

**Shercar online services request**

Please fill out the spaces with the requested information.  
Once you have completed the form please sign and post to:

Shergroup House  
Braintree Freeport  
No 3 Freeport Office Village,  
Century Drive,  
Braintree  
Essex  
CM77 8YG

Date: \_\_\_\_\_

**Shercar Limited and**

Your Local Authority: \_\_\_\_\_

HCEO Name: \_\_\_\_\_

THIS REQUEST is dated: \_\_\_\_\_

## Parties

SHERCAR LIMITED incorporated and registered in England and Wales with company number 05851189 whose registered office is at Brenchley House, 75-77 High Street, Sittingbourne, Kent, ME10 4AW ("Shercar")

Your Local Authority: \_\_\_\_\_

HCEO Name: \_\_\_\_\_

## Background

Shercar has developed and provides a service consisting of internet access to the Website (as defined below) and application software at its remote computer location for the purpose of enabling Authorised Users to search the DVLA Database for the purposes of enforcement of Court Orders.

The Local Authority/AHCEO wishes to use Shercar's service in its operations for the purpose of allowing bailiffs of the Local Authority/AHCEO acting by the powers of or the order of the Court to trace registered owners of vehicles and seize such vehicles as appropriate ("Permitted Purpose").

The Local Authority/AHCEO has agreed to take and pay for Shercar's service subject to the terms and conditions of this request for services.

## Agreed Terms

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

<b>Agreement</b>	means the acceptance by Shercar of this request for services by the Local Authority/AHCEO which shall become the agreement between the parties upon the setting up and transmission by Shercar of the login and password for the Local Authority's/AHCEO's user account;
<b>Authorised Users</b>	means those employees of the Local Authority/AHCEO who are entitled to use the Website and Software under this agreement, as further described in clause REF "a582390" \h \w \* MERGE-FORMAT 2.2.2;

## Business

means any day which is not a Saturday, Sunday or public holiday in England or Wales;	
<b>Confidential Information</b>	means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 8;
<b>DVLA Database</b>	means the electronic database created, maintained and owned by the Driver and Vehicle Licensing Agency containing names and addresses of the registered keepers of vehicles;
<b>DVLA Searches</b>	means online electronic searches of the DVLA Database carried out using the Software via the Website for the Permitted Purpose;
<b>Effective Date</b>	means the date Shercar agrees to this request for the services by setting up and transmitting the login and password for the Local Authority's/AHCEO user accounts;
<b>Fees</b>	means the fees payable to Shercar from time to time, for each DVLA Search submitted as set out in clause 6;
<b>Local Authority/AHCEO Data</b>	means the data input into the information fields of the Software via the Website by the Local Authority/AHCEO, by Authorised Users and the results of the DVLA Searches;
<b>Local Authority's/AHCEO Project Manager</b>	means the member of the Local Authority/AHCEO Usergroup appointed in accordance with clause REF "a443131" \h \w 5.1.3. The Local Authority's/AHCEO's Project Manager at the Effective Date is named in Schedule 1 Project Managers Name:

<b>Local Authority/AHCEO Usergroup</b>	<p>means the appropriately skilled, qualified, experienced and competent individuals appointed by the Local Authority/AHCEO from time to time who shall serve as Sherocar’s primary contacts for Sherocar’s activities under this agreement. The initial members of the Local Authority/AHCEO Usergroup are listed in Schedule 1</p>
<b>Normal Business Hours</b>	<p>means 08.00 am to 08.00 pm local UK time, Monday to Friday, excluding public holidays;</p>
<b>RPI</b>	<p>means the general index of retail prices (including all items except food) published in the Digest of Statistics by the Office for National Statistics or, if this index ceases to be published, any other retail price index published in substitution;</p>
<b>Services</b>	<p>means the DVLA Searches, carried out via the Website using Software by Sherocar for the Local Authority/AHCEO;</p>
<b>Sherocar Support Team</b>	<p>means the individuals appointed by Sherocar from time to time who shall serve as the Local Authority’s/AHCEO’s primary contacts for the Local Authority’s/AHCEO’s activities under this agreement.</p>
<b>Software</b>	<p>means Sherocar’s proprietary software in machine-readable object code form only used by the Local Authority/AHCEO to query the DVLA Database; and the underlying Sherocar database in which the queries and results of the DVLA Searches are stored;</p>
<b>Support</b>	<p>means reasonable telephone and email support and assistance provided by Sherocar to the Local Authority/AHCEO to enable the Local Authority/AHCEO to use the Software, Website and Services;</p>

<b>Terms of Use</b>	means the terms of use of the Website posted on the Website from time to time, setting out the Permitted Purpose for which and the terms of use of the Software and Website;
<b>Website</b>	means the website at Shercar uniform resource locator: <a href="http://www.shercar.net/">http://www.shercar.net/</a> .

