

Driving Instructor Services Licence Agreement

Driving Instructor Services, ("DIS"), is the trading name of Nicholas Zapettis, (the proprietary owner of the business), whose office is at 866 Carmarthen Road, Fforestfach, Swansea SA5 8HR.

If you accept all of the terms and conditions in this agreement, (the "Terms"), DIS will licence its Service to you as a Subscriber, including any improvements, amendments and additions thereto. You can indicate your acceptance by selecting the "**I accept**" button at the bottom of this registration screen and the registration process will continue. If you are not willing to be bound by all the Terms, select the "**I decline**" button at the bottom of this registration screen and the registration process will terminate.

By accepting these Terms you also undertake to follow an industry-approved code of conduct. These Terms replace any previous Terms and apply from **2nd July 2012** until further notice.

Unless specified as a condition, the Terms of this Agreement shall be interpreted as warranties.

(A) It is a condition of this Agreement that DIS is not responsible for any misunderstanding arising from the failure of any Subscriber or Instructor to read these Terms in full.

(B) It is a condition of this Agreement that DIS has the right to amend any of the Terms at any time. Continued use of the Service will be taken as your acceptance of any Terms that may have been amended since you originally subscribed.

(C) It is a condition of this Agreement that DIS may, at its sole discretion and at any time, vary or cancel any part of the Service that it would normally endeavour to provide or may have provided in the past.

(D) It is a condition of this Agreement that no liability shall ascribe to DIS or any of its workers or suppliers in the event of failure of the Service howsoever caused.

1. DEFINITIONS

"Instructor" is any person in addition to the Subscriber who is nominated by the Subscriber to enjoy the benefit of the Service with their permission.

"Service" is the making available by DIS of one or more of the Core Services as described herein to support the business of a self-employed driving instructor or multi-car driving school and shall include (but not be limited to) any copyright material supplied by DIS in binary form and any other machine readable materials including (but not limited to) PDA programmes, computer programmes, Internet code, libraries, source files, header files and data files, together with any updates or error corrections provided by DIS and any user manuals, programming guides and other documentation provided by DIS in support of the Service. Additional services may be provided by DIS, but these may be withdrawn at any time without notice.

“Subscriber” is the person completing this registration process and who is bound by the terms of this Agreement. The Subscriber will be considered the primary user and will be responsible for the proper adherence to the terms of this Agreement by any Instructor who may also benefit from the Service.

"Subscription" is the amount charged by DIS for providing the Service and which is payable monthly in advance by bankers direct debit or by other means acceptable to DIS. The Subscription shall vary according to the number of Instructors requested by the Subscriber, or by negotiation with DIS regarding additional or alternate Services, and shall at all times be subject to our Fair Usage policy as described herein, but it shall not be reduced or diminished in any way if the Subscriber or any Instructor does not use any or all of the Service. The rate of Subscription may also vary from time to time in accordance with DIS normal business practice.

"Subscription Point" is the first day of any month where Service is to be provided. For taxation purposes, the Subscription Point shall also be considered the point of taxable supply.

2. LICENCE TO USE

Subject to these Terms, DIS grants to the Subscriber a non-exclusive, non-transferable, limited licence to access and use the Service for the sole purpose of running a driving instructor or driving school business. Subscribers are also expected to take all reasonable steps that a duly diligent person might be expected to take to protect DIS intellectual property rights. Additional Instructors may use the Service at DIS' sole discretion under the condition that the Subscriber remains personally liable in the event of failure by an Instructor to hold to these Terms.

3. TRIAL PERIOD

From time to time DIS may offer a trial period to potential new Subscribers for the purpose of trialling the Service. At any time before the end of the trial period you can notify DIS in writing, (by post to our business address or via the DIS intranet messaging system that is part of the Service), that you wish to terminate the Service. If you do not terminate in writing before the end of the trial period, or if you continue to use the Service after the trial period is ended despite having given notice, payment of the Subscription will be due. DIS reserves the right to terminate or refuse to implement a trial period at any time at its sole discretion without giving reason. Some Service may be limited or not available during a free trial period and will only become available to paying Subscribers.

