

OASIS RESTORE TRUST - SECURE SCHOOL

FUNDING AGREEMENT KEY FEATURES

Note: This is a broad summary of the main provisions of the proposed Funding Agreement for the secure school. We would advise that the full text of the consultation draft of the Funding Agreement should be consulted in order to fully understand its provisions. Please note that the consultation draft has been agreed with the Ministry of Justice, but it remains subject to fine tuning. The Trustees of Oasis Restore Trust and the Secretary of State for Justice will take into consideration any comments and feedback on the proposed funding agreement before any decision is taken to agree its final form and before entering into it

General Academy Obligations and Conduct

1. The Secure School must meet the requirements of the Academies Act 2010 (the “Act”). In order for the Secure School to receive payments from the Secretary of State, the Secure Academy Trust must comply with the Funding Agreement.
2. The Secure School is a Secure 16 to 19 Academy under section 1B of the Academies Act and shall be principally concerned with providing full-time or part-time education to those over compulsory school age but under 19. The Secure School will be a secure children’s home under the Children’s Home (England) Regulations 2015. The Secure School will be built on care and quality and will deliver a therapeutic environment in a secure setting. It will offer bespoke provision for children and have education, health, care and physical activity at its heart.
3. The Secure School must meet all the statutory requirements as required under the Act and due to the obligations on it from being designated as a secure children’s home. The Secure Academy Trust must consider relevant guidance and legislation including the Funding Agreement, Articles, Secure Schools Financial Handbook, Secure Schools Assurance Handbook, Secure Schools Governance Handbook, Lease, Data Sharing Agreement, as set out in full at clause 1.16.
4. The Secure Academy Trust must, as soon as is reasonable, establish an appropriate mechanism for the receipt and management of donations for the purpose of its charitable aims as specified in the Articles.
5. The policies and practices adopted by the Secure School must ensure as far as reasonably practicable that they are compliant with the Equality Act 2010 and enable students of all faith or none to play a full part in the Secure School irrespective of the proportion of faiths at the Secure School. Although, the Secure Academy Trust must not seek to designate the Secure School as a school with a religious character. The Secure Academy Trust shall comply with the its obligation to provide Collective Worship as required under legislation.
6. The Secure Academy Trust must support the cultural, linguistic and religious needs of the Children and Young People placed in the Secure School and ensure access to interpreter services as required.
7. Clause 2.17 sets out the obligations that the Secure Academy Trust must comply with under relevant legislation and that in complying with these obligations they must have regard to the relevant provisions of the SEND Code of Practice.
8. The Secure Academy Trust must engage with the Secretary of State on the development of revised or new operational policies to ensure that practice, process and requirements are kept up to date. This obligation includes attendance at relevant forums, and provision of sufficient

resource to review, comment on, and help shape operational policy intended for application across the youth secure estate.

Governance Requirements

9. The Secure Academy Trust is a company limited by guarantee and therefore has members and directors. The directors are referred to as “Charity Trustees” and they must have regard to any guidance relating to governance issued from time to time by the Secretary of State. The names and appointment dates of new Members and Charity Trustees must be sent to the Secretary of State within 14 days of their appointment, along with details of any Member or Charity Trustee that they are replacing. Each proposed new Member and Charity Trustee should be informed that their details will be shared with the Secretary of State to assess their suitability, and they must agree to this before their appointment.
10. The Secure Academy Trust must obtain the consent of the Secretary of State if it wishes to amend or remove any provisions of its Articles of Association which relate to the appointment/election, resignation or removal of Charity Trustees or Members. If the Secretary of State consents to the amendment, the Secure Academy Trust must effect the changes as soon as reasonably possible and submit to the Secretary of State a copy of the amended Articles and the Members’ resolution approving the change.
11. The Secure Academy Trust must notify the Secretary of State if there is a proposed or actual change of control of the Secure Academy Trust (or of a legal entity that controls the Secure Academy Trust), and must seek the Secretary of State’s agreement that, if he is content with the change, he will not exercise his right to terminate the Funding Agreement as a result of the change of control.

Length of the School Day

12. The Secure School will operate all year round for twenty-four hours a day. The Secure Academy Trust will determine how time is organised including the length of the school day and education provision.

