

THIS AGREEMENT is dated _____

PARTIES

1. **THE MOTOR CYCLE INDUSTRY ASSOCIATION LIMITED** incorporated and registered in England and Wales with company number 01113282 whose registered office is at 1 Rye Hill Office Park, Birmingham Road Allesley, Coventry, West Midlands, CV5 9AB (**We/Our/Us/Supplier**)
2. [**FULL COMPANY NAME**] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**You/Customer**)

BACKGROUND

We agree to subsidise the training course that we are providing to You on the terms set out below, and subject to our terms and conditions on page 2.

AGREED TERMS

The standard course fee is £1575.

You will pay us £500 deposit at the start of the course. 50% of this deposit will be refunded to you when the course is completed and MCIAC Accreditation is gained.

MCIAC Accreditation lasts for 1 year (Initial Term).

You agree to renew the MCIAC Accreditation for a further 3 years, when the Initial Term ends.

The renewal fee is £450 per year.

To maintain the MCIAC Accreditation, you must:

- comply with MCIAC's standards;
- rectify any breaches in the MCIAC standards promptly and in any event within a period of 14 days after being notified in writing to do so by Us; and
- provide, in a timely manner, data relating to customers for the purpose of Our quality assurance checks.

We will only ask you for the full course fee in the following events:

1. You do not complete the course. In this event, we keep the entire deposit and you pay the balance of £1075.
2. You complete the course but don't maintain the MCIAC standards or don't renew the MCIAC Accreditation for the full 3 years. In this event, you must repay the £250 refunded from the deposit on completion of the course, and pay the balance of the course fee, so a total of £1375.

Acceptance

By signing this document you confirm that you have read and accept these terms and conditions.

Name.....

Signed.....

Dated.....

TERMS AND CONDITIONS

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions

ATB: DVSA Approved Motorcycle Training Bodies.

Data Protection Legislation: the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Deliverables: all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

DVSA: Driver and Vehicle Standards Agency

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

MCIAC: Motorcycle Industry Association Accreditation Centre, a trading name of the Supplier through which the Services are provided.

Pre-existing Materials: all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications.

Services: training courses which help ABTs to improve their businesses and raise the standards of both rider training and customer service they offer.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.8 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to **writing** or **written** includes fax and email.

1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.12 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.13 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMMENCEMENT AND DURATION

2.1 The Supplier shall provide the Services to the Customer on the terms and conditions of this agreement.

2.2 The Supplier shall provide the Services to the Customer from date of course and shall continue to be supplied until completion.

3. ACCREDITATION

3.1 Following completion of the Services, the Customer will gain MCIAC Accreditation which lasts for 1 year (**Initial Term**).

3.2 To maintain the MCIAC Accreditation, the Customer must:

(a) comply with MCIAC's standards as set out in Schedule 1;

(b) rectify any breaches in the MCIAC standards promptly and in any event within a period of 14 days after being notified in writing to do so by the Supplier; and

(c) provide, in a timely manner, data relating to customers for the purpose of the Supplier's quality assurance checks.

3.3 In return for the Supplier subsidising the Services under clause 6.2, the Customer shall renew the MCIAC Accreditation for a further 3 years, following the expiry of the Initial Term.

4. SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in all material respects.

4.2 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

4.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

(a) comply with its obligations under clause 3;

(b) co-operate with the Supplier in all matters relating to the Services; and

(c) provide, in a timely manner, such information and materials as the Supplier may reasonably require, and ensure that it is accurate in all material respects.

5.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

5.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or

consequential losses, loss of profit and loss of reputation, loss as will entitle the Supplier to license such rights to the or damage to property and those arising from injury to or Customer.

death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

5.4 The Customer shall not at any time from the date of this agreement to the expiry of 6 months after the termination of this agreement, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

6. CHARGES AND PAYMENT

6.1 The total cost of the Services is £1,575.00.

6.2 The Supplier agrees to subsidise the Services, in return for the Customer complying with its obligations at clauses 3, and subject to the Customer paying the following charges:

(a) a £500 deposit, of which £250 will be refunded to the Customer on completion of the Services when MCIAC Accreditation is gained; and

(b) thereafter, an annual fee of £450 to maintain the MCIAC Accreditation, in accordance with clause 3.3.