4. FREE SERVICES

DIS may provide a free diary or other services, (“Free Service”), for use by sole-trader driving instructors, subject to the condition that any Free Service is not to be used by any other party, agent or representative working for or acting on behalf of the instructor to whom the Free Service facility is registered. The Free Service facility may be withdrawn at any time by DIS without reason.

5. MULTI-USER LICENSES

Neither Subscribers nor Instructors may authorise any other party to access or use the Service unless they are accepted by and registered with DIS. A Multi-user licence may require the Subscriber to pay an additional Subscription to DIS by to enable the Service to be used by another Instructor or Instructors. It is the responsibility of the Subscriber to advise their Instructors of these Terms, and Subscribers are responsible for all activity that takes place under any Multi-user licence granted to them or by any Instructor authorised by them to use the Service. The Subscriber shall at all times be personally responsible for any breach of these Terms that may be occasioned by their Instructor(s) and must take appropriate steps to ensure compliance of Terms by any Instructor or Instructors nominated by them. A Subscriber has the right to end the Service or close an Instructor's authority at any time, and to access, request and receive all information related to an Instructor's use of the Service by notifying DIS and giving their instructions.

6. COMMENCEMENT OF SERVICE and PAYMENT OF SUBSCRIPTIONS

Once we have received a completed application for registration, we will activate your account to confirm your application acceptance. Our acceptance of your application brings into existence a legally binding contract between us. You shall be deemed to have begun the Service on the date we accept your application although you will also have to complete your Online Office databases to make use of the Service. The first Subscription payment will be an apportioned sum calculated to the end of the first month that your payment is due and the amount will depend on the date that you originally registered. The full Subscription will be collected in advance on or about the first day of each whole month thereafter. Occasionally, the first (part) Subscription and the first proper (full month in advance) Subscription may be taken at the same time. If we are unable to collect your Subscription when due, we reserve the right to charge a reasonable administration fee and suspend our Service until all outstanding sums, together with our reasonable charges, have been paid in full.

7. CORE SERVICES

Depending on the actual Service being subscribed to, DIS will make its best effort to provide one or more of the following *Core Services* consistently and to a high standard to the Subscriber, and any authorised Instructors, whilst this Agreement subsists:

- *An Online office* to enable Subscribers and Instructors to enter, merge, store, view and amend information relating to their business.
- *Help and advice to install and set up databases* including reasonable access for Instructors to be inducted into the set up and use of their Online Office.
- *An interactive diary* for Instructors to record their day-to-day appointments.

- *A professional UK telephone reception* answering calls in your own trade name and normally available weekdays between the hours of 8 a.m. and 8 p.m. and on Saturdays between 9 a.m. and 5 p.m. except public holidays, adverse weather conditions, incidence of staff shortage or incapacity and circumstances beyond our control.
- *Dealing with and recording lesson amendments and cancellations* together with a facility for taking bookings from new and existing pupils.
- *An intranet messaging system* as a means by which you can contact DIS and Instructors.
- *End of Year accounts* including a personal Cash flow statement, Profit and Loss account and Balance sheet for each Instructor.
- *Statistical and management reports* to help and advise the Subscriber (and, where appropriate, any Instructor) as to the progress of their business.
- *A complete pupil record* including lesson hours, products and payments relating to every pupil within the business.
- *A transaction log* of calls taken with detailed messages advising of the work done on the Subscriber's behalf and a daily list of outstanding matters to be attended to.
- *A dedicated divert telephone number* (DDI number) enabling Subscribers and Instructors to divert their calls whenever they want.
- *Important "on-the-day" calls forwarded by text* to the Instructor's mobile phone.
- *Internet Mobile phone access*, which is a facility specifically designed by DIS in order to access and update the Online Office using an Apple iPhone or other Internet mobile phone.
- *Mentoring* will be advice on business and law to the extent that we are experienced and qualified as well as help and advice on using the Service and induction of Instructors.
- *Pupil progress system* using a scoring system to enable instructors to monitor the progress of individual pupils on each lesson.
- *Hard copy receipts to pupils* generated at the end of each lesson but subject either to the availability of appropriate handheld printer hardware (for use with PDA) or pupil email address being provided (via iPhone).

