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SUBCONTRACTOR DELIVERY POLICY

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1. Policy Statement

This policy sets out Activate Learning's role in ensuring the Department for Education's (DFE's) Subcontracting Rules for post-16 education and training, and the Office for Students (OfS) Condition E10: Subcontracting for Higher Education in England is administered correctly and to provide clarity to any interested parties around the process and decision making relating to subcontracting.

2. Purpose

2.1. This Policy outlines Activate Learning's position in relation to its subcontracting provision and funding to partner organisations.

2.2. This Policy is designed to ensure:

- The provision offered by subcontractor organisations supports strategic objectives

- That Activate Learning's mission, commitments and values are upheld by subcontractor organisations
- That our subcontracted arrangements are delivered within a robust framework which is transparent, legal and in the best interests of all parties involved
- That subcontracted provision is fit for purpose and of high quality
- That our learners receive the best service possible
- That subcontracted arrangements adhere to relevant Department for Education (DfE) rules, and the regulatory framework for the Office for Students (OfS)
- That subcontracted arrangements are in accordance with Activate Learning's relevant policies, including Equality and Diversity, Safeguarding and Prevent, Financial Regulations, Fees Policy, and Data Protection.

This policy will be reviewed with each subcontractor as part of the annual contract creation or renewal cycle to ensure that all partners are aware of their responsibilities.

3. Scope

3.1. This policy applies to all subcontractors and informs all relevant parties (potential partners, Governors, Activate Learning staff, Activate Apprenticeship staff, funding bodies) of our intentions with regards to subcontracted provision.

3.2. The policy includes the fees and charges arrangements we have with subcontractors and only includes provision subcontracting that is funded or regulated through the DfE or OfS.

3.3. All references in this policy apply to DfE funded courses (including apprentices) and OfS regulated provision unless otherwise stated.

3.4. This Policy is published in line with requirements set out in the DFE's Subcontracting Rules for post-16 education and training, and the Office for Students Regulatory Framework for Higher Education in England.

4. Definitions

- ***Accounting officer*** - senior responsible person is the chief executive of Activate Learning

- ***DfE***- the Department for Education
- ***Funding*** - the funding provided to Activate Learning by the DfE in accordance with the Funding Rules in relation to the relevant Programme and the provisions of this Agreement. This includes funding relating to employers' digital accounts.
- ***Funding Rules*** - the procedures, rules and requirements from time to time as laid down by the DfE
- ***Learner*** - a person who is enrolled and who receives the education and training comprised in a Programme from the Partner
- ***OfS*** – The Office for Students. The OfS are the single regulator of higher education in England
- ***Provision subcontracting*** - when subcontracted delivery is for teaching and learning, or enrichment activities or high needs support. This is for all or parts of the delivery of a learning programme where funding is received by the DfE for that delivery component or where the provision relates to activity regulated by the OfS.
- ***Subcontractor*** - is a legal entity that has an agreement with Activate Learning to deliver education and training funded by the DfE or where the provision is subject to the OfS Regulatory Framework for Higher Education in England.

4.1. OfS regulated provision

The Office for Students (OfS) regulates the subcontracting of higher education in England through a specific condition of registration: Condition E10: Subcontracting. As Activate Learning is not an awarding body, the only subcontracting arrangement Activate Learning can undertake is through an Exceptional Collaborative Arrangement (ECA) with Pearson Education Ltd and another delivery partner.

– Through an ECA arrangement, Activate Learning is the lead provider and as such retains overall responsibility for ensuring that any subcontracted courses meet the requirements of Pearson and those set out in the Office for Students Regulatory Framework for Higher Education in England. This relates to assuring high quality provision and includes taking all reasonable steps to deliver the provisions of Activate Learning's Access and Participation Plan, and Student Protection Plan, including providing financial support for eligible students.

- If Activate Learning considers entering into an ECA with another delivery partner, the OfS's Subcontracting Information Source (SIS) initially be used to assess the extent to which Activate Learning's governance and oversight of such an arrangement can ensure compliance with regulatory and awarding body requirements as well as provide a high quality learning experience for all students.

- For the purposes of this policy, Higher Education (HE) is defined as Higher National Certificates, Higher National Diplomas, or units thereof

5. Responsibilities

5.1. The Group Director of Institutional Effectiveness will be responsible for maintaining compliance with this policy. Subcontract Owners (Faculty Group Directors, Faculty Directors, or the Director of Higher Education as defined on each contract) will ensure ongoing compliance and operational integrity by working directly with the partners including procurement, contract signing, observations and contract meetings.

6. Safeguarding

6.1. Activate Learning retains overarching accountability for the safeguarding and welfare of all learners engaged in subcontracted or alternative provision. This is achieved through robust due diligence, contractual arrangements, and ongoing quality assurance processes. All partners are required to evidence effective safeguarding arrangements that comply with statutory requirements, including the Prevent duty, and align with Activate Learning's safeguarding standards.

6.2. Subcontracted providers must ensure that safeguarding arrangements are embedded and effective, including the appointment of a suitably trained Designated Safeguarding Lead (DSL), implementation of safer recruitment practices, and the establishment of clear procedures for reporting, recording, and escalating concerns.

6.3. The organisation responsible for the learner at the point a concern arises will take immediate safeguarding action and make any necessary referrals, unless otherwise agreed between DSLs. All safeguarding concerns must be accurately recorded, stored securely, and shared promptly with Activate Learning in line with agreed information-sharing protocols. Activate Learning will retain the primary safeguarding record for the learner for the duration of the subcontracted provision.

6.4. All partners are required to demonstrate due regard to the Prevent duty, including the identification

and management of risks related to radicalisation and extremism. Providers must also promote online safety through appropriate filtering and monitoring systems, learner education, and clear reporting mechanisms.

6.5. Safeguarding arrangements will be subject to regular review through scheduled safeguarding and operational meetings, with additional meetings convened where required. In the event of significant safeguarding concerns, partners will work collaboratively to assess and manage risk, implement appropriate interventions, and contribute to internal or external review processes to support continuous improvement.

6.6. Clear roles and responsibilities will be agreed and maintained to ensure there are no gaps or duplication in safeguarding support. Where professional disagreement arises, this will be escalated promptly between DSLs and, where necessary, through formal professional challenge and escalation procedures.

7. Commitment Statement

7.1. Activate Learning and all subcontractors comply with the DfE Funding Rules, the Office for Students Regulatory Framework for Higher Education in England, and any other relevant guidance and future updates in all matters regarding the delivery of the provision. These rules are reviewed annually by the Group Director of Institutional Effectiveness and the Director of Higher Education and all policies/processes/documentation amended as necessary. Standard contract templates are provided by external legal representatives to ensure contractual compliance.

7.2. Activate Learning holds full accountability for education and training provided to all earners under a subcontract.

7.3. If any subcontractor fails to deliver on DfE funded provision and apprenticeships, we will be responsible for making alternative arrangements for the delivery of education and training (and/or repaying DfE funding).

7.4. If any subcontractor fails to fulfil their responsibilities for the delivery of an OfS regulated course, we will follow the process detailed within the Subcontracting Agreement and in accordance with Activate Learning's Student Protection Plan.

7.5. Activate Learning will create and maintain contingency plans in place for learners in the event that:

- we need to withdraw from a subcontract arrangement
- a subcontractor withdraws from the arrangement, or
- a subcontractor goes into liquidation or administration.

7.6. Activate Learning commits to ensuring that appropriate resources are put in place in order to manage and support subcontracted provision. We will ensure that staff working on subcontracted provision have the appropriate knowledge, skills and experience to successfully procure, contract with and manage subcontractors.

7.7. Activate Learning will monitor, review and evaluate the quality of delivery in order to inform corrective, preventative and improvement actions and manage risk through contingency planning. If underperformance is identified, it will be addressed through measured and targeted action plans backed by support and development from Activate Learning.

7.8. In partnership with subcontractors, Activate Learning operates in the spirit of support, co-working, and transparency. Activate Learning endeavour to learn from subcontractors and recognise and share good practice where appropriate.

7.9. All Activate Learning's subcontracted activity is designed to support the achievement of strategic aims as defined in the contract and enhance the quality of our overall offer. The educational rationale for Activate Learning to maintain subcontracted provision are:

- Enhance the opportunities available to students
- Delivery of niche or expert provision
- To widen the range and scope of provision offered by Activate Learning in terms of engagement, retention, and progression opportunities
- To contract expert teaching and resources in a cost-effective manner
- To increase learner and employer engagement between the organisations
- To support better geographical access for learners
- To offer an entry point for disadvantaged groups
- To deliver provision which engages hard-to-reach learners (e.g. Not in Employment, Education or Training - NEETs) with the aim of progression into mainstream provision
- To deliver provision which engages learners who share protected characteristics, where there might otherwise be gaps

- To respond to meet stakeholders' demands (Learners, Employers and Community)
- To provide better access to training facilities
- To meet levy paying employers demand for delivery.
- To capacity-build both organisations to respond to new projects and priorities
- To develop and support small local training providers where a symbiotic relationship is developed/can be explored

7.10. The reasons for working with each individual subcontractor will vary and will be discussed at the selection/annual renewal process and documented. If the reasons for any partnership are not clear, then a contract will not be entered into. The Corporation's Audit Committee will receive a strategic rationale for each partner and will recommend final approval from the full Corporation Board where they are content to do so. Approval of the Corporation Board will be required before entering into any subcontract.

7.11. For DfE funded provision, Activate Learning will prioritise work with partners on 16-19 provision where it provides greater opportunities for high needs/LLDD learners or where it provides us with access to specialist equipment and resources that we cannot provide at the local campus.

7.12. Whilst the DfE subcontracting rules place the subcontracting threshold at '25% of the learners in each funding stream under an agreement in any given funding year', it is Activate Learning's intention to never exceed 10% of its learner volume on any given DfE funding stream with subcontractors. This is to protect the quality of the delivery by ensuring we have capacity to manage the partnership appropriately.

7.13. For subcontracting relating to OfS courses, we would not normally subcontract provision to a volume greater than 25% of all learners on our overall OfS regulated provision.

7.14. Activate Learning will only use subcontractors who we determine are of high quality and low risk. Selection of new subcontracted provision will be carried out in a way that meets Activate Learning's strategic aims and enhances the quality of offer to learners. Partners that we deem to move into a high-risk category in-year may have contracts terminated or, at our discretion, may continue with us where suitable mitigations are in place.

7.15. Activate Learning's Governing Body and Activate Learning's Accounting Officer will be

regularly informed of all subcontracting activities, including new subcontracts proposed.

7.16. Any selection of subcontractors will be in accordance with our obligations under Public Contracts Regulations 2015. Subcontracting opportunities, including those where a partner is already working with us, will be publicised through our website. For DfE funded provision, interested parties will apply for these opportunities in accordance with the DfE Subcontracting Standard's pre-award and contract award principles.

7.17. Activate Learning do not subcontract to meet short-term funding objectives.

7.18. Activate Learning will not enter into brokerage agreements for any of its delivery subcontracting arrangements.

7.19. Activate learning will not enter into any 16-19 provision subcontract where the partner will need to work with a third party to deliver that training (such as a sports club) or where the partner will need to enter into a subcontract with that third party (second level subcontracting).

7.20. Activate Learning will not seek to work with partners that deliver outside of its usual recruitment area on DfE funded 16-19 programmes. We may subcontract out of area provision for 19+ delivery (including OfS regulated provision) where a strong strategic rationale and monitoring procedure exists.

7.21. Activate Learning will always co-deliver on subcontracts involving 16–19-year-old study programme learners unless a strong strategic argument and DfE approval is in place.

7.22. Where we subcontract on apprenticeship delivery, subcontractors will act as co-delivery partners with Activate Learning. We work in partnership with our employers to ensure we provide the best experience and, where we believe this will be best achieved with a delivery partner, we plan this with employers through our contracting process to ensure any such arrangements are agreed and documented. Activate Learning will always own the relationship with the employer. We will ensure a written agreement is made with employers setting out which parts of the programme will be delivered by Activate Learning and which parts by the subcontractor. The delivery element by Activate Learning will have substance and never be a token amount of the delivery required for the employer; we will not enter a subcontract if this principle cannot be adhered to in accordance with the examples provided

in the 'using subcontractors in the delivery of apprenticeships' documentation.

Activate Learning's contribution to improving own and subcontractor's quality of teaching and learning

7.23. Subcontractors are supported by Activate Learning to maintain the same high-quality standards expected across all aspects of delivery.

7.24. Activate Learning's approach to ensuring the quality of subcontracted provision is set out in the following key steps:

7.25. Requesting the complete quality assurance policies, processes and procedures that the subcontractor implements to ensure the quality of their provision.

7.26. Collecting and examining the output from the above measures – this may include internal and external quality assurance reports, lesson observations, learner and employer feedback, programme reviews and improvement plans, staff CPD records.

7.27. Validating the quality data received by implementing quality checks and procedures across the subcontracted provision, including our own lesson observations and quality check visits carried out by subject specialist staff, employer and learner feedback surveys, interviews with subcontractor staff etc.

7.28. Activate Learning will further contribute to quality assurance by:

- Ensuring that subcontractors are included in the Activate Learning quality process
- Providing subcontractors with a key contact at Activate Learning for any issues relating to the contract delivery
- Holding regular contract review meetings with subcontractors to performance manage quality and to mitigate any risks related to the provision. The contract reviews will be followed by developmental action plans that build the capacity of the provider to offer the best services to learners
- Working with subcontractors to respond to the employer and student feedback to improve experience
- Identifying and sharing best practice to improve learners' experience
- Sharing resources and providing learner access to Activate Learning facilities, including online learning resources
- Providing staff development opportunities for subcontractor staff.
- Conducting an annual due diligence review for existing providers

- Having a robust quality monitoring plan for each partner incorporating in-person quality and compliance visits.

8. Fees and charges

For DfE funding provision (including apprenticeships):

8.1. Activate Learning will receive all the funding for subcontracted delivery through the payment mechanisms of the DfE. A proportion of that will then be passed to the partner using the 'payment terms' section below. Activate Learning will never seek to retain greater than 20% of the funding generated by the partner's delivery; where it does so, Activate Learning understands that the DfE may request an explanation. To determine the value of the funding retained, Activate Learning will work with the partner at the due diligence and contract stage to compile a list of services and products that will be provided to support quality delivery. These will be broken down into three main headings:

8.2. Managing the subcontract (incorporating management contract meetings, due diligence, software license costs, contingency planning etc.)

8.3. Production of compliant funding returns and other administration activities (incorporating exam and data collection and funding return costs)

8.4. Quality monitoring and oversight activities (incorporating staff development activities, observations, staff and student reviews and feedback etc.)

8.5. The fees will be agreed as a proportion of time spent by Activate Learning on that activity where appropriate. Where this cannot be applied (e.g. group-wide software license costs) we will calculate the fee by dividing the overall cost to Activate Learning by the number of planned enrolments in the contract.

8.6. Additional fees may be charged where the potential continuity costs to Activate Learning would be disproportionately high if the subcontractor ceases trading.

8.7. Each partner will be reviewed against a menu of costs separately to add or remove activities that are bespoke to their delivery model and requirements to ensure that the costs are specific to each and flex up or down depending on the input from Activate Learning.

8.8. Each cost/sub-section of costs will be reviewed to outline the way in which each activity supports the delivery of high-quality education. The costs will be agreed with the partner to ensure they are proportionate and a declaration explaining why this is the case will be added

to the cost's breakdown.

- Each subcontractor will similarly reconcile the public funding they expect to retain through the contract by detailing the activities that those funds will be used for. These will be reviewed by Activate Learning to ensure that both parties are delivering high-quality learning and that the costs are reasonable and proportionate.

8.9. Funding passed to the partner for delivery that is subsequently found to be non-compliant will be clawed back. Funding will also be clawed back if periodic payments have been made for learners that are subsequently found to have withdrawn or failed as per the terms of each individual contract.

8.10. Activate Learning will work with our partners to ensure that subcontracting does not lead to the inadvertent funding of extremist organisations.

For OfS regulated provision:

8.11. Tuition fees for subcontracted arrangements will be set by Activate Learning in line with the organisation's status as an OfS Approved (fee cap) provider, the OfS's basic and maximum fee limits, and in accordance with the Competition and Markets Authority (CMA) guidance for Higher Education providers.

8.12. Students will be informed as to what services are provided by which party in relation to the course tuition fee

8.13. Activate Learning will receive tuition fees directly from either the student loans company, the student, or a third party e.g. employer. The funding passed to the partner will be negotiated with the delivery partner based upon the services provided by Activate Learning and any additional costs such as awarding body registration fees required to support the arrangement.

9. Contract

9.1. All subcontractors are required to agree and sign a contract prior to delivery of any provision.

9.2. The contract clearly defines the roles and responsibilities for Activate Learning and the subcontractors from the outset of the partnership.

9.3. In agreement with both parties, variations to the contract may be issued during the contract period. The variation may relate to, for example:

- Changes in the management fee depending on the level of support required

- Changes to the volumes of learners and funding
- Changes to the range and scope of provision delivered by the subcontractor.
- Changes to funding rules and guidelines
- Changes to regulatory or awarding body requirements affecting subcontracted arrangements

10. Payment terms between Activate Learning and subcontractors

10.1. For any payments to be made to the subcontractor, the subcontractor must conform to the terms of the contract and provide the required paperwork, data and information for Activate Learning to make a successful claim via its Individual Learner Record (ILR) to the relevant funding agency (for DfE provision), or to confirm ongoing attendance for students on OfS regulated provision.

10.2. Subcontractors are paid for the learning activity delivered the previous month, subject to meeting contractual requirements and subject to approval of levy funds on the Apprenticeship Service. The subcontractors are required to produce an invoice following the confirmation of the amount to be paid by Activate Learning. Alternative payment conditions may operate following discussions with the subcontractor, depending on the contract delivery model and contract delivery time.

10.3. All subcontractors are set up as suppliers on Activate Learning's finance system. The payment is made to the Subcontractor via BACS.

10.4. Funds due to the subcontractor may be held back with terms highlighted in the contract if the training provider fails to adhere to the contract terms, and escalation processes will be followed.

10.5. Compliant invoices will be paid within thirty days of receipt.

11. Transparency

11.1. Activate Learning will publish this policy on its website, along with a list of partners, contract amounts, and funding retained as agreed in the contracts. This will be available by 31 October.

11.2. Activate Learning will publish data on the actual level of funding paid and retained for each of the subcontractors on DfE and OfS funded provision (including apprentices) in each contractual year. This data will be published within 30 days of the ILR closing.

11.3. As a minimum, the following will be included in the published supply-chain fees and charges:

- Name of the subcontractor.
- UKPRN number of the subcontractor.
- Contract start and end date.
- Type of provision (for example, 16-18 Apprenticeships, 19+ Apprenticeships, classroom learning, workplace learning, OfS regulated provision).
- Funding received from the funding agencies to Activate Learning for provision delivered by the subcontractor in that academic year.
- Funding Activate Learning has paid to the subcontractor for provision delivered in that academic year.
- Funding Activate Learning have retained in relation to each subcontractor for that academic year.

11.4. If appropriate, funding that subcontractors have paid to Activate Learning for services or support provided in connection with the subcontracted provision.

11.5. Activate Learning will publish this information on fees and charges alongside the Subcontracting Policy to allow all supply-chain fees and charges information to be viewed in context.

Timing for policy review

11.6. This Policy is to be reviewed annually. It will be reviewed and signed by Activate Learning governing body and Activate Learning's Accounting Officer.

Dissemination

11.7. The Policy is available for current and potential subcontractors to view on Activate Learning website www.activatelearning.ac.uk .

11.8. Potential subcontractors are requested to read the Policy as part of due diligence for subcontracting arrangements with Activate Learning.

Subcontractors wishing to work with Activate Learning

11.9. Interested parties should contact the Group Director of Institutional Effectiveness in the first instance to receive an application form and due diligence requirements. You will then be

put in touch with the relevant curriculum team to explore appropriate synergies. Applications may then proceed to due diligence and agreement stage.

Disclaimer

11.10. Activate Learning reserves the right to amend the subcontracting arrangements at any time in accordance with the terms and conditions contained in the subcontract agreements.

12. References

- Subcontracting funding rules for post-16 education and training
- Office for Students Condition E10: Subcontracting
  - Office for Students (OfS) Regulatory Framework
  - OfS's Oversight of Subcontractual Arrangements Checklist
- Apprenticeship Funding Rules for Main Providers
- Subcontracting Standard
- Assurance reviews of the subcontracting standard for post-16 providers
- Funding higher risk organisations and subcontractors policy - GOV.UK
- Equality and Diversity
- Safeguarding and Prevent
- Financial Regulations
- Fees Policy
- Data Protection