6.3 The Supplier shall invoice the Customer for the charges that are payable under clause 6.2 and VAT, which the Supplier shall add to its invoices at the appropriate rate.

6.4 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by the Supplier.

6.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date:

(a) the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and

(b) the Supplier may suspend all Services until payment has been made in full.

6.6 The full cost of the Services shall become immediately due and payable to the Supplier by the Customer if:

(a) the Customer does not complete the Services and the MCIAC Accreditation is not gained; or

(b) the Customer completes the Services but does not comply with its obligations under clause 3 or opts to leave the quality assurance scheme before the 3 year period is complete.

6.7 All sums payable to the Supplier under this agreement shall become due immediately on its termination, despite any other provision. This clause 6.7 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.

6.8 All amounts due under this agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. INTELLECTUAL PROPERTY RIGHTS

7.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to clause 7.2, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If this agreement is terminated, this licence will automatically terminate.

7.2 The Customer acknowledges that, where the Supplier does not own any of the Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms

8. CONFIDENTIALITY

8.1 The Customer undertakes that it shall not at any time during this agreement, and for a period of two years after termination of this agreement, disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain, except as permitted by clause 8.2.

8.2 The Customer may disclose the Supplier's confidential information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 8; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

8.3 The Customer shall not use the Supplier's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

8.4 All materials, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials) shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

9. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1 Nothing in this agreement limits or excludes the Supplier's liability for:

(a) death or personal injury caused by its negligence;

(b) fraud or fraudulent misrepresentation; or

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

9.2 Subject to clause 9.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

(a) loss of profits;

(b) loss of sales or business;

(c) loss of agreements or contracts;

(d) loss of anticipated savings;

(e) loss of or damage to goodwill;

(f) loss of use or corruption of software, data or information;

(g) any indirect or consequential loss.

9.3 Subject to clause 9.1 and clause 9.2, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to:

(a) £1575.00 per claim; and

(b) in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, the equivalent of the total charges paid by the Customer in that period.

9.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

10. DATA PROTECTION

10.1 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.

10.2 The parties shall (and shall procure that all persons employed by the parties to perform its obligations under this agreement) comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data protection Legislation, which arise in connection with this agreement.

10.3 Notwithstanding the general obligation in clause 10.2, where the Supplier is processing personal data as a data processor, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the Data Protection Act 1998.

10.4 The provisions of this clause 10 shall apply during the continuance of this agreement and after its expiry or termination.

11. TERMINATION

Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986];
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (f) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11 (b) to clause 11 (h) (inclusive);
- (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

12. CONSEQUENCES OF TERMINATION

12.1 On termination or expiry of this agreement:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest

and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

(b) the Customer shall, return all of the Supplier's Equipment, Pre-existing Materials and Deliverables. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;

(c) the following clauses shall continue in force: clause 7 (Intellectual property rights), clause 8 (Confidentiality), clause 9 (Limitation of liability), clause 10 (Data Protection) clause 12.1, clause 22 (Notices), clause 23 (Dispute resolution), and clauses 24 and 25 (Governing law and jurisdiction).

12.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

13. FORCE MAJEURE

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

14. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

17. SEVERANCE

17.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

17.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. ENTIRE AGREEMENT

18.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

18.3 Nothing in this clause shall limit or exclude any liability (c) if sent by fax, at 9.00 am on the next Business Day after for fraud.

19. ASSIGNMENT AND OTHER DEALINGS

19.1 This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

19.2 The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement, provided that the Supplier gives prior written notice of such dealing to the Customer.

20. NO PARTNERSHIP OR AGENCY

20.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

21. THIRD PARTY RIGHTS

No one other than a party to this agreement shall have any right to enforce any of its terms.

22. NOTICES

22.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by fax to its main fax number.

22.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

23. DISPUTE RESOLUTION

23.1 If any dispute arises in connection with this agreement, a director (or other senior representative of the parties with authority to settle the dispute) of each party will, within 14 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

23.2 If the dispute is not wholly resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate mediation a party must give notice in writing (**ADR notice**) to the other party to the dispute requesting mediation. A copy of the request should be sent to CEDR. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR notice.

23.3 The commencement of mediation will not prevent the parties commencing or continuing court proceedings/arbitration.

24. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

25. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

