Each Course may be used by one individual only to complete the respective course once.
- b. County acknowledges that all Courses must be used prior to the termination or expiration of this Agreement or prior to the termination or expiration of any subsequent contract renewal term as described in Section 4.d, below.
- c. Once County has utilized the number of Courses purchased pursuant to Section 4.a, above, County shall pay NSCN for the number of additional Courses utilized by County during the prior month, subject to County's receipt of a correct invoice with respect to the Course Reports. Each additional Course needed throughout the Term shall be priced at the per course price reflected in Section 4.a above.
- d. County acknowledges that originally purchased Courses must be used prior to the expiration of this Agreement, and County shall not be entitled to any refund of any payment made hereunder due to unused Courses. Provided, however, that if County requests, at least sixty (60) days prior to the expiration of this Agreement, an extension of the Term in order to use any unused Courses following the expiration of the original Term, NSCN agrees that it will request an extension of such time from the National Safety Council (National), and if National agrees to such extension then NSCN will agree to such extension as well. County understands that National is not required to agree to any such extension, and in the event that National does not so agree then NSCN will not be authorized to agree to an extension and County will not be entitled to any refund for unused Courses. Provided, National's consent to such requests shall not be unreasonably withheld.

5. Proprietary Rights. All patents, copyrights, trade secrets, and other proprietary rights in or related to the Content are and will remain the exclusive property of National, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Content is used. County will not take any action that jeopardizes National's proprietary rights or acquire any right in the Content. National will own all rights in any copy, translation, modification, adaptation, or derivation of the Content. County will obtain, at National's request, the execution of any instrument that may be appropriate to assign these rights to National or perfect these rights in National's name. Except as granted above, this Agreement does not grant County any intellectual property rights or other rights in or to the Content or its associated documentation. County acknowledges that the Content constitutes a valuable trade secret of National, shall be protected as such and County agrees that it shall use the Content solely in accordance with the provisions of this Agreement.

6. Representations and Warranties. Each Party represents and warrants to the other Party that: (A) it is duly organized and in good standing under the laws of the jurisdiction in which it is organized and has the authority and power to enter into the Agreement and perform its

obligations hereunder; (B) it is not currently the subject of voluntary or involuntary petition in bankruptcy, does not currently contemplate filing any such voluntary provision, and is not aware of any claim for the filing of an involuntary petition; and (C) that neither the execution of this Agreement nor its performance will directly or indirectly violate or interfere with the terms of another agreement to which it is a party, nor will it enter into any agreement the execution or performance of which would violate or interfere with the Agreement.

7. Limitation of Liabilities. Each party agrees to indemnify and hold harmless to the fullest extent allowed by law, the other party and its principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorneys' fees), arising out of or resulting from the acts or omissions of their principals, officers, or employees in the performance of this Agreement. Liability includes any claims, damages, losses, and expenses arising out of or resulting from performance of this Agreement that results in any claim for damage whatsoever including, any bodily injury, civil rights liability, infringement of rights of a third party, sickness, disease, or damage to or destruction of tangible property, including the loss of use resulting therefrom. Further, each party shall maintain a policy or policies of insurance (or self-insurance program), sufficient in coverage and amount to pay any judgments or related expenses from or in conjunction with any such claims. Nothing in this Agreement shall require either party to indemnify or hold harmless the other party from liability for the negligent, intentional or wrongful acts or omissions of said other party or its principals, officers, or employees.

8. Notices. All notices and other communications required or desired to be given pursuant to this Agreement will be given in writing and will be deemed duly given upon personal delivery, or on the third day after mailing if sent by certified mail, postage prepaid, return receipt requested, or on the day after deposit with a nationally recognized overnight delivery service which maintains records of the time, place and recipient of delivery, and in each case if directed as follows:

if to NSCN, then to: Eric Koeppe
President/CEO
11620 M. Circle
Omaha NE 68137

if to County, then to: Kim Etherton
Director of Community Corrections
633 S. 9th St. Ste. #101
Lincoln, NE 68509

or to such other person or address as a Party may respectively designate in like manner, from time to time.

9. Independent Contractor. It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of the County shall not be deemed to be employees of National Safety Council and employees of National Safety Council shall not be deemed to be employees of the County. The Parties shall be responsible to their respective employees for all salaries and benefits. Neither Parties' employees shall be entitled to any

salary or wages from the other Party or to any benefits made to their employees, including but not limited to, overtime, vacation, retirement benefits, workers compensation, sick leave or injury leave. The Parties shall be responsible for maintaining Worker's Compensation Insurance and Unemployment Insurance for its employees, and for payment of all Federal, State, local and any other payroll taxes with respect to its employees' compensation. National Safety Council shall further assume full responsibility for payment of any and all expenses or related costs associated with, or arising from, any injury to National Safety Council's employees that may arise in the course of performing this Agreement.

10. Miscellaneous. This Agreement will be governed, construed and interpreted in accordance with the laws and decisions of the State of Nebraska without regard to conflict of law principles that would require the law of another state or jurisdiction be applied. If any provision contained in this Agreement, is held to be invalid or unenforceable by a court of competent jurisdiction, such provision will be severed here from and such invalidity or unenforceability will not affect any other provision of this Agreement, the balance of which will remain in and have its intended full force and effect; provided, however, if said invalid or unenforceable provision may be modified so as to be valid and enforceable as a matter of law, such provision will be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law.
- a. All waivers shall be in writing. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof.
 - b. This Agreement may not be assigned by County without NSCN's prior written consent, which shall not be unreasonably withheld. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns.
 - c. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous verbal and written communications, agreements, assurances and understandings between the Parties with respect thereto.
 - d. This Agreement may be executed in multiple counterparts, with the same effect as if the signatures to each counterpart were set forth upon a single document.
 - e. The numbers, headings or titles of the various Sections of this Agreement are not a part of this Agreement, but are for convenience of reference only and do not, and will not be used to, define, limit, continue, modify or affect the meaning or content of the Sections. All references to Sections in this Agreement refer to the various Sections of this Agreement, unless expressly stated otherwise.
 - f. The Schedules, Exhibits and other documents referred to in this Agreement are attached hereto, made a part hereof and incorporated herein by this reference.

Any ambiguity in any provision of this Agreement which shall be discovered after its execution shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

IN WITNESS WHEREOF, NSCN and County have executed this Agreement as of the Effective Date.

NATIONAL SAFETY COUNCIL, NEBRASKA



By: _____
Eric Koeppe
President/CEO

By: _____
Chair, Lancaster County Board of Commissioners