- *A Personalised website* utilising a choice of website templates and colour schemes and incorporating a number of pages of predetermined length and content that will be appropriate for the Subscriber's business together with hosting of the website template.
- *Website links* for use in a Subscriber's own website that would enable potential new pupils to view products and prices and to book an initial driving lesson online and also providing a link for existing pupils to book and cancel lessons directly or view their records online.
- *Automated text messages* offering reminders to pupils of their lessons and a variety of other marketing and efficiency benefits to the Instructor.
- *Liaising with pupils* to rebook them or to arrange theory or practical driving test appointments for them on behalf of sole-trader Subscribers.

DIS may also provide additional services as well as those listed but if we do so we may cancel those additional services at any time at our discretion.

8. DIS TAKING PUPIL CARD PAYMENTS

If DIS is willing to accept credit or debit card payments from your pupils on your behalf there will be additional terms and conditions that you will have to agree to. These will be notified to you if you apply for us to provide this facility.

9. WHAT DIS DOES NOT DO

DIS will not generally undertake any work that requires it to initiate contact with any pupil unless specifically provided for in our *Core Services* e.g. as in our arranging tests on behalf of sole trader Subscribers. Exceptions will be made where it would be in the spirit of good customer relations for us to contact pupils, (such as where we have been unreasonably delayed in answering a call and we believe it would be fair of us to try to recover the caller where possible, or in the sudden incapacity of an instructor where several pupils may need to be rescheduled). However, we will not usually contact pupils in order to:

- deal with lesson clashes resulting from double-booking of lessons
- move pupils for an Instructor
- collect money owed by pupils
- deal with or arbitrate any complaints, (unless agreed by us on an individual case basis, or where the integrity or reputation of the Service may be prejudiced by our *not* dealing with a complaint).

10. PROVISION OF EQUIPMENT

DIS will not provide any equipment as part of its Service. DIS may advise on appropriate hardware that may be appropriate for use by the Service, and can help to source or make separately available appropriate equipment that may be subject to a separate charge to you by a third party supplier. The responsibility for suitability, durability and use of any hardware, howsoever sourced or supplied, at all times rests with the Subscriber.

11. PROVISION OF BUSINESS RECORDS

No warranty is given as to the accuracy of any records that may be generated by the System. In particular, although every reasonable effort has been made to produce what is intended to be a basic set of annual accounts and other management and statistical analyses, neither DIS nor its managers, owners and designers are qualified accountants and Subscribers should seek the support of a suitably qualified accountant to prepare a full and individual set of financial accounts where appropriate. Subscribers accept that the accuracy of records will be affected by (amongst other things) inputs made by the user, changes in legislation and software and design limitations and it is a condition of this Agreement that DIS is not responsible for any errors or omissions in records howsoever caused.

12. INTELLECTUAL PROPERTY RIGHTS and RESTRICTIONS

DIS has developed and will continue to develop during the term of this Agreement specialised services to be used in conjunction with the operation and management of a driving school business. DIS hereby asserts its rights as owner of all copyright materials, software, logos, know-how and confidential information that is owned, developed, prepared, supplied or licensed by them or on their behalf and title to software and all associated intellectual property rights is retained by DIS and/or its licensors. Unless applicable law prohibits enforcement, you may not modify, decompile, or reverse engineer software. You acknowledge that the software is designed or intended for use in support of your business as a driving instructor (including Multi-user licenses where applicable) and DIS disclaims any express or implied warranty of fitness for any other use. No right, title or interest in or to any trademark, service mark, logo or trade name of DIS or its licensors is granted under this Agreement. All materials provided by DIS under this Agreement shall be confidential unless they are already in the public domain.

