



## Terms of Use (Subscriptions)

December 2022

### 1. Introduction:

1.1 These terms of use govern your use of our website; by using our website, you accept these terms of use in full. If you disagree with these terms of use or any part of these terms of use, you must not use our website.

1.2 If you subscribe to our website, we will ask you to expressly agree to these terms of use.

1.3 Our website uses cookies. By using our website and agreeing to these terms of use, you consent to our use of cookies in accordance with the terms of our privacy policy.

### 2. Licence to use website

2.1 Unless otherwise stated, we or our licensors own the intellectual property rights in the website and material on the website. Subject to the licence below, all these intellectual property rights are reserved.

2.2 You may view, download for caching purposes only, and print pages from the website for your own personal use, subject to the restrictions set out below and elsewhere in these terms of use.

2.3 You must not:

1. (a) republish material from this website (including republication on another website);
2. (b) sell, rent or sub-license material from the website;
3. (c) show any material from the website in public;

4. (d) reproduce, duplicate, copy or otherwise exploit material on our website for a commercial purpose;
5. (e) edit or otherwise modify any material on the website; or
6. (f) redistribute material from this website except for content specifically and expressly made available for redistribution; for example, test papers.

### **3. Acceptable use**

3.1 Unless you are a subscriber to our website, you must not access or attempt to access any area on the website that is restricted to subscribers.

3.2 You must not use our website in any way that causes, or may cause, damage to the website or impairment of the availability or accessibility of the website; or in any way which is unlawful, illegal, fraudulent or harmful, or in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

3.3 You must not use our website to copy, store, host, transmit, send, use, publish or distribute any material which consists of (or is linked to) any spyware, computer virus, Trojan horse, worm, keystroke logger, rootkit or other malicious computer software.

3.4 You must not conduct any systematic or automated data collection activities (including without limitation scraping, data mining, data extraction and data harvesting) on or in relation to our website without our express written consent.

3.5 You must not use our website to transmit or send unsolicited commercial communications.

3.6 You must not use our website for any purposes related to marketing without our express written consent.

### **4. Fair usage policy**

4.1 A Fair Usage Policy is necessary to ensure Driving Test Success Anytime's hosting services, and the resources made available within it, are used fairly and operate reliably for all of our customers.

4.2 Each Driving Test Success Anytime membership is intended and designed for a single user

4.3 The membership is personal and under this "Fair Usage Policy" you are not allowed to share your membership with another user.

4.4 Excessive behaviour will be determined by a number of factors including (but not limited to), evidence that you are sharing your membership with another user, the amount of resources being used or the length of time which your excessive usage continues for.

4.5 If in our reasonable opinion, you have breached this Fair Usage Policy, we may contact you, using the details provided during registration to let you know that we deem your usage to be excessive and to discuss options to enable you to continue to use Driving Test Success Anytime. In this event we reserve the right at our sole discretion but acting reasonably, to either (i) impose reasonable limits to reduce your usage; or (ii) agree a suitable fee structure with you to continue to use the service; or (iii) suspend your usage; or (iv) terminate your usage.

## 5. Subscriptions

5.1 In these terms, “subscription” means a right to access the restricted areas of our website described in this Section 5, and “subscriber” means a person who has such a right by virtue of this Section 5.

5.2 Access to certain areas of our website is restricted to subscribers. We reserve the right to restrict access to other areas of our website, or indeed our whole website, at our discretion.

5.3 You may become a subscriber by completing the registration process.

5.4 You will have the opportunity to identify and correct input errors prior to ordering your subscription.

5.5 We will not file a copy of these terms of use specifically in relation to each subscriber and, if we update these terms of use, the version to which you originally agreed will no longer be available on our website. For this reason, we recommend that subscribers print and file a copy of these terms of use for future reference.

5.6 These terms of use are provided in the English language only.

5.7 The subscription charges will be as set out on our website from time to time. All subscription charges stated on the website are stated inclusive of VAT.

