

Dated 1st April 2018

Subcontract

**regarding contract for the provision of Services relating to Sexual
Health between Provide Community CIC and Healthy Living
Partnership Limited**

between

Healthy Living Partnership Limited

and

SUBCONTRACTOR NAME AND ADDRESS

Please state below

Parties

- (1) **HEALTHY LIVING PARTNERSHIP LIMITED** incorporated and registered in England and Wales with company number 09600188 whose registered office is at The Old Grange Warren Estate, Lordship Road, Writtle, Essex, CM1 3WT (the **Company**).
- (2) **[FULL LEGAL NAME OF SUBCONTRACTOR]** [incorporated and registered in England and Wales with [company] number _____ whose registered office is at [ADDRESS] _____

(the **Subcontractor**).

Background

- (A) The Company has entered into, or expects to enter into, an agreement in the form attached at Schedule 1 (the **Main Contract**) to supply services to Provide Community Interest Company (registered in England under number 07320006) (the **Customer**) relating to sexual health service to be provided to Thurrock Council.
- (B) The Company's entry into the Main Contract is on the basis that it is subcontracting to the Group of Subcontractors the delivery of the services described in the Main Contract, on a "back-to-back" basis with the Company, and in accordance with the provisions set out below.

Agreed terms

1 Definitions and Interpretation

- 1.1 The following definitions and rules of interpretation apply in this agreement.
- 1.2 Definitions:

Customer: as defined in Background (A).

Effective Date: as defined in Clause 2.1.

Group of Subcontractors: all the subcontractors (including the Subcontractor during the Term) from time to time to whom the Company subcontracts any of the Main Contract Services.

Main Contract: as defined in Background (A).

Main Contract Services: the services to be provided by the Company to the Customer pursuant to the Main Contract.

Subcontract Fees: the amounts set out in schedules 1 and 2 to the Main Contract for the provision of the Subcontract Services described in those schedules (and for the avoidance of doubt, this does not include the fees described in schedule 3 to the Main Contract).

Subcontract Services: the services delivered or to be delivered by the Subcontractor pursuant to this agreement (as one of the Group of Subcontractors), in accordance with the Main Contract, being Main Contract Services other than any which are expressed or implied under the Main Contract not to be subcontracted.

Term: the term of this agreement, being as described in Clause 7.

- 1.3 References to Clauses and Schedules are to clauses of and schedules to this agreement.

- 1.4 Headings shall not affect the interpretation of this agreement.
- 1.5 Unless the context otherwise requires: words in the singular shall include the plural and in the plural shall include the singular; words imparting a gender shall include the other gender and the neutral; and references to persons shall include an individual, company, corporation, firm, partnership or limited liability partnership.
- 1.6 A reference to **writing** or **written** (except in respect of sending a notice in accordance with Clause 9.11) includes in electronic form.
- 1.7 References to **includes** or **including** or like words or expressions shall mean without limitation.
- 1.8 References to any statute or statutory provision shall include any subordinate legislation made under it, any provision which it has modified or re-enacted (whether with or without modification) and any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
- 1.9 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2 Effective Date

- 2.1 This agreement shall have legal effect as between the Company and the Subcontractor on the date that it is signed by the last of the Company or the Subcontractor to sign it, or in the absence of being signed, from the date on which the Subcontractor first delivers Subcontract Services (**Effective Date**).

3 Company's role

- 3.1 The Subcontractor acknowledges that the Company is merely facilitating the ability of the Group of Subcontractors to provide the Main Contract Services (other than (a) any overall management by the Company of the provision of those Main Contract Services and (b) any aspect of the Main Contract Services which are expressed or implied under the Main Contract not to be subcontracted).
- 3.2 To the extent permitted by law, the Subcontractor agrees not to hold the Company responsible or liable (whether in contract, tort, negligence or any legal cause of action) for any act or omission of any member of the Group of Subcontractors or for any termination of the Main Contract or this agreement as a result of any act or omission of any member of the Group of Subcontractors.
- 3.3 Whether or not the Company or the Customer decides to enter into or terminate or suspend the Main Contract shall be entirely at the option of the Company or the Customer. There is no promise of revenues or continued future revenues from this agreement. The Subcontractor shall not hold the Company liable (whether in contract, tort, negligence or any legal cause of action) in respect of any (1) indirect or consequential losses, damages, costs or expenses; (2) loss of actual or anticipated profits; (3) loss of revenue; (4) loss of business; (5) loss of contracts; (6) loss of savings; (7) loss of opportunity; (8) loss of goodwill; or (9) loss of reputation; in each case in respect of the Main Contract not being entered into or any early termination or suspension of the Main Contract.

4 Subcontracting arrangements

- 4.1 As soon as this agreement becomes effective under Clause 2, and provided the Main Contract is and remains in force, the Subcontractor shall be bound to deliver to the

Company the Subcontract Services. Where applicable to the rights and obligations in respect of the provision of the Subcontract Services, and subject to anything else set out in this agreement which would be inconsistent, the terms and provisions of the Main Contract (as updated from time to time) shall apply to this agreement mutatis mutandis (with corresponding rights, obligations, warranties, indemnities and representations applying to the corresponding parties) so that, where appropriate and to the extent applicable:

- 4.1.1 reference to the "Company" is substituted for (or, as applicable, additional to) "Provide" or the "Customer";
 - 4.1.2 reference to the "Subcontractor" is substituted for (or, as applicable, additional to) "HLP" or the "Supplier";
 - 4.1.3 reference to the "Customer" is substituted for (or, as applicable, additional to) "Thurrock Council";
 - 4.1.4 reference to the "Group" is to the group of the Customer and the Company;
 - 4.1.5 reference to "this agreement" is interpreted by reference to this agreement;
 - 4.1.6 reference to the parties are interpreted by reference to the parties to this agreement;
 - 4.1.7 anything described in the Main Contract as belonging to or being owned by the Customer shall be deemed to belong to or be owned by the Customer or the Company, and anyone with whom the Customer has a relationship as described in the Main Contract shall be deemed to be someone with whom the Customer or the Company has a relationship;
 - 4.1.8 where the Company has rights or benefits or discretions (or the right to receive anything) under or in relation to the Main Contract, the Subcontractor will receive the benefit of the corresponding rights or benefits or discretions (or have a corresponding right to receive anything) under or in relation to this agreement to the extent that it is reasonable for the Subcontractor to benefit from those rights or benefits or discretions; and
 - 4.1.9 where the Customer has rights or benefits or discretions (or the right to receive anything) under or in relation to the Main Contract, the Company (and ultimately the Customer) will receive the benefit of the corresponding rights or benefits or discretions (or have a corresponding right to receive anything) under or in relation to this agreement.
- 4.2 To the extent that any wording in the Main Contract states that something will be done or not done (or happen or not happen), then unless the context suggests otherwise, this shall be deemed to be an obligation on the Subcontractor to ensure that that thing will be done or not done (or happen or not happen) as the case may be, and in good time so as to enable the Company to have a reasonable opportunity to perform all of its obligations appropriately in sufficient time and so that the Company would not be in breach of any legal obligation under or pursuant to the Main Contract.
- 4.3 The Subcontractor undertakes to the Company that it shall:
- 4.3.1 perform the Subcontract Services in accordance with the requirements and to the standards and levels for the Main Contract Services set out in the Main Contract and not to do or omit to do anything in respect of the Subcontract Services which would leave the Company in breach or with any liability under the Main Contract;

- 4.3.2 raise with the Company as soon as possible any questions it may have from time to time on the Subcontract Services or interpretation of them;
 - 4.3.3 as the Company reasonably requires and in accordance with the Company's instructions, provide all information, deliverables, data, materials, reports and co-operation to the Company and (if the Customer requires) the Customer. This includes the Subcontractor providing any information, deliverables, data, materials and reports required to be provided to the Customer under the Main Contract at the same time as providing it to the Company;
 - 4.3.4 comply with and deliver any requirements of the Company which the Company provides to the Subcontractor in accordance with Clauses 4.3.2 and 4.3.3;
 - 4.3.5 ensure that it has appropriately qualified and experienced healthcare professionals assigned to deliver the Subcontract Services at all times and to the standards and in accordance with the requirements of the Main Contract;
 - 4.3.6 inform the Company in writing immediately in the event it cannot, or believes it may not be able to, perform any element of the Subcontract Services.
- 4.4 The Company undertakes to the Subcontractor that it shall:
- 4.4.1 use its reasonable endeavours to ensure the Main Contract is performed by the Customer in accordance with its terms (but it shall not have any liability (whether in contract, tort, negligence or any legal cause of action) to the extent that the Company has used those reasonable endeavours); and
 - 4.4.2 inform the Subcontractor in writing as soon as possible of any material developments or changes in relation to the Main Contract.
- 4.5 To the extent that anything said or done by the Company to the Customer (whether under or outside of the Main Contract, and as a warranty, representation or otherwise) is based on any input or information from the Subcontractor, the Subcontractor warrants and represents that such input or information is true and accurate and continues to be so.
- 4.6 The Company shall not materially amend the Main Contract unless it reasonably believes this is in the interests of the Group of Subcontractors. If the Main Contract is amended, the Company shall inform the Subcontractor in writing as soon as reasonably possible, and such amendments shall apply to this agreement.
- 4.7 When applying the terms of the Main Contract to this agreement, the terms shall be amended as follows:
- 4.7.1 Clause 8.1 of the Main Contract shall not refer to there being any payment for fees under schedule 3 to the Main Contract;
 - 4.7.2 Clause 8.2 of the Main Contract shall not apply;
 - 4.7.3 Clause 8.3 of the Main Contract shall refer to a three day period instead of seven days;
 - 4.7.4 the competitive business described in clause 10.1 of the Main Contract shall refer to any business of the Customer or the Company or the Group;
 - 4.7.5 under clause 12.1 of the Main Contract, the Customer, as well as the Company and the Group, may process the data in the ways described;

- 4.7.6 clause 19.2 of the Main Contract shall refer to 15 Business Days rather than ten Business Days; and
- 4.7.7 Schedule 3 to the Main Contract, and paragraph 2.13 (and any reference to paragraph 2.13 in paragraph 2.14) and appendix 3 to schedule 2 to the Main Contract, will not apply to this agreement, except that the Subcontractor agrees to use all reasonable endeavours to ensure that it carries out its obligations in such a way so as to ensure that no penalty or damages are payable by the Company to the Customer in respect of those provisions, and the Subcontractor shall reimburse the Company to the extent that any penalty or damages are payable due to the act or omission of the Subcontractor.

5 Indemnity from Subcontractor and disputes

- 5.1 The Subcontractor shall indemnify and keep indemnified the Company against all losses, claims, demands, liabilities, costs and expenses incurred or suffered by the Company (including any liability under or pursuant to the Main Contract) arising out of that Subcontractor's act or omission in respect of this agreement including the performance, late performance, non-performance or faulty performance of any aspect of the Subcontract Services.
- 5.2 The Company shall inform the Subcontractor in writing as soon as possible after it becomes aware of any dispute between the Company and the Customer arising out of the Subcontractor's performance, late performance, non-performance or faulty performance of the Subcontract Services.
- 5.3 The Company shall deal with any dispute that arises between the Company and the Customer under the Main Contract and shall control any litigation, arbitration, mediation, adjudication, expert determination or other dispute settlement procedure in which the Company might be involved in relation to the Main Contract.

6 Fees, charges and expenses

- 6.1 In respect of the Subcontract Fees, it is agreed that:
- 6.1.1 the Company shall pay to the Subcontractor as full consideration for the performance by that Subcontractor of its duties under this agreement the Subcontract Fees;
- 6.1.2 the Company shall have no obligation to pay the Subcontractor any Subcontract Fees until it has received payment from the Customer pursuant to the Main Contract;
- 6.1.3 the Company shall pay the Subcontractor the relevant Subcontract Fees within 30 days of the later of the Company:
- (a) receiving a proper invoice from the Subcontractor; and
 - (b) receiving payment itself in full from the Customer; and
- 6.1.4 the Company may at any time and at its option, set off any liability of the Subcontractor to the Company (including any amounts due under Clause 5) against any liability of the Company to the Subcontractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by the Company of its rights under this Clause shall not

limit or affect any other rights or remedies available to it under this agreement or otherwise.

7 Commencement and duration

7.1 This agreement shall be effective from the Effective Date and shall continue in force until the earliest of:

7.1.1 the Company terminates this agreement in accordance with Clause 8.1 or 8.2 or at law; or

7.1.2 the Subcontractor terminates this agreement in accordance with Clause 8.2 or at law; or

7.1.3 the Main Contract expires or is terminated;

in which case and whereupon this agreement shall terminate.

8 Termination

8.1 The Company may at any time terminate this agreement by notice to the Subcontractor with immediate effect where:

8.1.1 the Company ceases to receive payment under the Main Contract or the Company is unable to perform its obligations under the Main Contract by reason of any act, or omission or otherwise of the Customer; or

8.1.2 the Main Contract terms are amended by the Customer to such an extent that in the reasonable opinion of the Company, the continued performance by the Company of the Main Contract is no longer in the best interests of the Company.

8.2 Each party may at any time terminate this agreement by notice to the other party with immediate effect where:

8.2.1 the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so; or

8.2.2 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or

8.2.3 the other party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts as they come due, or an order is made or a resolution is passed for the winding-up of the other party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other party or a receiver or manager or administrative receiver is appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order or the other party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.

9 General

- 9.1 **Counterparts** - This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 9.2 **Material Developments** - Each party undertakes to inform the other party in writing as soon as practicable, of any matter, or information or development of which it becomes aware which may affect its ability to perform any obligation arising under this agreement.
- 9.3 **Entire Agreement** - Save as expressly provided herein, this agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the parties hereto preceding the date of this agreement and in any way relating to the subject matter of this agreement and to the exclusion of any representations not expressly stated herein except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each party acknowledges that it has not entered into this agreement based on any representation that is not expressly incorporated into this agreement.
- 9.4 **Waiver** - Unless a party expressly states in writing that it is waiving a particular power, right or remedy in a particular stated instance, no failure or delay or omission by either party in exercising any power, right or remedy under this agreement or at law shall operate as a waiver of such power, right or remedy; and no waiver in any particular instance shall extend to or affect any other or subsequent event or impair any powers, rights or remedies in respect of it or in any way modify or diminish that party's other powers, rights or remedies under this agreement or at law.
- 9.5 **Severability** - If any Clause or other provision in this agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other Clause or provision or part of any Clause or provision, all of which shall remain in full force and effect.
- 9.6 **Relationship** - Nothing in this agreement shall create or be deemed to create a partnership, an agency or a relationship of employer and employee between the parties.
- 9.7 **No assignment or further subcontracting** - The Subcontractor shall not (and shall not purport to) assign, subcontract, transfer, novate, charge or otherwise encumber, create any trust over or deal in any manner with this agreement or any of its rights, liabilities or obligations under this agreement without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed). If with such consent the Subcontractor further subcontracts any of its obligations to a subcontractor, it shall be and remain fully liable for the performance of any subcontractor appointed by it.
- 9.8 **Third parties** - No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 9.9 **Governing law** - This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 9.10 **Jurisdiction** - Each party irrevocably agrees that the English courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).
- 9.11 **Notices** - Any notice required or authorised to be given under this agreement shall be in writing and shall be served by personal delivery or by recorded delivery or by overnight

courier or by facsimile addressed to the relevant party at its address stated in this agreement or at such other address or facsimile number as is notified by the relevant party to the other party for this purpose from time to time or at the address or facsimile number of the relevant party last known to the other party. Any notice so given shall be deemed to have been served when it is actually received, but any notice given by facsimile shall be deemed to have been received and served upon receipt by the sender of an answerback signal from the correctly numbered receiving machine.

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

Signed by 

Duly authorised to sign on behalf of

**HEALTHY LIVING PARTNERSHIP
LIMITED**

1st April 2018

Signed by

duly authorised to sign

on behalf of **[SUBCONTRACTOR**

Date

NAME]

Schedule 1 Main Contract

See separate.