



AGREEMENT

IMPERIAL CIVIL ENFORCEMENT SOLUTIONS

AGREEMENT

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Contract Details

Name and Address of the Company	Imperial Civil Enforcement Solutions Limited (company number 2023383) of 7 Hill Street Bristol BS1 5PU
Name and Address of the Customer	
Agreement Identification	
Agreement date	[insert date (month in words)]
Go-live Date	at the Agreement date, the Go-live Date is estimated to be [insert date (month in words)]
Term of the Agreement	[x years/months] from the Go-live Date. .
Terms and conditions	Imperial Civil Enforcement Solutions Ltd standard terms which follow these contract details
The Solution	As set out in Schedule 1, the Company will provide [include a generic title here eg OpenParking or 3sixty or permitsmarti] <ul style="list-style-type: none"> • Software • Support • Hosting Service • SaaS • Business Processing Services • Car Park Management • Professional Services <div style="text-align: right; margin-top: -10px;"> } (delete as applicable) </div>
Charges	The amounts payable by the Customer under this Agreement are set out in Schedule 2.



AGREEMENT

This Agreement is made and effective as of the Agreement date shown above, irrespective of the date of signature.

Under this Agreement We agree to provide You with the Solution (as defined below) subject to the terms of this Agreement.

This Agreement consists of:

- the Contract Details
- the terms and conditions referred to above
- Schedule 1 Description of the Solution to be provided by the Company
- Schedule 2 Pricing
- Schedule 3 Support Service Level Agreement
- Schedule 4 Processing Personal Data
- any other documents expressly made a part of this Agreement.

The parties agree that no other terms and conditions apply to this Agreement. .

agreed for Company	agreed for Customer
.....
signature	signature
.....
name	name
.....
title	title

1 Standard Terms

1.1 In this Agreement:

“Approved Operator Scheme” means a code of practice for operators of parking services on private land or unregulated public car parks issued by a trade association accredited by the DVLA.

“Authorised Users” means your employees and/or independent contractors who are authorised by this Agreement to use the Solution;

“Business Processing Services” means a comprehensive range of processing services for parking authorities and car park operators;

“Car Park Management” means: (i) services for issuing parking charge notices (“PCNs”) and (ii) services to pursue payment of PCNs, unless this is excluded in Schedule 1, (iii) any other car park management services set out in Schedule 1. Car Park Management includes the Open Parking branded Services;

“Company”, “we” and “us” means the Company shown in the Contract Details;

“Customer” and “you” means the Customer shown in the Contract Details;

“DVLA” means the Driver and Vehicle Licensing Agency;

“Equipment” means hardware that we supply to you under this Agreement;

“Go-live Date” means the date when the Solution is available for the Customer to use in accordance with this Agreement. The Go-live Date may, for example, signify that implementation Services are complete or that Professional Services are complete and deliverables are with the Customer;

“Hosting Service” means the service where Software is installed on our computer systems;

“Intellectual Property” means patents, copyright and related rights, trade marks, domain names, designs, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered, registrable or not and including all applications (or rights to apply) for, and renewals or extensions of, 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;

“Professional Services” means design, development, integration, implementation, installation, testing, training or consultancy;

“SaaS” means Software is licensed on a subscription basis and is centrally hosted for multiple customers. In this Agreement the terms and conditions relating to Software, Hosting Service and Services apply to SaaS;

“Services” means the Hosting Service, SaaS, Support, Car Park Management, Business Processing Services or Professional Services that we provide you under this Agreement;

“Software” means the software that we license you under this Agreement but excluding all third party software;

“Solution” means the Software and/or Services and/or Equipment that we have agreed to provide under this Agreement, as set out in Schedule 1;

“Support” means the support services that we provide you under this Agreement;

“Virus”: any thing or device (including any software, code, file or programme) designed to:

- (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; or

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- (b) prevent, impair or otherwise adversely affect access to or operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or
- (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

“Working Day” means a day other than Saturday, Sunday or a public holiday in England, when banks in London are open for business.

- 1.2 These Standard Terms consist of the Special Terms in clauses 2 - 6 and the General Terms in clauses 7 – 21.

The General Terms apply to all Solutions.

Each of the Special Terms apply only to those Solutions identified at the start of each clause.

- 1.3 The documents forming this Agreement take priority in the following order in the event of any conflict or ambiguity:

- any documents expressly made part of this Agreement other than the Schedules, the Special Terms, the General Terms, the Contract Details
- the Schedules
- the Special Terms
- the General Terms
- the Contract Details.

SPECIAL TERMS

2 Software

This clause 2 applies whenever we make Software available to you, whether it is installed on your systems or on our own systems.

2.1 Grant of Licence

2.1.1 We grant you a non-exclusive, royalty-free, non-transferable licence to use the Software subject to the terms and conditions of this Agreement. The licence shall continue for the term shown above.

2.1.2 Your use of the Software is restricted to object code form for your normal business purposes and any act which is reasonably incidental to such use, including making a reasonable number of back-up or test copies of the Software where it is installed on your own computers/devices.

2.1.3 If you require any additional licences to the number specified in Schedule 1 and we agree to provide those licences, they shall be provided to you on the terms of this Agreement (save as to charges which shall be as agreed between you and us).

2.1.4 We warrant that the Software shall conform in all material respects with the description in Schedule 1. Your sole remedy for breaches of this warranty shall be that we shall within a reasonable period and at our own cost, fix all non-conformity of the Software with the system description which are notified to us within the sixty (60) days of the Go-live Date.

2.1.5 We do not warrant that your use of the Software will achieve any of your intended purposes or outcomes. It is your sole responsibility to satisfy yourself that the Software and the Solution described in Schedule 1 (including any agreed written specification of the Software) will achieve any such intended purpose or outcome. We do not warrant that the Software will operate error free or uninterrupted.

2.1.6 Software prices exclude implementation and integration, which we can quote you for separately and which will be subject to clause 3 below.

2.1.7 Any third party software (whether supplied by us or not) is licensed by the third party licensor to you and nothing in this Agreement shall impose any liability on us in respect of the performance or use by you of such third party software.

