

## CHROMA THERAPIES LTD (T/A CHROMA)

### TERMS AND CONDITIONS OF BUSINESS

THE COMMISSIONER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 10 (LIMITATION OF LIABILITY).

#### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

##### 1.1 Definitions:

**Background Checks:** has the meaning set out in clause 4.4.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Case Proposal:** Chroma's case proposal for arts therapies services.

**Chroma:** Chroma Therapies Ltd (t/a Chroma) registered in England and Wales with company number 08745211.

**Chroma Materials:** has the meaning set out in clause 5.1(g).

**Client:** the individual, identified by the Commissioner, who will be receiving the Therapy Services.

**Commencement Date:** has the meaning given in clause 2.2.

**Commissioner:** the person, firm or organisation who purchases the Therapy Services from Chroma for the benefit of the Client.

**Commissioner Default:** has the meaning set out in clause 5.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 13.5.

**Contract:** the contract between Chroma and the Commissioner for the supply of the Therapy Services in accordance with these Conditions.

**Declined Therapy Services:** any Therapy Services planned or scheduled to be supplied by Chroma during the Termination Notice Period but declined or refused by the Commissioner and/or Client.

**Fees:** the fees payable by the Commissioner for the supply of the Therapy Services in accordance with clause 7.

**HCPC:** the Health and Care Professions Council.

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

**Notice Period:** has the meaning set out in clause 10.8.

**Order:** the Commissioner's order for the Therapy Services as set out by Commissioner's written acceptance of Chroma's Case Proposal.

**Start Date:** has the meaning set out in clause 4.5.

**Termination Notice Period:** has the meaning set out in clause 11.1.

**Therapist:** a HCPC registered arts therapist employed or retained by Chroma to deliver the Therapy Services.

**Therapy Services:** the arts therapies services supplied by Chroma as set out in the Order.

## 1.2 Interpretation:

- (a) A reference to legislation or a legislative provision:
  - (i) is a reference to it as amended, extended or re-enacted from time to time; and
  - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email.

## 2. Basis of contract

- 2.1 The Order constitutes an offer by the Commissioner to purchase the Therapy Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Chroma issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**'Commencement Date'**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Chroma are issued or published for the sole purpose of giving an approximate idea of the Therapy Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Commissioner seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any Case Proposal given by Chroma shall not constitute an offer, and is only valid for the period of 30 Business Days from its date of issue unless otherwise specified in the Case Proposal.

## 3. Supply of the Therapy Services

- 3.1 Chroma shall supply, or procure the supply of, the Therapy Services to the Commissioner in accordance with the Order in all material respects.

- 3.2 Chroma shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Therapy Services.
- 3.3 Chroma reserves the right to amend the Order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Therapy Services, and Chroma shall notify the Commissioner in any such event.
- 3.4 Chroma warrants to the Commissioner that the Therapy Services will be provided using reasonable care and skill commensurate with the prevailing standards of the HCPC.

#### **4. The Therapist**

- 4.1 Chroma shall make available the Therapist who shall deliver the Therapy Services to the Client.
- 4.2 Chroma shall use reasonable endeavours to procure that the Therapist shall:
- (a) be registered with the HCPC;
  - (b) follow the HCPC code of ethics;
  - (c) have a valid certificate for a minimum of Level 3 training in Safeguarding Children and Safeguarding Vulnerable Adults (or shall be booked onto safeguarding training within 6 months of the Commencement Date);
  - (d) attend, in accordance with HCPC professional regulations, regular clinical supervision to ensure the highest level of professional clinical practice for the duration of the Contract;
  - (e) deliver the Therapy Services to the Client for the duration stated in the Order;
  - (f) make decisions about continuation or cessation of therapeutic input in collaboration with the Commissioner;
  - (g) in accordance with their regulatory requirements, respect and maintain the confidentiality of all information pertaining to the Commissioner, its employees and the Client at all times, except where disclosure of such information is required by law;
  - (h) in accordance with their professional requirements, and the HCPC's guidelines, write confidential clinical notes on a weekly basis for use in supervision, and as a record of therapeutic progress;
  - (i) be responsible for all aspects of Grievance and Disciplinary Procedure pertaining to their professional work;
  - (j) be responsible for providing the therapeutic resources and equipment unless otherwise specified in the Order;
  - (k) be responsible for providing a work plan to the Client and/or the Commissioner as appropriate; and
  - (l) act in accordance with all reasonable instructions given to them by the Client or Commissioner provided such instructions are compatible with the specification of Therapy Services provided in the Order.

