



DATED: **XX/XX/2020**

SERVICE LEVEL AGREEMENT

FOR

EDUCATION AND TRAINING SERVICES

Between

SBA NATIONWIDE LTD

and

[INSERT CLIENTS NAME HERE]



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SCHEDULE

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THIS AGREEMENT is dated **[DATE]**

PARTIES

- (1) **SBA NATIONWIDE LTD** incorporated and registered in England and Wales with registered company number 11771613 whose registered office is at St Pauls House, 23 Park Square South, Leeds, West Yorks, LS1 2ND (**Lead Provider**).
- (2) **[INSERT CLIENT NAME HERE]** incorporated and registered in England and Wales with company number **XXXXXXXX** whose registered office is at **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX** (**Employer**).

BACKGROUND

- (A) The Employer wishes to make available to their employees the Apprenticeship, and the Lead Provider wishes to provide the Services on the terms set out in this agreement.
- (B) The Lead Provider is in the business of providing all aspects of delivery of the Apprenticeship including support of trainers and assessors, and quality monitoring to ensure successful completion of the apprenticeship standard, via the provision of the Services.
- (C) The Employer will be responsible for enabling delivery of the Services including, but not limited to, on the job and off the job training, confirming the eligibility of Apprentices for apprenticeship funding and for incentive payments where applicable and will be required to sign incentive claim forms to enable the lead provider to claim eligible incentive payments on their behalf. Their responsibilities are set out in further detail in the commitment statement.

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions.

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

Applicable Laws: all applicable laws, statutes, regulations and codes from time to time in force.

Apprenticeship: the framework and standard apprenticeship schemes.

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

Business Hours: the period from [9.00 am to 5.00 pm] on any Business Day.

Banding: Funding banding/Cap applied by the ESFA on the subject area/apprenticeship

Change Order: has the meaning given in clause 6.1.

Charges: the sums payable for the Services, as set out in *Schedule 2*.

Co-Investment Charges: charges payable in circumstances where the Employer does not have sufficient funding available to them to deliver the Services to top up the shortfall and to ensure that the Employer remains eligible to receive further funding from ESFA.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

DAS: Digital Apprenticeship Services Account, account that is placed in funds as a result of the apprenticeship levy available from May 1st 2017.

Deliverables: any outputs of the Services and any other documents, products and materials provided by the Lead Provider to the Employer as specified in *Schedule 1* and any other documents, products and materials provided by the Lead Provider to the Employer in relation to the Services (excluding the Lead Provider's Equipment).

Employers Contribution: the contribution made by the Employer in accordance with the provisions of *Schedule 1*.

Employer's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Employer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in *Schedule 1*.

Employer Materials: all documents, information, items and materials in any form (whether owned by the Employer or a third party), which are provided by the Employer to the Lead Provider in connection with the Services, including the items provided pursuant to clause 4(j).

Employer Responsibilities: the responsibilities of the Employer in respect of supporting the delivery of the Services set out in clause 4.

Enrolment Date: the date on which a Learner is accepted and accordingly enrolled on to the Apprenticeship to be delivered by the Lead Provider pursuant to and in accordance with the Services.

ESFA: The Education and Skills Funding Agency or any successor body or bodies.

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

Learner: a person who is employed by the Employer and who is enrolled on the Apprenticeship to be delivered in accordance with the Services.

Services: the delivery of the Apprenticeship pursuant to the services set out in *Schedule 1*, including services which are incidental or ancillary to such services.

The Lead Provider's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the The Lead Provider, its agents, subcontractors or consultants to the Employer and used directly or indirectly in the supply of the Services, including any such items specified in Schedule 1.

VAT: value added tax chargeable under the Value-Added Tax Act 1994.

- 1.2 Clause, Schedule [and paragraph] headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural, shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** includes fax and email.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.14 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMMENCEMENT AND DURATION

2.1 This agreement shall commence on XX/XX/2020 and shall continue, unless terminated earlier in accordance with clause 16, until XX/XX/20XX or the last enrolled learner has achieved the programme which ever the later.