2.1.8 You shall not:

- (a) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in this Agreement or as may be allowed by any applicable law;
- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any applicable law.

3 Services

This clause 3 applies where we provide you with any Services under this Agreement.

3.1 We warrant that we will:

- (a) perform the Services with that degree of skill and diligence which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services and which are in accordance with any codes of practice published by relevant trade associations;
- (b) provide the Services in accordance with all applicable laws and regulations and obtain, maintain and comply with all necessary permissions and consents;

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- (c) provided the Services in accordance with the description in Schedule 1 and the terms of this Agreement;
- (d) allocate sufficient and appropriate resources to provide the Services in accordance with the terms of this Agreement;
- (e) use all reasonable endeavours to achieve the SLAs set out in Schedule 1 or 3;
- (f) correct any defects in any Professional Services' deliverables which you notify us of within thirty days' of us delivering the deliverable to you.

3.2 We will also:

- (a) provide reasonable co-operation and information in relation to the Services to your other suppliers as you may reasonably require for the purposes of enabling them to create and maintain any interfaces that you may reasonably require. Where we need to charge for such co-operation, we will obtain your approval in advance;
- (b) ensure that any of our personnel whilst they are on your premises or sites, comply with your reasonable rules and policies which have been made known to us reasonably in advance.

3.3 Professional Services and their deliverables are deemed to be accepted by you upon delivery. Where we have agreed specific acceptance tests with you in Schedule 1, you will be deemed to have accepted the Professional Services or deliverables, unless, within five Working Days after completion of the acceptance tests, you have issued us with a notice giving reasons for non-acceptance in sufficient detail for us to be able to promptly correct the deficiency. You will be deemed to have accepted the Professional Services or deliverables if you use them for any purpose other than testing.

3.4 Change Control: if at any time we or you wish to alter all or any part of the Services, the party making the request shall provide the other with a written change request with particulars of such changes and with such further information as the other may reasonably require.

We shall then submit a written quotation to you as soon as reasonably practicable specifying what changes (if any) will result to the Charges or timetable for delivery of the Services.

You may choose either:

- (a) to accept such quotation in which case this Agreement shall be amended to incorporate the quotation; or
- (b) to withdraw the proposed changes in which case this Agreement shall continue unchanged.

4 **Hosting**

This clause 4 applies where Software we have supplied you with is installed on our systems and it also applies where your access to Software is through the SaaS service that we provide to you.

4.1 We shall perform the Hosting Service or SaaS to allow your Authorised Users to access and use the Software, including hosting set-up and ongoing services, as described in Schedule 1.

4.2 In relation to Authorised Users:

- (a) your access to the Hosting Service or SaaS is limited to the Authorised Users;
- (b) you shall maintain a written list of current Authorised Users of the Software, and you shall provide such list to us as we may reasonably request from time to time;
- (c) you shall ensure that each Authorised User keeps a secure password for his use of the Software and keeps his password confidential;
- (d) by giving You reasonable prior notice we may audit Authorised User name and password security no more than once a year and shall reasonably endeavour not to

substantially interfere with your normal conduct of business; and if the audit reveals that passwords have been provided to individuals who are not Authorised Users, without prejudice to our other rights, we shall invoice and you shall pay for: (i) such access as if the individuals had been Authorised Users, (ii) our reasonable costs of carrying out the audit.

- 4.3 Except as otherwise expressly provided in this Agreement, you are solely responsible for: procuring, maintaining and securing your network connections and telecommunications links from your systems to our data centres; and for resolving all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.
- 4.4 You shall not store, distribute or transmit any Virus, or any material through the Hosting Service or in your use of SaaS that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities.

5 Support

This clause 5 applies where we provide you with a maintenance and support service for Software installed on your systems. This clause also applies where we provide you with Hosting Service or SaaS because Support forms an integral part of those Solutions. This clause also covers support for any Equipment that we supply you with.

- 5.1 Support starts from the Go-live Date and shall automatically cease upon the Software licence ceasing.
- 5.2 Support is specified in Schedules 1 and 3 and covers fault diagnosis and error correction. Error correction does not cover extending or changing the scope and functionality of Software.
- 5.3 Diagnosis and resolution of operational problems will when practicable be carried out remotely from your premises. Where problems have not been resolved remotely, we shall provide on-site services to carry out such work at your premises. Any client site-based support activity undertaken by our support consultants not directly related to reported support problems will be charged at our prevailing daily rate.
- 5.4 Support will be delivered in accordance with the response times specified in Schedule 3. Response and Fix Times are targets based on averages and are not guaranteed. We will use reasonable endeavours to promptly resolve any reported problems and will keep you informed of our actions in resolving problems.
- 5.5 Support only applies to those versions of the Software which we announce as being supported versions. Services we agree to provide for other versions of the Software will be charged at our prevailing daily rate.
- 5.6 Support of Equipment
- 5.6.1 We shall make reasonable endeavours to repair (where we are a licensed repair centre in respect of the particular piece of Equipment) or procure a repair (in all other cases), pursuant to any warranty that was offered by the manufacturer in respect of any fault arising in the normal course of use. We shall use reasonable endeavours to repair or procure the repair promptly after we have received the piece of Equipment from you at our nominated premises. You bear the cost of returning any faulty items to us and we shall bear the cost of returning them to you.