Clause, schedule and paragraph headings shall not affect the interpretation of this request for services or the Agreement.

A **person** includes a corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

Words in the singular shall include the plural and vice versa.

A reference to one gender shall include a reference to the other genders.

A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it. A reference to writing or written includes faxes but not e-mail.

References to clauses and schedules are to the clauses and schedules of this request for services and Agreement; references to paragraphs are to paragraph of the relevant schedule.

## **DVLA Searches and Support**

Shercar shall perform the Services and provide the Support services.

In relation to Authorised Users:

the Local Authority's/AHCEO's access to the Services shall be limited to individual

Authorised Users, being employees of the Local Authority/AHCEO;  
the Local Authority/AHCEO shall maintain a written list of current Authorised Users of the Software and Website, and the Local Authority shall provide such list to Shercar as may be reasonably requested by Shercar from time to time;  
the Local Authority/AHCEO shall ensure that each Authorised User keeps all passwords issued by Shercar for his use of the Software and Website secure and confidential;

if Shercar discovers that passwords have been provided to individuals who are not Authorised Users, and without prejudice to Shercar's other rights, Shercar shall promptly disable such passwords and shall not issue any new passwords to such individuals.

**In relation to Software/Website:**

Shercar hereby grants to the Local Authority/AHCEO subject to the terms and conditions of this agreement a non-exclusive, non-transferable personal licence to allow Authorised Users to access the Software via the Website to make use of the Services and to use the Services solely for the Permitted Purpose;

the Local Authority/AHCEO shall not use the Services to store, distribute or transmit any material that is unlawful, harmful, threatening, defamatory, obscene, 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;

the rights provided under this clause REF "a226782" \h \w 2.3 are granted to the Local Authority/AHCEO only, and shall not be considered granted to any third party associate or affiliate of the Local Authority/AHCEO; and

**the Local Authority shall not:**

attempt to duplicate, modify or distribute any portion of the Website or the Software; or

attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any of the Website or the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or

use the Software, Website or Services to provide services to third parties; or

transfer, temporarily or permanently, any of its rights under this agreement, or

attempt to obtain, or assist others in obtaining, access to the Software, Website or Services, other than as provided under this clause REF "a595261" \h \w 2.3.4; or

attempt to circumvent, or assist others in circumventing, access to the Software, Website or Services.

## Local Authority Data

Shercar shall follow its archiving procedures for Local Authority Data as described below in clause 3.2. In the event of any loss or damage to Local Authority/AHCEO Data, the Local Authority's/AHCEO sole and exclusive remedy shall be for Sherca to use reasonable commercial efforts to restore the lost or damaged Local Authority/AHCEO Data from the latest back-up of such Local Authority/AHCEO Data maintained by Sherca in accordance with the archiving procedure described below. Sherca shall not be responsible for any loss, destruction, alteration or disclosure of Local Authority/AHCEO Data caused by any third party.

Sherca shall use all reasonable endeavours to develop the back-up schedule, perform scheduled back-ups, provide routine and emergency data recovery, and manage the archiving process. The back-up schedule shall include at least weekly full back-ups and daily incremental back-ups. In the event of data loss, Sherca shall use all reasonable endeavours to provide recovery services to try to restore the most recent back-up.

## Sherca's Obligations

Sherca undertakes that the Services will be performed with all reasonable skill and care.

Sherca undertakes that the Software will perform substantially to enable the DVLA Searches to be carried out. This undertaking shall not apply to the extent of any non-conformance which is caused by use of the Software contrary to Sherca's instructions or modification or alteration of the Software by any party other than Sherca or Sherca's agents. If the Software does not conform to the foregoing warranty, Sherca will, at its expense, use all reasonable commercial efforts to correct any such non-conformance promptly, or provide the Local Authority/AHCEO with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Local Authority's sole and exclusive remedy for any breach of the undertaking set out in this clause REF "a503174" \h \w 4.2. Notwithstanding the foregoing, Sherca does not warrant that the Local Authority's use of the Website, Software and the Services will be uninterrupted or error-free.