4.3 Where the Therapist:

- (a) is self-employed, Chroma shall use reasonable endeavours to procure that the Therapist shall maintain in force professional indemnity and malpractice insurance with a limit of at least £1 million per claim; and
- (b) is employed by Chroma, the Therapist shall be covered under Chroma's professional indemnity and malpractice insurance.

4.4 Chroma shall carry out and collate all necessary background checks on the Therapist, including CRB/DBS/Access NI/PVG Certificate checks, safeguarding certificates, professional qualifications and professional registration ('**Background Checks**').

4.5 The Therapy Services will commence when:

- (a) satisfactory Background Checks have been completed on the Therapist;
- (b) the Commissioner has had direct contact with the Therapist; and
- (c) start days/times and location/venues are agreed between Commissioner and Therapist ('**Start Date**').

5. **Commissioner's obligations**

5.1 The Commissioner shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with Chroma and the Therapist in all matters relating to the Therapy Services;
- (c) assist in the sourcing and provision of a suitable location for the delivery of the Therapy Services;
- (d) provide a named individual to act as the main point of contact relating to the Order;
- (e) provide Chroma with such information and materials as Chroma may reasonably require in order to supply the Therapy Services, and ensure that such information is complete and accurate in all material respects;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Therapy Services before the Start Date;
- (g) keep all materials, equipment, documents and other property of Chroma ('**Chroma Materials**') in safe custody at its own risk, maintain the Chroma Materials in good condition until returned to Chroma, and not dispose of or use the Chroma Materials other than in accordance with Chroma's written instructions or authorisation; and
- (h) comply with any additional obligations as set out in the Order.

5.2 If Chroma's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Commissioner or failure by the Commissioner to perform any relevant obligation ('**Commissioner Default**')

- (a) without limiting or affecting any other right or remedy available to it, Chroma shall have the right to suspend performance of the Therapy Services until the Commissioner remedies the Commissioner Default, and to rely on the Commissioner Default to relieve it from the performance of any of its obligations in each case to the extent the Commissioner Default prevents or delays Chroma's performance of any of its obligations;
- (b) Chroma shall not be liable for any costs or losses sustained or incurred by the Commissioner arising directly or indirectly from Chroma's failure or delay to perform any of its obligations as set out in this clause 5.2; and
- (c) the Commissioner shall reimburse Chroma on written demand for any costs or losses sustained or incurred by Chroma arising directly or indirectly from the Commissioner Default.

## **6. Non-solicitation**

- 6.1 The Commissioner shall not, without the prior written consent of Chroma, at any time from the Commencement Date to the expiry of 6 months after the termination or expiry of the Contract, solicit or entice away from Chroma or employ or attempt to employ the Therapist or any other person who is, or has been, engaged as an employee, consultant or subcontractor of Chroma in the provision of the Therapy Services.
- 6.2 Any consent given by Chroma in accordance with clause 6.1 shall be subject to the Commissioner paying to Chroma a sum equivalent to 50% of the then current annual remuneration of the individual concerned, or, if higher, 50% of the annual remuneration to be paid by the Commissioner to that individual.

## **7. Fees and payment**

- 7.1 The Fees for the Therapy Services shall be calculated on a time and materials basis:
  - (a) the Fees shall be calculated in accordance with Chroma's hourly or daily fee rates, as set out in the Order;
  - (b) Chroma's daily fee rates for each individual are calculated on the basis of a seven-hour day between the hours of 8.00 am to 6.00 pm on Business Days; and
  - (c) Chroma shall be entitled to charge the Commissioner in full for any sessions cancelled by the Client or the Commissioner on less than 24 hours' notice.
- 7.2 Chroma reserves the right to increase the Fees on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 7.3 The Commissioner shall pay each invoice submitted by Chroma:
  - (a) within 14 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by Chroma.