2.2 Both parties shall agree to observe the requirements of the ESFA. Current funding rules and guidance can be found at <https://www.gov.uk/guidance/apprenticeship-funding-rules#the-latest-rules-2019-to-2020>

2.3 The Lead Provider shall provide the Services to the Employer in accordance with this agreement from XX/XX/2020.

3. THE LEAD PROVIDER'S RESPONSIBILITIES

3.1 The Lead Provider shall:

- (a) provide the Services and the Deliverables in accordance with *Schedule 1* and 3;
- (b) ensure that the Services and Deliverables will conform in all respects with *Schedule 1* and 3 and any Applicable Laws;
- (c) perform the Services with care, skill and diligence in accordance with best practice in the Lead Provider's industry, profession or trade;
- (d) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and free from material defect;
- (e) co-operate with the Employer in all matters relating to the Services;
- (f) report to the Employer on a quarterly basis as to the progress of the Learners and the delivery of the Services;
- (g) use its reasonable endeavours to ensure that all Learners complete the Apprenticeship within the term of this agreement;
- (h) before the date on which the Services are to start, obtain and at all times, maintain during the term of this agreement, all necessary licences and consents and comply with all Applicable Laws in relation to the Services;
- (i) hold all Employer Materials in safe custody at its own risk and maintain the Employer Materials in good condition until returned to the Employer, and not dispose of or use

the Employer Materials other than in accordance with the Employer's written instructions or authorisations;

3.2 In relation to the Lead Provider's personnel, the Lead Provider shall:

- (a) ensure that all personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them, and that such personnel are in sufficient number to enable the Lead Provider to fulfil its obligations under this agreement; and
- (b) promptly inform the Employer of the absence (or the anticipated absence) of any of its staff, and if so required by the Employer, provide a suitably qualified replacement for such individual.

4. EMPLOYER'S OBLIGATIONS

The Employer shall:

- (a) co-operate with the Lead Provider in all matters relating to the Services; and ensure that the lead provider is not prevented from delivering the agreed services
- (b) Give the required time for all on and off the job training to Learners required under the Apprenticeship specification and the rules for which the lead provider is governed
- (c) confirm on the Enrolment Date, and on a continuing basis, each Learner's eligibility to participate in the Apprenticeship in accordance with all Applicable Laws;
- (d) confirm that upon enrolment it has every intention of the learner remaining on the programme for the full required duration required to complete the programme.
- (e) advise the Lead Provider as soon as reasonably practicable where a Learner is no longer eligible to participate in the Apprenticeship;
- (f) from the date on which the Learner becomes ineligible to participate with the Apprenticeship, indemnify and keep indemnified the Lead Provider against all costs, expenses, charges and losses (whether direct or indirect) the Lead Provider may suffer or incur in connection with such Learner being ineligible to participate;
- (g) use its best endeavours to ensure that all Learners complete the Apprenticeship within the term of this agreement;
- (h) participate in all and any reviews of Learners' as required by the Lead Provider from time to time;
- (i) provide unrestricted access to the Employer's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Lead Provider, for the purposes of the Services;
- (j) provide to the Lead Provider all documents, information, items and materials required under *Schedule 1*;
- (k) provide the Employer's Equipment to the Lead Provider by the dates specified and in the manner prescribed in *Schedule 1*;



- (l) inform the Lead Provider of all health and safety and security requirements that apply at the Employer's premises which the Lead Provider will require access to.

5. DEFAULT BY THE EMPLOYER

A failure by the Employer to comply with the terms of this agreement shall relieve the Lead Provider from complying with its obligations under this agreement with effect from the date on which the Lead Provider notifies the Employer in writing and in reasonable detail of the Employer's failure and its effect or anticipated effect on the Services.