This Agreement shall not prevent Sherca from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this

This Agreement shall not prevent Sherca from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this agreement.

## Local Authority `s Obligations

### **The Local Authority shall:**

#### **provide Shercar with:**

all necessary co-operation in relation to this agreement; and

all necessary access to such information as may be required by Shercar;

in order to render the Services, including but not limited to Local Authority/AHCEO Data, security access information and software interfaces to the Local Authority's/AHCEO's other business applications;

provide such personnel assistance, including the Local Authority/AHCEO Usergroup and other Local Authority personnel, as may be reasonably requested by Shercar from time to time;

appoint the LAB's Project Manager, who shall have the authority to contractually bind the Local Authority/AHCEO on all matters relating to this agreement. The Local Authority/AHCEO shall use reasonable endeavours to ensure continuity of the Local Authority `s/AHCEO's Project Manager;

comply with all applicable laws and regulations with respect to its activities under this Agreement and specifically its obligations as a Data Controller under the Data Protection Act 1998 ("DPA");

carry out all other Local Authority/AHCEO responsibilities set out in this Agreement or in any of the Schedules in a timely and efficient manner. In the event of any delays in Local Authority `s/AHCEO's provision of such assistance as agreed by the parties, Shercar may adjust any timetable or delivery schedule set out in this agreement as reasonably necessary; and

Indemnify Shercar for any breaches of the DPA arising out of the use or misuse of the Software, Website or the Services.

### **Charges and Payment**

The Local Authority/AHCEO shall pay Shercar the sum of £2.00 (Two Pounds Sterling) in respect of each search submitted (whether in respect of the same registered vehicle or otherwise) via the Website.

Shercar shall invoice the Local Authority/AHCEO monthly as of the last day of each month for all Services performed by Shercar during that month. Each invoice is due and payable 30 days after the invoice date. If Shercar has not received payment within five days after the due date, and without prejudice to any other rights of Shercar, Shercar may charge interest on the outstanding sums in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time) on such due amounts commencing on the due date and continuing until fully paid, whether before or after the judgment.

Shercar shall review the Fees payable under clause 6.1 annually on the anniversary of the Effective Date and in the absence of any agreement otherwise, the Fees shall increase in line with any increase in the RPI.

## **Proprietary Rights**

The Local Authority/AHCEO acknowledges and agrees that Sherocar and/or its licensors own all intellectual property rights in the Software, the Website and Services. Except as expressly stated herein, this agreement does not grant the Local Authority/AHCEO any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Website, Support, Services or any related documentation or activity.

Sherocar confirms that it has all the rights in relation to the Software and Website that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

## **Confidentiality**

Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

is or becomes publicly known other than through any act or omission of the receiving party; or

was in the other party's lawful possession before the disclosure; or

is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

is independently developed by the receiving party, which independent development can be shown by written evidence; or

is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement. In the event of the Local Authority receiving a request which relates to Sherocar under the Freedom of Information Act 2000 or amended or other similar legislation, the Local Authority shall inform Sherocar of the nature of the request and the identity of the party making the request.

Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

The Local Authority/AHCEO acknowledges that the Software, the Website the results of any performance tests of the Software and the Services constitute Sherocar's Confidential Information.

This clause 8 shall survive termination of this agreement, however arising.

## **Indemnity**

The Local Authority shall defend, indemnify and hold harmless Sherocar against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Local Authority's/AHCEO's use of the Software, Website or Services, provided that:

the Local Authority is given prompt notice of any such claim;

Sherocar provides reasonable co-operation to the Local Authority/AHCEO in the defence and settlement of such claim, at the LAB's expense; and

the Local Authority/AHCEO is given sole authority to defend or settle the claim.

Sherocar shall defend the Local Authority/AHCEO, its officers, directors and employees against any claim that the Software, or Website infringes any United Kingdom patent effective as of the Effective Date, copyright, database right or right of confidentiality, and shall indemnify the Local Authority/AHCEO for any amounts awarded against the Local Authority in judgment or settlement of such claims, provided that:

Sherocar is given prompt notice of any such claim;

the Local Authority/AHCEO provides reasonable co-operation to Sherocar in the defence and settlement of such claim, at Sherocar's expense; and

Sherocar is given sole authority to defend or settle the claim.