- 7.4 Time for payment shall be of the essence of the Contract.
- 7.5 All amounts payable by the Commissioner under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ('VAT'). Where any taxable supply for VAT purposes is made under the Contract by Chroma to the Commissioner, the Commissioner shall, on receipt of a valid VAT invoice from Chroma, pay to Chroma such additional amounts in respect of VAT as are chargeable on the supply of the Therapy Services at the same time as payment is due for the supply of the Therapy Services.
- 7.6 If the Commissioner fails to make a payment due to Chroma under the Contract by the due date, then, without limiting Chroma's remedies under clause 11, the Commissioner shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8. Intellectual property rights**
- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Therapy Services (other than Intellectual Property Rights in any materials provided by the Commissioner) shall be owned by Chroma.
- 9. Data protection**
- The parties shall comply with their data protection obligations as set out in Schedule 1.
- 10. Limitation of liability: THE COMMISSIONER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 10.1 Chroma has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £10 million per claim. The limits and exclusions in this clause reflect the insurance cover Chroma has been able to arrange and the Commissioner is responsible for making its own arrangements for the insurance of any excess loss.
- 10.2 References to liability in this clause 10 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.3 Nothing in this clause 10 shall limit the Commissioner's payment obligations under the Contract.
- 10.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).



- 10.5 Subject to clause 10.4 (Liabilities which cannot legally be limited) Chroma shall not be liable to the Commissioner for the following types of loss:
- (a) loss of profits.
  - (b) loss of sales or business.
  - (c) loss of agreements or contracts.
  - (d) loss of anticipated savings.
  - (e) loss of use or corruption of software, data or information.
  - (f) loss of or damage to goodwill.
  - (g) indirect or consequential loss.
- 10.6 Subject to clause 10.4 (Liabilities which cannot legally be limited) Chroma's total liability to the Commissioner for all loss or damage shall not exceed the total Fees paid to Chroma by the Commissioner under the Contract.
- 10.7 Chroma has given commitments as to compliance of the Therapy Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.8 Unless the Commissioner notifies Chroma that it intends to make a claim in respect of an event within the Notice Period, Chroma shall have no liability for that event. The '**Notice Period**' for an event shall start on the day on which the Commissioner became, or ought reasonably to have become, aware of the event having occurred and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 10.9 This clause 10 shall survive termination of the Contract.

## **11. Termination**

- 11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party the required written notice as stated in the Order ('**Termination Notice Period**').
- 11.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

11.3 Without affecting any other right or remedy available to it, Chroma may suspend or terminate the supply of the Therapy Services under the Contract with immediate effect by giving written notice to the Commissioner if:

- (a) the Commissioner fails to pay any amount due under the Contract on the due date for payment; or
- (b) Chroma is unable to provide a Therapist deemed suitable by both Chroma and the Commissioner.

## **12. Consequences of termination**

12.1 On termination or expiry of the Contract:

- (a) the Commissioner shall immediately pay to Chroma all of Chroma's outstanding unpaid invoices and interest;
- (b) in respect of any:
  - (i) Therapy Services supplied; and
  - (ii) Declined Therapy Services,which have not been invoiced by Chroma, Chroma shall submit an invoice, which shall be payable by the Commissioner immediately on receipt;
- (c) the Commissioner shall return all of the Chroma Materials. If the Commissioner fails to do so, then Chroma may enter the Commissioner's premises and take possession of them. Until they have been returned, the Commissioner shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

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

12.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **13. General**

**13.1 Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.



### **13.2 Assignment and other dealings.**

- (a) Chroma may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Commissioner shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Chroma.

### **13.3 Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.3(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### **13.4 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

### **13.5 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### **13.6 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other

right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**13.7 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 13.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**13.8 Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) sent by email to the address specified in the Order.
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (iii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 13.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 13.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**13.9 Third party rights.**

- (a) The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

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

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

## SCHEDULE 1 : DATA SHARING TERMS (“DSA”)

The parties agree:

### 1 INTERPRETATION

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

#### 1.1 Definitions:

**“Agreed Purpose”** the provision of Therapy Services as provided for, and for the term of, the Contract.

**“Criminal Offence Data”** means Personal Data relating to criminal convictions and offences or related security measures to be read in accordance with section 11(2) of the DPA 2018 (or other applicable Data Protection Legislation).

**“Data Protection Legislation”** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended;

**“Personal Data Breach”** a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

**“Shared Personal Data”** the Personal Data and Special Categories of Personal Data to be shared between the parties under clause 4 of this DSA.

**“Special Categories of Personal Data”** the categories of Personal Data set out in the Data Protection Legislation.

**“Subject Rights Request”** the exercise by a data subject of their rights under the Data Protection Legislation.

**“UK GDPR”** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Controller, Processor, Information Commissioner, Data Subject and Personal Data, Processing and appropriate technical and organisational** measures shall have the meanings given to them in the Data Protection Legislation.

#### 1.2 The Annex forms part of this DSA and shall have effect as if set out in full in the body of this DSA, and any reference to this DSA includes the Annex.

## **2 PURPOSE**

- 2.1 This DSA sets out the framework for the sharing of Shared Personal Data when the Commissioner discloses or makes available Shared Personal Data to Chroma in connection with the Contract.
- 2.2 The parties consider this data sharing initiative necessary and proportionate as the Commissioner is commissioning Therapy Services from Chroma for the benefit of the Client(s), in relation to whom the Commissioner holds Personal Data which it must share with Chroma to enable Chroma to contact the Clients and start the provision of Therapy Services. The sharing of the Client's Personal Data in this way is fair as it will benefit the Client and not unduly infringe the Client's (the **Data Subject**) fundamental rights and freedoms and interests. The Client has been notified of the sharing of Personal Data and Special Category Personal Data with Chroma by the Commissioner.
- 2.3 The parties agree to Process Shared Personal Data for the Agreed Purpose only. The parties shall not Process Shared Personal Data in any way that is incompatible with the Agreed Purpose.

## **3 COMPLIANCE WITH NATIONAL DATA PROTECTION LAWS**

- 3.1 Each party must ensure compliance with applicable Data Protection Legislation at all times during the term of the Contract and this DSA.

## **4 SHARED PERSONAL DATA**

- 4.1 The following types of Personal Data will be shared between the parties during the term of this DSA:
  - 4.1.1 Personal Data of the Client including name, age, home address, Commissioners reference number, NHS number, telephone number, email address
  - 4.1.2 Special Categories of Personal Data of the Client including (but not limited to) their current physical and mental health, previous medical history (physical and mental health), previous treatments and current treatments, notes on the Clients progress or difficulties, their beliefs (philosophical or religious), their diet or related eating or drinking habits, sexual orientation and sex life, racial or ethnic origin, genetic or biometric data used to uniquely identify a natural person, where essential for the provision of the Therapy Services and/ or the safe management of the Client, Criminal Offence Data may be shared between the parties during the term of the Contract .
  - 4.1.3 Personal Data of individuals involved in treatment or service provision to the Client, including (but not limited to) staff of the Commissioner or Chroma, therapists and medical practitioners who have treated or are currently treating the Client, being their name or other identifier, email addresses, telephone numbers or other means of contact;

- 4.2 This Shared Personal Data is considered necessary to share, to enable the provision of Therapy Services to the Client by Chroma.

## **5 LAWFUL, FAIR AND TRANSPARENT PROCESSING**

- 5.1 Each party shall ensure that it Processes the Shared Personal Data fairly and lawfully in accordance with clause 5.2 during the Term of this DSA.
- 5.2 Each party shall ensure that it has a legal basis under Data Protection Legislation for the Processing of Shared Personal Data.
- 5.3 The parties each agree to provide such assistance as is reasonably required to enable the other party to comply with Subject Rights Requests within the time limits imposed by the Data Protection Legislation.
- 5.4 The Commissioner shall, in respect of Shared Personal Data, ensure that it provides clear and sufficient information to the Data Subjects, in accordance with the Data Protection Legislation, of the purposes for which it will process their Personal Data, the legal basis for such purposes and such other information as is required by the Data Protection Legislation including where Shared Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the Data Subject to understand the purpose and risks of such transfer.

## **6 DATA QUALITY**

- 6.1 The parties have developed a reliable means for sharing Shared Personal Data and the Commissioner shall ensure that all Shared Personal Data is accurate and each transfer is secure.

## **7 DATA SUBJECTS' RIGHTS**

Each party is independently responsible for maintaining a record of Subject Rights Requests and complying with them and may request assistance from the other party in so far as is necessary to comply with a Subject Rights Request.

## **8 DATA RETENTION AND DELETION**

- 8.1 Chroma shall not retain or process Shared Personal Data for longer than is necessary to carry out the Agreed Purpose.

- 8.2 Notwithstanding clause 8.1, each party shall continue to retain Shared Personal Data in accordance with any statutory or professional retention periods applicable in their respective countries and / or industry.
- 8.3 Subject to clause 8.2, Chroma shall ensure that any Shared Personal Data is destroyed:
- 8.3.1 on termination of its provision of Services under the Contract;
  - 8.3.2 on expiry of this DSA on any grounds; or
  - 8.3.3 once Processing of the Shared Personal Data is no longer necessary for the Agreed Purpose.

## **9 TRANSFERS**

- 9.1 For the purposes of this clause, transfers of Shared Personal Data shall mean any sharing of Personal Data by Chroma with a third party, and shall include the subcontracting the provision of Therapy Services to a third party, who shall act as a third party Controller in respect of the Shared Personal Data.
- 9.2 Chroma may not transfer Shared Personal Data to a third party located outside the UK or EEA.

## **10 SECURITY AND TRAINING**

- 10.1 The Commissioner shall only provide the Shared Personal Data to Chroma by using secure methods and to this end, the parties undertake to have in place throughout the term of this DSA appropriate technical and organisational security measures to prevent Personal Data Breaches.
- 10.2 The Parties shall ensure a level of security appropriate to:
- 10.2.1 the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
  - 10.2.2 the nature of the Shared Personal Data to be protected. The parties agree that the Shared Personal Data comprises Special Categories of Personal Data that relates to vulnerable Data Subjects.
- 10.3 It is the responsibility of each party to ensure that its staff members are appropriately trained to handle, process and transfer the Shared Personal Data (in accordance with the technical and organisational security measures set out in the Annex) together with any other applicable Data Protection Legislation and have entered into confidentiality agreements relating to the Processing of Personal Data.

## **11 PERSONAL DATA BREACHES AND REPORTING PROCEDURES**



11.1 The parties shall each comply with its obligation to report a Personal Data Breach to the Information Commissioner or appropriate Supervisory Authority and (where applicable) Data Subjects under the Data Protection Legislation.

11.2 The parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data Breach in an expeditious and compliant manner.

## **12 WARRANTIES**

12.1 The Commissioner warrants and undertakes that it will:

12.1.1 process the Shared Personal Data in compliance with Data Protection Legislation.

12.1.2 maintain its registration with the Information Commissioner during the term of the Contract.

12.1.3 take all appropriate steps to ensure compliance with the security measures for the secure transfer of Shared Personal Data set out in the Annex.

12.1.4 have a legal basis for the transfer and sharing of Shared Personal Data to Chroma and it will ensure that the Shared Personal Data is accurate.

12.2 Except as expressly stated in this DSA, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the greatest extent permitted by law.

## **13 INDEMNITY**

13.1 The Commissioner shall indemnify Chroma in respect of the warranty at clause 12.1.4 and hold Chroma harmless from any cost, charge, damages, expense or loss arising from the Commissioner's breach of clause 12.1.4.

## **14 VARIATION**

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

## **15 CHANGES TO THE APPLICABLE LAW**

If during the Term of this DSA the Data Protection Legislation change in a way that the Contract is no longer adequate for the purpose of governing lawful data sharing exercises, the parties agree that they will negotiate in good faith to review the DSA and the Contract if necessary, in the light of the changes.

## ANNEX : SECURITY MEASURES

Technical and organisational measures to ensure the secure transfer and sharing of Shared Personal Data :

The sharing and transfer of Personal Data can be made

1. using electronic methods (email, file transfer applications)
2. using telephones during case consultations
3. face to face during meetings
4. by hardcopy using postal or courier services

the measures in place to ensure the secure transfer and sharing of data in each case are:

### Electronic

- Encryption of emails whilst in transit
- Use of cloud email security platforms such as Egress
- Appropriate training on sending emails to appropriate recipients

### Telephone & Face to Face

- Any handwritten notes are transcribed onto secure platforms and then destroyed

### Hardcopy

- When sending, the preferred use of couriers where practical to do so
- On receipt, scanning and storing on secure platforms before shredding

### Other organisational measures to ensure data security:

- MFA used for all software used for storage of shared personal data
- Storage of shared personal data is not allowed on computers, laptops or mobile devices
- Safeguards in place to ensure all hardware has appropriate security and virus protection in place and that updates are installed in a timely manner
- Use of pseudonymisation where it is practical to do so
- All computers and hardware that access locations where shared personal data is stored are password protected and that all passwords are secure according to the Password Policy