6. CHANGE ORDER

6.1 The Lead Provider may advise of changes to the scope or execution of the Services in accordance with any changes notified to it by the ESFA. Proposed changes will come into effect in accordance with the instructions of ESFA but the Lead Provider shall notify the Employer of such changes in a Change Order within 20 Business Days of their being notified of such changes by ESFA. A **Change Order** shall be a document setting out the proposed changes and the effect those changes will have on:

- (a) the Services;
- (b) the Charges;
- (c) the timetable for the Services; and
- (d) any terms of this agreement.

7. CHARGES AND PAYMENT

7.1 In consideration of the provision of the Services by the Lead Provider, the Employer shall pay the Charges.

7.2 The Lead Provider shall invoice the Employer for Charges if applicable (including, for the avoidance of doubt, any Co-Investment Charges that may become due and payable from time to time) at the intervals specified in Schedule 1.

7.3 The Employer will ensure that any documentation required to make the applicable funding claim will be supplied to the Lead Provider within the same calendar month in which the Learner is enrolled.

7.4 The Employer shall pay each invoice submitted to it by the Lead Provider within 10 days of receipt to a bank account nominated in writing by the Lead Provider.

7.5 The Employer shall make any required Employer Contribution in accordance with the provisions of Schedule 1.

7.6 Without prejudice to any other right or remedy that it may have, if the Employer fails to pay the Lead Provider any sum due under this agreement on the due date, the Employer shall pay

interest on the overdue amount at the rate of 2% per annum above the Bank of England base rate from time to time. Such interest shall accrue daily from the due date until actual payment of the overdue amount, whether before or after judgment. The Employer shall pay interest together with the overdue amount.

- 7.7 If the Employer disputes a payment in good faith, then the interest payable under clause 7.5 is only payable after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.

8. CLAWBACK

- 8.1 The Lead Provider shall have the right to recover funds and be reimbursed for the full amount received from ESFA in respect of all and any Learner's affected if any of the below circumstances are identified:

- (a) Where the Employer has incorrectly declared that they or their Learner is eligible for funding;
- (b) Where the Employer has received government contribution and incentives;
- (c) Where no training or assessment has taken place because of the employer restricting the services of the lead provider being conducted
- (d) Where the Employer has not paid any applicable co-investment contribution to the provider.

This list is non-exhaustive and shall be amended in accordance with all Applicable Laws from time to time. Please refer to the Lead Provider for further information regarding this.

- 8.2.1 In the event the Learner withdraws from the Apprenticeship for any reason, including termination of employment by the Employer (for whatever reason), payment for the total cost of training up to the date on which the Learner withdraws will be calculated pro rata for the period of training. Where the total paid for training to date is greater than the total cost of training the appropriate refund will be issued to the ESFA in line with ESFA requirements in place from time to time. Where the total paid for training to date is less than the training provided a claim to the ESFA will be issued to cover the full cost of training..

- 8.2.2 In the event the Learner withdraws from the Apprenticeship for any reason, including termination of employment by the Employer (for whatever reason), payment for the total applicable Co-Investment Charge will still be required (where applicable) and will become due in full on the date on which the Learner withdraws and payment shall be made within 28 days of this date.

- 8.2.3 In the event the Learner withdraws from the course for any reason, including termination of employment by the Employer (for whatever reason), payment of the equivalent amount that would have been made payable from the Employer's Digital Apprenticeship Service Account, or via funding received by the Employer from ESFA, would be payable to the Lead Provider by the Employer.

- 8.3 In the event that an agreed training or assessment event is cancelled by the Employer or learner for whatever reason with less than seven days' notice, the Lead Provider reserves the right to charge the Employer for such cancelled sessions at a cost of £350 plus VAT per Learner per session.
- 8.4 In the event that an agreed training or assessment event is cancelled by the lead provider for whatever reason with less than seven days' notice, the employer reserves the right to charge the lead provider for such cancelled sessions at a cost of £350 plus VAT per Learner per session.
- 8.5 The charges payable in accordance with this clause 8.5 shall exclude the following costs which shall be payable by the Employer monthly in arrears, subject to submission of an appropriate invoice:
- 8.5.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Lead Provider engages about the Services
- and
- 8.5.2 the cost to the Lead Provider of any materials or services procured by the Supplier from third parties for the provision of the Services approved by the Employer in advance from time to time.