Teachers and Staff

13. The Secure Academy Trust must request enhanced Disclosure and Barring Service (“DBS”) certificates as appropriate for members of staff, the Chair of the Board and the Charity Trustees and for those who are carrying out a relevant activity. The Secure Academy Trust must promptly submit to the Secretary of State, on request, the information contained in any enhanced DBS certificate that it receives.
14. The Secure Academy Trust should ensure all staff have appropriate qualifications and experience to fulfil their role, including any qualifications and experiences required by law.
15. The Secure Academy Trust must designate a staff member as responsible for promoting the educational achievement of children who are being looked after by an LA, or have been looked after by an LA, and must also designate a Special Needs Co-ordinator. The Secure Academy Trust must ensure that the designated staff members receive appropriate training and have regard to any guidance issued by the Secretary of State.
16. The Secure Academy Trust will be responsible for the pay and conditions of service for all staff.
17. The Secure Academy Trust has a statutory duty to ensure that all teachers employed by the Trust have access to the Teachers’ Pension Scheme (“TPS”) and in doing so must comply with the requirements of the scheme as well as complying with the HM Treasury’s Fair Deal Guidance. The Secure Academy Trust must ensure that all staff other than teachers employed

by the Secure Academy Trust have access to the Local Government Pension Scheme and in doing so, must again comply with the HM Treasury's Fair Deal Guidance.

18. Information about any capability procedures in respect of a teacher at the Secure School must be provided to a potential new employer at other specified educational establishments on request.

Curriculum, Assessment and Careers Support

19. The curriculum is the responsibility of the Secure Academy Trust. The curriculum shall be balanced and broadly based and include English, maths, computing, physical education, sport and vocational options. Religious Education shall be offered to all Children and Young People. The content of the curriculum and the approach to the curriculum shall be published on the website.
20. Any view or theory must not be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. Where relevant to the curriculum, the Secure Academy Trust must provide for the teaching of evolution as a comprehensive, coherent, and extensively evidenced theory.
21. The Secure Academy Trust must prevent political indoctrination and must actively promote British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of other faiths and beliefs. The Academy Trust must also promote principles supporting equality of opportunity.
22. Careers guidance must be provided at the Secure School in accordance with the requirements under the Education Act 1997 and in line with the Department for Education's statutory guidance and ensure that there is an opportunity for a range of education and training providers to access Children and Young People in years 8 to 13 for the purpose of informing them about technical education qualifications or apprenticeships.
23. The Secure Academy Trust must ensure that students at the Secure School take part in assessments of performance appropriate to the qualifications offered by the Secure School and ensure it publishes information relating to the Secure School's performance on its website as requested by the Secretary of State from time to time.

Charging

24. There must be no charge in respect of admission to the Secure School. Although the Secure School may receive funds from a third party in respect of the admission and attendance of Children and Young People with SEN.
25. The general prohibition on charging does not prevent the Secure Academy Trust receiving funds from others using its facilities – the Secure Academy Trust may charge people who are not the Children and Young People at the Secure School. Any such use must not be to the detriment of the education and welfare of the Children and Young people attending the Secure School.

Students

26. Subject to any lower capacity provided for in the Mobilisation Plan and unless agreed otherwise with the Secretary of State, the Secure Academy Trust must ensure that the Secure School has capacity to accommodate, educate and care for 49 children and young people to the required standards.
27. The Secure Academy Trust must ensure that the Secure School meets the needs of all students including students with SEN and disabilities.

28. The Secure Academy Trust shall be responsible for administering the Assisted Visits Scheme, the scheme which ensures that approved persons are supported financially in order to maintain links with the relevant student.

Emergency and Contingency Arrangements and Transition Arrangements

29. In the event of a fire, the Secure Academy Trust shall be responsible for all staff and students. Prior to the Secure School Opening Date, the Secure Academy Trust shall design and implement policies and procedures for fire safety and evacuation and shall provide these policies to the Secretary of State if reasonably requested. An annual safety inspection may be carried out by the Secretary of State or an appointed team and the Secure Academy Trust shall provide all reasonable assistance for these inspections.
30. The Secure Academy Trust must ensure that the Secretary of State's electronic case management system, YJAF and Secure Estate AssetPlus assessment tool are used for the students in their care. YJAF shall be used for all assessments, case management, sentence planning and risk recording and for all other key information in line with relevant protocols.
31. The movement of the Children and Young People from the Secure School and other secure establishments is the responsibility of the Secretary of State. All other transport and escorts are the responsibility of the Secure Academy Trust. If the Trust uses a third party or subcontractor, they must ensure the third parties have had checks and other assessments of suitability. The Secretary of State may request sight of these documents and policies and seek assurance as they consider reasonably necessary to ensure that the Secretary of State's standards are being met. The Trust must comply with Standards 4 and 5 of the Youth Justice National Standards in respect of resettlement and transition activity.
32. The Secure Academy Trust may be required to provide information to the Critical Casework Panel at short notice or on ad hoc occasions. The Secure Academy Trust must act to provide information within the timeframes agreed by YCS Placements and the Secure Academy Trust.

Placements and Admissions

33. The Secure Academy Trust shall comply in all respects with the YCS Placements Guidance and shall respond to the YCS Placements Team within a timely manner of receiving the necessary paperwork.
34. The Trust shall have policies and processes in respect of new placements which will include late-night admission of placements and will comply with any applicable guidance relating to secure children's homes and Secure 16 to 19 Academies when complying with these arrangements.
35. The Secure Academy Trust shall have processes in place to ensure the legality of detention and act to resolve any doubts promptly. This shall include checking a custodial warrant is in place, along with any other processes required for compliance. The Children and Young People shall be made aware of their legal rights and the Secure Academy Trust must focus particularly on ensuring that they understand their rights.
36. If the Child/Young Person challenges the legality of their detention the Trust shall give them access to facilities to immediately contact a legal adviser and/or relative or friend where appropriate.
37. The Trust shall develop and keep under review a "Statement of Purpose" in accordance with their obligations under the Children's Homes (England) Regulations 2015. The Secure Academy Trust shall have due regard and cater for the needs of all students in line with its Statement of Purpose, and consult with the YCS and take into account the YCS's opinions when developing its Statement of Purpose and when reviewing the Statement. The Secure

Academy Trust shall be entitled to determine the final content of its Statement of Purpose, subject to compliance with these obligations.

38. The Secure Academy Trust shall use its best endeavours to accept all referrals from the YCS in compliance with the Statement of Purpose and its legal obligations. To the extent the Trust considers the referral inappropriate or contrary to the Statement of Practice, the Secure Academy Trust shall promptly notify YCS. The YCS and Trust shall work in good faith to determine whether the referral should be withdrawn.
39. If at any time, the Secure Academy Trust decides not to admit a Referral, it shall provide the rationale for this to the Secretary of State (or a nominated representative) within 3 Business Days. All decisions relating to Referrals shall be made in compliance with the principles of equality and non-discrimination.
40. If a bedroom becomes unavailable, the Secure Academy Trust shall inform the YCS as soon as practicable and complete all necessary repairs within an agreed timescale. If the repairs will take longer than two Business Days, this should be discussed with the YCS.

Healthcare and Separation Policy

41. Prior to the Secure School Opening Date, the Parties shall work with NHS England to design an integrated operating model that incorporates health provision commissioned by NHS England. The Secure Academy Trust shall provide all reasonable support and assistance to the Healthcare Provider to allow effective delivery of Healthcare Standards including allowing access to the Secure School to allow the Healthcare Provider and NHS England to deliver their duties.
42. Where action is taken to separate any Child or Young Person in order to prevent injury or serious damage to property, the Secure Academy Trust must record each decision and the details surrounding the separation as set out at clause 2.49.

Meals

43. The Secure Academy Trust must provide catering in line with the Children's Homes (England) Regulations 2015 and must have regard to the School Food Standards which apply to academies. The Secure Academy Trust must comply with all applicable food standards legislation and health and safety obligations in complying with this obligation and must cater for the Children and Young People's dietary requirements.

Funding

44. The Secure Academy Trust must comply with the Secure Schools Financial Handbook.
45. The Secretary of State shall provide one-off and recurrent funding for the Secure Academy Trust. Each funding stream is independent of each other and must be accounted for separately.
46. Project Development Funding – this funding has been provided to the Secure Academy Trust for the Project Development phase prior to entering into the Funding Agreement. The obligations in relation to this funding is set out in the Project Development Agreement. Any underspends accumulated by the Secure Academy Trust will be reviewed by the Secretary of State and the Secretary of State may recover any accumulated Project Development Funding or reduce future payments of Mobilisation Funding proportionally to the amount of underspend.
47. Mobilisation Funding – this funding will be provided by the Secretary of State to support the Mobilisation Plan. The payment of this fund is set out in the Secure School Financial Handbook. The Secure Academy Trust must report expenditure as required under the Secure School Financial Handbook. The Secretary of State will review any underspends accumulated by the Secure Academy Trust and at the Secure School Opening Date, may recover accumulated

Mobilisation Funding or reduce future payments of Annual Operational Funding proportionally. If any other income streams are received which support the Mobilisation Plan, the Secure Academy Trust must inform the Secretary of State.

48. Annual Operational Funding – the Secretary of State will pay this funding to the Secure Academy Trust to cover the cost of all Services provided from the Secure School Opening Date. This funding excludes Lifestyle Maintenance. The amount of funding will be calculated as set out under the Secure School Handbook and the Secure Academy Trust will be notified of this in an Annual Letter of Funding. Unless agreed with the Secretary of State, the Secure Academy Trust shall ensure sufficient resources are in place to meet the Planned Capacity (or any lower capacity agreed as part of the Mobilisation Plan) regardless of the actual number of Children and Young People in the Secure School at any given time.
49. The Secretary of State will pay the Annual Operational Funding in 12 equal monthly instalments. In the first year of operation, this may be adjusted to reduce cashflow risk to the Secure Academy Trust.
50. The Secure Academy Trust may operate with a Budget Surplus of up to 10% of the value of Annual Operational Funding. Any such Budget Surplus must be held as a Restricted Reserve and can only be used for the benefit of the Children and Young People accommodated within the Secure Academy Trust or as specified by the Secretary of State. Any unspent Annual Operational Funding which cannot be carried forward shall be returned to the Secretary of State as requested or the Secretary of State may take this into account when determining subsequent Annual Operational Funding.
51. Lifestyle Maintenance Funding – the Secretary of State will agree with the Secure Academy Trust a programme of works for the Secure School based on an independent lifestyle review as set out in the Lease and described in the Secure Schools Financial Handbook. The Secretary of State will have discretion over the timing and amount of any Lifestyle Funding but shall not unreasonably withhold Lifestyle Funding.
52. Lifestyle Maintenance Funding is generally restricted to the repair and replacement of the existing fabric of the land and buildings at the Secure School rather than any enhancements which will increase the value of the land and buildings.
53. The Secure Academy Trust may operate with an unlimited annual surplus of Lifecycle Maintenance Funding during the period covered by the current Lifecycle Maintenance Programme. Any such surplus must be held as a Restricted Reserve. However, at the end of each period, the Secretary of State will review expenditure and may request any unspent funds are returned or may take this unspent funding into account when considering payment of subsequent Lifecycle Maintenance Funding.
54. The Secretary of State may withhold Lifestyle Maintenance Funding or require repayment of it if the Secure Academy Trust has not complied with the Funding Agreement, or the conditions of the Secretary of State in respect of Lifestyle Maintenance Funding, the Lifestyle Maintenance does not accord with the programme of works approved by the Secretary of State, or the Lifestyle Maintenance is not completed within the timeframe agreed by the Secretary of State and the Secure Academy Trust.
55. Other Funding – other expenditure may be funded either by the Secure Academy Trust from their reserves or, if these reserves are insufficient, the Trust can make a bid to the Secretary of State for additional funding beyond the amount set out in the Annual Letter of Funding. This additional funding shall be at the discretion of the Secretary of State.
56. The Secure School Financial Handbook should be referred to in order to further understand the funding streams and requirements for funding.

57. Funding Associated with Ofsted Registration Requirements – the Secure Academy Trust must maintain the Secure School building to a standard that remains registrable with Ofsted as a secure children’s home. If complying with this obligation would require funding beyond the Lifecycle Maintenance Funding, the Secure Academy Trust should apply to the Secretary of State for additional funding. The Secretary of State will review any proposal to ensure that the proposal represents value for money and appropriately addresses the required standards, along with any recommendations made by Ofsted. The Secretary of State may withhold funds if the works would still not meet the required standards, significant reconfiguration or the purchase of new land is required, or the works would limit the number of places available. Further reasons are set out in detail at clause 3.30. Save for the circumstances where funding may be withheld, the Secretary of State shall ensure that the Secure Academy Trust is adequately funded to ensure that the secure school building remains registerable with Ofsted as a secure children’s home.
58. Other Sources of Funding may include funds from private or public sources so long as they are compliant with the obligations described in the Secure Schools Financial Handbook. Healthcare Services will be commissioned and paid for by NHS England. The Secretary of State will provide and account for the cost of transport to and from courts or other justice accommodation.

Financial and Accounting Requirements

59. In order to receive funding from the Secretary of State, the Secure Academy Trust must be fulfilling its financial and reporting requirements under the Funding Agreement including appointing an Accounting Officer and must also remain compliant with HM Treasury’s Managing Public Money guidance.
60. The Secure Academy Trust must abide by the Charity Commission guidance, in particular, the “Protecting Charities from Harm” guidance. Any reference in this guidance to reporting to the Charity Commission should instead be interpreted as reporting to the Secretary of State in their capacity as principal regulator.
61. Proper accounting records should be kept by the Secure Academy Trust which will include statements of income and expenditure, statements of cash flow and balance sheets and which must be produced in such form and frequency as the Secretary of State directs.

Accounts and Audits

62. The Secure Academy Trust must prepare and file the annual reports and accounts with Companies House in accordance with the Companies Act 2006 and, in addition, in accordance with the Charity Commissions “Accounting and Reporting by Charities: Statement of Recommended Practice” (as if it were a registered charity) and as the Secretary of State may direct. There must be an annual audit by independent auditors who have been appointed in line with the Secure Schools Financial Handbook.
63. The accounts must carry an audit report stating whether, in the auditors’ opinion, the accounts show a true and fair view of the Secure Academy Trust’s affairs. They must also be accompanied by other reports relating to the use of grants and other matters, as the Secretary of State directs.
64. The annual reports and accounts must be submitted in line with departmental reporting deadlines as published in the Secure School Financial Handbook (and subject to any amendment by the Secretary of State from time to time).
65. The annual reports and accounts, along with the memorandum of association and articles must be published on the Secure Academy Trust’s website, as must the names of the Charity Trustees and Members. The annual report should also include the names of all Members who

served during that year. Subject to confidentiality requirements set out in clause 7.31, the Funding Agreement must also be published on the website.

66. The accounts and all relevant reports must be open to officials of the MOJ, YCS and National Audit Office and their agents for inspection or carrying out value for money assessments.
67. The Secretary of State may instruct auditors to report to them on the adequacy and effectiveness of the Secure Academy Trust's accounting systems and internal controls to standards determined by the Secretary of State and to make recommendations for improving the financial management.

Acquiring and disposing of Publicly Funded Assets

68. Secretary of State consent must be obtained for the Secure Academy Trust to acquire or dispose of certain publicly funded assets (including freehold and leasehold land and buildings) or dispose of any other class of capital asset above the threshold set out in the Secure School Financial Handbook. Other than these exceptions, the Secure Academy Trust can dispose of fixed Assets without consent subject to achieving the best price that can reasonably be obtained and maintaining the principles of regularity, propriety and value for money.
69. If the Secure Academy Trust sells capital Assets which were acquired or enhanced wholly or partly using payments made by or on behalf of HM Government, the Secure Academy Trust must pay to the Secretary of State, if requested, an amount of the sale proceeds equivalent to the proportion of the original cost.
70. In respect of Publicly Funded Assets, the Secure Academy Trust must obtain the Secretary of State's consent before giving any guarantees, indemnities or letters of comfort (except as given in normal contractual relations), write off any debts or liabilities owed to it or offering to make any special payments (including ex gratia payments, staff severance and compensation payments) if the value of those transactions would be above any threshold specified in the Secure Schools Financial Handbook. In any case, the Secure Academy Trust must give the Secretary of State 30 days' notice (or a shorter period as the Secretary of State may agree) of its intention to take such action, regardless of whether consent is required.
71. The Secure Academy Trust must promptly notify the Secretary of State of any loss arising from suspected theft or fraud in line with the requirements of the Secure Schools Financial Handbook, or otherwise specified by the Secretary of State.

Borrowing and Investments

72. Secretary of State consent must be obtained for borrowing (including in relation to leases and overdraft facilities). The Secure Academy Trust must not use Publicly Funded Assets to secure borrowing.
73. Secretary of State approval must be obtained for investment transactions that are novel, contentious and/or repercussive or put the Secretary of State funding at significant financial or reputational risk.
74. The Secure Academy Trust must not, without the consent of the Secretary of State, enter into a fixed term contract or financial commitment with a third party that exceeds five years without the inclusion of a break clause that allows termination in under five years.

Insurance

75. The Secure Academy Trust must have adequate insurance cover in respect of all risks. The Secretary of State must be provided with the most recent copy of the policy or policies of insurance.

Reserves Policy

76. The Secure Academy Trust must have a Reserves Policy which complies with The Charity Commission's Charity Statement of Recommended Practice, defines all Reserves including any Restricted Reserves, and provides the Secretary of State with the most up-to-date version of its Reserves Policy.

Property

77. Within 28 days of the Land being demised to the Secure Academy Trust (or within 28 days of signing the Funding Agreement if the Land is demised to the Secure Academy Trust prior to entry into the Funding Agreement), the Secure Academy Trust must enter a restriction on the Land at the Land Registry and must apply for the Secretary of State's consent to apply, disapply, modify or cancel the restriction on the Land.
78. There are a number of obligations for the Secure Academy Trust in relation to the Land including the requirement to comply with the lease and to seek the Secretary of State's consent prior to granting any licence or parting with or sharing occupation of the Land.
79. If the Secure Academy Trust is, or if it is reasonably foreseeable that the Trust will be in material breach of the Lease, the Secure Academy Trust must immediately give written notice to the Secretary of State stating the breach and the proposed remedial action.
80. If the Secure Academy Trust has not entered into a Lease by 31 October 2023, the Secretary of State may serve a Termination Notice.
81. If the Secure Academy Trust receives a Property Notice, it must send a copy to the Secretary of State within 14 days setting out how it proposes to respond and provide any further information as required by the Secretary of State, and use best endeavours to assist the Secretary of State in relation to the Property Notice.
82. Where either a notice to terminate the Funding Agreement has been served under clause 6.1 or the Secretary of State considers, having consulted with the Secure Academy Trust, that not all the Land is need for the operation of the Secure School, the Secure Academy Trust must share occupation of the Land as the Secretary of State considers appropriate and enter into the necessary legal arrangements. Any associated reasonable costs directly arising from the legal arrangements will be payable by the Secretary of State.
83. In the event of inconsistency between the Lease and Funding Agreement, the Funding Agreement will prevail.

Termination Provisions

84. Either Party can terminate the Funding Agreement by giving notice of not less than the minimum period for payment under an "Academy Agreement" as set out in Section 2(2)(a) of the Academies Act 2010 i.e. at least seven years.
85. The Secretary of State has additional powers to issue a "Termination Warning Notice" (being a notice indicating the intention to terminate the Funding Agreement) in certain circumstances. Where the Secure Academy Trust has failed to implement the required remedial measures in the Termination Warning Notice, the Secretary of State can then terminate the Funding Agreement. Circumstances which may lead to a Termination Warning Notice include where the Secretary of State considers:
- the Secure Academy Trust is in breach of the Funding Agreement;
 - standards of education, health, wellbeing or care at the Academy are unacceptably low;

- there has been a serious breakdown in management or governance of the Secure School;
- safety standards are not being met; or
- the Secure Academy Trust has not sufficiently met the conditions set out in any formal direction from the Secretary of State, pursuant to Phase C of the Ladder of Interventions (i.e. the process of performance and intervention escalation in Secure Schools as set out in the Secure School Assurance Handbook).

The Secure Academy Trust can make representations to the Secretary of State in line with the deadlines in the Termination Warning Notice.

86. The Secretary of State can also terminate the Funding Agreement after an inspection if the quality of the education, training or care services is not considered adequate to meet the reasonable needs of those receiving the services, or if the Secure School/Secure Academy Trust is subject to enforcement action by Ofsted and/or the Care Quality Commission, the Secure School is judged to be inadequate by Ofsted or the Secretary of State (guided by Ofsted) decides not to renew the approval for the accommodation to be used as secure accommodation.
87. If the Secretary of State serves a Termination Warning Notice in line with clauses 6.7 and 6.8 of the Funding Agreement, and has not received representations, or has received representations but does not consider them satisfactory, or the required improvements have not been made by the deadline, the Secretary of State may serve a Termination Notice.
88. The Secretary of State also has the power to serve a Termination Notice where the Secure Academy Trust is in financial difficulties or cannot pay its debts, as more specifically set out at clause 6.10. If the Trust receives a petition which may result in an order for winding up or administration, the Trust must promptly inform the Secretary of State and the Secretary of State may serve a Termination Notice.
89. If a Trustee or Member of the Secure Academy Trust refuses to consent to checks by the Secretary of State or is deemed unsuitable and does not resign or is not removed within 42 days, a Termination Notice may be served.
90. Prior to the Secure School opening, if the Secretary of State considers that the Secure School would provide an unacceptably low standard of education, health, wellbeing or care, or safety would be threatened, or there is a serious breakdown in management or governance, the Secretary of State may delay opening the Secure School or require that a building or structure on the Land is not used until the relevant issues are resolved, if not resolved, the Secretary of State may serve a Termination Notice. On the Secure School Opening Date, if the building is not considered ready or suitable or has not met Ofsted requirements to achieve registration as a children's home, or the site is not approved for use as secure accommodation, or the Secure School is not registered with Ofsted, or the Healthcare provider has not been procured by NHS England, or the Secretary of State considers insufficient staff have been recruited/trained, or the opening is subject to a legal challenge, the Secretary of State may also delay the opening of the Secure School or require that a building or structure on the Land is not used until the relevant issues are resolved, if not resolved, the Secretary of State may serve a Termination Notice. Although the Secretary of State cannot serve a Termination Notice if the Healthcare provider has not been procured (as this is not within the Secure Academy Trust's control).
91. The Funding Agreement may also be terminated by the Secretary of State if the Secretary of State reasonably considers there are failings in the performance, management or governance of the Secure School or the Secure Academy Trust which are so severe they are incapable of remedy within a safe and appropriate timeframe (a non-exhaustive list of Irremediable Breaches is set out at clause 6.21). If such an Irremediable Breach was to arise, the Secretary of State

may issue a Termination Notice specifying the date of termination of the Funding Agreement and setting out directions for the exit and transition planning arrangements.

92. If the Funding Agreement is terminated, the Secure School would cease to be a 16 to 19 Academy and the approval to deliver a secure children's home may also be reviewed. If the Secure Academy Trust owns capital assets funded by HM Government, upon termination of the Funding Agreement, the Secure Academy Trust may be required to transfer these to a nominee of the Secretary of State for educational purposes or repay a sum equivalent to the value of those assets. The Secretary of State is only required to indemnify the Secure Academy Trust for the costs of termination where the Funding Agreement is terminated by the Secretary of State under clause 6.1 (termination on 7 years' notice). In other cases, the Secretary of State has discretion whether or not to indemnify the Secure Academy Trust.

Funding during notice period

93. During the notice period following a Termination Warning Notice or a Termination Notice, the Secure Academy Trust may continue to receive placements at the Secure School (unless the Secretary of State specifies otherwise), and continue to receive Annual Operational Funding.
94. During the notice period, a forecast of expected costs up to and including the termination date must be submitted to the Secretary of State within 3 months of the issue of the Termination Notice.
95. During the Exit Period, unless agreed with the Secretary of State, the Secure Academy Trust must not make any commitments which commits the Secretary of State to expenditure for the operation of the Secure School beyond the Termination Date.

Exit and Transition Planning

96. Within 3 months of the Secure School Opening Date, the Secure Academy Trust shall deliver an Exit Plan to the Secretary of State to allow the cessation or seamless transfer of the operation of the Secure School in the event that the Funding Agreement is terminated. The Exit Plan shall be reviewed on an annual basis. The details to be included in the Exit Plan are set out in full at clause 6.32.
97. To assist with exit planning, the Secure Academy Trust must create and maintain a detailed register of all Assets and other relevant agreements which the Secure Academy Trust has entered into in relation to the Secure School and make such register available to the Secretary of State on request. The Secure Academy Trust shall take reasonable endeavours to ensure that any licence for Third Party Software and other relevant agreements are assignable or capable of novation upon the Secure Academy Trust ceasing to operate the Secure School.
98. Should the Secretary of State terminate the Funding Agreement, the Secure Academy Trust shall provide reasonable assistance, requested by the Secretary of State, to facilitate the transfer of responsibility for and operation of the Secure School and to identify any staff who are critical to the operation of the Secure School. During such period, the Secure Academy Trust shall not make redundant or terminate the employment of any such staff, or cause such staff to leave the Secure School until the Funding Agreement ends or until such time as the Parties agree.
99. Upon termination of the Funding Agreement (or at such date as the Parties agree), the Secure Academy Trust shall vacate the Secure School, remove any Assets and materials used by the Secure Academy Trust, and leave the Secure School in a clean, safe and tidy condition; and return any Assets of the Secretary of State to the Secretary of State or such Government body as the Secretary of State may specify.

100. Termination of the Funding Agreement will not affect any accrued rights, remedies, obligations or liabilities of the parties under the Funding Agreement existing at termination.
101. For further details of the Termination and Exit provisions, please refer to Clause 6 of the Funding Agreement.

Information Sharing and Notices

102. The Secure Academy Trust must provide the Secretary of State with any information they reasonably require in relation to the running of the Secure School. The Secure Academy Trust must promptly provide information to a local authority about a student or parent of the student as required under clause 7.6.
103. The Parties shall comply with the Data Protection Legislation and the terms of a Data Sharing Agreement agreed by the Secure Academy Trust and Secretary of State.
104. On request, the Secure Academy Trust must provide the Secretary of State with the agenda of Trustee Board meetings and (where the Board has delegated any functions to committees) committee meetings, along with the minutes of such meetings and any reports, documents or papers considered at such meetings. The Secure Academy Trust may exclude any content relating to a named teacher or employee, a named student, or any matter which the Secure Academy Trust reasonably believes should remain confidential.
105. The Secure Academy Trust must allow the MOJ and YCS officials to enter the Secure School at any reasonable time. All records, files and reports relating to the running of the Secure School must be available to them. The MOJ and YCS officials may attend and speak at meetings of the Charity Trustees but will withdraw from any discussions surrounding the Secure Academy Trust's or the Secure School's relationship with the Secretary of State or discussions surrounding bids for funding.
106. Any formal notices or communications given by the Secure Academy Trust to the Secretary of State (and vice versa) in relation to the Funding Agreement must be in accordance with the notice requirements set out in clause 7.7 of the Funding Agreement, which includes that such notices must be given in writing (note this does not include email unless agreed in advance).

General Provisions and Confidential Arrangements

107. Where relevant, the Secure Academy Trust must comply with the Modern Slavery Act 2015 and must have in place the policies and procedures to ensure compliance.
108. Either Party may request a variation to the Funding Agreement in the form set out in Schedule 1 of the Funding Agreement. The Parties must comply with the terms set out at clauses 7.15 to 7.20 when requesting a variation.
109. A General Change in Law or Specific Change in Law does not relieve the Secure Academy Trust of its obligations and responsibilities in relation to the operation of the Secure School. In the event of a Specific Change in Law, either Party may notify the other as soon as reasonably practicable of the likely effects and whether any changes are required. They shall provide the other Party with proposals for minimisation of any cost increase and how the cost may or has affected the operation of the Secure School. In anticipation of or following a change, either Party may request a variation by following the process set out in clauses 7.15 to 7.20.
110. Except to the extent set out in the Funding Agreement, each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose it without the other Party's consent, except as necessary for the performance of obligations under the Funding Agreement, except where such disclosure is required by law or the information is already in their position or was already in their possession. The Secure Academy Trust may

disclose the Secretary of State's Confidential Information to those directly involved in operating the Secure School and who need to know the information, but shall ensure such staff are aware of the confidentiality requirements.

111. The Funding Agreement may be published (with any Confidential Information belonging to the other Party redacted).
112. The Secretary of Staff may require non-disclosure agreements to be entered into prior to staff or advisors commencing work. The Secure Academy Trust must retain a list of all non-disclosure agreements entered into.
113. The Secretary of State may disclose Confidential Information for the purpose of the examination of accounts, review of efficiency and effectiveness of how the Secretary of State has used its resources, to Parliament and Parliamentary Committees, to any Crown Body, to any consultant or contractor engaged in the operation of the Secure School provided that when disclosing information to any Crown Body or any consultant or contractor, the information disclosed is necessary for the purpose concerned and the Secretary of State requests that the information is treated as confidential, with a confidentiality undertaking where appropriate.
114. For the full confidentiality requirements, please refer to clause 7.30 to 7.43.
115. Each Party is subject to FOIA and the EIR. The Secure Academy Trust must consult the Secretary of State in relation to all Requests for Information relating to the business of the Secretary of State within 2 Business Days of receiving a request and vice versa. Each Party shall provide all necessary assistance as reasonably requested and a copy of all information in its possession or control. The Parties must consult with each other in order to determine whether any Confidential Information is exempt from disclosure in accordance with the provisions of the FOIA and EIR.
116. All Intellectual Property Rights which existed and were vested in the Secure Academy Trust prior to the date of the Funding Agreement or which are created during the term of the Funding Agreement in carrying out its obligations under the Funding Agreement shall vest, and remain vested, in the Secure Academy Trust. Any Intellectual Property Rights which existed and vested in the Secretary of State prior the date of the Funding Agreement shall remain vested in the Secretary of State. The Secure Academy Trust grants a royalty free, irrevocable, non-exclusive licence to the Secretary of State for all of their Intellectual Property Rights created during the term of the Funding Agreement, and shall do all necessary acts to facilitate such licence. Further obligations relating to Intellectual Property Rights are set out at clauses 7.48 to 7.54 including the procedures for any Third-Party IP Claim and an obligation on the Secure Academy Trust not to infringe the Intellectual Property Rights of any third parties.
117. A Force Majeure Event shall not result in a Party breaching the Funding Agreement. The time for any performance of an obligation shall be extended accordingly. The affected Party must notify the other in writing of when the event occurred and how long it is likely to be ongoing for and the effect on its ability to meet its obligations under the Funding Agreement. They must use all reasonable endeavours to mitigate against the effect of the Force Majeure Event. If either Party considers that a Force Majeure Event renders the obligations under the Funding Agreement physically, economically or commercially unviable for more than six months either Party may propose to terminate the Funding Agreement by giving three months written notice.
118. The Secure Academy Trust cannot assign the Funding Agreement.

**Stone King LLP
November 2022**