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- 5.6.2 We shall have no obligation to repair or procure a repair in respect of:
- (a) a fault caused by negligence or accident or deliberate damage or through operating the Equipment outside its specification;
 - (b) the failure of equipment not supplied by us;
 - (c) failure of batteries; or
 - (d) any failure of the Equipment which is outside the manufacturer's warranty terms.
- 5.6.3 Where the damage to the Equipment is not covered, we will advise you of the cost of repair or replacement. An order covering the repair or replacement and return carriage will be required before repairs/replacement are put in hand.
- 5.6.4 If we loan replacement equipment to you whilst the original Equipment is being repaired, you agree to take reasonable care of such equipment whilst it is in your possession and return it to us promptly at the end of the loan period. Loan equipment becomes your liability on receipt until its receipt back by us. We reserve the right to charge for repair or replacement of any loan equipment lost or damaged by you. Where loan equipment is not returned to us within seven days after delivery of the repaired item to you, you will pay a weekly rental charge at the rate of 1/20th of the full retail cost of the equipment for each week or part thereof the equipment is not returned to us. We shall bear the cost of dispatching the loan equipment to you and you shall bear the cost of returning it to us.
- 5.7 Support Exclusions: we are not obliged to provide Support if:
- (a) we receive notification of problems from your personnel who have not been properly trained in the Solution;
 - (b) the defects or errors result from modifications to the Solution not made by us or made without our prior written consent or by the incorrect use of the Software or for any reason external to the Solution(including, but not limited to, failure or fluctuations of electrical supplies, failures in your IT infrastructure or equipment, failures in your or third party operating systems or other applications, failures of any data communications that are required in respect of any part of the provision of the Solution for which you are responsible, failures of hardware or equipment not supplied by us under this Agreement, accidents or natural disasters);
 - (c) in our reasonable opinion, the Solution is being run on a system of yours which requires changes to facilitate the proper functioning and performance of the Software;
 - (d) the Solution is used for a purpose which was not specified in this Agreement;
 - (e) the problem arises from data originated, modified or deleted as a result of instruction from sources external to the Solution unless prior approval to such instructions has been given by us in writing;
 - (f) the problems arise from lost or corrupted data which has occurred otherwise than from our own negligence or errors in the Solution;
 - (g) the problems or errors result from your neglect, default or mis-operation;
 - (h) the problem or error results from the installation at your site of a new release or version of third party software working in conjunction with the Software that is unable to be supported by us without changes being made to our existing technical and or development infrastructure;
 - (i) a third party manufacturer or supplier of software development tools or applications used by or in conjunction with the Software withdraws support to that product and by so doing renders correction of a fault, problem or error to be outside our control.

- 5.8 Your Support responsibilities: you will -
- (a) not make any modification or addition to the Solution which have not been authorised by us;
 - (b) ensure that only trained staff use the Solution and use it correctly and in accordance with the operating instructions;
 - (c) protect and secure data and system software by regular back-up procedures with that degree of skill and diligence which would reasonably and ordinarily be expected from any skilled and experienced user of such data and system software who needs to protect the same from loss or damage;
 - (d) provide us with timely, clear and unambiguous details of a fault or problem and associated priority level, in accordance with our standard format for this purpose;
 - (e) exercise due care and diligence that the Solution continues to function in an appropriate and correct manner;
 - (f) maintain a fully supported version of necessary third party software that is equivalent to but not greater than the fully supported version in use by us;
 - (g) keep records of the Solution's usage and perform audit checks if requested by us in a mutually agreed format;
 - (h) if requested by us, promptly provide a method of remote access to the Software to enable us to carry out the Support;
 - (i) maintain a representative test database on which to perform user acceptance testing of modifications and updates prior to the loading such onto the system;
 - (j) provide for a suitably qualified software engineer to audit periodically third party software to ensure such software performs in accordance with agreed parameters as stated by us and consult us prior to making any significant modifications to agreed settings or controls; and
 - (k) advise us prior to installing a new release of any third party software product that works in conjunction with the Solution.

6 Car Park Management

This clause 6 applies if we provide Car Park Management to you.

- 6.1 Our obligations in relation to Car Park Management:
- (a) we will retain status as an "Approved Operator" under an Approved Operating Scheme;
 - (b) if your Car Park Management is for Open Parking, we will supply, erect and maintain suitable Open Parking signage at the car park(s) covered by this Agreement;
 - (c) we will supply systems and, if shown in Schedule 1, we will also supply equipment and/or personnel for issuing parking charge notices (PCNs) for drivers who do not comply with the terms and conditions displayed at the car park(s). Drivers will be deemed to have accepted the displayed terms and conditions by entering the car park and making use of the parking facilities;
 - (d) we will pursue payment of all PCNs through to a conclusion. Unless otherwise shown in Schedule 1 or 2, all PCN charges will be payable to us and will be apportioned between you and us as set out in those schedules;
 - (e) where we decide that DVLA searches, debt recovery or other legal action is required to secure outstanding parking charges, we may recover the attendant fees and a reasonable administration fee from the debtor. Where you instruct us to instigate DVLA searches, debt recovery or legal action, all attendant fees will be payable by you.

6.2 Your obligations

- (a) you warrant and represent that you are the legal owner or occupier of the car park(s), with all authority and permissions to enter into this Agreement;
- (b) you agree to us performing Car Park Management and will provide us with all reasonable assistance relating to your role as the owner of the car park(s), so that we can meet our obligations under this Agreement;
- (c) you will provide and maintain the car park(s), and any ancillary services in connection with this Agreement, with that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and provider engaged in the provision of similar facilities and services under similar circumstances and which are in accordance with any codes of practice published by relevant trade associations and so as to minimise the risk of loss or damage to property and death of or injury to persons;
- (d) you will supply and maintain the car park(s) and any ancillary services in connection with this Agreement, in accordance with all relevant regulations and legislation and health and safety regulations and conforming to the BPA's Park Mark scheme. You will ensure that all your personnel issuing PCNs at the car park(s) will be smartly dressed and display an identification badge while issuing notices to parked vehicles and will carry out all notice issuing in accordance with the code of practice of an Approved Operator Scheme;
- (e) if you install signage at the car park(s) (whether in addition to or instead of those installed by us) then all such signs must be placed in prominent positions and identify us as the creditor (as defined by the Approved Operator Scheme). You will ensure that all signs at the car park(s) (whether installed by you or by us) shall be kept visible and clear from any obstruction, such as plants and foliage. You will inform us in advance of any such additional signage or of any signage to be removed as this affects information we need to maintain as part of Car Park Management;
- (f) you remain responsible for payment and collection of all standard parking fees (unless and to the extent stated otherwise in Schedule 1 or 2).

6.3 Legal construction

- (a) we and you agree that no relationship of landlord and tenant as defined under the Landlord and Tenant Act 1954 is created in relation to the operation of this Agreement, nor do the provisions of this Agreement create in our favour any lease of or similar interest in the land on which the car parks are sited;
- (b) you will indemnify us from and will maintain adequate insurance for all loss of or damage to the car park(s) and for any loss of or damage to any party's property and for death of or injury to any persons arising at or from use of the car park(s);
- (c) you agree that we are the creditor, as defined by the Approved Operator Scheme and that we are entitled to recover all PCN fees from car park users through to a conclusion.

GENERAL TERMS

7 Your Obligations

7.1 You shall:

- (a) ensure that your personnel reasonably co-operate with us in relation to the provision of the Solution;
- (b) provide all necessary access to your personnel, facilities, premises, sites and computer systems for us to provide the Solution in accordance with this Agreement;
- (c) promptly give us such documentation, other information and decisions as we reasonably request for us to provide the Solution in accordance with this Agreement;
- (d) comply with all relevant laws and regulations and maintain all consents, licences and permissions necessary for you to meet your obligations under this Agreement;
- (e) use reasonable endeavours to prevent unauthorised access to, or use of, the Solution and notify us promptly of any such unauthorised access or use;
- (f) only use the Solution for your own business purposes which includes delivering your services to your own customers/the general public but you will not sell, resell, distribute/re-distribute, lease, sublicense, rent, hire, loan any part of the Solution to any other party nor assist third parties to obtain access to or benefit to the Solution, other than as expressly provided under this Agreement;
- (g) not assign or transfer (temporarily or permanently) any of your rights or obligations under this Agreement without our prior written consent;
- (h) not, during this Agreement or for the period of six months after it ends, seek to employ or engage to provide any similar services any of our personnel who have been involved with this Agreement or in delivering the Solution.

8 Prices and payment

- 8.1 Charges apply to 08.00 hours -18.00 hours on Working Days. If you would like us to provide our Solution to you at other times we will quote you for the additional charge.
- 8.2 Unless shown otherwise in Schedule 2, all Charges are subject to increases in line with the Consumer Price Index (CPI) with effect from each anniversary of the Go-live Date.
- 8.3 Unless shown otherwise in Schedule 2, Charges exclude any third-party costs, delivery charges, postage and packaging.
- 8.4 Prices for Professional Services exclude travel and subsistence expenses, which will be charged at our standard rates from time to time, which are available on request.
- 8.5 If we are prevented or otherwise delayed in providing the Solution as a result of your (or your contractors' or representatives') acts or omission you agree to pay us any costs and other reasonable expenses that we incur as a result of such act or omission.
- 8.6 If you wish to cancel or reschedule any Professional Services you must inform us in writing and the following charges will apply:
 - (a) if notification is received within 3 to 5 Working Days in advance of the scheduled date of the activity, 50% of the Charges and 100% of the expenses incurred will be payable;
 - (b) if notification is received within 2 Working Days or less in advance of the scheduled date of the activity, 100% of the Charges and expenses incurred will be payable.

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- 8.7 Software – for perpetual licences, invoices shall be raised following delivery. For term licences the first invoice shall be raised following delivery and we will raise subsequent invoices to cover annual periods from the delivery date.
- 8.8 Hosting Service, SaaS and Support – the first invoice is raised following the Go-live Date, subsequent invoices will be raised to cover annual periods from the Go-live Date.
- 8.9 Business Processing Services and Car Park Management are invoices monthly in arrears.
- 8.10 Professional Services delivered on a time and materials basis are invoiced monthly in arrears. Where the Professional Service is for less than £5,000 (five thousand pounds sterling), we will invoice following completion. Where the Professional Service is for a defined scope of work with a fixed price in excess of £5,000 (five thousand pounds sterling), we will invoice 35% when we start work following receipt of your purchase order, 55% upon completion and 10% following the Go-live Date.
- 8.11 All sums payable under the Agreement are exclusive of VAT, which shall be added at the rate prevailing at the relevant tax point.
- 8.12 All invoices are payable within thirty days of the date of the relevant invoice. In the event of late payment we reserve the right to charge interest on the outstanding balance at the statutory rate and, subject to giving you not less than seven days written notice, we may also suspend provision of the Solution or any part of it until we receive full payment.

9 Intellectual Property

- 9.1 All Intellectual Property relating to the Solution or our performance of this Agreement shall be owned exclusively by us or our suppliers or licensors. We grant you the right to use such Intellectual Property for the purposes of this Agreement and for its duration and subject to its terms.
- 9.2 We will defend or, at our option, settle any claim that the Intellectual Property relating to the Solution infringes any third party rights, provided that you give us prompt written notice of the claim, do not make any admission of liability, agreement or compromise in relation to the claim, provides all such assistance and documents as we may reasonably request and allow us full control of the claim. At our discretion we may (a) modify the Solution to make it non-infringing; or (b) make an arrangement with the third party for the continued use of the Intellectual Property in question, or (b) reimburse all fees paid by you in relation to the part of the Solution that cannot be used because of the infringement claim and terminate this Agreement in respect of that part of the Solution.
- 9.3 We are not be liable for any infringement or claim based upon:
- (a) any modification of the Solution by parties other than ourselves; or
 - (b) use of the Solution in combination with software or other technology not supplied or approved in advance by us; or
 - (c) use of the Solution contrary to this Agreement, instructions or documentation supplied by us; or
 - (d) use of a non-supported version of the Solution; or
 - (e) your possession or use of any third-party software or items or through your breach of any third-party terms.

This clause 9.3 constitutes your exclusive remedy and our only liability in respect of claims relating to third party Intellectual Property.

10 Termination

- 10.1 This Agreement shall continue for the term shown in the Contract Details and thereafter shall continue until terminated with effect from the next anniversary of the Go-live Date by one party giving the other not less than three months written notice.
- 10.2 In addition to the foregoing, either party may end this Agreement immediately by written notice to the other party if:
- (a) that other party commits any material breach of this Agreement which is incapable of remedy or in the case of a breach capable of remedy, fails to remedy it within thirty days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or
 - (b) the other party is involved in legal proceedings concerning its solvency, or ceases or threatens to cease trading, or enters into liquidation, whether compulsory or voluntary, (other than for the purposes of a solvent amalgamation or reconstruction), or makes any arrangement with its creditors or petitions for an administration order or has a receiver or administrative receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or any analogous event occurs in any jurisdiction.

11 Limitation of Liability

- 11.1 Subject to clauses 11.2 and 11.3, the liability of each party under this Agreement shall not exceed 125% of the Charges paid in the twelve months immediately preceding the event giving rise to the liability.
- 11.2 Neither party is liable to the other for any special, indirect or consequential loss of any nature (including, without limitation, any economic loss or other loss of business, revenue, profit, goodwill or anticipated savings), whether arising in contract, tort, negligence, breach of statutory duty or otherwise. This shall still be the case whether or not the possibility of such loss arising on a particular breach of contract or duty has been brought to the attention of such party at the time of making this Agreement;
- 11.3 Nothing in this Agreement shall restrict or exclude either party's liability for death or personal injury resulting from its negligence; or for wilful misconduct or fraud. No limitation or exclusion applies to your obligation to make payments properly arising under this Agreement or where you breach the terms of any licence granted under this Agreement.

12 Force Majeure

- 12.1 Neither party shall be liable for delay or failure to perform its obligations under this Agreement where such failure results from circumstances beyond the party's reasonable control.

13 Announcements

- 13.1 Neither party shall make any public statement about this Agreement or its subject matter without the prior approval of the other, such approval not to be unreasonably withheld.

14 Confidentiality

- 14.1 Each party shall keep secret and treat as confidential all information obtained from the other which is either stated to be confidential or could reasonably be regarded as confidential and shall not disclose such information to any person other than its employees where such disclosure is required for the performance of the party's obligations under this Agreement. This clause shall not extend to information which was already in the lawful possession of a party prior to this Agreement or

which is already public knowledge or becomes so subsequently (other than as a result of a breach of this clause) or which is trivial or obvious or where disclosure is required by any party with adequate statutory authority. The obligations of confidentiality under this clause shall survive any termination of this Agreement.

15 Disputes

- 15.1 If any dispute arises under this Agreement the parties will refer it to their chief executive officers, or their nominee, who shall have fifteen working days to resolve the matter before either party can resort to any other action.

16 Notices

- 16.1 Any notice under this Agreement may be delivered personally or by prepaid recorded delivery to the address set out above (or such other address in the United Kingdom as is otherwise notified from time to time). Any such notice or other written communication shall be deemed to have been served:
- (a) if delivered personally or by prepaid recorded delivery, at the time when receipt is signed for;
 - (b) if sent by email, at the time of sending unless the email system generates a non-delivered report.

17 No Partnership

- 17.1 Except to the minimum extent required to give effect to its express provisions, nothing in this Agreement creates, implies or evidences any partnership or joint venture between the parties, or the relationship between them of principal and agent and neither party has any authority to make any representation or commitment, or to incur any liability, on behalf of the other.

18 Third Party Rights

- 18.1 A party who is not expressly party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

19 Warranties

- 19.1 All warranties expressly given under this Agreement replace all other warranties, conditions and other terms implied by statute or common law which are excluded from the Agreement to the fullest extent permitted by law.
- 19.2 Where we rely on data that we source from the DVLA, we accept no responsibility for any part of the DVLA data in any manner whatsoever. If we become reasonably aware of any material problems with the DVLA data, we will tell you of our concerns.

20 Entire Agreement

- 20.1 This Agreement constitutes the entire agreement between the parties and supersedes and replaces any previous agreement, understanding, undertaking, representation, warranty and arrangement of any nature whatsoever between the parties relating to the subject matter of this Agreement.
- 20.2 Any amendment to the terms and conditions of this Agreement must be made in writing and reference this clause 20.2.

21 Law and Jurisdiction

- 21.1 This Agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.



AGREEMENT

Schedule 1:

Description of the Solution



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Schedule 2:

Pricing

Schedule 3:

ICES Support Service Level Agreement

This Support Service Level Agreement (SLA) covers the provision of support for the Support service provided by the Company to the Customer under the Agreement.

Definitions

The definitions below apply to this SLA in addition to the definitions assigned to words in this Agreement, which unless modified by the definitions below shall apply equally to this SLA.

“Bug”	means a fault in the software that gives rise to an Incident, but at the time of the Incident may not be known.
“Call”	means a telephone call, e-mail sent to the Company’s Service Desk or web logging that is for the purpose of reporting an Incident.
“Enhancement”	A proposal for a change to be made, it includes high level details of the proposed change, and will be recorded on our Change Request log for discussion at the relevant Steering Group. From there it will be accepted onto our development list, put on hold or de-scoped.
“Incident”	means an event which is not part of the standard operation of the Software and which causes, or may cause, an interruption to, or reduction in, the quality of the service provided by the Software.
“Known Error”	means an Incident or Problem for which the root cause is known and for which a temporary Workaround or permanent alternative has been identified.
“Problem”	means an unknown underlying cause of one or more Incidents.
“Request”	A request from a user for something to be provided – for example, a request for information or advice; to reset a password; or to change the configuration of the system.
“Resolution”	means action that will resolve and Incident. This may be a Workaround.
“Service”	means the Support service described in Schedule 1 of the Agreement.
“Service Desk”	means the single point of contact within the Company for the users of the Service.
“Support Hours”	means the hours as set out in section 1 of this SLA that are during the Working Day and during which time the Company will provide Support through the Service Desk.
“Workaround”	means a method of overcoming an Incident or avoiding a Problem, either by a temporary fix or by a technique that means the Customer is not reliant on a particular aspect of the Software that is known to have a problem.
“SLA”	means the Service Level Agreement between the Customer and the Company as set out in this Schedule.

1. Customer Support

The Company's support procedures are designed to ensure you receive a consistent and effective support and maintenance service.

If you need support you must follow the procedure outlined below:

We have two contact methods, by email and telephone.