5.8 You must pay to us the subscription charges in respect of the first and any subsequent period of your subscription in advance, in cleared funds, in accordance with the instructions on our website.

5.9 We may vary subscription charges from time to time by posting new charges on our website. However, such variations will not affect subscriptions that have already been paid for.

5.10 Your subscription will be activated automatically following receipt of your subscription charges in cleared funds. Your subscription will continue for the relevant period set out on our website, subject to early termination in accordance with these terms of use.

5.11 If you, the client, fail to pay Driving Test Success Limited in line with the agreed subscription payment due date, Driving Test Success Limited reserves the right to suspend all services until payment has been made in full, or to terminate our agreement with immediate effect.

5.12 Driving Test Success Limited reserves the right to change, suspend or discontinue any of the services we provide for you, or any or all users, at any time, including those laid out in the DTSA Subscription Service. We will not be liable for the effect that any changes to the Service may have on you, including your income or your ability to generate revenue through the Services.

5.13 We provide each subscriber with a login and password to enable the subscriber to access the restricted areas of our website. Subscribers must ensure that their login and password details are kept confidential. You must notify us in writing immediately if you become aware of any unauthorised use of your login or password. You are responsible for any activity on our website arising out of any failure to keep your login and password confidential, and may be held liable for any losses arising out of such a failure.

5.14 You must not use any other person's login and password to access our website.

5.15 During the period of your subscription, you will be able to access, using the login and password details that we provide to you, namely the Online Learning Facility containing Theory Test, Hazard

Perception Test and Practical Driving Test revision tools.

5.16 If you are contracting as a consumer, you may cancel a subscription at any time within 7 working days, beginning on the day after you received our acknowledgement of payment of your subscription charge, providing that you have not accessed the [restricted areas of the website] during that period. If you cancel a subscription in accordance with this provision, you will receive a full refund of the price paid. We will usually refund any money received from you using the same method originally used by you to pay for your purchase. We will process the refund due to you as soon as possible and, in any case, within 30 days of the day we received your valid notice of cancellation. Your notice of cancellation should be sent to the address or email address at the end of these terms of use.

## **6. User generated content**

6.1 In these terms of use, “your user content” means material (including without limitation text, images, audio material, video material and audio-visual material) that you submit to our website, for whatever purpose.

6.2 You grant to us a worldwide, irrevocable, non-exclusive, royalty-free licence to use, reproduce, adapt, publish, translate and distribute your user content in any existing or future media. You also grant to us the right to sub-license these rights, and the right to bring an action for infringement of these rights.

6.3 You warrant and represent that your user content will comply with these terms of use.

6.4 Your user content must not be illegal or unlawful, must not infringe any third party's legal rights, and must not be capable of giving rise to legal action whether against you or us or a third party (in each case under any applicable law).

6.5 Your user content (and its publication on our website) must not:

- (a) be libellous or maliciously false;
- (b) be obscene or indecent;
- (c) infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;
- (d) infringe any right of confidence, right of privacy, or right under data protection legislation;
- (e) constitute negligent advice or contain any negligent statement;
- (f) constitute an incitement to commit a crime;
- (g) be in contempt of any court, or in breach of any court order;
- (h) be in breach of racial or religious hatred or discrimination legislation;
- (i) be blasphemous;
- (j) be in breach of official secrets legislation;
- (k) be in breach of any contractual obligation owed to any person;
- (l) depict violence;
- (m) be pornographic or sexually explicit;
- (n) be untrue, false, inaccurate or misleading;
- (o) consist of or contain any instructions, advice or other information which may be acted upon and could, if acted upon, cause illness, injury or death, or any other loss or damage;
- (p) constitute spam;
- (q) be offensive, deceptive, threatening, abusive, harassing, or menacing, hateful, discriminatory or inflammatory; or
- (r) cause annoyance, inconvenience or needless anxiety to any person.

6.6 Your user content must be appropriate, civil, tasteful and accord with generally accepted standards of etiquette and behaviour on the internet.

6.7 You must not use our website to link to any website or web page consisting of or containing material that would, were it posted on our website, breach the provisions of these terms of use.

6.8 You must not submit any user content to the website that is or has ever been the subject of any threatened or actual legal proceedings or other similar complaint.

6.9 We reserve the right to edit or remove any material submitted to our website, or stored on our servers, or hosted or published upon our website.

6.10 Notwithstanding our rights under these terms of use in relation to user content, we do not undertake to monitor the submission of such content to, or the publication of such content on, our website.

## **7. Limited warranties**

7.1 We warrant to subscribers that the subscription service will be provided with reasonable care and skill, and that we will use reasonable endeavours to maintain the availability of the website (subject to scheduled maintenance) during the term of a subscription.

7.2 You acknowledge that some of the information published on this website is submitted by users, and that we do not usually review, approve or edit such information. We do not warrant the completeness or accuracy of the information published on this website.

7.3 To the maximum extent permitted by applicable law we exclude all representations, warranties and conditions relating to this website and the use of this website (including, without limitation, any warranties implied by law of satisfactory quality, fitness for purpose and/or the use of reasonable care and skill).

## **8. Limitations and exclusions of liability**

8.1 Nothing in these terms of use will:

(a) limit or exclude our or your liability for death or personal injury resulting from negligence; (b) limit or exclude our or your liability for fraud or fraudulent misrepresentation; (c) limit any of our or your liabilities in any way that is not permitted under applicable law; or (d) exclude any of our or your liabilities that may not be excluded under applicable law.

8.2 If you are a consumer, any statutory rights that you have, that cannot be excluded or limited, will not be affected by these terms of use.

8.3 The limitations and exclusions of liability set out in this Section and elsewhere in these terms of use:

(a) are subject to the preceding paragraph; and

(b) govern all liabilities arising under the terms of use or in relation to the subject matter of the terms of use, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

8.4 To the extent that the website and the information and services on the website are provided free-of-charge, we will not be liable for any loss or damage of any nature.

8.5 We will not be liable to you in respect of any losses arising out of any event or events beyond our reasonable control.

8.6 We will not be liable to you in respect of any business losses, including (without limitation) loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.

8.7 We will not be liable to you in respect of any loss or corruption of any data, database or software.

8.8 We will not be liable to you in respect of any special, indirect or consequential loss or damage.

8.9 Our aggregate liability to you under the terms of use will not exceed the total amount paid or (if greater) payable by you to us under the terms of use.

8.10 You accept that we have an interest in limiting the personal liability of our officers and employees. Having regard to that interest, you accept that we are a limited liability entity and agree that you will not bring any claim personally against individual officers or employees in respect of any losses you suffer in connection with the website or these terms of use. This will not, of course, limit or exclude the liability of the company itself for the acts and omissions of our officers and employees.

8.11 You agree to the publication of comments, reviews and/or feedback relating to you, by others, on our website. You acknowledge that such comments, reviews and/or feedback may be critical or defamatory or otherwise unlawful; and you agree that you will not hold us liable in respect of any such comments, reviews and/or feedback, irrespective of whether we are aware or ought to have been aware of such comments, reviews and/or feedback.

## **9. Indemnity**

You hereby indemnify us and undertake to keep us indemnified against any losses, damages, costs, liabilities and expenses (including without limitation legal expenses and any amounts paid by us to a third party in settlement of a claim or dispute on the advice of our legal advisers) incurred or suffered by us arising out of any breach by you of any provision of these terms of use, or arising out of any claim that you have breached any provision of these terms of use.

## **10. Breaches of these terms of use**

10.1 Without prejudice to our other rights under these terms of use, if you breach these terms of use in any way, or if we reasonably suspect that you have breached these terms of use in any way, we may:

(a) send you one or more formal warnings;

(b) temporarily suspend your access to the website;

- (c) permanently prohibit you from accessing the website;
- (d) block computers using your IP address from accessing the website;
- (e) contact your internet services provider and request that they block your access to the website;
- (f) bring court proceedings against you for breach of contract or otherwise;
- (g) suspend and/or delete your account with the website; and/or
- (h) delete and/or edit any or all of your user generated content.

10.2 Where we suspend or prohibit or block your access to our website or a part of our website, you must not take any action to circumvent such suspension or prohibition or blocking (including without limitation creating and/or using a different account).

10.3 In addition to our rights and remedies above, if a subscriber breaches these terms of use in any way, or if we reasonably suspect that a subscriber has breached these terms of use in any way, we may cancel the subscriber's subscription. Where we cancel your subscription for this reason, or take any other action against you under this Section, we will not refund to you the subscription charge or any element of the subscription charge you have paid.

10.4 We may also cancel subscriptions on 30 days written notice without cause. Where we cancel your subscription on this basis, we will refund to you all subscription charges paid by you to us in respect of any period of subscription after the date of effective termination of the subscription (which amount will be calculated by us using any reasonable methodology).

## **11. Third party websites**

Our website includes hyperlinks to other websites owned and operated by third parties. We have no control over the contents of third party websites, and we accept no responsibility for them or for any loss or damage that may arise from your use of them.

## **12. Trademarks**

12.1 Focus Multimedia Limited, Driving Test Success Online and our logo are trademarks belonging to us. We give no permission for the use of these trademarks, and such use may constitute an infringement of our rights.

12.2 The other registered and unregistered trademarks or service marks on our website are the property of their respective owners. Unless stated otherwise, we do not endorse and are not affiliated with any of the holders of any such rights and as such we cannot grant any licence to exercise such rights.

## **13. Competitions**

From time to time we may run competitions, free prize draws and/or other promotions on our website. These will be subject to separate terms and conditions (that we will make available to you as appropriate).

#### **14. Variation**

We may revise these terms of use from time-to-time. Revised terms of use will apply to the use of our website from the date of the publication of the revised terms of use on our website. Please check this page regularly to ensure you are familiar with the current version.

#### **15. Assignment**

15.1 We may transfer, sub-contract or otherwise deal with our rights and/or obligations under these terms of use without notifying you or obtaining your consent – providing that, where you are a subscriber and a consumer, we will not transfer our rights and/or obligations in any way which may serve to reduce the guarantees benefiting you under these terms of use.

15.2 You may not transfer, sub-contract or otherwise deal with your rights and/or obligations under these terms of use.

#### **16. Severability**

If a provision of these terms of use is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

#### **17. Exclusion of third party rights**

These terms of use are for the benefit of you and us, and are not intended to benefit any third party or be enforceable by any third party. The exercise of our and your rights in relation to these terms of use is not subject to the consent of any third party.

#### **18. Entire agreement**

These terms of use, together with our privacy policy, constitute the entire agreement between you and us in relation to your use of our website, and supersede all previous agreements in respect of your use of this website.

#### **19. Law and jurisdiction**

These terms of use will be governed by and construed in accordance with English law, and any disputes relating to these terms of use will be subject to the non-exclusive jurisdiction of the courts of England and Wales.

## **20. Registrations and authorisations**

20.1 We are registered with UKIE (The Association for UK Interactive Entertainment). You can find the online version of the register at <http://ukie.info/member-list>.

20.2 Our VAT number is GB 661 4081 52.

## **21. Our details**

21.1 The full name of our company is Focus Multimedia Limited. We are registered in England & Wales under registration number 2408658.

21.2 Our registered address is The Studios, Lea Hall Enterprise Park, Wheelhouse Road, Rugeley, Staffordshire, WS15 1LH, United Kingdom.

21.3 You can contact us by email at [support@drivingtestsuccess.com](mailto:support@drivingtestsuccess.com)