In the defence or settlement of the claim, Sherocar may obtain for the Local Authority/AHCEO the right to continue using the Software, or Website replace or modify the Software or Website so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this agreement without liability to the Local Authority/AHCEO. Sherocar shall have no liability if the alleged infringement is based on:

a modification of the Software or Website by anyone other than Sherocar; or

the Local Authority's use of the Software or Website in a manner contrary to the instructions given to the Local Authority by Sherocar from time to time or the Terms of Use; or

the Local Authority's use of the Software after notice of the alleged or actual infringement from Sherocar or any appropriate authority.

The foregoing states the Local Authority's/AHCEO's sole and exclusive rights and remedies, and Sherocar's entire obligations and liability, for patent, copyright, database or right of confidentiality infringement.

## Limitation of Liability

This clause 10 sets out the entire financial liability of Sherocar (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Local Authority in respect of:

any breach of this agreement;

any use made by the Local Authority of the Services, the Software, the Website or any part of them; and

any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

Except as expressly and specifically provided in this agreement:

the Local Authority/AHCEO assumes sole responsibility for results obtained from the use of the Software or Website and the Services by the Local Authority/AHCEO, and for conclusions drawn from such use. Sherocar shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Sherocar by the Local Authority/AHCEO in connection with the Services, or any actions taken by Sherocar at the Local Authority's/AHCEO direction; and

all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.

Nothing in this agreement excludes the liability of Sherocar:

for death or personal injury caused by Sherocar's negligence; or  
for fraud or fraudulent misrepresentation.

Subject to clause REF "a317601" \h \w 10.3:

Sherocar shall not be liable for any loss of profits, loss of business, depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising; and

Sherocar's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the price paid for the Services during the [12] months preceding the date on which the claim arose].

## Term and Termination

This agreement shall commence on the Effective Date and shall continue for the period of 12 months, unless otherwise terminated as provided in this clause REF "a178744" \h \w 11. After 12 months, this agreement shall automatically renew for yearly periods, unless either party notifies the other, in writing, at least 90 days before the end of the then current term.

Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement without liability to the other if:

the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or

an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or

the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

On termination of this agreement for any reason:

each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party including in the case of Local Authority/AHCEO the Website, Support or Software;

Shercar may destroy or otherwise dispose of any of the Local Authority/AHCEO Data in its possession unless Sherocar receives, no later than ten days after the effective date of the termination or expiry of this agreement, a written request for the delivery to the Local Authority of the then most recent back-up of the Local Authority/AHCEO Data. Sherocar shall use reasonable commercial efforts to deliver the back-up to the Local Authority/AHCEO within 30 days of its receipt of such a written request, provided that the Local Authority has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Local Authority/AHCEO shall pay all reasonable expenses incurred by Sherocar in returning or disposing of Local Authority/AHCEO Data; and

the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

## **Force Majeure**

Shercar shall have no liability to the Local Authority under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Shercar or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Shercars or sub-contractors, provided that the Local Authority/AHCEO is notified of such an event and its expected duration.

## **Waiver**

A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

## **Severance**

If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## **Entire Agreement**

This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

## **Assignment**

The Local Authority/AHCEO shall not, without the prior written consent of Shercar, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

Shercar may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

## **No Partnership or Agency**

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **Third Party Rights**

This agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

## **Notices**

Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

## **Governing Law and Jurisdiction**

This agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.

The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement.

This agreement has been entered into on the date stated at the beginning of it.

## Billing Information

### Billing Contact Details:

**Billing Contact Name:**

**Billing Contact Email:**

**Billing Contact Tel:**

**Billing Address 1:**

**Billing Address 2:**

**Billing Address 3:**

**Billing Address 4:**

**Billing Address 5:**

\* If you have more billing information to send us please use the blank pages provided at the end of this document.

## Schedule 1: Personnel

### Shercar Support Team

<b>Account manager:</b>	Lesley Wright

<b>Shercar's Project Manager:</b>	David Asker
<b>Shercar's Support adviser:</b>	Ryan Sayers

### Local Authority/AHCEO: UserGroup

<b>Account administrator:</b>	
<b>Account administrator email:</b>	
<b>Account representative:</b>	
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## Schedule 1: Personnel continued

### Local Authority: UserGroup

Local Authority's Project Manager:

Local Authority's Support adviser:

\* If you have more user accounts to fill in please use the blank pages provided at the end of this document.

**Signed by  
for and on behalf of Shercar**

\_\_\_\_\_  
Director

**Signed by  
for and on behalf of  
Local Authority**

\_\_\_\_\_  
Authorised signatory

Additional Information:

Additional Information: