

COALESCENT LIMITED

and

ORGANISATION NAME

ORGANISATION ADDRESS

SUBSCRIPTION AGREEMENT

THIS AGREEMENT is made on **DATE** (the “**Commencement Date**”)

BETWEEN

- (1) **COALESCENT LIMITED** incorporated and registered in England and Wales with company number 12744137 whose registered office is at Granary Court House , Bank Street, Bishop's Waltham, Southampton, Hampshire, SO32 1AE (“**Coalescent**”); and
 - (2) **ORGANISATION NAME** a Organisation in England, whose principal offices are at **ADDRESS** (“**Organisation**”),
- each a “**Party**” and together the “**Parties**”.

BACKGROUND

- (A) Coalescent is a company who design and implement new digital approaches to business challenges.
- (B) Coalescent owns exclusive rights to the Software (defined below).
- (C) The Organisation wishes to use the Software to assist in the Assessment and Authorisation of Deprivation of Liberty under the Liberty Protection Safeguards (LPS) (defined below).
- (D) Coalescent has agreed to grant the Organisation a right to access and use the Software via the internet in accordance with this Agreement (defined below).

AGREED TERMS

1. CONSIDERATION AND INTERPRETATION

- 1.1 In consideration of the mutual benefits and obligations contained in this Agreement, each Party hereby agrees to be bound by the terms of this Agreement.
- 1.2 The definitions and rules of interpretation in this Clause apply in this Agreement as the Definitions shown in Schedule 1.
- 1.3 Clause headings shall not affect the interpretation of this Agreement.
- 1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to writing or written includes e-mail.
- 1.8 References to including and include(s) shall be deemed to mean respectively including without limitation and include(s) without limitation.
- 1.9 When a number is expressed both in words and numbers, in the event of a conflict the words shall be deemed correct.
- 1.10 References to Clauses and Schedules are to the clauses and schedules of this Agreement and references to Paragraphs are to paragraphs of the relevant Schedule.

2. LICENCE TO ACCESS THE SOFTWARE

- 2.1 In consideration for payment of the Fees, Coalescent hereby grants to the Organisation a non-exclusive, revocable, non-transferable licence (subject to the terms and conditions of this Agreement) for the duration of this Agreement to:
- (a) permit the Users to access and use the Software over the internet, solely for the purposes of contributing to, viewing or administrating a Deprivation of Liberty;
 - (b) make and use only such number of copies of the Technical Documentation as is reasonably necessary for the purposes of using the Software; and
 - (c) print out, or otherwise make, printed copies of the reports, numeric results and other information generated from the Organisation's access and use of the Software.
- 2.2 The Organisation shall not:
- (a) copy the Software or any part of it except to the extent and for the purposes expressly permitted by this Agreement; or
 - (b) modify, adapt, develop, create any derivative work, reverse engineer, decompile, disassemble or carry out any act otherwise restricted by copyright or other Intellectual Property Rights in the Software except and only to the extent that it is expressly permitted by applicable law.
- 2.3 The Organisation shall not sub-license, rent, sell, lease, distribute, transfer, transmit, assign or sub-license its licence rights to any other person or entity.
- 2.4 The Organisation acknowledges and agrees that it is permitted to access and use the Software only in accordance with the express terms and conditions of this Agreement and that all rights not expressly granted to the Organisation in the Software are reserved by Coalescent to itself.

3. REGISTRATION

- 3.1 Within a reasonable period from the Commencement Date, Coalescent shall provide the Organisation with a link to their individual instance of 'CoLiberty' and enable it to register for access to and use of the Software.
- 3.2 Once registered, the Organisation will be able to generate Login Details for its Users. The Organisation will also be able to suspend and delete any Users Login Details.
- 3.3 Organisation is responsible and wholly liable for all acts or omissions committed using the Organisation's Login Details.
- 3.4 The Organisation shall ensure that there are no more than one (1) active Login Details for each User at any one time.

4. FEES

- 4.1 Coalescent shall invoice the Organisation for the Fees annually in advance from the Commercial Period Commencement Date and the Organisation shall pay the Fees in full as specified on the invoice within thirty (30) days of the date of such invoice. If additional services are requested by the Organisation, Coalescent shall be entitled to issue invoices for such services at any time.
- 4.2 If any sum payable to Coalescent under this Agreement is in arrears for more than thirty (30) days after the due date Coalescent reserves the right without prejudice to any other right or remedy it has under this Agreement or in law to:

- (a) charge interest, accruing daily, on the overdue amount at an annual rate of three percent (3%) above the base rate as set by the Bank of England from time to time; or
 - (b) terminate this Agreement.
- 4.3 All sums payable by the Organisation to Coalescent under this Agreement are exclusive of value added tax or any similar taxes, levies or duties. All value added taxes or similar taxes, levies or duties are payable by the Organisation at the appropriate rate.
- 4.4 After the expiry of the first Commercial Contract Year Coalescent may increase the Fees once per Commercial Contract Year (excluding RPI uplift referenced in 4.5) by providing the Organisation with at least three (3) month's prior written notice of the next Commercial Contract Year commencing. If the Organisation disagrees with such increase it may terminate this Agreement by providing Coalescent with at least two (2) month's prior written notice of the next Commercial Contract Year commencing.
- 4.5 After the expiry of the first Commercial Contract Year, Coalescent may increase the Fees in line with the published RPI figure. For the avoidance of doubt, Coalescent is not required to give notice in respect of an RPI increase
- 4.6 Following the first Commercial Contract Year, unless the Customer gives to Coalescent notice of termination at least 2 months in advance from the Commercial Period Commencement Date then the Customer shall pay all the Fees for the subsequent Commercial Period notwithstanding notice of termination or whether the Services or any part thereof are not required during such subsequent Commercial Period.

5. WARRANTIES

- 5.1 Each of the Parties warrant and represent to each other that it has full power and authority to enter into and perform its obligations under this Agreement.
- 5.2 Each of the Parties warrant to the other that it:
 - (a) shall obtain and maintain all necessary licences clearances, permissions, and consents necessary to carry out all of its obligations under this Agreement; and
 - (b) shall comply with all laws and regulations applicable to it with respect to its obligations under this Agreement.
- 5.3 Coalescent warrants that:
 - (a) for the duration of this Agreement, the Software will conform substantially with the Technical Documentation, provided the Software:
 - (i) is used in accordance with the Technical Documentation and instructions given by Coalescent from time to time;
 - (ii) is used with software, hardware or networks approved by Coalescent; or
 - (iii) is not modified by any person other than Coalescent;
 - (b) it shall use commercially reasonable endeavours to provide support to the Organisation in respect of the Software;
 - (c) it shall use commercially reasonable endeavours (including adopting procedures to regularly screen the Software) to prevent known computer viruses being introduced into the Software (provided that Coalescent shall not be responsible if the Organisation's Login Details are used to introduce such viruses into the Software); and

- (d) it shall provide the Organisation with access to up to date Technical Documentation.
- 5.4 Subject to Clause 7 Coalescent entire liability for breach of the warranty at Clause 5.3(a) shall be, at Coalescent's option for Coalescent to:
- (a) correct, repair or replace the Software within a reasonable time so as to comply with the warranty at Clause 5.3(a); or
 - (b) terminate this Agreement immediately by giving the Organisation written notice.
- 5.5 Except as stated in Clause 5.3 and as required by applicable law without the possibility of contractual waiver, the Software is provided on an “**as is**” and “**as available**” basis, in no event does Coalescent warrant that the Software is error-free or uninterrupted.
- 5.6 To the maximum extent permitted by applicable law the warranties given in Clause 5.3 are in lieu of all other warranties or conditions, express or implied, and Coalescent disclaims any and all implied warranties or conditions, including any warranties of satisfactory quality, fitness for a particular purpose (regardless of whether Coalescent knows or had reason to know of any particular needs), merchantability, non-infringement, accuracy or availability.
- 5.7 The Organisation is solely responsible for acquiring, servicing, maintaining, and updating all equipment, not owned or operated by or on behalf of Coalescent, that allows the Organisation to access and use the Software, and for all expenses relating to such equipment (plus any applicable taxes).
- 5.8 The Organisation warrants and represents that it shall:
- (a) only access and use the Software in the manner, and for the purposes, expressly specified in this Agreement, the Technical Documentation and in accordance with all operating instructions or procedures that may be issued and amended by Coalescent from time to time;
 - (b) not make the Software (or any part of it) available, or permit it to be used:
 - (i) to build a product or service which competes (directly or indirectly) with the Software;
 - (ii) subject to Clause 2.3, by any third parties for any purpose whatsoever, except when invited by the Organisation via ‘Third Party’ user access to contribute to a Deprivation of Liberty.
 - (c) not incorporate or allow the Software to be incorporated in any other software (including any linking to the Software or any framing or mirroring of any part the Software);
 - (d) not attempt to access any systems, programs or data of Coalescent that are not licensed under this Agreement, or otherwise made available by Coalescent for public use;
 - (e) not use any device or software to interfere or attempt to interfere with the proper operation of the Software (including any virus or denial of service attack);
 - (f) not delete or in any manner alter any notices, disclaimers or other legends contained in the Software or appearing on any screens, documents, reports, numeric results or other materials obtained by the Organisation through use of the Software;
 - (g) to notify Coalescent in writing immediately if it comes into contact with any Proprietary Information and return all such Proprietary Information (and any copies) to Coalescent; and
 - (h) not authorise, procure or facilitate any breach of Clauses 5.8 to 5.8(g).

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 Coalescent (and its licensors) own all rights (including Intellectual Property Rights) in the Software and Technical Documentation.
- 6.2 The Organisation shall take all such steps as Coalescent may reasonably require to assist Coalescent in maintaining the validity and enforceability of the rights (including Intellectual Property Rights) that belong to Coalescent and/or its licensors.
- 6.3 The Organisation shall not bring court proceedings or take other official steps aimed at defeating the validity of any Intellectual Property Rights of Coalescent and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.
- 6.4 Other than the licences expressly granted in Clause 2.1 and in the Data Processing Addendum, neither Party grants any licence of, right in or makes any assignment of any of its rights (including Intellectual Property Rights).
- 6.5 Subject to Clause 7.3, Coalescent will indemnify the Organisation against any third party claim alleging that use of the Software in accordance with this Agreement infringes any copyright of such third party (a “**Claim**”) provided that the Organisation:
- (a) promptly (and in any event within seven (7) Business Days) gives Coalescent written notice of any Claim of which the Organisation becomes aware;
 - (b) allows Coalescent to have conduct of and/or to settle any negotiations and/or proceedings in relation to any Claim;
 - (c) does not make any admission of liability, agreement or compromise in relation to any Claim without the prior written consent of Coalescent; and
 - (d) gives Coalescent such information and assistance in relation to the negotiations and proceedings in relation to any Claim as is reasonably requested by Coalescent.
- 6.6 If any Claim is made or is in the reasonable opinion of Coalescent likely to be made, Coalescent may at its option and expense:
- (a) procure for the Organisation the right to continue to use the Software in accordance with this Agreement;
 - (b) replace or modify the Software so that it no longer infringes the rights of any third party, provided that such replacement or modification does not materially affect the functionality of the Software; or
 - (c) terminate this Agreement immediately by giving the Organisation written notice.
- 6.7 The indemnity in Clause 6.5 shall not extend to any Claim which arises as a result of:
- (a) use of the Software not in accordance with this Agreement, the Technical Documentation or any instructions given to the Organisation by Coalescent from time to time;
 - (b) the Organisation’s use of the Software with software, hardware or networks not approved by Coalescent; or
 - (c) any modification to the Software made by any person other than Coalescent.
- 6.8 Clause 6.5 contains the Organisation’s sole and exclusive rights and Coalescent’s entire obligations and liability for infringement of any Intellectual Property Rights.

7. LIABILITY

7.1 Nothing in this Agreement shall operate to exclude or restrict either Party's liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be excluded or limited under applicable law.

7.2 Subject to Clause 7.1, Coalescent shall not be liable to the Organisation in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, for any:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of sales, business or business opportunity;
- (d) loss of agreements or contracts;
- (e) wasted expenditure (excluding the Fees);
- (f) anticipated savings;
- (g) loss of or corruption of data;
- (h) damage to reputation or loss of goodwill, in each case, whether direct or indirect; or
indirect, consequential or special loss.

7.3 Subject to Clauses 7.1 and 7.2, Coalescent aggregate liability to the Organisation for any loss or damage in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise connected to or arising out of this Agreement shall, in respect of any and all claims during a Commercial Contract Year, not exceed the Fees paid by the Organisation to Coalescent in that Commercial Contract Year.

8. DATA PROTECTION

8.1 The obligations of both Parties in relation to the collection, storage, processing and transfer of any personal data under this Agreement are set out in the Data Processing Addendum.

9. CONFIDENTIALITY

9.1 Each Party agrees:

- (a) to use the Confidential Information only in accordance with this Agreement;
- (b) to keep the Confidential Information secure and confidential and not (without the prior written consent of the Party who disclosed the Confidential Information) disclose it in whole or part to any third party, except as permitted under this Clause 9;
- (c) to not copy or reduce to writing or otherwise record Confidential Information except as strictly necessary for the use of the Software in accordance with this Agreement;
- (d) not to delete any confidentiality and/or proprietary notices on the Confidential Information;
- (e) to apply at least the same (but no less than commercially reasonable) security measures or degree of care as that which it would apply to its own confidential information; and

- (f) to ensure that anyone with access to the Confidential Information shall be bound by obligations of confidentiality no less restrictive than those set out in this Clause 9.

9.2 Information which:

- (a) is or becomes generally available to the public other than as a result of its disclosure in breach of this Agreement or any other undertaking of confidentiality; or
- (b) is lawfully and independently developed or acquired without reliance in any way on the information received or generated in the course of conducting the matters set out in this Agreement,
- (c) shall not constitute Confidential Information.

9.3 The Organisation may disclose Confidential Information:

- (a) to its Personnel who need to know the Confidential Information in order to use the Software in accordance with this Agreement; or
- (b) to the extent required by any court of competent jurisdiction or any applicable judicial, governmental, supervisory, regulatory or self-regulatory body, the Organisation shall give Coalescent prompt written notice of such requirement.

10. TERM AND TERMINATION

10.1 This Agreement shall commence on the earlier of (i) the Commencement Date; or (ii) the date at which a User first accesses the Software, and shall continue unless terminated pursuant to Clause 4.4, 5.4(b), 6.6(c), the remainder of this Clause 10, Clause 13.4 or Clause 21.2.

10.2 Without prejudice to any other rights or remedies to which either Party may be entitled, either Party may terminate this Agreement in its entirety immediately at any time by written notice to the other Party if:

- (a) the Data Processing Addendum is terminated for any reason;
- (b) the other Party commits any material breach of its obligations under this Agreement and (if such breach is remediable) fails to remedy that breach within thirty (30) days of that Party being notified in writing of that breach; or
- (c) the other Party suffers an Insolvency Event.

10.3 Without prejudice to any other rights or remedies to which Coalescent may be entitled, Coalescent may terminate this Agreement without liability to the Organisation if:

- (a) the Organisation's use of the Software may result in Coalescent breaching an order, instruction or request of a court, or regulatory authority or any applicable laws or regulations;
- (b) the Organisation brings court proceedings or takes other steps aimed at defeating the validity of any of Coalescent or its licensors Intellectual Property Rights; and/or
- (c) the Organisation purports to assign any of its rights or obligations under this Agreement in breach of Clause 19.1.

10.4 Either Party shall be entitled to terminate this Agreement for convenience at any time by providing the other Party with two (2) month's prior written notice.

10.5 For the avoidance of doubt, a breach by the Organisation of its obligations contained in any of Clauses 2.2, 2.3, or 4.1 will be considered material breaches for the purposes of Clause 10.2(a).

11. CONSEQUENCES OF TERMINATION

11.1 Following termination or expiry of this Agreement for any reason:

- (a) the Organisation's Login Details shall be disabled;
- (b) the Organisation shall (at its sole cost) return (or at Coalescent's option, destroy) all copies of the Technical Documentation in its possession;
- (c) each of the Organisation and Coalescent shall promptly return to the other Party or otherwise dispose of as the other Party may instruct, all materials, documents or papers whatsoever including Confidential Information of the other Party sent to the Organisation or Coalescent (as the case may be) and relating to Coalescent's or the Organisation's business which the Organisation or Coalescent (as the case may be) may have in its possession or under its control in whatever form it may be recorded or stored, including any electronic or digital storage media;
- (d) the Parties shall have no further obligations or rights under this Agreement, without prejudice to those which have accrued to either Party prior to termination or expiry save that Clauses 1, 4, 6, 7, 8, 9, 11 and 14 to 26 and those other Clauses the survival of which is necessary for the interpretation or enforcement of this Agreement or which by their nature can be reasonably interpreted as surviving the expiry or termination of this Agreement, shall continue to have effect after such expiry or termination; and
- (e) the Parties acknowledge that Coalescent shall be entitled to retain any Aggregated Data (as defined in the Data Processing Addendum).

11.2 If this Agreement is terminated by the Organisation in accordance with Clauses 10.2 or 21.2 or by Coalescent in accordance with Clause 5.4(b), 6.6(c) or 10.4, then Coalescent shall refund any pro rata Fees paid by the Organisation in respect of the part of the Commercial Contract Year that the Organisation was unable to use the Software.

12. RESERVATION OF RIGHTS

12.1 Coalescent reserves the right to suspend the Organisation's access to the Software in the event that Coalescent:

- (a) is entitled to terminate this Agreement;
- (b) is obliged to suspend the Organisation's use of the Software in order to comply with an order, instruction or request of a court, or regulatory authority;
- (c) needs to carry out maintenance on the Software;
- (d) has reasonable grounds to believe the Organisation is in breach of its obligations contained in any of Clauses 2.1, 2.2, 2.3, 5.1, 5.2, 5.8, 19 or the Data Processing Addendum shown in Schedule 2 or has been so in the past and is likely to be so again; or
- (e) has reasonable grounds to believe that the Organisation's access to or use of the Software is likely to cause technical problems for Coalescent.

13. FORCE MAJEURE

13.1 A Party, provided that it has complied with the provisions of Clause 13, shall not be in breach of this Agreement, nor liable for any failure or delay in performance of its obligations under this Agreement (and, subject to Clause 13.2, the time for performance of the obligations shall be extended accordingly) arising from or attributable to a Force Majeure Event. The corresponding obligations of the other Party will be suspended to the same extent.

- 13.2 Any Party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- (a) it notifies the other Party in writing in a timely manner of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and
 - (b) it has used reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations (or such of its obligations as it reasonably can) under this Agreement.
- 13.3 As soon as reasonably possible after the end of the Force Majeure Event, the affected Party shall notify the other Party in writing that the Force Majeure Event has ended and shall resume performance of its obligations under this Agreement.
- 13.4 If either Party is prevented from performance of substantially all of its obligations by a Force Majeure Event for a continuous period of at least ninety (90) days, the other Party may terminate this Agreement immediately on service of written notice upon the Party affected by the Force Majeure Event.

14. DISPUTE RESOLUTION

- 14.1 Subject to Clause 14.8 any dispute or difference of opinion (a “**Dispute**”) arising between the Coalescent and the Organisation in respect of or arising out of this Agreement shall be dealt with in accordance with this Clause 14.
- 14.2 The Parties shall negotiate in good faith to attempt to resolve the Dispute.
- 14.3 The Representatives and Senior Representatives of Coalescent are:
- Representative: Jessica Huckle, Marketing and Business Development Manager ,
jessica.huckle@coalescent.uk; and
- Senior Representative: Lianne Hawkins, COO, lianne.hawkins@coalescent.uk.
- 14.4 The Representative and Senior Representatives of the Organisation are:
- Representative: **Insert Name, Job Title, Organisation Name, Email address** and
- Senior Representative: **Insert Name, Job Title, Organisation Name, Email address**
- 14.5 The Representatives and Senior Representatives shall contact each other in accordance with Clause 15.
- 14.6 In the first instance, the Representative of each Party shall each attempt to resolve the Dispute. If the Dispute cannot be resolved by the Representatives with ten (10) Business Days of the date of the first written communication between the Representatives, it shall be referred to the Senior Representative of each Party who shall attempt to resolve the Dispute.
- 14.7 In the event that a Dispute cannot be resolved in accordance with Clause 14.6 within ten (10) Business Days of the date of the first written communication between the Senior Representatives, either Party may seek all available remedies at law or equity in accordance with Clause 26.
- 14.8 Nothing in this Clause shall prevent or delay either Party from seeking relief in accordance with Clause 25.

15. NOTICES

- 15.1 All communication and notices (whether legal or otherwise) concerning, arising under or in connection with this Agreement shall be:

- (a) in writing;
- (b) sent either by hand, recorded post or e-mail.

15.2 Notices to Coalescent shall be sent for the attention of and using the details below:

For the attention of: Lianne Hawkins

Address: Coalescent's registered office address

E-mail: lianne.hawkins@coalescent.uk

15.3 Notices to the Organisation shall be sent for the attention of and using the details below:

- a. For the attention of: **Insert Name**
- b. Address: **Insert Address**
- c. E-mail: **Insert email address**

15.4 Notices shall be deemed to have been received:

- (a) if delivered by hand or recorded post, on signature of a delivery receipt; or
- (b) if sent by e-mail, on the date it is sent (provided that no automated bounce back message is received).

16. PUBLICITY

16.1 Coalescent shall be entitled to publicise the fact that this Agreement has been entered into between the Parties and to list the Organisation as a Organisation of Coalescent in its promotional materials (including Coalescent's website).

16.2 The Organisation shall not be entitled to publicise the fact that this Agreement has been entered into between the Parties and to list Coalescent as a supplier of the Organisation in its promotional materials (including the Organisation's website) without the prior written consent of Coalescent.

17. WAIVER

17.1 The failure or delay by either Party in exercising any right, power or remedy of that party under this Agreement shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either Party of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

17.2 Any waiver by either Party of a breach of or default under any of the terms of this Agreement by the other party shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement.

17.3 No waiver in connection with this Agreement shall, in any event, be effective unless it is in writing, refers expressly to this Clause, is duly signed by or on behalf of the Party granting it and is communicated to the other Party in accordance with Clause 15.

18. SEVERANCE

18.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, it shall be deemed to be modified to the extent necessary to make it valid, enforceable and legal.

- 18.2 If such modification is not possible, the relevant provision (or part of a provision) shall be deemed to be deleted and the other provisions will remain in force.

19. ASSIGNMENT AND SUB-CONTRACTING

- 19.1 This Agreement and the Organisation's rights, duties and obligations hereunder are personal to the Organisation and the Organisation may not assign its rights, novate or otherwise transfer this Agreement, delegate its duties or subcontract its rights without Coalescent's prior written consent.
- 19.2 Coalescent may assign its rights, novate or otherwise transfer this Agreement, delegate its duties or subcontract its rights pursuant to this Agreement to any person or entity.
- 19.3 The Parties' rights and obligations will bind and inure to the benefit of their respective successors and permitted assigns.

20. INDEPENDENT CONTRACTORS

- 20.1 The Parties to this Agreement are independent contractors, and no agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement.
- 20.2 Neither Party shall have the power to obligate or bind the other Party.

21. AMENDMENTS

- 21.1 Subject to Clause 21.2, no variation or amendment to this Agreement shall be effective unless recorded in writing and signed by or on behalf of both Parties.
- 21.2 Coalescent reserves the right, at any time, to change the terms of this Agreement by providing the Organisation with thirty (30) calendar days prior written notice of such changes. Any use of the Software by the Organisation after the expiry of such notice shall constitute the Organisation's acceptance of the Agreement as modified. If the Organisation does not accept the changes it may terminate this Agreement by notifying Coalescent in writing prior to expiry of the notice of such changes provided by Coalescent.

22. HERDING OF CLAIMS

- 22.1 The Organisation shall be liable to Coalescent for the acts and omissions of any Users of the Software provided by Coalescent to the Organisation pursuant to this Agreement as though they were acts and omissions of the Organisation. Any costs suffered by Coalescent in connection with the Agreement arising directly or indirectly out of an act or omission of a User's breach of the Agreement shall be deemed to be a loss caused by the Organisation and such loss shall be recoverable by Coalescent against the Organisation.
- 22.2 The Organisation agrees to indemnify and keep fully and effectively indemnified Coalescent on demand and on an unlimited basis from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) arising or resulting from or in connection with any claim brought directly against Coalescent by a User using the Software.

23. THIRD PARTY RIGHTS

- 23.1 No term of this Agreement is intended to confer a benefit on or to be enforceable by any person who is not a Party to this Agreement (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).

24. ENTIRE AGREEMENT

- 24.1 This Agreement constitutes the entire agreement and understanding between the Parties relating to its subject matter and supersedes any previous agreement between the Parties relating to any of such subject matter.
- 24.2 Each Party acknowledges and agrees that in entering into this Agreement, it does not rely on (and shall have no remedy in respect of) any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) except as expressly set out in this Agreement. The only remedy available to each Party for breach of this Agreement shall be for breach of contract under the terms of this Agreement.


25. INJUNCTIVE RELIEF

- 25.1 Each Party recognises that the other Party's business relies upon the protection of its Intellectual Property Rights and/or Confidential Information. In the event of a breach or threatened breach of its Intellectual Property Rights or Confidential Information, the other Party may be caused irreparable harm for which damages alone would not be an adequate remedy. The other Party may therefore, in addition to any other remedies available be entitled to, seek injunctive relief, specific performance or similar equitable relief to prevent any actual or threatened breach of its Intellectual Property Rights or Confidential Information. The prevailing Party shall be entitled to recover all costs and expenses, including reasonable legal fees incurred because of any such legal action.

26. GOVERNING LAW AND JURISDICTION

- 26.1 This Agreement (and any non-contractual obligations arising out of or in connection with it and any claim or dispute in relation to its formation) shall be governed by and interpreted in accordance with English law.
- 26.2 Subject to Clause 26.3, each Party irrevocably submits to the exclusive jurisdiction of the Courts of London, England over any claim or matter arising out of, under or in connection with this Agreement (and any non-contractual obligations arising out of or in connection with it and any claim or dispute in relation to its formation).
- 26.3 Nothing in this Agreement shall prevent either Party from bringing proceedings in accordance with Clause 25 to protect its Intellectual Property Rights or Confidential Information (whether in connection with this Agreement or otherwise) in any jurisdiction where it believes that infringement or a breach relating to its Intellectual Property Rights or Confidential Information might be taking place.

SIGNED by a duly authorised representative on behalf of **COALESCENT LIMITED**

Print name	LIANNE HAWKINS
Signature	
Position	CHIEF OPERATING OFFICER
Date	INSERT DATE HERE

SIGNED by a duly authorised representative on behalf of **INSERT ORGANISATION NAME**

Print name	INSERT NAME HERE
Signature	INSERT SIGNATURE HERE
Position	INSERT JOB TITLE HERE
Date	INSERT DATE HERE

SCHEDULE 1

1.1 DEFINITIONS

The definitions and rules of interpretation in Clause 1 apply in this Agreement as follows:

Agreement: means this Subscription Agreement (including all Schedules);

Business Days: means any day (other than a Saturday or Sunday) when banks are generally open for normal business in London;

Claim: has the meaning given to it in Clause 6.5;

Confidential Information: means:

- b) any information relating to the business, affairs, financial dealings, operations, processes, commercial strategies, technical information, product information, product design features, clients and supplier information, goodwill and reputation, know-how, proprietary rights, designs, trade secrets, software and/or market opportunities of a Party and all, or any part of, and originals or copies of;
- c) any information in whatever form embodied (e.g. oral, written, electronic), that any Party discloses to any other Party regardless of whether such information is marked as confidential or not; and
- d) subject to Clause 16.1, any information related to the fact or substance of discussions or negotiations (whether written, oral or otherwise) between the Parties, the terms of this Agreement and any other agreement or proposed arrangement between the Parties;

Commercial Contract Year: means each successive 12-month period commencing on the Commercial Period Commencement Date or an anniversary thereof;

Commercial Period Commencement Date: means 1 April 2020;

Data Processing Addendum: means the data processing addendum shown at Schedule 2 of this Agreement.

Director: has the meaning given to it in Schedule 3;

Dispute: has the meaning given to it in Clause 14.1;

Fees:

- As outlined in the GCloud Pricing Document

Force Majeure Event: means any event, circumstance or cause beyond the reasonable control of the affected Party including (in each case to the extent it is beyond the reasonable control of the affected Party):

- a) acts of God (including fire, flood, earthquake, windstorm, other adverse weather conditions or other natural disaster);
- b) terrorist activity, civil unrest, war, riot or other military action;
- c) industrial action, strikes or lock-outs;
- d) changes in applicable law or governmental regulations;
- e) power failure, any failure of any computer software (other than the Software) or hardware operated by a third party;

- f) failure of any third party's communications networks and facilities other than where the same has been caused by the relevant Party failing to adequately maintain the same, (including interruptions to or lack of availability of internet related services including Domain Name System (DNS) services and hosting services); or
- g) interruption or failure of utility service, including electric power, gas or water,

A Force Majeure Event does not include inability to pay;

Insolvency Event: means:

- a) if any encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the Party;
- b) if the Party makes any voluntary arrangement with its creditors, becomes subject to an administration order, has an administrator appointed or goes into liquidation or passes a resolution for its winding-up (except for the purpose of a solvent amalgamation or solvent reconstruction where the resulting entity in each case agrees to be bound by or assumes the obligations imposed on the Party under this Agreement);
- c) or anything analogous to any of the events at (a) and (b) above under the law of any jurisdiction occurs in relation to the Party; or
- d) if the Party ceases or threatens to cease to carry on business;

Intellectual Property Rights: means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software including both source code and object code, database right, topography rights, moral rights, know-how, trade secrets and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Login Details: means usernames and passwords generated by the Organisation to enable Users to access and use the Software;

Personnel: means the, officers, directors, employees, staff and contractors of a Party to this Agreement;

Proprietary Information: means any proprietary information or Confidential Information (excluding the Software itself) that forms part of the Software, including the source code, algorithms, product development files, diagrams or any proprietary data;

Representative: has the meaning given to it in Clause 14.3 in respect of Coalescent and Clause 14.4 in respect of the Organisation;

RPI: Retail Price Index as published on the ONS website

Senior Representative: has the meaning given to it in Clause 14.3 in respect of Coalescent and Clause 14.4 in respect of the Organisation;

Software: means Coalescent software as described in Schedule 3 and the Technical Documentation, including any modified or replacement versions made available to the Organisation from time to time;

Technical Documentation: means the Coalescent technical documentation (as provided and updated from time to time by Coalescent).

Users: means anyone given the product role of:

- a) Staff

- b) Third Party;
- c) Assessor
- d) Duty Signatory
- e) Admin and/or
- f) Super Admin

SCHEDULE 2

DATA PROCESSING ADDENDUM

Between

1. THE PARTIES

(A) **The Organisation** a Organisation in United Kingdom, whose principal offices are at **ORGANISATION ADDRESS** (hereinafter called the “**Organisation**”) and

(B) **COALESCENT LTD** of Granary Court House , Bank Street, Bishop's Waltham, Southampton, Hampshire, SO32 1AE (hereinafter after called the “**processor**”).

2. DEFINITIONS

The following words and phrases used in this Addendum shall have the following meanings except where the context otherwise requires:

- 2.1 The expressions “controller”, “data subject”, “personal data”, “processing” and “personal data breach” shall have the meanings prescribed under the DP Legislation (defined below).
- 2.2 “Addendum” means this Data Processing Addendum together with its Annexes and any other documents attached to or referred to as forming part of this Addendum.
- 2.3 “DP Legislation” means the new Data Protection Act 2018, the General Data Protection Regulation (“the Regulation”), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), and all other applicable laws and regulations relating to the processing of personal data and privacy and any subordinate legislation relating to the processing of personal data and privacy. This includes any applicable guidance and/or codes of practice issued by the Information Commissioner’s Office (in the UK) or relevant government department in relation to such legislation.
- 2.4 “Personal Data” shall mean personal data that the Organisation is controller in respect of.
- 2.5 Headings are inserted for convenience only and shall not affect the construction or interpretation of this Addendum and, unless otherwise stated, references to clauses and Annexes are references to the clauses of and Annexes to this Addendum.
- 2.6 Any reference to any enactment or statutory provision shall be deemed to include a reference to such enactment or statute as extended, re-enacted, consolidated, implemented or amended and to any subordinate legislation made under it. In particular specific reference is made to relevant articles of the GDPR (the Regulation).
- 2.7 The word “including” shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word.
- 2.8 For the avoidance of doubt, the processor’s obligations in this Addendum apply only to such Personal Data, and to such processing, etc. as are subject to or which the processor has agreed to undertake pursuant to the terms of this Addendum

3. PURPOSE AND AUTHORISED PERSONS

- 3.1 Both Parties acknowledge and agree that the Organisation is the controller and the processor will only process the Personal Data on the Organisation’s behalf, for the following purpose; facilitating the Authorisation of a Deprivation of Liberty, and also to provide Organisation managers and senior managers with management information that will help them make better strategic decisions (hereinafter called “the Purpose”) or as otherwise required by law (subject

to the processor first notifying the Organisation of the relevant legal requirement unless such notification is itself prohibited by law on important grounds of public interest). The processor will develop specific solutions for various issues highlighted by services within the Organisation. For each new approach or solution developed by the processor and where Personal Data is to be processed by the processor, an appendix will be created by the Organisation at the Organisation's cost and signed by both Parties which will set out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of Personal Data and categories of data subjects for that specific approach or solution.

- 3.2 The Organisation confirms that the Purpose is not incompatible with the purpose(s) for which the Organisation collected the Personal Data from the relevant data subjects.
- 3.3 The following persons are authorised by the Organisation and the processor respectively to assume overall responsibility for the obligations contained in the DP Legislation and this Addendum in respect each organisation;

Organisation: DPO, **Insert Name, (Insert email)**

Coalescent Ltd: Lianne Hawkins (DPO@coalescent.uk)

4. PROCESSOR'S OBLIGATIONS

- 4.1 With exception to the pre-approved list of sub-processors set out at Annex A to this Addendum, the processor will not engage additional sub-processors without prior written authorisation of the Organisation. Processor shall provide the Organisation with not less than 30 days' notice of any proposed changes to the list shown at Annex A and the Organisation may notify the processor in writing of any objection to such proposed appointment within 5 days after receiving such notice. If processor does not receive any objection to a proposed sub-processor, the Organisation shall be deemed to have consented to the processor's engagement of such sub-processor.
- 4.2 If the Organisation objects accordance with this clause 4.1, the processor will attempt to re-arrange the processing arrangements so that the proposed sub-processor is not used to process the Personal Data or if not practicable, processor may terminate the Agreement by giving the Organisation not less than 30 days' notice
- 4.3 Processor will ensure that its sub-processors provide sufficient guarantees to implement appropriate technical and organisation measures in such a way that its processing will comply with the DP Legislation.
- e) Processor will enter into a written agreement with all sub-processors and include in that agreement:
 - (a) obligations on the sub-processor that are equivalent to the obligations on processor in relation to Personal Data under this Addendum; and
 - (b) obligations on the sub-processor not to sub-contract the processing of any Personal Data on behalf (directly or indirectly) of the Organisation to any third party without obtaining the prior written consent of the processor.
- 4.4 Processor remains fully liable to the Organisation for the performance of each of its sub-processors in relation to processing Personal Data.
- 4.5 The processor will restrict access to the Personal Data to those personnel of the processor who are directly involved in the processing in pursuance of the Purpose, and the processor will ensure that all such personnel are have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 4.6 The processor will provide reasonable assistance to the Organisation insofar as is possible, for the fulfilment of the Organisation's obligations to respond to requests for exercising data subjects' rights. In particular, the processor will where appropriate use commercially reasonable endeavours to forward a request from a data subject with regard to correct or deletion of its Personal Data to the Organisation.
- 4.7 The processor will provide reasonable assistance to the Organisation in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the Regulation taking into account the nature of processing and the information available to the processor. In particular the processor will:
- (a) notify the Organisation without undue delay after becoming aware of any personal data breach as defined in the Regulation in respect of the Personal Data and co-operate with the Organisation to assist the Organisation in notifying such personal data breach to the Information Commissioner's Office (ICO) within 72 hours of the Organisation becoming aware of the personal data breach. In the event of delay, the processor will provide the Organisation with reasons for the processor's delay in notifying the Organisation of such personal data breach;
 - (b) provide the Organisation, without undue delay, with the following:

- (i) details of the nature of the personal data breach including where possible, the categories of data subjects impacted;
 - (ii) approximate number of data subjects concerned;
 - (iii) approximate number of Personal Data records concerned;
 - (iv) details of the likely consequences of the personal data breach;
 - (v) the measures taken or proposed to be taken by the processor to address the personal data breach; and
 - (vi) the measures to mitigate its possible adverse effects,
- 4.8 where, and in so far as, it is not possible for the processor to provide such information at the same time, the information may be provided by the processor in phases without undue further delay;
- (a) at the request of the Organisation, provide reasonable assistance to the Organisation with the carrying out of a data protection impact assessment in the event that the Organisation, acting reasonably, decides that such an assessment is necessary pursuant to Article 35 of the Regulation, and with any review to assess if processing is performed in accordance with such assessment; and
 - (b) at the request of the Organisation, assist the Organisation with any consultation with the ICO in relation to such assessment, and implement all measures recommended by the ICO in any written advice which the ICO provides to the Organisation.
- 4.9 The processor will at the direction and discretion of the Organisation delete or return to the Organisation all Personal Data upon the expiry or other termination of this Agreement, and the processor will delete any copy of such Personal Data unless required by law to continue to store such Personal Data. In particular the processor will:
- (a) ensure that the data is completely removed from all physical and electronic systems, including any back up, storage media and archiving systems;
 - (b) ensure that all information held on their hardware is securely deleted prior to re-use. Items deemed for refurbishment and/or re-use, and carrying data shall undergo a full diagnosis, test and a best-in-class data cleansing process; and
 - (c) where required by the Organisation, confirm in writing that it has performed the necessary actions to destroy all copies of the data, giving full details of the actions taken and dates carried out.
- 4.10 The processor shall assist the Organisation in complying with its obligations under the DP Legislation, by making available to the Organisation the information necessary to demonstrate its compliance with the DP Legislation and allowing for and contributing to audits and inspections of its security measures by engaging a third party security professional annually to verify the adequacy of its security measures and making a confidential audit report available to the Organisation on request.
- 4.11 The processor will not contact or attempt to contact any data subject or other person identified in the Personal Data for any reason other than as specified in the Purpose or agreed by the Organisation or as otherwise required under this Addendum.
- 4.12 In the event that disclosure of personal data is ordered by a Court of competent jurisdiction, or is required by a law enforcement agency or regulatory body of authority, or is required for the purposes of legal proceedings, the processor shall immediately notify the Organisation (where permitted by law) in writing of any such requirement for disclosure in order to allow the Organisation to make representations to the person or body making the requirement.

5. ORGANISATION OBLIGATIONS

5.1 Organisation will:

- (a) comply with its obligations under the DP Legislation and Regulation which arise in relation to this Addendum, the Agreement and the receipt of the Services;
- (b) not do or omit to do anything which causes the processor (or any of the processor's sub-processor) to breach any of its obligations under the DP Legislation and Regulation; and
- (c) reimburse the processor for any reasonable costs incurred by the processor in performing its obligations under clauses, 4.7, 4.8, and 4.9 in each case except to the extent that such costs were incurred because of any breach by the processor of its obligations under this Addendum.

5.2 Organisation represents, warrants and undertakes to the processor that:

- (d) Organisation (and any other sub-contractor of the Organisation) has obtained all Personal Data in accordance with the DP Legislation and Regulation and has provided (or will provide) all necessary notices to data subjects whose personal data comprises part of the Personal Data; and
- (e) Organisation has (or will at the required time have) a valid ground for the processor's (and any sub-processors') processing of Personal Data in accordance with this Addendum, so that the processor's (and any sub-processors') processing of Personal Data in accordance with this Addendum complies with the DP Legislation and Regulation.

6. AGGREGATED DATA

- 6.1 Subject to clauses 6.2 and 6.3, Organisation grants to processor the non-exclusive, worldwide right to copy, adapt, transmit, communicate, display, distribute and create compilations and derivative works of the Personal Data for the processor's own purposes.
- 6.2 The licence at clause 6.1. is strictly limited to the use of Personal Data to compile, use and disclose aggregated data (the "Aggregated Data").
- 6.3 In relation to all data subjects, the Organisation shall provide all notices and obtain all consents required under the DP Legislation in relation to the proposed creation and use of Aggregated Data referenced in this clause 6.

Annex A: Pre-approved sub-processors

Organisation name
Amazon Web Services
Looking Local

Annex B: Categories of Data

The processor will process personal data in order to ultimately inform the Organisation's decision-making processes. The data provided to the processor will help the Organisation:

- understand particular issues;
- understand patterns and trends of service interactions;

The processor will maintain a record of all categories of processing activities carried out on behalf of the Organisation under this Addendum and such record will contain:

- the name and contact details of the processor and the Organisation, and where applicable their representatives, and the Organisation's data protection officer (set out in clause 3.3);
- the categories of processing carried out by the processor;
- where applicable, transfers of data to a third country or an international organisation, including identifying such third country or international organisation, and where appropriate the documentation of appropriate safeguards;
- where possible, a general description of the technical and organisational security measures implemented by the processor.

Annex C: Security

The processor will take all measures required pursuant to Article 32 of the Regulation. In particular, the processor will demonstrate and provide reasonable evidence to the Organisation on reasonable notice, that the processor has implemented appropriate technical and organisational measures to ensure a level of security appropriate to the risk. In the event that the Organisation is made/becomes aware that the processor has failed to implement such appropriate technical and organisational measures, the Organisation may, acting reasonably, direct the processor to implement without delay all or any of the following measures;

- the pseudonymisation and encryption of personal data;
- measures to ensure the ongoing confidentiality, integrity, availability and resilience of the processor's processing systems and services;
- measures to ensure the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
- a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

SCHEDULE 3

SOFTWARE SPECIFICATION

1. The Software is available online via an internet browser.
2. The Software will be accessible by:
 - 2.1.1.certain individuals employed or contracted by the Organisation required to administrate and manage the DoLS process
 - 2.1.2.certain individuals employed or contracted by the Organisation to conduct Best Interest and Mental Health Assessments under LPS
 - 2.1.3.certain individuals employed or contracted by the Organisation to manage or administrate user access to CoLiberty
 - 2.1.4.certain individuals employed or contracted by the Organisation to act as Signatory in respect of granting or otherwise a dol under LPS
 - 2.1.5.certain individuals delegated **Third Party** access to contribute to individual dols eg consulted with people, friends, family, managing authorities etc.
- 2.2. The Software is designed to provide the organisation with the tools it requires to administrate, assess, authorise and report deprivation of liberty under LPS schemes.
- 2.3. The Software will provide the Organisation with facility to case manage, collaborate on assessments and share history and assessments across Responsible Body boundaries (providing each party is in agreement).