You can email Application Support at the following email address Support@ICES.Imperial.co.uk. On receipt of your email you will receive an automatic confirmation of acknowledgement. When emailing support you must include all relevant information including screenshots to ensure we are able to progress the Call as quickly as possible.

For each support call received via email we will establish the priority based on the severity and impact from the information provided. Our guidelines for setting the priority and the associated SLA's are attached.

You can telephone Application Support on **0844 848 7010**. This service is available during our normal working hours (8:00am to 6:00pm on Working Days).

We will ask you a series of questions in order for us to investigate your Call as quickly as possible. You should try, where able, to gather as much information as possible before making the call to us.

Once details have been gathered we will log your Call on our system and progress relevant investigations. You will be given a Call reference number, which you should quote in any future discussion or correspondence.

When logging the Call we will establish with you the priority based on severity and impact. Our guidelines for setting the priority and our associated SLAs are described in the attachment.

Following this, your Call will be passed to an appropriate engineer to progress. We may, where necessary, contact you for further information to assist in resolving the Call.

Our call logging system will automatically control the progression of your call in relation to its SLA, as determined by the priority, for resolution and initial response times.

If at any time the priority of your call changes or you are dissatisfied with the progress of your call you may raise the Call's priority by contacting our Application Support.

You may escalate it further by sending an e-mail to your Business Development Manager.

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1.1. The Service will be supported and maintained by the Company as follows:

Support Hours :	08:00 to 18:00 hours during Working Days
Infrastructure Availability	99.5%
Web/ATP transactions	24/7

- 1.2. Support Hours extensions after the normal hours for that day may be possible provided the request is received by the Company's Service Desk before 12 noon on the day the extension is required. Any such extension will be charged at the Company's then current hourly and out-of-hours rate.
- 1.3. Additional days of Support (for example weekends or public holidays) may be possible provided the request is received by the Company's Service Desk at least 5 Working Days before the additional days are required and subsequently confirmed in writing before the additional days. Any such additional days will be charged at the Company's then current daily, weekend and public holiday rates as appropriate.
- 1.4. The Company shall provide a service desk during the Support Hours for the Customer to log Incidents. This includes Incidents being reported by the Customer by making a Call, as well as Incidents reported by ICES' server monitoring tools or identified by the Company's staff in the provision of the Service.

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GUIDELINES FOR SETTING PRIORITY LEVELS

The priority for each Call will be based on severity and impact according to the following guidelines. A support engineer will contact you within the response time detailed, to advise you of the resolution suggest a temporary solution or discuss the need for further investigation. A fix time will not be guaranteed as this depends entirely on the nature of the problem. However, our target resolution detail is below.

Priority Code	Guidelines	Response Time	Target Resolution
CRITICAL INCIDENT (L1)	A complete system failure or a failure that is causing loss of all revenue or failure to enforce across the customers area.	Within working 1 hour	Within 4 working hours
SERIOUS INCIDENT (L2)	A significant part or a significant feature is unavailable for use if the problem is unresolved. Work is being, or will become, seriously delayed by the problem or will cause financial loss.	Within 4 working hours	Within 12 working hours
MODERATE INCIDENT (L3)	The error is affecting individual users and/or is not causing a significant issue. The system is usable.	Within 8 working hours	Within 30 working hours
MINOR INCIDENT (L4)	A minor error requiring no immediate action or workaround	Within 8 working hours	Within 70 working hours
PRIORITY REQUEST (R1)	Any request for information, guidance in the use of the system or modifications to be made to the system configuration that if not implemented within the given target resolution period will have an impact on enforcement or revenue.	Within 4 working hours	Within 30 working hours
TIMELY REQUEST (R2)	Any request for information, guidance in the use of the system or modifications to be made to the system configuration that if not implemented within the given target resolution period will have an impact on enforcement or revenue.	Within 8 working hours	Within 70 working hours
MINOR REQUEST (R3)	Any request for information, guidance in the use of the system or modifications to be made to the system configuration that if not implemented within the given target resolution period will have an impact on enforcement or revenue or any request where there is no impact on revenue or enforcement.	Within 8 working hours	Within 199 working hours
ENHANCEMENT	Any request for service relating to, or modifications to be made to software in use by the customer.	Within 8 working Hours	Considered for a future release

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- 1.5. The Response Time to an Incident shall mean the period between the time when the Call is received by the Company and the time when someone from the Company starts to assist the Customer, either during the initial Call from the Customer or by a phone call to the Customer from the Company's Service Desk.
- 1.6. Resolution shall mean:
 - 1.6.1. the provision of a full, permanent solution; or
 - 1.6.2. when a Workaround is provided and implemented to the reasonable satisfaction of the Customer; or
 - 1.6.3. the cause of the Incident is found to be a Problem.
- 1.7. The implementation and impact of Workarounds and Problems will be reviewed by the parties in Service Review Meetings.
- 1.8. When, in the Company's reasonable opinion, the resolution of an Incident is not possible due to the ability to resolve such Incident being outside the Company's control, it shall notify the Customer in writing accordingly and, subject to the agreement of the parties (such agreement not to be unreasonably withheld), the Incident shall be re-categorised as a MINOR INCIDENT (L4). The Company shall, however, use reasonable endeavours to further investigate the cause(s) of the Incident and promptly report any progress to the Customer.
- 1.9. In situations when the Company commences work within the Support Hours on a CRITICAL INCIDENT (L1), work shall continue beyond the end of the Support Hours until:
 - 1.9.1. the Incident has been resolved; or
 - 1.9.2. the end of the Support Hours for that day; or
 - 1.9.3. there is no realistic prospect of being able to resolve the Incident by working through;whichever is the sooner.
- 1.10. The Company's Service Desk shall be staffed during Support Hours.

2. Changes to the Service or Service Levels

- 2.1. Either party may request or suggest changes to this SLA. All such changes will be handled using the Company's Change Control Procedures, and until the changes have been agreed between the parties and committed to writing the SLA will continue as it was as if no such change had been requested or suggested.

3. Revisions to the Software

- 3.1. If the cause of the Incident is a Bug in the software and/or the resolution of the Incident is by means of a Workaround then the Customer and the Company will subsequently agree an appropriate date for a permanent resolution of the Problem. If the permanent resolution of the Incident requires a change to the software then the parties will agree if this should be implemented as an emergency change or included in the next maintenance release of the software.
- 3.2. In situations where the software has to be changed in order to resolve a MINOR INCIDENT (L4) that changes will be issued as part of the next maintenance release.
- 3.3. All such revisions to the software will be handled under the Company's Change Control Procedures.

4. Maintenance Releases

- 4.1. A maintenance release is a new release of the software issued to resolve outstanding low priority Incidents. CRITICAL INCIDENT (L1) and SERIOUS INCIDENT (L2) requiring a change to the software will be resolved through an emergency release as detailed above.

Maintenance releases of the software will normally be issued on a six monthly basis. Maintenance releases and installation instructions are included within the support fee. We will quote you for any assistance you require to install any maintenance release.

5. Service, Reporting and Review

- 5.1. The Customer will provide a nominated person who will be the primary contact for all Service management dialogue with the Company.

Unless otherwise agreed the Service Review Meetings shall be held every 6 months.

- 5.2. The Company support shall submit a monthly Service Report with details of Service provision and performance against Service Levels in respect of the period under review.

- 5.3. Attendees at Service Review Meetings shall be the Customer nominated contact and any further representatives of either party which that party proposes to the other no later than one Working Day prior to the Service Review Meeting.

- 5.4. Service Review Meeting agendas shall, as a minimum, include:

- 5.4.1. a review of Service provision,
- 5.4.2. a review of issues (including Workarounds and Problems),
- 5.4.3. proposed Change Control Notes, and
- 5.4.4. on-going development of the Service.

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6. Performance/Resolutions

- 6.1. During any incident the Customer may continue to use all operable elements of the Service except when such operation is agreed by the parties as interfering with remedial activities.
- 6.2. If the Company fails to meet a service level, service credits will be calculated as follows:

Service	Service Level	Service Credits
Company Service Desk	Each CRITICAL INCIDENT (L1) that is not resolved/worked-around within the Target Resolution Time. Each Service Hour thereafter	500
	Each SERIOUS INCIDENT (L2) that is not resolved/worked-around within the Target Resolution Time. Each Service Hour thereafter	200
	Each MODERATE INCIDENT (L3) that is not resolved/worked-around within the Target Resolution Time. Each Service Hour thereafter	100
Company Service Desk Availability	Each occasion the Company's Service Desk is not available during the Support Hours.	100

Service Credits do not apply where the failure to achieve those Service Levels is a result of any default of the Customer.

All Service Credits shall be calculated on a monthly basis, and the Company shall advise the Customer of its calculations monthly. Service Credits are the Customer's sole financial remedy for any failure by the Company to provide Support in accordance with the Agreement.

6.3. Value of Service Credits

- 6.3.1. The total number of Service Credits will be calculated for every month and the credits due to the Customer will be calculated as follows:

500 Service Credits = 0.5 day's services that can used for training and similar support related ad hoc services provided by the Company;
- 6.3.2. Where a failure to meet more than one of the Service Levels is wholly attributable to a single Incident, Service Credits shall only accrue in respect of the Service Level yielding the highest Service Credit;
- 6.3.3. The Service Credits accrued in any one month shall be capped at 2000 and must be used within 3 months;
- 6.3.4. If, in any one single month, the number of Service Credits is 100 or less they will be waived by the Customer;
- 6.3.5. Within 2 Weeks of the end of each month the parties will agree the Service Credits accrued, such agreement not to be unreasonably withheld or delayed, and the said Service Credits accrued will be given as a discount against the next service days ordered by the Customer.

Schedule 4: Processing Personal Data

In this Schedule

“Data Protection Legislation” means (while they are in force) the Data Protection Acts 1998 and 2018, the EU General Data Protection Regulation and the Law Enforcement Directive (Directive 9EU) 2016/680) and any successor or replacement or additional Act(s) or Regulation(s) relating to the processing of personal data or privacy with which we are required to comply; and

“Personal Data”, “Process”, “Processing”, “Data Controller”, “Data Processor” and **“Appropriate Technical and Organisational measures”** shall have the meanings given to them in the Data Protection Legislation;

- 1 Both parties shall at all times during the term of this Agreement comply with all applicable requirements of the Data Protection Legislation in relation to the Processing of Personal Data.
- 2 We may be processing Personal Data under this Agreement as a Data Controller in respect of certain processing, and for you as a Data Processor in respect of other Processing. Where we are acting as a Data Processor on your behalf in respect of the Processing of Personal Data, the following provisions apply.
- 3 You shall be solely responsible for determining the purposes for which and the manner in which such Personal Data is Processed. However, you accept that under the Data Protection Legislation we may be obliged to make Personal Data available in specified circumstances to parties with the required statutory authority.
- 4 You will ensure that you have all necessary appropriate consents and notices in place to enable the lawful transfer of the Personal Data to us and the Processing of the Personal Data by us (or any of our authorized sub-processors) for the purposes of this Agreement.
- 5 Where required to do so by Data Processing Legislation, we will maintain a written log of all Processing of Personal Data performed by us on your behalf and provide you with a copy of such log on request. The written log shall include the following information:
 - (a) the categories of Processing carried out on your behalf;
 - (b) a list of any transfers of Personal Data to a third party outside the EEA (including the name of the relevant non-EEA country and organisation), and documentation of the suitable safeguards in place for such transfers. All such transfers are subject always to your approval in accordance with this Agreement; and
 - (c) a general description of the technical and organisational security measures referred to in this Agreement.
- 6 Where we Process Personal Data on your behalf, we shall, in respect of such Personal Data:
 - (a) not access or use Personal Data except as is reasonably necessary for the performance of this Agreement;
 - (b) act strictly in accordance with this Agreement and on your written instructions received from time to time;
 - (c) comply promptly with any request from you to amend, delete or transfer Personal Data;

- (d) not disclose Personal Data to any employee, director, agent, contractor or affiliate of ours (“Company Personnel”), or any third party, except as is necessary for the performance of this Agreement, or to comply with applicable laws, or with your prior written consent;
 - (e) implement and maintain Appropriate Technical and Organisational Measures:
 - to protect the security and confidentiality of Personal Data Processed by us in performing this Agreement;
 - to protect Personal Data at all times against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure, access, or Processing; or
 - as required under the Data Protection Legislation.
 - (f) notify you of any request made by a Data Subject under Data Protection Legislation in relation to or in connection with Personal Data Processed by us on your behalf and at all times cooperate with and assist you to execute your obligations under the Data Protection Legislation in relation to such Data Subject requests;
 - (g) Process the Personal Data in accordance with the specified duration, purpose, type and categories of Data Subjects as set out below (or as otherwise notified by you to us).
- 7 We shall within 24 hours, or earlier if reasonably practicable, of becoming aware, notify you and the DVLA in writing of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data. The notice provided will specify:
- (a) the categories and number of the individuals and the records concerned;
 - (b) the likely consequences of the breach;
 - (c) any steps taken to mitigate and address the breach; and
 - (d) specify an appropriate point of contact within our organisation who you can contact about the breach.
- 8 We will promptly give you the detail you request to allow you to understand the impact of the breach. We will promptly comply with any instructions provided by you, and cooperate with you, in relation to the data breach.
- 9 We must give you notice before engaging a subcontractor to Process Personal Data on your behalf (if any). We shall ensure that we have entered into a written contract with the third party which contains terms for the protection of Personal Data which are no less protective than the terms set out in this Agreement. If you object to the engaging of such subcontractor, we shall take reasonable steps to resolve your reasonable concerns.
- 10 We shall not, and shall procure that our subcontractors shall not, transfer or Process any Personal Data outside the EEA and/or the UK without your prior written consent and unless the following conditions are fulfilled:
- (a) appropriate safeguards are in place relating to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) we comply with your obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

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- (d) we comply with reasonable instructions notified to us in advance by you with respect to the Processing of the Personal Data.
- 11 We shall provide you with such reasonable assistance as you shall require in relation to any complaints made by Data Subjects or investigations or enquiries made by any regulator or supervisory authority relating to you or your obligations under the Data Protection Legislation.
- 12 In relation to Personal Data Processed by us under this Agreement, we shall reasonably co-operate with you to the extent necessary to enable you to adequately discharge your responsibility as a Data Controller under Data Protection Legislation (including in respect of the preparation of data protection impact assessments).
- 13 You shall have the right to audit us and relevant records and materials as necessary to demonstrate our compliance with our obligations under this Agreement and Data Protection Legislation. At any time, we will co-operate fully to allow and assist such audits, including on-site inspections of our business premises or processing facilities, conducted by you or your auditor.
- 14 We will tell you immediately if we are asked to do something which might infringe the Data Protection Legislation or other data protection law of the UK, EEA or a Member State.
- 15 We shall ensure that any Company Personnel with access to Personal Data are both bound by confidentiality obligations in respect of access, use or Processing of such Personal Data, and have received appropriate training.
- 16 At your request, we shall provide a copy of all Personal Data held by us in the format selected by us. If an alternative format is required, you shall pay our usual charges in the preparation of that copy.
- 17 The provisions of this Schedule 4 shall survive termination of the Agreement.
- 18 The parties will agree to any reasonable amendment to this Agreement required to bring it into line with any amendment to or re-enactment of any Data Protection Legislation, or to allow each of the Parties to comply with any requirement or recommendation of the Information Commissioner or any other data protection or supervisory authority in relation to the Processing of Personal Data.

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DELETE AS NEEDED

		BPU processing	PaySmarti	PermitSmarti	DVLA enquiries only	SaaS and Hosting Service
1	Subject matter of the processing	Processing of Parking/Penalty Charge Notice enforcement.	Cashless payments for car parking charges.	Names, addresses, VRM's, email addresses, phone numbers	Names, addresses & VRM's	Hosting of Parking Management system, no access to data held within.
2	Duration	For the duration of the Agreement	For the duration of the Agreement	For the duration of the Agreement	For the duration of the Agreement	For the duration of the Agreement
3	Nature and Purpose of the processing	The purpose of our processing is to fulfil our contractual obligations. This includes the Processing of Parking/Penalty Charge Notice, retrieval of registered vehicle holder details from the DVLA from VRM details collected for PCN's.	The purpose of our processing is to fulfil our contractual obligations. This includes the Processing of credit and debit card payments for car park charges. Collection of vehicle registration mark details to link with payments. Storage of VRM and personal details of registered users.	The purpose of our Processing is to fulfil our contractual obligations. To issue permits for parking in a permit only zone.	The purpose of our Processing is to fulfil our contractual obligations. Retrieval of registered vehicle holder details from the DVLA from VRM details collected for PCN's.	The purpose of our Processing is to fulfil our contractual obligations. Storage of Parking management systems.
4	Types of Personal Data Processed	Names, addresses, VRM's, email addresses, phone numbers and data relevant to appeals	Names, addresses, VRM's, email addresses, phone numbers, credit/debit card number.	Names, addresses, VRM's, email addresses, phone numbers	Names, addresses & VRM's	We do not have access to the Personal Data held with the system, so are unable to confirm this.
5	Categories of Data Subjects in relation to Personal Data Processed	Motorists who have committed a contravention of relevant parking rules.	Customers of a car park.	Motorists who wish to park in a permit zone	Motorists who have committed a contravention of relevant parking rules.	We do not have access to the Personal Data held with the system, so are unable to confirm this.
6	Plan for return and destruction of the data once the Processing is complete unless requirement under union or member state law to preserve that type of data.	Individual cases where a VQ4 enquiry has been sent to the DVLA will be retained for 2 years after the contravention date. All other data will be deleted at the end of the Agreement..	Personal Data will be retained for as long as the cashless parking account is in place or 60 days after the account becomes inactive. Payment files will be retained for 6 years.	At the Customers' discretion.	We retain the responses for 6 months after the DVLA enquiry is made.	For the duration of the Agreement