13. NO WARRANTY

Software is provided "as is", "with all faults" and "as available". We do not guarantee the accuracy or timeliness of data or information available from the Service. DIS gives no express warranties, guarantees or conditions and excludes any implied warranties including those of merchant ability fitness for a particular purpose, workmanlike effort and infringement. Unless specified in this Agreement, all express or implied conditions, representations and warranties, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement are disclaimed, except to the extent that these disclaimers are held to be legally invalid. DIS will provide the Service with reasonable care and skill but we do not warrant or undertake that this will cause the Service to operate without fault or interruption. We shall use all reasonable endeavours to correct any fault notified by you as soon as is

reasonably practicable. DIS cannot guarantee the quality of a product or service provided by a third party, however, we will use reasonable endeavours to resolve any disputes. All information given in our website and in any brochures or other advertising materials is believed to be correct when it was printed but potential subscribers must check the accuracy of any figures or other information for themselves and not rely on anything that is not specified in this Agreement.

14. COMPLYING WITH LEGISLATION

You are responsible for obtaining all necessary licenses and authorities and complying with all relevant legislation that may apply to you in order to make use of the Service including but not limited to the Motor Cars (Driving Instruction) Regulations 1989, The Road Traffic Act 1988, The Data Protection Act 1998 and all subsequent amendments and additions thereto. You are recommended to take legal advice before accepting this Agreement.

15. LIMITATION OF LIABILITY

In no event will we, or our service suppliers, be liable for any loss or damages, including but not limited to loss or damage arising from failure or error in the provision of the Service howsoever caused. Nor will we be liable for any other special, incidental, indirect or consequential loss or damage, arising out of or in connection with the use of or inability to use the Service including but not limited to any claim that may be brought by pupils or instructors or other licensees or subscribers even if DIS has been advised of the possibility of such claims. Your exclusive remedy and DIS's entire liability in the event of failure by DIS to provide the Service or satisfy any element of this Agreement will be at DIS's option to replace software media or refund an amount equal to one week's Subscription. The foregoing limitations will apply even if this Agreement fails in its essential purpose. You may have other specific legal rights according to the laws of England and Wales that this contract cannot change.

16. INTEGRATION

This Agreement is the entire agreement between you and DIS relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgment or other communication between the parties relating to its subject matter during the term of this Agreement. These Terms may be modified by DIS without notice at any time and will be deemed as accepted by all Subscribers unless notice is given as per these Terms to terminate the Subscription at the next Subscription Point.

17. INTERNET ACCESS SERVICE AND TELEPHONE DIVERT

The Subscriber is responsible for paying the fees charged by any Internet access provider and for paying all fees charged by a telephone service provider in order to utilise the Service including but not limited to those charges relating to diverting calls to DIS from your own telephone number. Those fees are in addition to the Subscription.

18. FAIR USAGE

Fair Usage policy applies to this Agreement in respect of the Service provided by DIS and, in particular, to the number and nature of calls handled by DIS' telephone reception. Whilst DIS undertakes to answer a generous number of calls on behalf of all its Subscribers, in the event that DIS takes an unreasonably large number of calls for an individual Subscriber relative to the number of instructors that the Subscriber claims to represent, or the nature of those calls in DIS' sole opinion places unreasonable demands on its service infrastructure, this Fair Usage policy will apply. Fair Usage will be determined by DIS at its sole discretion and may be calculating from the number of calls received as a proportion of the number of instructors registered to use the system and comparing this against other users, or otherwise by virtue of the experience of DIS in dealing with the Subscriber's individual business requirements and the conduct of their account. If we in our sole opinion decide that your usage does not reflect the service being subscribed to, we will contact you to let you know that we feel your usage is unreasonable and discuss your alternatives, which may require the payment of a higher Subscription, or could result in our requesting you to limit what we consider to be the "excess usage".

19. TERMINATION

Either party may terminate the Service at any time by giving at least seven clear days written notice to the other, (including via the DIS intranet messaging system that is part of the Service), and the Service will then terminate at the next Subscription Point. The Service may be terminated immediately by DIS without notice if you fail to comply with any condition of these Terms or because of a persistent breach of any of these terms. [A "Persistent Breach" will be considered to be a breach of one of these terms more than twice in any twelve-month period or a breach of two or more terms in any one month period.] Either party may terminate the Service immediately without notice should any software become (or, in either party's reasonable opinion, is likely to become) the subject of a claim of infringement of any intellectual property right. Upon termination, you must stop using the Service.

20. CANCELLATION and REASONABLE CHARGES

In the event of notification to cancel the Service, the Service will continue to be provided and the Subscription shall remain payable until the next Subscription Point at which time no further Subscription shall be due and the Service will be terminated. This means that if notice to cancel is received shortly after a Subscription Point, the Subscription shall remain payable up to the next Subscription Point. There will be no refund of Subscription for any period of cancellation or non-use of Service up to the next Subscription Point. DIS may charge interest and reasonable costs in dealing with any late or outstanding payments or any breach of this agreement.

21. PRIVACY POLICY

This Privacy Policy does not apply to the practices of companies that we do not own or individuals we do not control, employ, manage or have entered into a franchise agreement with. When you register with us we will ask for personal information about you and you will not be anonymous to us. We will use this information to decide

whether to provide products or services to you. We may also process payments or applications to make payments over our website and if this happens we undertake to use secure (encrypted) facilities. We may retain a small amount of data in connection with these facilities. We may send personally identifiable information about you to suppliers or service providers who work in association with us to provide a product or service to you. We may also disclose personally identifiable information about you when we respond to court orders or legal process or if we find that your actions violate the terms of our Terms. Information will remain on our archived records after your registration has been closed and we may amend this policy from time to time.

22. DATA PROTECTION

DIS is registered with the *Information Commissioner's Office* as required under the Data Protection Act 1998, (registration PZ3178656), and is authorised as a Data Controller to collect and store information. DIS is committed to upholding the eight Data Protection principles of good information handling practice and a full explanation of these principles can be found at: http://www.ico.gov.uk/for_organisations/data_protection/the_guide/the_principles.aspx. Subscribers and Instructors are considered to be Data Processors for purposes of the Data Protection Act and neither Subscribers nor Instructors need to register separately with the *Information Commissioner's Office* to use the Service. However, it is a strict condition of the use of the Service that Subscribers and Instructors must ensure that:

- The pupil has consented to the processing of data.
- The processing of data is necessary for the purposes of the “legitimate interests” of the business.
- Any complaint received about the manner in which data has been collected or used must immediately be notified to DIS and the complainant must be advised to contact DIS directly in writing stating the exact nature of their complaint so that the matter can be properly investigated.

Further information about a Data Processor's obligations in processing data can be found at:

http://www.ico.gov.uk/for_organisations/data_protection/the_guide/conditions_for_processing.aspx

23. EXPORT REGULATIONS.

All Software and technical data delivered under these Terms are subject to UK export control laws and may be subject to export or import regulations in other countries. You agree to comply strictly with all such laws and regulations and acknowledge that you have the responsibility to obtain such licenses to export, re-export, or import as may be required after delivery to you.

24. SEVERABILITY

If any provision of these Terms is held to be unenforceable this Agreement will remain in effect with the provision omitted unless omission would frustrate the intent of the parties, in which case this Agreement will immediately terminate.

25. GOVERNING LAW

These Terms will be construed according to the laws of England and any litigation shall be heard in a court in England or Wales.