9 AUDIT

- 9.2 The Employer shall allow the Lead Provider (or its professional advisors) to access the Employer's premises, personnel, systems and relevant records to ensure correct processes and procedures are being complied with and any rules put in place by ESFA from time to time are being complied with.
- 9.3 Subject to the Lead Provider's obligations of confidentiality at clause 14, the Employer shall provide the Lead Provider (and its professional advisers) with all reasonable co-operation, access and assistance in relation to each audit.
- 9.4 The Lead Provider and its professional advisers shall have the right to take copies of any records which they reasonably require and remove such copies and the Employer shall provide the necessary facilities to assist in copying free of charge.

10 INTELLECTUAL PROPERTY RIGHTS

- 10.2 In relation to any Employer Materials used/referenced to throughout the Learners Apprenticeship programmes;
- 10.2.1 the Employer and its licensors shall retain ownership of all IPRs in the Employer Materials; and
- 10.2.2 the Employer grants to the Lead Provider a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Employer Materials for the term of this agreement for the purpose of providing the Services to the Employer.
- 10.3 In relation to the Deliverables:

- 10.3.1 the Lead Provider and its licensors shall retain ownership of all IPRs in the Deliverables, excluding the Employer Materials;
- 10.3.2 the Lead Provider grants to the Employer, or shall procure the direct grant to the Employer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this agreement to copy and modify the Deliverables (excluding the Employer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and

11 INSURANCE

During the term of this agreement [and for a period of 12 months after the expiry or termination of this agreement, both the Employer and the Lead Provider shall maintain in force, with a reputable insurance company, professional indemnity insurance at an amount not less than £10 million and public liability insurance at an amount not less than £5 million to cover the liabilities that may arise under or in connection with this agreement and shall produce to the other party on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12 COMPLIANCE WITH LAWS AND POLICIES

In performing its obligations under this agreement, the Lead Provider and the Employer shall each comply with the Applicable Laws and shall inform the other party as soon as it becomes aware of any changes in the Applicable Laws.

13 DATA PROTECTION AND DATA PROCESSING

13.2 The Employer and the Lead Provider acknowledge that for the purposes of the General Data Protection Regulation 2018 (GDPR) and Data Protection Act 1998, the Employer is the Data Controller and the Lead Provider is the data processor of any Personal Data.

13.3 The Lead Provider shall process the Personal Data only to the extent, and in such a manner, as is necessary for the purposes of providing the Services. The Lead Provider shall comply in all material respects with the General Data Protection Regulation 2018 (GDPR) and Data Protection Act 1998 in respect of the processing of such data.

14 CONFIDENTIALITY

14.2 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, Employer, clients or the Lead Providers or the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 14.3.

14.3 Each party may disclose the other party's confidential information:

14.3.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and

14.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.4 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

15 LIMITATION OF LIABILITY

15.2 Nothing in this agreement:

15.2.1 shall limit or exclude the the Lead Provider's or the Employer's liability for:

15.2.1.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;

15.2.1.2 fraud or fraudulent misrepresentation;

15.2.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) any other liability which cannot be limited or excluded by applicable law.

15.3 Subject to clause 15.2:

15.3.1 neither party to this agreement shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement;

15.3.2 the Lead Provider's total liability to the Employer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to the total annual charges (calculated by reference to the charges in successive 12-month periods from the date of this agreement) actually paid by the Employer under this agreement.

