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**Sub-Contracting Policy**

**2019/2020**

**Board Approved: June 2019**

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1. **Purpose**

V Learning Net (VLN) will use this document to define the basis on which any subcontracting arrangements will be managed. The management of Subcontractors will be based upon the Subcontractor's ability to deliver educational priorities, at a quality and learner satisfaction levels that create the minimal risk to public funds, exceed the requirements of Ofsted and enable the priorities of VLN to be achieved.

## 1.1 Subcontracting purpose and reason for subcontracting

1. VLN's main purpose for subcontracting is to ensure that our Mission Statement is achieved:

***‘To provide those individuals who are, for whatever reason, the most disadvantaged within the communities of Devon and Cornwall, with the opportunity to learn and…..To build and increase/grow the operational capacity of the wider Third Sector, within Devon and Cornwall and, the South West.’***

1. Our purpose for subcontracting educational provision, as well as having a historical basis, is to meet the educational needs of the most disadvantaged in Devon and Cornwall. This is done through a network of Third Sector (non for profit) organisations. This in turn enables VLN to build the capacity of our sub-contractors and fulfil the wider aims of our Mission Statement.

## Statutory Subcontracting Selection Process

## VLN ensures that they select their subcontractor(s) fairly and ensures the subcontractor have sufficient capacity, capability, quality and business standing to deliver the provision that is being subcontracted.

**VLN uses the following steps when recruiting new organisations for ESFA funding:**

* VLN will provide a notice on the web site detailing any potential subcontracting opportunities and providing a deadline for applications.
* Potential Subcontractors will submit to VLN an initial expression of interest, followed by completing the Due Diligence Checklist.
* VLN take the necessary steps to verify any actual or perceived conflicts of interests in potential subcontractors and eliminate such subcontractors from the process.
* Potential Subcontractors' information will be assessed by senior managers and then taken to the next Trustee meeting for discussion
* Applicants will be notified of the outcome - this will usually be within four weeks of the original application. We will always attempt to give feedback on all applications. We will also offer assistance to develop the organisational capacity of the applicants, to enable future potential offers of sub-contracts from VLN or other providers, were we will act as brokers.
* Those successful with their application will progress through the second part of the due diligence process and, subject to satisfactory completion, will be offered a contract. This is a fully supported process to enable new sub - contractors to make the transition to mainstream funding away from project base models.

1. **Retained Management Fee**

VLN uses a standardised retained management fee of 20% on subcontractor’s contract values, this fee is charged individually on the subcontractors Adult Skills contracts and Young Peoples contract element 1 and 5% on adult skills learning support. The table below identifies how the management fee is broken down showing the percentage value attributed to each function. This table is a part of the subcontracting contract for 2019/20 and will be costed individually in each contract.

## VLN will provide the following support mechanisms for this fee:

|  |  |  |  |
| --- | --- | --- | --- |
| **V LEARNING NETWORKS**   * Our purpose for subcontracting educational provision, as well as having a historical basis, is to meet the educational needs of the most disadvantaged students in Devon and Cornwall. This is done through a network of Third Sector (non for profit) organisations. This in turn enables V LEARNING NETWORKS to build the capacity of our subcontractors and fulfil the wider aims of our Mission Statement. * Contractual procedural obligations to the subcontractor are itemised in the table below. These specific costs are all reasonable and proportionate to the delivery of the subcontracted teaching and learning. The charges below give full clarification on how the cost all contribute to delivering high-quality learning. The subcontracting policy is published on our website [www.v-learningnet.org.uk](http://www.v-learningnet.org.uk). V LEARNING NETWORKS management charge is a standard rate of 20% individually on Adult Skills and Young People element 1 contracts and 5% on adult skills learning support. * The costing below does not specifically individualised which member of staff carries out the function as rolls within our organisation do cross over. However, all effort has been taken to create costings that identify all of the procedures V Learning Network carries out in managing the consortium. It is our opinion that all of the costing identified represent value for money and enable delivery opportunities to exist in areas with little alternative provision. | | | |
| **Contract Value** | |  | |
| **Management Charge at 20%** | |  | |
| **Function** | | **%** | Amount £ |
| 1. | V Learning Network manages and administrates the MIS functions for the subcontractor learners, including submitting error free monthly returns to the ESFA. V Learning Network will manage the external ESFA audits and ensure the subcontractors are compliance to gain a satisfactory verdict. | 39% | £ |
| A highly technical procedure that requires an extensive knowledge of both MIS systems and funding methodology. It is an auditable function, which therefore, requires minimal errors. The cost of this to the consortium represents 39% of the management budget, it is self-evidently of the highest priority and we believe represents a very high level of value for money. | | | |
| 2. | V Learning Network re-creates simplified ILR paperwork to allow all subcontractor students, firstly to be able to understand and secondly to complete the forms without error. V Learning Network will create and issue guidance each year how to complete the forms along with any highlighted changes. This is managed by V Learning Network to make sure the subcontractor at all times is compliant with ESFA, external auditors and Awarding Body requirements. | 8% | £ |
| This will assist in paperwork with minimal errors. All paperwork is verified before entering onto the MIS, feedback and extra training if applicable will be offered to subcontractor on paperwork procedures. and the cost for this service is related to the MIS staff for the academic year. | | | |
| 3. | V Learning Network administer and manage the subcontractor’s achievements, learner voice, distance travelled and destinations. This produces a performance report which is supplied to the subcontractor to help with the completion of their SAR. The report is also used to analyse effectiveness of delivery and can monitor the performance of individual tutors. | 6% | £ |
| The cost of this service relates to MIS staff time required to process the subcontractor data for achievements, learner voice and destinations for the academic year. This data has multiple uses and is incredibly effective. | | | |
| 4. | V Learning Network will carry out a regular and substantial programme of quality assurance checks on the education and training provided by subcontractor. The programme will cover whether the learners exist and are eligible, and involve direct observation of initial guidance, assessment and delivery of learning programmes. V Learning Network will provide the subcontractor with a report. Highlighting strengths and identify areas for improvement, which will be actioned and followed up. V Learning Network will manage the OFSTED audits and ensure the minimum standard of good is achieved. | 39% | £ |
| This service cost relates to quality staff ensuring the subcontractor quality of teaching, learning and processes are at the highest level, conforming to ESFA and Ofsted requirements. This service can only be achieved by ensuring the quality staff have sufficient time and resources available to the subcontractor. The cost of this service is 39% of the management budget and is critical to maintaining quality. | | | |
| 5. | In addition to the above, V Learning Network will use reasonable endeavours to assist or draw the attention of the subcontractor, opportunities for restructuring the curriculum and other relevant modifications to facilitate and maximise the benefits to the Learner (wherever practicably and statutorily possible) and deem to be offering good value for money for the ESFA. This is fulfilling V Learning Networks wider obligation as a Third Sector Educational Infrastructure Organisation and the ESFA ensuring maximum benefit from public funding. | 8% | £ |
| This service relates to the quality staff, where they ensure the subcontractor meeting the local needs of their communities and businesses within their geographical area. Giving guidance and training if applicable on curriculum and quality. The service cost ensures maximisation of funding representing the best opportunities for students and creating excellent value for money. | | | |
| Total: | | 100% | £ |

|  |  |
| --- | --- |
| **V LEARNING NETWORK** provides additional contractual services to the subcontractor which are not included in the management fee, these services all contribute to the high quality of learning. | |
| 1. | V Learning Network will ensure that data entries optimise the subcontractor’s potential drawdown. |
| This service relates to MIS staff proportionate time required to provide advice and guidance to subcontractor. This service is not chargeable to the subcontractor. | |
| 2. | V Learning Network will produce valid MIS spreadsheet reports to the subcontractor on a monthly basis. This will allow the subcontractor to monitor their contractual spend with V Learning Network. |
| This service relates to MIS staff providing essential data to the subcontractor. This report enables the subcontractor to check the data and payments, to ensure they agree correct monthly payments are being made and their contractual “spend” is on target. This service is not chargeable to the subcontractor. | |
| 3. | V Learning Network will contact the subcontractor monthly to discuss their contract targets against their actual spend and renegotiate if necessary, to prevent any unduly pressures. |
| This service relates to MIS staff assisting the subcontractor plan delivery and to ensure they meet contractual requirements. The service cost is based on the time factor for the full academic year. This service is not chargeable to the subcontractor | |
| 4. | V Learning Network will carry out spot-checks through the academic year on the subcontractor delivery and processes. V Learning Network will lead an investigation, if there is any evidence of a subcontractors irregular financial or delivery activity. V Learning Network will report the outcome of the investigation, in writing, to the ESFA within 10 days of the end of the investigation. |
| This service is a statutory contractual requirement, which will be carried out at the subcontractor premises by V Learning Net MIS and Quality staff throughout the academic year. This service is not chargeable to the subcontractor. | |
| 5. | V Learning Network will provide moderation if required and support subcontractors with External Verification visits. |
| This service relates to quality staff, ensuring the subcontractor has support through the moderation and external moderation are successful. This service is not chargeable to the subcontractor. | |
| 6. | V Learning Network will provide online, and classroom based CPD for the subcontractor. |
| This service relates to quality staff, ensuring the continual development of the subcontractor. V Learning Network provide new online CPD and classroom-based CPD. The service cost is the time required to develop, install and monitor resources. This service is not chargeable to the subcontractor. | |

## Payment Terms

**August 2019-July 2020**

**VLN will make payments to the Subcontractor based on the following principles:**

Learner enrolments will be processed on the MIS according to start and end dates. Whatever the enrolment monetary total the Subcontractor has registered on the MIS, relevant to that current calendar month will be added to an accumulative total for the Subcontractor and we will make a payment balanced to the payments we receive from the ESFA. Payment dates will be on or around the 21st of each month. The subcontractor will receive a monthly remittance from VLN along with the exact date in which the payment will be cleared in their bank.

# All payments will be subject to the following:

* + VLN will retain 20% from the monthly total.
  + To cover the cost of administration VLN will also retain 5% of all learning support.
  + Any outstanding amounts for qualification enrolment fees owed to VLN will be deducted before transfer of funds.
  + VLN reserves the right to delay or withhold payments, if the Subcontractor has greater than 20% of their registered learners who have passed their end dates by more than two calendar months and VLN has not either received the achievement certificate or the learner evidence to internally verify.
  + VLN reserves the right to delay or withhold payments, to the Subcontractor if the level of quality of the supporting evidence (enrolments, delivery planning), **teaching or Minimum Standards of Performance (required by ESFA)** are not of the standard required by VLN.
  + The price per learner will be calculated by entry onto the MIS. Any advance calculation will only estimate the value per learner and therefore is not binding

**No payment will be made in relation to the participation in a programme of any learner who:**

* + Has not been enrolled in accordance with the provisions relating to enrolment contained in this Agreement; or
  + Is a person considered under the Funding Rules to be fully funded by a source other than the ESFA or is being funded more than once in relation to the same program;
  + No payment will be made in relation to a learner where the Subcontractor has failed to notify VLN of any relevant Attendance or Achievement by that learner in accordance with the provisions of this Agreement.
  + VLN will not be under any obligation to make payment to the Subcontractor in respect of Monies over and above any upper limit of their MCV (Maximum Contract Value) unless **agreed by VLN** by written communication.
  + If VLN pays the price to the Subcontractor in relation to any learner who is subsequently demonstrated not to be eligible for funding by the ESFA, VLN will be entitled to be fully refunded by the Subcontractor. At the discretion of VLN such refund will either be payable within 30 days of notice by VLN to the Subcontractor or may be deducted from the price payable in relation to the subsequent Payment Period.
  + If the Funders fail to pay the fees of any funded learner, or change the terms and conditions of VLN's contract, (which has implications that involve Subcontractors) VLN shall be under no obligation to pay any part of the price relating to that funded learner or correct any short fall in funding to the
  + Subcontractor. Any part of the price relating to the said funded learner shall be fully refunded if need be to VLN by the Subcontractor.

## Due Diligence

Subcontractors will supply VLN with all relevant information requested to protect learners and to ensure the Subcontractor is a legally, financially and educationally sound organisation, prior to any contract being signed.

VLN will conduct short notice spot-checks to Subcontractors as part of its quarterly audit processes.

VLN will provide two days advance notice in writing of proposed spot-check visits to the Subcontractor, informing them of what areas will be audited.

Post-audit action plans will be produced where necessary and Subcontractors will be supported through training and mentoring to achieve the aims set out in these action plans. Subcontractors who consistently fail to attend training or engage in the mentoring scheme will be penalised.

1. **Performance Data**

VLN will provide the subcontractor with performance data throughout the academic year on a monthly basis.

1. **Delivery Quality**

All programs of learning should include an initial and diagnostic assessment process that enables learners and staff to identify what they want to achieve from the course. This process should ensure that:

* Learners have the necessary aptitudes, attributes and abilities to help them successfully complete the courses for which they are applying.
* Any learning support needs are accurately identified.
* Learners have the information they need to help them make well informed judgements about the relevance of their courses to their short- and longer-term employment and learning goals.
* Subcontractors must have access to appropriate learner support arrangements. Where appropriate the assessment should also gather necessary information about health and medical records, previous relevant experience, depending on the nature of the course itself and specifically where the nature of the course presents significant health and safety issues. VLN Health & Safety policy and risk assessments must be adhered to.
* Subcontractors must maintain learner progress records at an appropriate level of detail, in relation to the context and length of the course or

program.

* Requirements in relation to observation of teaching and learning are defined in VLN observation, teaching and learning assessment policy. Teaching observations will be planned and undertaken throughout the academic year by VLN. VLN will support and work with any subcontractor who has been awarded an inadequate of needs improvement grade.
* Subcontractors must ensure that appropriate staff attend VLN best practice

events and any training organised by VLN which has been put in place to address issues identified in quality or compliance post-audit action plans.

## Health & Safety

Subcontractors must provide details on request of VLN, how they ensure that facilities used to deliver learning meet all Health & Safety regulatory and legislative requirements, including where required specific health & safety reports, audits and risk assessments. This includes all venues including work placements.

## Information, Advice and Guidance

Subcontractors will be required to demonstrate that they provide information, advice and guidance (IAG) at an appropriate range of venues, through a range of media and throughout the duration of the program. This will be observed through the academic year under VLN spot-checks.

## 10. Facilities and Resources

All facilities and resources used must be "fit for purpose" and comply with all current Health & Safety legislation.

## 11. Self-Assessment

All Subcontractors will be required to undertake a self-assessment process in

relation to the Common Inspection Framework and produce a SAR which clearly and specifically identifies and evaluates the courses and programmes which they are contracted to deliver. The SAR and resulting action plan must be submitted as specified in the contract.

## 12. Safeguarding

Subcontractors will be required to have in place safeguarding arrangements which are consistent with the standards expected VLN. This will entail having an annually updated Safeguarding Policy and a designated Safeguarding Officer qualified to appropriate level for each Subcontractor and learning venue.

## 13. Policies and Procedures

## Subcontractors will be required to demonstrate that they have robust quality audit arrangements, consistent with the requirements related to the audit activities undertaken by VLN as specified above:

* Health & Safety
* Equality & Diversity
* Safeguarding
* Quality Assurance, including performance monitoring and development of: ,
* Teaching practice
* Initial assessment
* Additional learning support
* Information, advice and guidance
* Self-assessment
* Performance management information
* Data protection
* Staff recruitment and development
* Financial management
* Sustainability, including action plan
* Retention
* ESF logo on website and wall poster in the office

## 14. Contract Monitoring and Review

Subcontractor performance will be monitored on an on-going basis. The Subcontractor will be expected to meet performance enrolment "monetary" targets during the year. These targets will reflect those set for VLN by the ESFA. Feedback on performance will be provided in writing, by phone or e-mail. The methods used will depend upon the circumstances at any point in time.

# These reviews may result in a reduction or increase in the level of funding identified in their contract.

# Subcontractors agree to track learner destinations and accurately report outcomes to VLN so that VLN can produce data for the Funders and OFSTED as required. Failure to do so will be judged as a breach of the Subcontractor terms and conditions of their contract

## 15. Subcontractors falling behind accumulative profile will be subject to the following actions;

|  |  |  |
| --- | --- | --- |
| **Half Period** | **Half 1** | **Half 2** |
| **Month** | **March 2020** | **July 2020** |
| **Data** | **Cumulative Year to Date** | |
| **Tolerance % of under profile** | **8%** | **0%** |
| **Action to adjust for underperformance to date and to adjust the future MCV** | VLN will reduce the Subcontractor’s MCV where it fails to deliver within the published tolerances. The reduction applied will reflect some or all of the value of under-delivery to date and reduce the future profile of the associated under-delivery by 15%.  The assumption is that VLN will only override the above tolerances in exceptional circumstances. VLN will use the Subcontractor’s historic track record to establish whether exception should be made. | |

The timing and amount of any reassignment of funds is VLN's sole decision, based on reasonable judgments of the current Subcontractor's performance.

