



Subcontracting Handbook

Version 1.0 – November 2024

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Subcontracting Handbook		17.12.2024
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Chief Executive Group	1	31.07.2027

OWNER	Director of Legal and Contracts		
GROUP EXECUTIVE LEAD	Chief Finance Officer		
DOCUMENT TYPE	Policy <input type="checkbox"/>	Group Procedure <input checked="" type="checkbox"/>	Local Procedure <input type="checkbox"/>
PURPOSE	The purpose of this Handbook is to set out the Group's approach to subcontracting. This Handbook is made available via the website of any NCG Colleges undertaking subcontracting and will also be shared with Subcontractors.		
APPLICABLE TO	All NCG employees, as well as consultants, vendors, agency workers, contractors, service users, trainees/students, volunteers and/or any other parties who have a business relationship with NCG.		
EQUALITY ANALYSIS COMPLETED [POLICIES ONLY]	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
	(If EA not applicable, please explain)		
KEY THINGS TO KNOW ABOUT THIS POLICY	<p>The Handbook covers:</p> <ol style="list-style-type: none"> 1. What is subcontracting and why do we subcontract 2. Planning and strategic intent 3. Procurement 4. Subcontractor development 5. Contracts 6. Contract management 7. Data assurance 8. Health & safety monitoring 9. Safeguarding 10. Quality assurance 11. Performance management 12. Risk management 		

	<p>13. Payments</p> <p>14. Dispute Resolution</p> <p>15. Exit</p> <p>16. Reporting</p>
EXPECTED OUTCOME	Readers are expected to understand the organisational position on our subcontracting controls, know their responsibilities in relation to the Handbook and comply with the Handbook.

MISCELLANEOUS	
LINKED DOCUMENTS	<ul style="list-style-type: none"> • NCG Financial Regulations • Subcontracting Strategy • FE Supply Chain Fees and Charges Policy
KEYWORDS	<ul style="list-style-type: none"> • Supply • Chain • Subcontracting • Subcontract

Equality Impact Assessment

EQUALITY IMPACT ASSESSMENT			
	Yes	No	Explanatory Note if required
EIA 1 - Does the proposed policy/procedure align with the intention of the NCG Mission and EDIB Intent Statement in Section 2?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	The answer to this must be YES
EIA 2 - Does the proposed policy/procedure in any way impact unfairly on any protected characteristics below?	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
Disability / Difficulty	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
Gender Reassignment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
Marriage and Civil Partnership	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
Religion or Belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
Sex	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
Sexual Orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
EIA3 - Does the proposed policy/processes contain any language/terms/references/ phrasing that could cause offence to any specific groups of people or individuals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
EIA4 - Does the policy/process discriminate or victimise any groups or individuals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
EIA 5 - Does this policy/process positively discriminate against any group of people, or individuals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this must be NO
EIA 5 - Does this policy/process include any positive action to support underrepresented groups of people, or individuals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The answer to this could be yes or no as positive action is lawful. However, an explanation must be provided for clarity.
EIA 6 - How do you know that the above is correct?	This policy has been reviewed by colleagues across NCG at various levels to ensure it aligns to NCG's mission and values, and no group is unfairly disadvantaged.		

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0. INTRODUCTION AND USEFUL DEFINITIONS

0.1. Introduction

This Subcontracting Handbook has been developed to support NCG to procure and maintain excellent and positive relationships with its Subcontractors in a creative and innovative way ensuring maximum flexibility, which focuses on qualitative rather than quantitative evaluation of organisations and enables us to provide greater support to those Subcontractors, who we identify as needing it most via our risk analysis.

This Handbook should be followed, to complement existing Policies and Procedures for FE Provision across NCG, for all FE Subcontracted Provision (“Subcontracted Provision”), irrespective whether this is whole-programme or part-programme and who the Funder is. Each Professional Lead is responsible for ensuring that existing Policies and Procedures capture Subcontracted Provision and align with spirit of this Handbook and the importance that our Subcontractors have on our learners’ journey.

To ensure that Subcontracted Provision is managed efficiently and effectively, all colleagues are expected, unless stated elsewhere within this Handbook, to complete nominated tasks in a timely manner. Unless otherwise stated within this Handbook, all tasks are time specific and should be completed within five (5) working days unless otherwise agreed by the Chief Finance Officer.

0.2. Definitions

Unless otherwise defined within this Handbook, the capitalised words and expressions throughout, shall mirror those in this year’s Subcontract for the respective Funded Provision.

0.3. Roles and Responsibilities

Each Professional Services team and College will identify named individuals to undertake the roles and responsibilities identified within this Handbook. As job titles differ across NCG, the following role types have been established where no one person will have responsibility, for consistency associated with Subcontracted Provision. Where a job title is used in the document, this means the post holder with responsible for these duties, or their deputy.

‘College Data team’ means the post holder(s) responsible for these duties within NCG Professional Services;

‘Health & Safety Lead’ means the post holder or their deputy responsible for these duties;

‘College Quality Lead’ means the post holder or their deputy responsible for these duties;

‘Subcontracting Committee’ means the Executive Principal – Curriculum, the Chief Finance Officer and the Director of Legal & Contracts.

1. WHAT IS SUBCONTRACTING AND WHY DO WE SUBCONTRACT?

From time to time to enable social mobility and economic prosperity through education, we may need to procure the services of a Subcontractor to enable us to deliver education and training on behalf of our Funders and to support our Employers or local community and ensure its Learners maximise their potential.

1.1. What is Subcontracting?

In its broadest context, subcontracting is where a third party is asked to deliver part of the education and training on our behalf, and we pay the Subcontractor for their delivery.

Our biggest Funder, the Education and Skills Funding Agency, states *that subcontracting means any delivery to a learner's programme of learning by a third party. It does not matter if this is by a third party recruited to deliver on site (travel to teach), online learning or whether it is described as a service. If that delivery contributes in any way to the learner's programme of study and is delivered by someone or an organisation not directly under the control of the Main Provider, then they consider that to be subcontracted delivery.*

Examples of Subcontracted Provision include:

- The delivery of the whole programme of learning, such as a 16 to 19 study programme or, adult skills funded qualifications, or any other FE funded programme, to which the Subcontractor receives a percentage of the Funding the Main Provider receives from the Funder.
- The delivery of part of the programme of learning, which is fundamental to the Learner achieving their qualification. This could be for a 16 to 19 study programme, the delivery of qualification or non-qualification hours. Examples of what may be deemed subcontracting can be found below – this list is not intended to be exhaustive but to provide some practical examples of what is now deemed subcontracting:
 - Guest speakers being paid to deliver a session or a series of sessions to the Learners which form part of their programme of learning;
 - Use of professionals such as football or rugby coaches to coach / train the Learners as part of their qualification, or whereby the Learners participate in a football / rugby league as part of their programme of learning;
 - Use of specialists to support delivery such as speech and language therapists, counsellors, coaches / mentors to assist Learners to complete their programme of learning;
 - Procuring online resources, including tutorials or chat facilities with a tutor or professional to enable Learners to complete their programme of learning;
 - Paid work experience;
 - Complementary qualifications which would provide the Learners with greater employability, such as first aid courses, etc.

If in doubt whether, the proposed activity would be deemed subcontracting, please consult with the Legal & Contracts team or Risk & Assurance team, who will evaluate the proposed delivery, and advise if in their opinion the proposed delivery would be deemed subcontracting.

1.2. Why we Subcontract

From time to time, we believe that working and collaborating with a range of value-added local and national organisations is fundamental to how we operate to best serve our local communities.

We will only engage with Subcontractors to assist us to deliver our mission, where at least one of the criteria set out at **Sub-section 2.2.** is met.

We expect our Subcontractors to share the same ethos as we do to tackle racism and other forms of discrimination and prejudice. We do not tolerate racism or discrimination in any form.

We also expect our Subcontractors to uphold our standards, policies and procedures to keep our Learners safe.

2. PLANNING AND STRATEGIC INTENT

We will only procure and work with Subcontractors to deliver high quality provision on our behalf where there is clear curriculum intent, one of the justifications set out in **Sub-section 2.2.** is met and the proposed subcontracting is financially viable.

We have no intentions to subcontract apprenticeship provision to a third party. If an opportunity arises, which would require us to subcontract part of the programme, consent should be sought from the Executive Director of Quality.

2.1. Planning

Each year, as part of our planning cycle, we will review our curriculum offer to inform our financial budget for the forthcoming year. As part of reviewing the curriculum offer, each College, should identify, if there are any gaps in their offer, or that their offer would benefit from other complementary qualifications to meet the needs of their local community but which they do not internally have the resources or expertise to deliver.

Colleges should not be proposing subcontracting, which is tactical, e.g., to fulfil a shortfall in their financial budget / contract allocation.

This should include:

- assessing how the proposed delivery supports achieves the intent at **Sub-section 2.2** and ambitions of the particular funding stream within the College;
- consultation with the relevant curriculum area to identify how the proposed delivery will add value to the existing programmes of learning;
- identifying if there is capacity / expertise within the College to deliver the proposed programme of learning and whether the College has appropriate approval to deliver proposed qualifications – if the answer to these questions is yes then a subcontract is not appropriate (unless specifically requested by an Employer or Funder).

Each College shall submit its Proposed Planned Levels of Subcontracting in the format agreed by the published deadline each year, for consideration by the Subcontracting Committee. The return should include all FE Subcontracted Provision and any other proposed partnerships.

The Subcontracting Committee does not guarantee that all proposed Subcontracting will be accepted. Each submission will be considered on its own merit, and how it contributes to NCG's Strategy and NCG's Subcontracting Strategy.

The FE Subcontracting Manager shall advise the Subcontracting Committee of the most recent RAG rating of any current Subcontractors, as determined in accordance with **Sub-section 6.1.** Except in extenuating circumstances, only current subcontractors who have been assessed as **GREEN** or **AMBER** will be considered by the Subcontracting Committee. Where the proposed Subcontracting needs to be procured, the successful organisation must be assessed by the Specialists as **GREEN** or **AMBER** in accordance with **Sub-section 3.4.2.**

Proposed Planned Levels of Subcontracting may be declined or reduced should:

- a) the Funding Agreement or Funding Rules prohibit subcontracting; or
- b) the aggregated volume of proposed subcontracting exceeds the Funder's Subcontracting Threshold, and NCG has not been granted consent to exceed the Funder's Subcontracting Threshold; or
- c) NCG does not have sufficient funding available to deliver its own curriculum offer;
- d) the Executive Director of Quality does not consent to subcontracting part of the apprenticeship programme for a specific Employer; or
- e) the Proposed Plan does not meet the criteria set out at **Sub-section 2.2**.

All Proposed Planned Levels of Subcontracting shall be reviewed by the Subcontracting Committee. The Proposed Planned Levels of Subcontracting shall be presented by the Chief Finance Officer at the next Finance & Resources Committee meeting for approval.

The Legal & Contracts team shall notify the Colleges and the Director of Learner Data Services once the Proposed Planned Levels of Subcontracting have been approved. Each College should ensure that the Proposed Planned Levels of Subcontracting are accurately reflected in 4Cast including the cost of delivery.

The Legal & Contracts team shall complete and submit the necessary exemption requests for consent to the Funder by the Funder's deadline. If no exemption requests are necessary, the Director of Learner Data Services or their nominee shall notify the Funder of the planned levels of subcontracting for each Academic Year in line with the Funder's requirements as specified in the Funding Rules, as and when requested, and keep up to date throughout the Academic Year.

2.2. Strategic intent

When procuring Subcontractors, the opportunity must always meet one of the following five objectives:

- a) The activity enhances the opportunities available to the young people and adults in our college geographies, particularly where this also supports the development of our own direct delivery;
- b) The activity fills gaps in niche or expert provision, or provide better access to training facilities where we cannot do this ourselves;
- c) Where we need to enable better access to learners in a wider geography than our colleges are able to support;
- d) The activity offers an entry point to education for disadvantaged groups, particularly those who may not wish to study on a college campus; or
- e) The activity supports individuals who share protected characteristics, where there might otherwise be gaps, or it addresses an equality, diversity issue in line with NCG Equality, Diversity, Inclusion and Belonging (EDIB) policy.

No planned subcontracting shall progress to **Section 3: Procurement** until such time as the Finance & Resources Committee has approved the Proposed Planned Levels of Subcontracting prior **Section 5: Contracts**, unless the Chief Finance Officer has authorised that the procurement can commence.

Once the Finance & Resources Committee has approved the final Planned Levels of Subcontracting, the Legal & Contracts team will arrange for such plans for the forthcoming Academic Year to be uploaded to the [Supply Chain Information](#) section on the NCG website by 31 October each year.

Amendment to the Planned Levels of Subcontracting will only be considered by exception outside of the scheduled reviews documented in the Financial Planning Calendar, e.g., Q1, Q2 and Q3. Any amendments within the Academic Year must have clear curriculum intent and one of the justifications set out in this **Sub-section 2.2** must be met.

3. PROCUREMENT

The procurement process has been developed in line with the Public Contracts Regulations 2015, as amended from time to time ('Regulations'). Any non-compliance with these Regulations may result in legal action being taken against NCG in the High Court, causing delay to the procurement process and potential significant fines and compensation award payable by NCG, should the courts find in favour of the claimant.

3.1. Market Engagement

Once the Finance & Resource Committee has approved the Proposed Planned Levels of Subcontracting, the FE Subcontracting Manager shall identify if there are any suitable organisations that could provide the services on the DPS.

As the procurement process is restricted to only pre-approved delivery partners on the DPS, if the FE Subcontracting Manager is not satisfied that there is a suitable pre-approved delivery partner(s) capable of providing the services, the FE Subcontracting Manager will undertake market engagement, with support from the respective College, to attract new applicants before commencing one of the procurement routes.

3.2. DPS

As the amount that NCG subcontracts over a four-year period exceeds the light-touch threshold under the Regulations, NCG uses a Dynamic Purchasing System ("DPS") to enable organisations interested in partnering NCG to become pre-approved.

The DPS is advertised through Find a Tender and Contracts Finder and is open for new applications 24/7 365 days a year. The Procurement team periodically evaluate new applications, including an assessment of financial accounts and credit reports by the nominated Finance team member to determine a Financial Ceiling for each applicant.

Financial ceiling will be determined by taking into consideration whether the bidder is making a profit/surplus before tax, has a current ratio (current assets/current liabilities) greater than 1 and use of the RedFlag database rating. The financial ceiling will be a percentile points multiplied by the most recent turnover dependent on the output of the financial assessment conducted, as set out below:

- Grade 1 = 50% of turnover;
- Grade 2 = 30% of turnover;
- Grade 3 = 10% of turnover; and
- Grade 4 = no financial ceiling available.

Subject to the application meeting NCG's minimum requirements, the Procurement team shall add those successful to the DPS. Feedback will be provided to any unsuccessful applicants to assist them to re-apply.

3.3. Procurement Routes

Irrespective of the procurement route followed, all applicants will be expected to complete a Cyber Security Questionnaire and a GDPR Supplier Questionnaire. The respective Questionnaires will be evaluated by the IT Security Lead and the Risk and Assurance team to ensure that the responses meet their requirements. Only when the IT Security Lead and the Risk and Assurance team are satisfied with the responses received will the successful applicant be notified of the outcome of the respective procurement application.

Any providers who have not applied or have a DPS application in progress when the Expression of Interest or Mini-Competition is launched, will only be able to apply for the opportunity once their DPS application has been successful and they have been added to the DPS. If the FE Subcontracting Manager is aware that there are other organisations that could deliver the Subcontracted Provision, the Expression of Interest or Mini-Competition should not be launched until such time as the said organisations have been accepted on to the DPS, unless time is of the essence for the Subcontractor to be procured and the bidders have been provided sufficient opportunity to complete their application.

3.3.1. Direct Award

To ensure that the opportunities are open, fair, and transparent, the Procurement team will only consider direct awards whereby a Procurement Waiver request has been submitted and one of the following criteria applies:

- The Employer or the Funder has specified that a specific organisation must be used to provide the specific services under the Funding Agreement. Written evidence of this instruction must be submitted to the Procurement team when submitting the Procurement Waiver;
- The Subcontract has been terminated without sufficient notice to procure a replacement subcontractor in a timely manner, resulting in the Main Provider being in default under the Funding Agreement; or
- There are no other organisations registered on the Dynamic Purchasing System for Delivery Partners that are able to provide the specific services. Evidence of this must be obtained via the Expression of Interest process (see **Sub-section 3.3.2.** below).

3.3.2. Expression of Interest ('EOI')

If the FE Subcontracting Manager believes that there are very few or no organisations suitably qualified to deliver the services, the FE Subcontracting Manager may choose to issue an EOI to satisfy themselves that this is the case, or to restrict the opportunity to organisations that are able to provide the services when the Mini-Competition is issued.

The FE Subcontracting Manager is responsible for drafting the EOI information pack, which once finalised the Procurement team will launch via the DPS.

All respondents to the EOI that meet the minimum requirements must either be (a) invited to respond to the subsequent Mini-Competition; or (b) be awarded a contract subject to further due diligence (if a Mini-Competition is not required).

All EOIs must be open for two working days. Weekends and bank holidays are deemed non-working days and do not count.

If there is only one response, or if all respondents will be offered a contract, and all respondents meet the minimum requirements, a direct award can be granted without the need to complete a Procurement Waiver, and the FE Subcontracting Manager can progress to **Sub-section 3.4**.

3.3.3. Mini-Competition

If there is a need to run a Mini-Competition, the FE Subcontracting Manager must develop the Mini-Competition information pack, which should clearly set out both the curriculum and strategic intent for subcontracting and how the successful bidders will deliver the wider social objectives of the Funder, along with NCG's minimum expectations and service requirements.

Such requirements may be included as exclusion questions to ensure the bidder(s) have the necessary skills and experience. Failure to answer questions appropriately will result in a bidder's application being rejected.

The proposed draft subcontract must be issued with the Mini-Competition (as the Regulations prevent NCG from enforcing their terms after the contract has been awarded if not published as part of the opportunity), along with any other documents that may help interested delivery partners to make the decision on whether to bid for the contract or not.

The Mini-Competition will only be available to DPS pre-approved delivery partners admitted to the DPS or, where an EOI was undertaken, only to those who responded to the EOI.

Once the Procurement team are happy with the Mini-Competition information pack and has agreed dates and timescales, the Procurement team will launch the opportunity.

All Mini-Competitions must be open for at least ten working days, unless there are exceptional business circumstances which means we need to reduce the deadline for responses. Under no circumstances can the Mini-Competition be open for less than two working days. Weekends and bank holidays are deemed non-working days and do not count.

All responses must be evaluated and Mini-Competition Evaluation Form completed for each response. If the evaluation is undertaken by a sole individual, the Procurement team and/or FE Subcontracting Manager will be responsible for moderating and agreeing the scores with the evaluator.

If any clarifications are required, the Procurement team will issue the questions to relevant bidders via Delta prior to awarding contracts.

The Procurement team must also ensure that NCG holds current financial accounts, insurance certificates, and must run a new credit check report for the successful bidder(s) to the Mini-Competition, before proceeding to award the contract. On receipt of the updated financial accounts and credit check report, these must be sent to the nominated Finance team member to assess and advise the new financial ceiling.

The Procurement team shall prepare and issue Contract Award Notices via Delta, subject to satisfactory completion of further due diligence at **Sub-section 3.4** and all necessary consents being granted.

As part of the Contract Award Notices, all bidders will be provided with scoring and feedback to assist them in future bids.

3.4. Post-contract Award Due Diligence

3.4.1. New Supplier Form

If a successful bidder is new to NCG, the FE Subcontracting Manager will request the New Supplier to be set up on NCG's Finance system by completing the New Supplier Form.

3.4.2. Specialist Review

The purpose of the Specialist Review is to ensure that all relevant information is checked by Specialists to ensure a proposed Subcontractor has the capability and capacity to deliver high quality provision, and to negotiate and agree the funding allocation to ensure high quality provision is delivered on behalf of the Funder.

The team of Specialists consists of representatives from the following Professional Services and/or College teams:

- Business Continuity;
- Curriculum;
- Health & Safety;
- People & Development;
- Quality (including Teaching & Learning);
- Safeguarding; and
- Sustainability (if applicable).

The purpose of the Specialist Review is to evaluate the evidence collected from the proposed Subcontractor. It is envisaged that the Specialists will look beyond the policies and procedures provided to ensure that these are embedded within the business to ensure high quality provision would be delivered.

The respective Curriculum team will be responsible for review the proposed curriculum for the Subcontracted Provision, and confirming the proposed curriculum meets the conditions of funding. Once the Profile has been agreed with the Subcontractor, the College, in conjunction with their Data team, is responsible for creating course codes and setting up timetables, to enable Subcontractors to record attendance in Staff Advantage.

The Specialist Review team will grade each piece of evidence and provide an overall grade:

	Meets or exceeds our minimum expectations
	Requires minor improvement to meet our expectations fully
	Fails to meet our expectations and/or causes us grave concerns

Actions assessed as **GREEN** can be cleared by the FE Subcontracting Manager within a defined period of the Contract going live, as agreed with the respective Specialist(s). Any actions should be added to the Contract Management Review.

Proposed Subcontractor assessed as **AMBER** should only proceed following consultation with the relevant Specialist(s) and Executive Principal - Curriculum. The relevant Specialist(s) will advise if the actions need to be completed the Subcontract can be issued, or within a defined period of the Contract going live, as agreed with the respective Specialist(s).

If the proposed Bidder has any **RED** areas on the Specialist Review, unless remedial actions can only be cleared to the satisfaction of the Specialist(s), the proposed bidder must be informed that NCG is withdrawing its contract award offer due to unsatisfactory post-contract award due diligence.

Evidence that discussions have taken place, or additional evidence provided, but the proposed Subcontractor is unable to remedy the actions to NCG's satisfaction must be recorded on the Specialist Review Form.

Another Specialist Review is not necessary if a further Subcontract is awarded for the same Academic Year, unless additional information is needed to demonstrate the Subcontractor is suitable to deliver the new provision or evidence previously submitted, was scheduled to be reviewed.

At least annually, we should ask the Subcontractor to refresh any of the information provided that is out of date by the Subcontractor.

4. SUBCONTRACTOR DEVELOPMENT

Once the Specialist Review has been completed at **Section 3: Procurement**, the FE Subcontracting Manager can commence onboarding the organisation and commence contract negotiations.

Each Specialist will be responsible for outlining the minimum expectations for their respective areas of responsibility associated with Subcontracted Provision, to enable the FE Subcontracting Manager to relay this to the Subcontractors. The Specialist will be expected to outline what information they expect to receive / see when visiting Subcontractors to assure themselves that the Subcontractor is delivering high quality teaching and learning and meeting the Funding Requirements.

4.1. Onboarding and Contract Negotiations

The purpose of the onboarding and contract negotiations is to identify any issues that would prevent a contract being awarded, outline the delivery requirements and key performance indicators, set out our key processes and procedures, and agree in principle, subject to approval at **Section 5: Contracts**, the delivery profile and proposed maximum contract value based on the proposed Subcontractor financial ceiling and the available Funding allocation for the Subcontracted Provision.

It is important that expectations are effectively managed on both sides.

Where multiple Subcontractors are being onboarded, all Subcontractors may be invited to a 'Welcome' meeting which sets out our minimum expectations and information sharing. Information specific to the respective Subcontractor, will be covered separately.

If any matters discussed, cannot be agreed, the FE Subcontracting Manager will notify the proposed Subcontractor that the proposed contract award will be withdrawn, and follow up in writing to confirm.

The FE Subcontracting Manager will request that the Subcontract is drafted by the Legal & Contracts team in accordance with **Section 5: Contracts**.

If requested by any of the Professional Services leads or their nominee, a copy of the Overview of the Programme and Profile will be provided for each Subcontractor to enable the respective teams to allocate resources accordingly.

4.2. During the Contract Life

From time to time during the contract life, the Funding Rules, paperwork, processes, and procedures may change. If this is the case, the FE Subcontracting Manager is responsible for ensuring that the Subcontractor is kept abreast of all such changes.

The FE Subcontracting Manager will be responsible for ensuring that there is a central repository for NCG's guidance notes and paperwork, so that said documents are easily accessible by Subcontractors.

As necessary, all Subcontractors will be invited to attend a 'Welcome' meeting facilitated by representatives from NCG at the start of each Academic Year to set out NCG's requirements for the forthcoming year. This meeting will be complemented with a series of masterclasses ran by our Specialists throughout the Academic Year and a termly newsletter covering topics of interest and share best practice. Specialists will be responsible for preparing the content of the masterclasses and drafting an article to include the newsletter as required.

The Subcontractor shall adhere to the principle of continuous improvement and enhancement of the Programme(s) (or the way in which they are provided) and must inform the Main Provider of any suggestions for improvements or enhancements to the Programme(s) (or the way in which it is provided), the curriculum and the Programme Materials. The Main Provider will consider such suggestions, and it may, if it so wishes, make use of the suggestions for its own benefit, the benefit of its Learners or the benefit of other Subcontractors.

NCG will support the Subcontractor to improve and develop the curriculum to improve the retention and achievement of Learners.

5. CONTRACTS

Once **Section 4: Subcontractor Development** has been completed, we are now ready to prepare and issue the Subcontract to the proposed Subcontractor for review and signature.

The Specialist Review Form and Onboarding must be signed off before the Subcontract can be requested.

Until such time as there is a Subcontract signed by both parties in place, no delivery can commence. The date of enrolment must not be earlier than the Commencement Date in the Subcontract.

5.1. Information Required

To enable the Legal & Contracts team to prepare the Subcontract (including a self-billing declaration and authorised signatory letter, the FE Subcontracting Manager must notify the Legal & Contracts team that the completed Specialist Review Form, Onboarding Checklist, Overview of the Programme and the Delivery Profile have been uploaded and provide any additional information required to populate the Subcontract in the format requested by the Legal & Contracts team.

If there are any of the actions identified in **Section 3: Procurement** or **Section 4: Subcontractor Development** that need to be completed to enable the Subcontract to be issued, the Onboarding Checklist should not be signed off.

5.2. Approvals

Prior to the Subcontract being issued to the Subcontractor for signature, the Legal & Contracts team will seek approval from the Executive Principal – Curriculum or their deputy, the Executive Principal – People & Culture.

By signing the Subcontract, the Chief Finance Officer is approving the planned level for the respective Subcontract.

If the proposed Subcontractor was previously not named, or the proposed maximum contract value exceeds the previously approved planned levels of subcontracting by the Finance & Resources Committee, the Chief Finance Officer has delegated authority to approve any amendments between meetings and reporting the revised plans as part of the next schedule review of the planned levels of subcontracting.

5.3. Funder Consent, if required

In the event that the proposed maximum contract value exceeds the previously declared planned levels of subcontracting to the Funder as set out in **Sub-section 2.1.**, the Funder shall be notified in accordance with the Funding Rules.

Some Funders must explicitly provide consent to enable us to proceed. If this is the case, written consent must be received before the Legal & Contracts team will issue the Subcontract for signature.

5.4. Formation of Subcontract

Once the Legal & Contracts team have the necessary approvals outlined at **Sub-sections 5.2. and 5.3.** above, the Legal & Contracts team will issue via NCG's esignatory software for signature by authorised signatories on behalf of both parties.

Once signed by both parties, the Legal & Contracts team will upload to the respective folder on the shared drive, and delivery can commence.

6. CONTRACT MANAGEMENT

All Subcontractors and their employees have a responsibility to comply to the terms set out in the Subcontract and delivery a high-quality Subcontracted Provision, in line with NCG's policies and procedures, including but not limited to, Health, Safety & Well-Being; Safeguarding; Equality, Diversity, Inclusion and Belonging; Data Policy and Data Standard Operating Procedures, audit; and quality assurance and compliance.

It is the responsibility of the FE Subcontracting Manager to oversee the Subcontracted Provision and contract manage the Subcontractor. Contract management requires an appropriate mix of data analysis, monitoring visits and quality review to ensure that delivery meets the required standard in line with **the Subcontract** and that any risk to the expected outcomes is mitigated to limit the impact to all involved.

The FE Subcontracting Manager is not expected to undertake all of this activity but is expected to make sure the activities are taking place by the respective teams throughout the Academic Year, and both the Subcontractor and the FE Subcontracting Manager are receiving the output of the activity on a timely basis to enable them to triangulate the data available to them to identify issues and mitigate risk.

6.1. Key Performance Indicators

Key Performance Indicators will be agreed in conjunction with the Executive Principal – Curriculum and the Executive Director of Quality.

The Key Performance Indicators are a mixture of quantitative and qualitative measures that provide a balanced but robust view of how the Subcontractor is performing, enabling the FE Subcontracting Manager to assign a risk rating of **RED**, **AMBER** or **GREEN** at least quarterly. Only data reported through NCG systems must be used when assigning a risk rating, i.e., no locally produced data will be accepted, although the FE Subcontracting Manager may take this into consideration when determining what performance measures are required.

The RAG rating would indicate the following:

	No material concerns
	Some minor concerns which could become material
	Serious concerns

There is no hard or fast rule as to when a Subcontractor should be performance managed. The above RAG ratings shall provide an indication when to performance manage, however, a risk-based approach should be considered on the most appropriate action. For example, on average, the overall risk rating is **GREEN**, the FE Subcontracting Manager may still agree some remedial actions, as the trajectory suggests that next month the Subcontractor is likely to be

AMBER or that one of the key performance indicators that has not been met this month, which is out of the ordinary.

In the first instance, consider the overall RAG rating, and then consider, what has driven the assessment and whether this causes some minor concern (informal), serious concern (formal).

If in any doubt, the FE Subcontracting Manager should consult with the Director of Legal & Contracts.

6.2. Contract review meetings

The FE Subcontracting Manager will undertake a Contract Review meeting with the Subcontractor at least twice per Academic Year, face to face and where possible, at the Subcontractor's premises. The FE Subcontracting Manager shall agree with the Subcontractor the frequency of the next meeting and venue depending on the RAG rating assigned to the Subcontractor in line with NCG's minimum frequency of meetings set out below:

	Face to face at least twice per Academic Year, with a virtual meeting via Microsoft Teams in-between (Minimum 3 meetings per Academic Year)
	Alternate between face to face and Microsoft Teams meeting once per half-term (Minimum 6 meetings per Academic Year)
	Face to face every 4 to six weeks (Minimum 10 meetings per Academic Year to allow for holidays)

Following completion of the Contract Review meeting, the FE Subcontracting Manager will provide the Subcontractor with a copy of the Contract Review Form which will summarise the topics discussed and capture salient information such as performance against each key performance indicator, forecast achievement rates timely and overall, feedback from assurance activity undertaken by NCG's Professional Services team in accordance with **Sections 7: Data Assurance, 8: Health & Safety Monitoring, 9: Safeguarding Monitoring, 10. Quality Assurance, and 12: Risk Management** and along with agreed SMART actions, and confirm the Risk rating.

Following completion of the Contract Review meeting, the FE Subcontracting Manager should follow **Sub-section 11.1.** if the Subcontractor has been RAG rated as **AMBER**, and **Sub-section 11.2.** if the Subcontractor has been RAG rated as **RED**.

7. DATA ASSURANCE

7.1. Data Protection: Controller to Processor relationship

NCG is required to process personal data in accordance with the UK General Data Protection Regulations (UK GDPR) and the Data Protection Act 2018.

As the Main Provider, and in accordance with the data protection legislation, NCG is the Controller, and the Subcontractor is the Processor.

In delivering subcontracted provision on NCG's behalf, Subcontractors must:

- a) Comply with the UK GDPR and Data Protection Act 2018;
- b) Not cause NCG to breach any obligation under the UK GDPR and Data Protection Act 2018;
- c) Notify NCG without undue delay if it identifies any areas of actual or potential non-compliance with the UK GDPR and/or Data Protection Act 2018; and
- d) Comply with all and any instructions issued by NCG relating to how Personal Data should be processed, including, but not limited, to sharing of Personal Data with NCG.

If any queries or concerns relating to data protection arise when managing Subcontractors and or Subcontracted Provision, they should be referred to the NCG Data Protection Officer by email to dpo@ncgrp.co.uk.

7.2. Data Submissions

The Subcontractor shall upload all evidence required, including Enrolment Paperwork and attendance registers within 5 working days of the activity taking place to enable NCG to maintain the ILR and monitor the Subcontracted Provision via a secure portal. The Subcontractor must follow NCG's instructions on where specific evidence should be uploaded and the file naming methodology. Only authorised users may access the portal. The respective owner of the secure portal shall grant permissions to authorised users.

Following uploading of evidence to the secure portal, the Subcontractor should also send a notification to the respective College Data team to confirm what evidence has been uploaded, but the Subcontractor must not attach such Learner records to the notification. NCG does not expect a separate notification for each piece of evidence or per Learner to be submitted by the Subcontractor.

The respective Data team are responsible for ensuring that they are able to track submissions received from Subcontractors and the status of each submission.

The Subcontractor is responsible for notifying the FE Subcontracting Manager of any changes of personnel as soon as practicable, and no later than one working day for routine changes.

If an employee of the Subcontractor leaves or is dismissed, the FE Subcontracting Manager must be informed immediately, so access can be terminated straight away. If the FE Subcontracting Manager is unavailable, the Subcontractor should notify the Legal & Contracts team.

7.3. Data Validations and Claims

On receipt of the data submissions, the respective College Data teams will validate the data submissions, in accordance with **Section 13. Payments.**

8. HEALTH & SAFETY MONITORING

The health, safety and wellbeing of Learners is paramount. The Subcontractor is responsible for ensuring that their own policy and procedures meet NCG's expectations our supply chain must fully support and commit to the same aims and objectives.

The Health & Safety Lead shall conduct an audit of the Subcontractor's health and safety management system including premises plant and equipment. The frequency of the audit will be dependent on the Health & Safety Lead's risk assessment of the Subcontractor.

When determining the risk rating of the Subcontractor, the Health & Safety Lead will consider the RAG rating allocated to the Subcontractor as part of the Specialist Review as detailed in **Section 3.4.2.** and the sector and type of training the Subcontractor delivers.

The frequency and context of audits shall be determined through risk and outcomes and subject to monitoring returns.

Each Academic Year, and no later than 30 September each year, the Health & Safety Lead shall notify the FE Subcontracting Manager, of a scheduled audits for the respective Academic Year.

8.1. NCG requirements

These are not exhaustive however they refer to the main areas that NCG expects the Subcontractor to be compliant in terms of legislation, approved guidance and best practice commensurate with HSG65 ([Managing for health and safety \(HSG65\) \(hse.gov.uk\)](https://www.hse.gov.uk/hsg65/)) or equivalent standard:

- insurances specified are suitable and sufficient in relation to the organisation's obligations to and the needs of Learners (employer's liability, public liability and others, for example driving insurance) and as legally required;
- The Subcontractor must:
 - be aware of and comply with all relevant health and safety legislation;
 - have a health and safety policy, statement, organisation, and arrangements (where employing five or more persons);
 - ensure that you have competent assistance (person(s) for health and safety, and this should be documented in your Health and Safety policy and instructions;
 - provide all employees with the appropriate Health and Safety training for their role;
 - make clear to key staff and employees their Health and Safety responsibilities;
 - undertake regular health and safety risk assessments in respect of employees and Learners, and that appropriate action is taken as a result. Risk assessments must be reviewed to take account of changes/accidents/incidents;
 - ensure that there are arrangements in place to review and adjust risk assessments if a Learner has special needs, a disability, learning/language difficulties or is a young person;

- have appropriate arrangements for ensuring safe plant and equipment and using PPE;
 - regularly check health and safety standards and conditions in practice;
 - have effective arrangements in place for the identification, investigation, notification and reporting of accidents and ill-health to employees and Learners;
 - ensure that Learners receive effective information, instruction and training in health and safety including induction promoting a concept of “Safe Learners”;
 - ensure that where training takes place at locations other than the organisations premises, e.g. work placements, work experience, the organisation must ensure that arrangements are made to assess health and safety suitability before the training takes place;
 - have a process in place to notify NCG immediately upon the occurrence of any injury or condition referred to in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR).
- The Subcontractor’s Health and Safety policy and standards / procedures must:
 - make reference to and arrangements for Learners/participants in training programmes;
 - be tested to ensure that it works in practice and helps to create a “safety culture” and “safe Learners”;
 - have clear roles and responsibilities covering who does what and when.
- The Subcontractor should:
 - have effective arrangements for the consultation and participation of employees and Learners in health and safety matters;
 - ensure that managers routinely monitor health and safety performance, for example, at management meetings;
 - should periodically audit your health and safety arrangements;
 - ensure that senior managers review the organisations performance in health and safety matters, for example annually, and identify improvements which should be taken forward as part of an annual health and safety action/development plan with the aim of continually raising standards.

9. SAFEGUARDING

The Subcontractor shall comply with the Safeguarding Responsibilities in accordance with the Subcontract. The Subcontractor will be required to provide evidence to the FE Subcontracting Manager to confirm compliance with the Subcontract as part of the Contract Review meetings outlined in **Section 6: Contract Management**.

The FE Subcontracting Manager must retain a single central register to demonstrate that all Subcontractors have met the Safeguarding Responsibilities.

The respective Designated Safeguarding Lead for each College (“College DSL”) shall monitor the Single Central Register and Wider Participation Report and flag any concerns to the FE Subcontracting Manager to discuss with the relevant Subcontractor.

To enable the Designated Safeguarding Lead to assure themselves that Enrolled Learners are attending their timetables sessions regularly, the Subcontractor must complete attendance registers in Staff Advantage in a timely manner.

As part of the Main Provider’s monitoring activities, outlined at **Section 10. Quality Assurance** and **Section 12. Risk Management**, the Main Provider may validate the data held by the Main Provider against the Subcontractor’s records, including requesting to see evidence to support such records, such as copies of DBS and training certificates, positive disclosures, KCSIE refresh declarations, etc. In the event, that a Trainer has a positive disclosure, or a risk assessment was put in place to enable delivery to commence before the DBS certificate was received, the Subcontractor must be able to show evidence that the College DSL approved the positive disclosure and / or risk assessment completed by the Subcontractor prior to assigning the Trainer to the Subcontract.

10. QUALITY ASSURANCE

Outlined within this **Section 10. Quality Assurance** are the controls in place to ensure effective monitoring of Subcontracted Provision.

10.1. Monitoring

Each Academic Year, and no later than 30 September each year, the College Quality Lead shall prepare a calendar of announced and unannounced visits to all Subcontractors to demonstrate the Funder's Controls over Learners, Trainers and provision are being met. The calendar will include as a minimum, the following activities, at least once per Academic Year, in line with NCG's quality procedures:

- review of the individual learning plans completed / targeting setting and monitoring by the Subcontractor when enrolling the Learners. Such checks should establish if the Learners were made aware that NCG / the College was the Main Provider;
- quality audit in line with risk assessment, to include course review and learner voice survey;
- quality audit including IQA and EQA report documents;
- review of Subcontractor completed OTL reports, and where possible (risk-based), joint OTLs. Ensure that staff are aware of the basic principles within the NCG TLA Policy and their ability to join College/NCG CPD sessions as guests;
- in year data review (retention, achievement, pass rates);
- an unannounced scheduled visit to consist of:
 - an observation of education, teaching and learning being delivered;
 - check registers and headcount to ensure they tally and that the individuals in the room are the named individuals on the registers and ILR and that these have been submitted to NCG in accordance with the Contract;
 - check Learners are aware of safeguarding procedures, Prevent Duty, identification of local risks, and risks associated with sexual abuse and harassment, and what to do if they have any concerns;
 - check that the Learners are aware who NCG / the College is and their role in the Learner's programme of study – the Learners should have been made aware of NCG / the College as part of enrolment and their induction; and
 - check a sample of Learner records for irregularities within the records.

10.2. Work Scrutiny

The College Quality Lead will undertake an audit of Learner work for proportionate sample of Learners during the Academic Year. This will include reviewing the paperwork in relation to evidence of quality of delivery and compliance with Funding Rules. If no issues are identified no further action is required. If issues are identified actions need to be agreed to rectify any issues.

10.3. Learner Feedback and Complaints

10.3.1. Learner Feedback

As a minimum the Subcontractor should seek feedback from all Learners throughout the Academic Year and share the feedback with the FE Subcontracting Manager and College Quality Lead.

Where the Learners are identified as part of NCG's sample for learner voice surveys, Learners will be contacted to enable us to quality assure the Subcontracted Provision. The Subcontractor will be expected to promote the survey and provide any necessary support to the College Quality Lead to make improvements to the Subcontracted Provision.

10.3.2. Complaints

Learners should be made aware as part of their induction that if they are unsatisfied with the programme of study, they should in the first instance follow the Subcontractor's complaints policy. In the event, that the complaint is not resolved, this should be referred to NCG / the College in accordance with NCG's Complaints and Compliments Policy.

10.4. Termly Quality Reviews

The Subcontracted Provision shall be included in the termly quality review cycle.

The College Quality Lead will be expected to report to the Executive Director of Quality and Executive Principal – Curriculum on the quality of Subcontracted Provision.

The termly quality review will include, but not limited to:

- Self- Assessment Report (SAR) & Quality Improvement Plan (QIP) review
- Delivery: including schemes of learning, assessment plans, initial assessments, how English and maths are embedded and ensuring that delivery staff and assessors are appropriately qualified.
- Any progress measures and/or points that are specified at points throughout the learners programme.
- Awarding Organisations: including evidence of centre approval, external verification/ standards verification and external quality assurance reports, and evidence of standardisation meetings.
- Observation of Teaching. Learning and Assessment: including evidence of the policy, and the process and criteria for observations. Evidence of the schedule in place including observations and work scrutiny, and evidence of feedback mechanisms.
- Stakeholder Engagement: Evidence of surveys, focus groups or any other activity used to gather learner and employer feedback. Provide evidence on outcomes and how feedback informs improvement.

- Safeguarding, Prevent & British Values: provide evidence of how this is delivered as part of the programme.
- In year performance data such as retention, achievement – both timely and overall, and pass rates;
- Actions to be taken to address underperformance.

10.5. Self-assessment and Quality Improvement Plan

Following submission of the R14 ILR, each Subcontractor is required to prepare and submit a self-assessment against the Education Inspection Framework. On receipt of the self-assessments, the College Quality Lead shall review the self-assessments, and migrate, where appropriate into the College's self-assessment report.

Alongside the self-assessment, the Subcontractor shall submit a quality improvement plan where areas for improvement have been identified to enable the Subcontracted Provision to be Ambitious for Outstanding. The College Quality Lead will monitor progress against the quality improvement plan as part of quality audit.

11. PERFORMANCE MANAGEMENT

Following completion of the Contract Review meeting in accordance with **Sub-section 6.2.**, the FE Subcontracting Manager should follow **Sub-section 11.1** as appropriate

11.1. Informal

Where the FE Subcontracting Manager has determined the Subcontractor should be managed informally to address minor concerns or to drive performance by the next scheduled Contract Review meeting in accordance with the NCG's minimum frequency of meetings set out in **Sub-section 6.2.**

The FE Subcontracting Manager and the Subcontractor will work together to develop and agree an informal SMART action plan to meet the minimum standards required, e.g., Key Performance Indicators as set out in **the Subcontract.**

If the informal SMART action plan is achieved, the FE Subcontracting Manager will confirm at the next Contract Review meeting and record on the Contract Review Form. The Subcontractor will continue to be assessed in accordance with the NCG's minimum frequency of meetings set out in **Sub-section 6.2.**

If the informal SMART action plan is not achieved, the FE Subcontracting Manager will discuss with the Director of Legal & Contracts whether to extend the informal action plan or escalate to formal performance management in accordance with **Sub-section 11.2.**

11.2. Formal

The FE Subcontracting Manager should discuss with the Director of Legal & Contracts the intention to formally performance manage the Subcontractor and the College Subcontracting Lead. Should the recommendation be to formally performance manage the Subcontractor, the Executive Principal – Curriculum will be consulted prior to instigating the formal performance improvement process. The FE Subcontracting Manager should also complete the 'Subcontractor at Risk' assessment in accordance with **Sub-section 12.5.** and seek support, as necessary, from the NCG's panel of Specialists to assist the Subcontractor to address concerns and drive an improvement in performance.

The FE Subcontracting Manager should notify the Subcontractor that the formal performance improvement process has been instigated and written notification will be issued imminently by the Legal & Contracts team. As part of the discussion, the FE Subcontracting Manager should address areas of underperformance and seek SMART actions to address such underperformance, and outlined the process to be followed as, set out in **the Subcontract.**

The maximum contract value may not be increased but may be reduced whilst the formal improvement process is active.

The Subcontractor may decide to exercise the dispute resolution process, in accordance with **Section 14: Disputes** and **the Subcontract**, if they are not satisfied with the decision.

The FE Subcontracting Manager shall monitor and review the agreed Action Plan at least fortnightly and record the progress in the Contract Review Form after each review until the target date for the underperformance to be improved.

Following conclusion of the formal improvement process, the FE Subcontracting Manager with approval from the Executive Principal - Curriculum will assess and decide if significant progress has been made to remove them from formal performance improvement.

If the Subcontractor has not fully achieved all actions, but sufficient progress has been made, we may decide to extend the formal improvement process. The above process will be followed again for the extension period.

If we determine that the Subcontractor has not made sufficient progress, the formal improvement process will end. The FE Subcontracting Manager will verbally notify the Subcontractor of the outcome of the formal improvement process and our intentions to terminate the Subcontract in accordance with **the Subcontract**.

The FE Subcontracting Manager will instruct the Legal & Contracts team to prepare and issue the termination notice. On receipt of the termination notice, the Subcontractor may decide to exercise the dispute resolution process, **Section 14: Disputes and the Subcontract**, if they are not satisfied with the decision.

11.3. References

Prior to using NCG as a referee, the Subcontractor should consult with the FE Subcontracting Manager. All requests should be sent to legal@ncgrp.co.uk

The FE Subcontracting Manager shall be responsible for responding to any reference requests received in a timely manner. Any references provided will be completed based on facts and no opinions will be included.

12. RISK MANAGEMENT

12.1. Risk Assessment

Funders require us to demonstrate that we have effective risk management procedures in place to effectively manage the public money which is paid to Subcontractors.

As a minimum we are expected to demonstrate:

- Contractual / subcontractor risk management is in place with clear responsibilities and processes, identification of who is best placed to manage risk, and subcontractor involvement where appropriate.
- Risks are formally identified and monitored regularly, with mitigating actions developed and implemented where possible, and 'obsolete' risks removed from consideration where appropriate.
- Escalation and reporting routes are in place for risk governance.
- Contingency plans are developed to handle Subcontractor failure (temporary or long-term failure/default); exit strategies are developed and updated through the life of the contract.
- Contractual terms around termination are understood and monitored by the FE Subcontracting Manager.
- Contractual terms around warranties, indemnities and insurance are understood and monitored by the FE Subcontracting Manager.
- Contractual terms around security and confidentiality are understood and monitored by the contract manager, particularly issues relating to the security/confidentiality of personal data.
- Dispute resolution processes are in place, including agreed adjudication procedures, mediation, and arbitration.
- The FE Subcontracting Manager monitors the subcontractor's financial health and performance (including using credit rating agencies).
- The FE Subcontracting Manager monitors the subcontractor's compliance with contractual 'non-performance' issues (for example, on tax and sustainability targets).

All colleagues, irrespective of their role, responsibilities or level of accountability / authority for Subcontracted Provision must follow NCG's policies and procedures and at all times deliver a service that at least meets the Funders' expectations outlined above at all levels.

The Director of Assurance and Risk will liaise with responsible managers to implement a framework to comply with the requirements set out above.

12.2. Suspected Fraud and Irregularities

The legal definition of fraud as defined in the Fraud Act 2006 is: 'The making of a false representation or failing to disclose relevant information, or the abuse of position, in order to make a financial gain or misappropriate assets.'

The controls we have in place to manage and monitor Subcontracted Provision must ensure any suspected or discovered instance of fraud are identifiable in a timely manner. Where identified, instances of suspected or actual fraud should be reported without delay to the Director of Assurance and Risk (via the procedures set out in the Whistleblowing Policy where appropriate) to allow for an investigation to commence.

12.3. Learner Records and Audits

As Main Provider, NCG is the owner of all Learner records and is required to maintain and retain all records relating to the delivery undertaken, either by us or that by the Subcontractor. NCG recognises that this is not always possible to hold the records centrally, particularly whilst a Learner remains on programme, as the records must be maintained to show Learner progression, or due to timing, e.g., you are only required to submit registers weekly for example.

In the event that an internal audit is scheduled to take place, the FE Subcontracting Manager, shall notify the Subcontractors of the forthcoming audit, and advise them that any Learner records that have not been submitted to NCG already, including those that have been updated since last submission, must be uploaded to the secure portal by a specific date and time.

All Learner records not provided to NCG prior to the expiry of the Subcontract, will be collected during the Subcontract closure outlined in **Sub-section 15.4**. Where records can not be delivered to NCG, because the Subcontractor requires such records to support financial statements, the Subcontractor will be required to sign a declaration to confirm the Subcontractor shall be responsible for retaining records in a secure manner until the retention date as defined in the Subcontract or such other date as notified by NCG or the Funder.

12.4. Internal Audit

The Director of Risk and Assurance will schedule internal audits of Subcontracted Provision in accordance with the agreed internal audit plan approved by the Audit and Risk Committee. The terms of reference for the internal audit will be agreed by the Chief Finance Officer.

All NCG colleagues who support the Subcontracted Provision and Subcontractors are expected to provide the Internal Audit team with the evidence requested in a timely manner to enable them to complete the assurance activity.

On conclusion of the assurance activity, the Director of Risk and Assurance will circulate for approval the report for approval. A copy of the final report will also be submitted to the Audit and Risk Committee.

The FE Subcontracting Manager will inform the Subcontractor when an audit, internal or external is taking place to ensure timely provision of evidence.

12.5. Business Continuity

Each Subcontractor is expected to submit a business continuity plan specific to the Subcontracted Provision for approval as part of the Specialist Review. The Subcontractor will be expected to review the business continuity plan periodically and share the revised plan.

Consideration to the Subcontractor's resilience and business continuity arrangements will be included in the relevant NCG business impact assessment and plan.

12.6. Subcontractor at Risk

In the event that the FE Subcontracting Manager has any concerns with the Subcontractor, or the Subcontracted Provision being delivered by the Subcontractor, the FE Subcontracting Manager should undertake a risk assessment to mitigate risk with the respective College and Professional Services Leads.

12.7. External Assurance

At least every three years, NCG's subcontracting controls will be externally assured by an independent audit firm. Such external assurance shall satisfy the Funding Rules and the Funding Agreement, where external assurance is a requirement of the Funding Agreement. The outcome of the external assurance visit will be made available to the relevant Funders.

13. PAYMENTS

NCG operate a self-billing process to pay Subcontractors for the Subcontracted Provision. The process outlined below should be followed in all instances.

Note: any reports including Personal Data should be password protected as a minimum. Each Subcontractor shall be given a password to use for the entire duration of the contract term, so that the password does not need to be exchanged each time.

13.1. Creation of Purchase Order

Once a Subcontract is in place, the Legal & Contracts team will raise a requisition in NCG's finance system to enable the Subcontractor to be paid for the delivery, the Subcontractor has undertaken during the contract term.

All requisitions will be raised to the local cost centre in which the income will be earned and to the respective nominal code for the Subcontracted Provision.

If, the Subcontract is varied during the contract term, the Legal & Contracts team will amend the value of the purchase order to ensure the Subcontractor can be paid in a timely manner.

13.2. Delivery and Data Processing

In accordance with the Subcontract, for whole programme delivery, the Subcontractor must, within 5 working days following start, achievement or withdrawal on a Programme, send to us evidence in relation to each Learner who has Enrolled on the Programme. On receipt of the evidence, the respective College Data team must confirm the paperwork and process in Unit-e within 5 working days of receipt.

Curriculum Leads in each College are responsible for ensuring that Enrolment Paperwork accurately reflects the delivery to be undertaken by the Subcontractor, so the respective College Data team can flag the Subcontracted Provision correctly in Unit-e to pull through to the ILR to ensure timely payment to the Subcontractors. If an Enrolled Learner withdraws from the Subcontracted Provision (including when the Enrolled Learner remains on programme with the College), the FE Subcontracting Manager, the respective College Data team and the Head of Finance, Planning and Resources must be notified, so Unit-e and the ILR are updated accordingly, and the Subcontractor is paid for the correct proportion of delivery.

If evidence is not received in a timely manner or is received after the cut-off deadline for evidence to be received for processing in the current period, priority shall be given to evidence received prior to the cut-off and received timely.

If the evidence does not meet our internal validation checks, the respective College Data team must notify the Subcontractor in a timely manner of validation being undertaken and advise what corrective actions should be taken and request re-submission within 5 working days to enable us to process the evidence for the Enrolled Learner.

Note, where the Subcontractor fails to submit evidence timely, and submits in bulk, or on, or after the monthly cut-off for processing in month, NCG is unable to guarantee that records will be processed within 5 working days. Submissions received within 5 working days of the NCG ILR file being generated will not be processed until the next month. Furthermore, NCG shall prioritise notifying Subcontractors of corrective action based on their planned end dates, to mitigate the likelihood of planned end date being exceeded.

Once the internal validation checks have been completed, the respective College Data team will process the Learner in Unit-e by the internal processing deadline for the current period, so that the Learner pulls through on to the current month's ILR submission.

In accordance with standard operating procedures, the respective College Data team will run ILR validation reports to find any data entry errors with the Enrolled Learners, so these can be resolved prior to the ILR submission. If the errors require resolution by the Subcontractor, these should be sent to the Subcontractor and ask them to undertake corrective actions and re-submit within 5 working days. If the information is submitted after the internal submission deadline for the respective month's ILR submission, the amendments will not be considered until the respective College Data team starts processing data for the next data submission.

The deadline for the submission of Learner information is the 15th of the month.

13.3. Batch Submission

After the internal processing deadline has passed, the respective College Data team will generate the batch file and send to the Funder.

13.4. Receipt of ILR

Following submission of the batch file to the Funder, the Funder will return to us, the ILR, within 5 working days of submission.

13.5. Calculation of Funding earned attributed to the Subcontractor

Within 5 working days of receipt of the ILR from the Funder, the Head of Finance, Planning and Resources shall calculate the payments due to each Subcontractor based on the Learner Summary Report for the respective month's delivery.

The Funding Rate and Fees represent earnings year to date and must be adjusted to deduct the Funding Rate and Fees calculated in the prior period. For avoidance of doubt, the R07 Funding Rate and Fees will consist of the Funding earned between R01 and R07, and therefore, Fees paid to R06 should be deducted to prevent over-accruing income and overpayment to the Subcontractor.

13.6. Validation of Fees

The two-stage validation process shall be undertaken to ensure that (a) the delivery undertaken is per the Subcontract and (b) that we hold satisfactory evidence to prove the delivery has taken place and compliant with the Funding Rules.

13.6.1. Delivery undertaken by the Subcontractor

Head of Finance, Planning and Resources will flag to the FE Subcontracting Manager any delivery in the ILR outside of the Profile issued with the Subcontract. If the Profile is amended during the Academic Year, the FE Subcontracting Manager, will notify the Head of Finance, Planning and Resources of the changed Profile.

If all delivery is in line with the Subcontract, the first validation step has been met.

If any delivery is more than the planned delivery, the Subcontractor shall be notified by the FE Subcontracting Manager, that the delivery is greater than that approved, that has been delivered, is at the Subcontractor's risk, and any Fees associated should be withheld, until such time as the delivery is approved, and a signed variation to the Subcontract is in place to reflect the revised Programme delivery.

There is no guarantee that any unapproved delivery will then be approved and paid to the Subcontractor.

If the delivery is not then approved, the Enrolled Learners may need to be removed from the ILR by the respective College Data team.

In the event that evidence for delivery is received after the deadline for submission, the Subcontractor shall not be paid for the delivery, until such time, the delivery shows on the ILR received from the Funder.

In the event that evidence for delivery is received after the deadline for evidence to be included in NCG final claim of the year, the delivery is at the Subcontractor's risk and neither NCG nor the Funder shall have any liability to the Subcontractor for the Fees associated with the delivery undertaken prior to the Expiry Date but submitted late.

13.6.2. Evidence to support satisfactory delivery undertaken

The Subcontractor must send within 5 workings days of the activity evidence to show delivery has taken place for each Learner.

At least termly, a sample-based approach shall be taken to check that the relevant evidence has been received to support the Fees payable year to date and there are no irregularities identified with the paperwork.

If there are no concerns of irregularities in the sampled checked, payment will be made.

If there are concerns which show suspected irregularities, the FE Subcontracting Manager should notify the Assurance team immediately. The Assurance team shall recommend the next steps, e.g., a further sample needs to be checked, or there are sufficient findings that an Intervention Event has occurred, and a Suspension Notice should be issued to the Subcontractor.

Should a Suspension Notice be issued, the Subcontractor shall be notified that all payments shall be suspended until we have concluded our investigations and lifted the suspension.

If the decision made is that the concerns raised do not call for suspension, the Subcontractor shall be notified by the FE Subcontracting Manager that justification is needed to address our concerns within 5 working days for consideration, or the Fees relating to the said Enrolled Learners shall be withheld, until the next schedule payment, after the justification supplied has been accepted by us.

13.7. Subcontractor Notification and Remedial Actions

The FE Subcontracting Manager will notify the Subcontractor of the proposed Fees to be paid, explaining that an amount has been withheld due to missing evidence or concerns with regards the credibility of the evidence.

The Subcontractor shall be given 5 working days to address the issues raised. If issues have been addressed to our satisfaction, the Fees due payable shall be paid in full at the end of the month.

If the issues have not been satisfactorily addressed, the Fees shall be withheld for the proportion of delivery at risk at the end of the month.

13.8. Payment Requests

The FE Subcontracting Manager shall notify the Head of Finance, Planning and Resources of the outcome of the validation process and authorise the Head of Finance, Planning and Resources to process the payment requests in NCG's finance system.

If insufficient funds are available on the purchase order to enable payment to be made, the delivery in excess of the purchase order value is at risk, until such time, as a signed variation is in place, and the purchase order value has been increased. There is no guarantee that the Subcontract will be varied, to cover the over-delivery, irrespective of the cause for the over-delivery.

The Group Management Accountant will check that Fees calculated, the receipt and the value in the Payment Request match and advise the Accounts Payable team to process the payment on the next available payment run (which should be no later than 30 days from the date the ILR was received from the Funder).

13.9. Payments Made

The Accounts Payable team shall process the payment and issue the remittance to the Subcontractor to show the payment has been sent via BACS to their nominated account in accordance.

The remittance is considered a reverse invoice for the purposes of the self-billing process. Subcontractors should not send invoices each month for payment to be made. Any invoices received shall be rejected and the Subcontractor will be asked to credit the invoice received.

13.10. Reconciliation

The Subcontractor is encouraged to reconcile the ILR extract and Fees due payable each month.

Only Enrolled Learners to which we are in receipt of Funding and hold satisfactory evidence to support the delivery shall be eligible for payment to the Subcontractor.

If Learners are missing from the ILR, the Subcontractor is responsible for submitting satisfactory evidence to enable us to process the Learner on the next available ILR. If the missing evidence is not received until after the final ILR submission for the relevant Funding year, the Subcontractor shall not be entitled to receive any Fees for the delivery missing from the ILR.

14. DISPUTE RESOLUTION

The purpose of this **Section 14: Dispute Resolution** is to ensure that when a dispute arises that this process is followed.

14.1. Informal Disputes

In the first instance, where possible, any dispute should be addressed between the parties Contract Managers informally. If either party is not satisfied with the outcome following raising the informal dispute resolution, the formal dispute resolution process, as set out below at **Sub-section 14.2.** and in **the Subcontract** should be followed.

14.2. Formal Disputes

Subject to **the Subcontract**, the parties to the Subcontract submit to the exclusive jurisdiction of the English Courts.

If any dispute has not been resolved informally, if any dispute arises out of the Subcontract, the parties may attempt to settle it by mediation in accordance with the model mediation procedures ('the Procedures') published by the Centre for Effective Dispute Resolution, CEDR Solve ('the Service Subcontractor').

To initiate mediation, a party must give notice in writing ('the mediation notice') to the other party to the dispute in accordance with **the Subcontract**.

The parties will seek to agree the appointment of a mediator but failing agreement within 28 days of the service of the mediation notice, either party may ask the President of the Law Society of England & Wales (or its successor body) to nominate a mediator and to recommend a mediation procedure.

The parties will accept such nomination in accordance with **the Subcontract** and also the recommended mediation procedure.

15. EXIT

The purpose of this **Section 15: Exit** is to ensure that all contracts are closed properly and sets out the process to be followed when contracts end or need to be exited early. There are three possible ways that a Subcontract ends:

- a) Natural end;
- b) Termination without cause (break clause); and
- c) Termination with cause (breach by either party).

Irrespective of the process to be followed, the FE Subcontracting Manager is responsible for formally closing the Subcontract as set out below at **Sub-section 15.4**.

The process for dealing with each scenario is outlined below.

15.1. Natural Exit

All contracts have an expiry date. The expiry date of the Subcontract should align to the end of the Funding Agreement with the Funder. There is no requirement to notify the Subcontractor that the Subcontract is coming to an end. However, where historically the Subcontract has been extended or a new subcontract entered in to for a further Academic Year for the Subcontracted Provision, if we do not intend to issue a new subcontract, the FE Subcontracting Manager should notify the Subcontractor as soon as practicable prior to the Subcontract ending that we have no intention of extending the Subcontract or entering into a new subcontract.

15.2. Termination without Cause

Either party may terminate the Subcontract without cause subject to written notice.

The FE Subcontracting Manager must notify the Legal & Contracts team as soon as practicable that they wish to bring the Subcontract to an early exit. Irrespective of who serves notice to terminate the Subcontract without cause, the FE Subcontracting Manager should provide assurance to the Legal & Contracts team that a Subcontractor at risk assessment has been completed and mitigating actions have been implemented to protect the Learners and public funds.

15.3. Termination with Cause

Whereby either party has cause to terminate the Subcontract, as outlined above, this process should be followed.

There are a number of reasons which could result in the Subcontract being terminated by either party.

15.3.1. Termination by the Main Provider

The Legal & Contracts teams should be consulted to understand our rights under the Subcontract, and whether NCG has the right to terminate with cause.

Whereby, the FE Subcontracting Manager identifies that a Subcontract needs to be terminated due to unsatisfactory completion of either the Performance Improvement outlined in **Section 9: Performance Improvement** or **Section 12: Dispute Resolution**, the FE Subcontracting Manager will notify the Legal & Contracts team that it is their intention to terminate the Subcontract as soon as practicable.

The FE Subcontracting Manager should provide assurance to the Legal & Contracts team that **Section 11: Performance Improvement** or **Section 14: Dispute Resolution** has been followed, and a Subcontractor at risk assessment has completed and mitigating actions have been implemented to protect the Learners and public funds once the termination notice is issued in accordance with **Sub-section 12.6**.

15.3.2. Termination by the Subcontractor

Whereby, the Subcontractor identifies that the Subcontract may be terminated on the grounds of one of the Subcontractor termination rights and, where applicable, **Section 14: Dispute Resolution** has been concluded; the Subcontractor may give notice to the Main Provider in accordance with the Subcontract.

15.4. Subcontract Closure

The FE Subcontracting Manager will be responsible for formally closing the Subcontract.

The Risk Assessment and mitigating actions completed in **Sub-sections 15.2. and 15.3.** must determine how the existing Learners will be supported and which of the following options will be instigated to enable the remainder of the delivery to be undertaken:

- a) Subcontractor to continue to support Enrolled Learners until the end of the current Academic Year;
- b) Reallocation to other Subcontractors: The FE Subcontracting manager must liaise with the Legal & Contracts team, Procurement team and the Specialists to plan how volumes will be re-allocated to ensure that a fair and transparent process has been followed. Once the Legal & Contracts Team are confident that there is a viable contingency plan in place, the Termination Notice will be issued; or
- c) Subcontracted Provision brought in-house; or
- d) A replacement Subcontractor has been procured in accordance with **Section 3: Procurement**.

Irrespective of which option the FE Subcontracting Manager intends to follow, the FE Subcontracting Manager should liaise with:

- The People & Development team to make them aware that that we intend to terminate a Subcontract early, if there is a requirement for the services to continue to determine in the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') apply. If there are no continuing services to be provided, it is highly probable that TUPE will not apply;
- The respective College Data team know that we intend to terminate a Subcontract early, to identify what information they would require to amend the ILR should we not be intending for Enrolled Learners to complete their programme of study with the Subcontractor;
- The Executive Director of Quality to ensure that the Enrolled Learners best interests are considered, and that retention and achievement rates are protected;
- The Director of Risk and Assurance to ensure that any Funding that has been received by us is not at risk of clawback should we be audited by the Funder or one of its representatives during the Funding Agreement term, or thereafter within the retention period; and
- The Head of Finance, Planning and Resources to ensure that there has been no overpayment of Fees to the Subcontractor, or whereby the Director of Risk and Assurance has identified that there is insufficient evidence to demonstrate delivery has taken place that such overpayment is clawed back from the Subcontractor immediately.

The Subcontractor Declaration will be amended once the payments have been reconciled to reflect actual delivery in accordance with **Sub-section 2.1**.

Should one of the following circumstances arise, the Executive Director – Curriculum or the Chief Finance Officer will notify the Funder of our intentions to terminate the Subcontract, if in its reasonable opinion, has serious concerns about the ability or suitability of the Subcontractor to deliver the Subcontracted Provision as a result of information received from the Subcontractor (or other third parties) which relate to irregular financial or delivery activities.

For all contract closures, the FE Subcontracting Manager will be responsible for the Subcontract closure. If the Subcontractor is intended to deliver again, the following Academic Year under a new subcontract, a light touch closure will take place to ensure NCG holds all relevant evidence to support the payments made, and that access to shared folders is removed. The FE Subcontracting Manager will decide if there is a need for an End of Contract Review meeting with the Subcontractor.

A file note to confirm the Subcontract has been closed and where appropriate a copy of the signed End of Contract Review should be saved into the Contract file for the respective Academic Year.

The FE Subcontracting Manager will notify the Procurement team if a Subcontractor should be removed from the Dynamic Purchasing System as a pre-approved delivery provider if the Contract was terminated due to a breach of contract by the Subcontractor.

16. REPORTING

A suite of reports will be made available, by the respective Professional Services area, to the FE Subcontracting Manager to enable them to contract manage the Subcontractor in line with **Section 6. Contract Management**. The above reports are in addition to the Contract Reviews undertaken by the FE Subcontracting Manager and the final reports generated by Specialists after each activity, e.g., monitoring or compliance visit.