16 TERMINATION

16.2 Without affecting any other right or remedy available to it, the Lead Provider may terminate this agreement with immediate effect by giving [written] notice to the Employer if:

16.2.1 the Employer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than ninety days after being notified in writing to make such payment;

16.2.2 the Employer commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 20 days after being notified in writing to do so;

- 16.2.3 the Employer repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 16.2.4 the Lead Provider in its absolute discretion (acting reasonably) resolves that the delivery of the Services is no longer economically viable;
- 16.2.5 the Employer suspends, or threatens to suspend, the services conducted by the employer or payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 16.2.6 the Employer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 16.2.7 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Employer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 16.2.8 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- 16.2.9 the holder of a qualifying floating charge over the assets of the Employer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 16.2.10 a person becomes entitled to appoint a receiver over all or any of the assets of the Employer or a receiver is appointed over all or any of the assets of the Employer;
- 16.2.11 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Employer's assets and such attachment or process is not discharged within 14 days;
- 16.2.12 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.2.5 to clause 16.2.11 (inclusive); and
- 16.2.13 the Employer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 16.3 [For the purposes of clause 16.2.2, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:
- 16.3.1 a substantial portion of this agreement; or
- 16.3.2 any of the obligations set out in associated clauses within this agreement

over the term of this agreement **OR** any three month period during the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

16.4 Without affecting any other right or remedy available to it, the Lead Provider may terminate this agreement with immediate effect by giving written notice to Employer if the Employer commits a breach of clause 12.

17 CONSEQUENCES OF TERMINATION

17.2 On termination or expiry of this agreement:

17.2.1 the Lead Provider shall deliver to the Employer all Deliverables whether or not then complete, and return all of the Employer Materials and the Employer's Equipment. Until they have been delivered or returned, the Lead Provider shall be solely responsible for the safe keeping of all Deliverables, Employer Materials and Employer's Equipment in its possession and will not use them for any purpose not connected with this agreement;

17.2.2 the Employer shall deliver to the Lead Provider all Lead Provider Materials and the Lead Provider's Equipment. Until they have been delivered or returned, the Employer shall be solely responsible for the safe keeping of all the Lead Provider Materials and the Lead Provider's Equipment in its possession and will not use them for any purpose not connected with this agreement;

17.2.3 the Employer shall use all reasonable endeavours to ensure the appointment of an alternative Lead Provider to deliver the Services (with no break in provision) and to ensure that service levels are maintained in respect of the delivery of the Services to Learners and the Lead Provider shall, if so requested by the Employer, provide all assistance reasonably required by the Employer to facilitate the smooth transition of the Services to the Employer or any replacement Lead Provider appointed by it;

17.2.4 the following clauses shall continue in force: clause 1 (Interpretation), clause 8.5 (Audit), clause 10 (Intellectual Property Rights), clause 14 (Confidentiality), clause 15 (Limitation of liability), clause 17 (Consequences of termination), clause 18 (Inadequacy of damages), clause 22 (Waiver), clause 24 (Severance), clause 26 (Conflict), clause 31 (Multi-tiered dispute resolution procedure), clause 32 (Governing law) and clause 33 (Jurisdiction).

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

18 INADEQUACY OF DAMAGES

Without prejudice to any other rights or remedies that the Lead Provider may have, the Employer acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Employer. Accordingly, the Lead Provider

shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

19 FORCE MAJEURE

19.2 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- 19.2.1 acts of God, flood, drought, earthquake or other natural disaster;
- 19.2.2 epidemic or pandemic;
- 19.2.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 19.2.4 nuclear, chemical or biological contamination or sonic boom;
- 19.2.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition [, or failing to grant a necessary licence or consent];
- 19.2.6 collapse of buildings, fire, explosion or accident; [and]
- 19.2.7 [any labour or trade dispute, strikes, industrial action or lockouts [(other than in each case by the party seeking to rely on this clause, or companies in the same group as that party)]];]
- 19.2.8 [non-performance by the Lead Providers or subcontractors [(other than by companies in the same group as the party seeking to rely on this clause); and]
- 19.2.9 interruption or failure of utility service.

19.3 Provided it has complied with clause 19.5, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

19.4 The corresponding obligations of the other party may be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party should learning be unable to continue.