Feedback will also be provided at periodic contract performance review meetings. The frequency of these meetings will be quarterly.

Where performance falls below the standard required, subcontractors will be issued with a Notice to Improve. Support will be provided to help subcontractors develop and enhance the quality of their delivery. If a subcontractor fails to meet the necessary improvements within the agreed timescales, it may be necessary to implement contract termination procedures.

## 16. Contract Termination

VLN will work with its Subcontractors to ensure that all learners receive high

quality and safe training, with all the necessary support for individuals to achieve

their aims and progress on to employment. Should a Subcontractor consistently

fail to improve any element of its performance which is deemed to be inadequate

or requiring improvement, or consistently fails to engage in training or with the

quality support systems which are in place, VLN reserves the right to terminate

the contract to protect the learners by written notice to the Subcontractor if:

* There is a mutual adverse change in the amount or nature of the Funders' funding of VLN or Funding is no longer available in respect of a Programme;

or

* There is a material breach by the Subcontractor of the terms of this Agreement which breach is not capable of remedy;

or

* There is a material breach by the Subcontractor of the terms of this Agreement which is capable of remedy but which is not remedied to the reasonable satisfaction of VLN within 14 days, after VLN has given written notice of the breach to the Subcontractor requiring it to be remedied (provided that the notice terminating this Agreement is given by VLN within one Month after the expiry of the period during which the breach should have remedied);

or

* The Subcontractor proposes or enters into an arrangement or composition for the benefits of its creditors or is the subject of any distress execution sequestration or other process levied upon or enforced against any part of the Subcontractor's undertaking, property, assets or revenues;

or

* The Subcontractor is the subject of a bankruptcy petition or has a bankruptcy order made against it or is the subject of an application order or appointment under sections 253, 273 or 286 of the Insolvency Act 2006 or is unable to pay or has no reasonable prospect of being able to pay its debts within the meaning of sections 267 and 268 of the Insolvency Act 2006;

or

* The Subcontractor (if a company) is the subject of a petition presented, an order made, a resolution passed or analogous proceedings taken for appointing an administrator of or winding up the company (other than for amalgamation or reconstruction of a solvent company) or stops payment or agrees to declare a moratorium or becomes or is deemed to be insolvent or unable to pay its debts (within the meaning of section 124 of the Insolvency Act 2006) when they fall due;

or

* The Subcontractor is a company and a notice relating to the striking off of the company is published pursuant to section 652 of the Companies Act 2006;

or

# The Subcontractor is a company and an encumbrance take possession or exercise or attempts to exercise any power of sale or a receiver is appointed for the undertaking of assets or revenues of the Subcontractor.

Such termination may take effect either immediately or at the end of the Academic Year in which the event entitling VLN to terminate this Agreement occurs, as VLN shall in its discretion determine. In the latter case this Agreement shall remain in full force and effect until the end of the said Academic Year.

The Subcontractor may terminate this Agreement by written notice to VLN if:

* There is a repudiatory breach by VLN of the terms of this Agreement which breach is not capable of remedy;

or

* There is a material breach by VLN of the terms of this Agreement which breach is capable of remedy but which is not remedied to the reasonable satisfaction of the Subcontractor within one month after the Subcontractor has given written notice of the breach to VLN requiring it to be remedied (provided that the notice terminating this Agreement is given by the Subcontractor within one month after the expiry of the period during which the breach should have remedied);

or

* VLN stops payment or agrees to declare a moratorium or becomes or is deemed to be insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 2006 when they fall due.

Provided that the Subcontractor shall be obliged to continue to provide the Programme(s) notwithstanding that VLN has the right to terminate this Agreement in accordance with any provision set out herein until the end of the Academic Year in which the event entitling the Subcontractor to terminate this Agreement occurred.