19.5 The Affected Party shall:

- 19.5.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- 19.5.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

19.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than [NUMBER] [weeks], the party not affected by the Force Majeure Event may terminate this agreement by giving [NUMBER] [weeks'] written notice to the Affected Party.

20 ASSIGNMENT AND OTHER DEALINGS

20.2 The Employer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

20.3 The Lead Provider may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement to an Affiliate, provided that it gives prior written notice of such dealing to the Employer.

21 VARIATION

Subject to clause 6, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22 WAIVER

22.2 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

22.3 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

22.4 A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

23 RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

24 SEVERANCE

24.2 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be

deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

24.3 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

25 ENTIRE AGREEMENT

25.2 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

25.3 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

26 CONFLICT

If there is an inconsistency between any of the provisions of this agreement and the provisions of the schedules, the provisions of this agreement shall prevail.

27 NO PARTNERSHIP OR AGENCY

27.2 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

27.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

28 THIRD PARTY RIGHTS

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

29 NOTICES

29.2 Any notice [or other communication] given to a party under or in connection with this agreement shall be in writing and shall be:

29.2.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

29.2.2 sent by fax to its main fax number **OR** sent by email to the Lead Providers Client Solutions Director and Employers project leads/business managers respectively.



29.3 Any notice [or communication] shall be deemed to have been received:

29.3.1 if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the proper address];

29.3.2 if sent by pre-paid first-class post or other next Business Day delivery services, at [9.00 am] on the [second] Business Day after posting [or at the time recorded by the delivery service].

29.3.3 if sent by [fax **OR** email], at [9.00am] on the next Business Day after transmission.

29.4 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

30 COUNTERPARTS

30.2 This agreement may be executed in any number of counterparts, each of which when executed [and delivered] shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

30.3 [Transmission of [an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) **OR** the executed signature page of a counterpart of this agreement] by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

30.4 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

31 MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

31.2 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

31.2.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Operations Director of the Employer and the Client Solutions Director of the Lead Provider shall attempt in good faith to resolve the Dispute;

31.2.2 If the Operations Director of the Employer and Client Solutions Director of the Lead Provider are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the CEO/MD of the Employer and CEO of the Lead Provider who shall attempt in good faith to resolve it; and

31.2.3 If the of the CEO/MD of the Employer and CEO of the Lead Provider are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the



Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

31.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 33 which clause shall apply at all times.

OR

No party may commence any court proceedings under clause 33 in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

31.4 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 33.

32 GOVERNING LAW

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

33 JURISDICTION

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

This agreement and the 2 additional schedules has been entered on the date stated at the beginning of it.

Signed by [NAME OF AUTHORISED INDIVIDUAL]

for and on behalf
SBA Nationwide Ltd

.....

[NAME]
[ROLE]

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF EMPLOYER]

.....

Director



Schedule 1 : Mandatory Services Details

Full details of the deliverables are available to be viewed following the appropriate apprentice framework or standard as governed and accredited by the ESFA and appropriate chosen EPAO

Subject/Apprenticeship: [INSERT LEVEL AND PROGRAMME NAME]

Subcontractor required: [Yes/No]

EPAO: [INSERT EPAO]

Employer to provide;

1. Provision of suitable equipment to enable learning i.e. laptop, desktop with suitable platforms including Microft Office 365, Internet Explorer/Google Chrome, access to SBA Nationwides online learner platform www.bud.co.uk
2. Ongoing, timely management of the Employer DAS account



Schedule 2 : Charges, Costs and Payment

Subject / Apprenticeship:

Banding Capping: as of date of SLA £XXXXXX per learner

Co-Investment Payment (where applicable): £XXX

Agreed Cost of Delivery: £XXXXX + EPA @ £XXXX per learner

Agreed DAS or Funding: DAS

Payment Method: Funded/ DAS Account

Agreed Co-Investment Payment: n/a

Payment Method: Bank Transfer/Cheque/Cash

Co-investment payment only applicable when in-sufficient funds remain within the employers DAS account or the employer is not subject to the levy