



HM Government

A Model Funding Agreement for Secure Schools

[NOTE - This document has been prepared by the Ministry of Justice in consultation with various Government departments and remains in near final draft form. It is expected that if the funding agreement is entered into by Oasis Restore Trust and the Secretary of State for Justice it will be substantially in this form, although there may be some technical and legal drafting changes to finalise the document before it is entered into. 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.]

[MONTH] 2023



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Summary

Information about the Secure School:

Name of Secure Academy Trust	Oasis Restore Trust
Company number	14489313
Name of Secure School	Oasis Restore
Opening date	[5 February 2024]
Capacity	49
Age range	12-17
Address and title number of Land	Sir Evelyn Rd, Rochester ME1 3YB being part of the land registered at the Land Registry with Freehold title K746517
Contact details for the Chair of Board of Charity Trustees	Chair of Trustees Oasis Restore Trust 1 Kennington Road London SE1 7QP

ESTABLISHING THE SECURE SCHOOL

Introduction to this agreement

- 1.1. This Agreement is between the Secretary of State for Justice (the “**Secretary of State**”) and Oasis Restore Trust (the “**Secure Academy Trust**”) and is an academy agreement as defined by section 1 of the Academies Act 2010 (as amended).
- 1.2. The Secure Academy Trust is a company limited by guarantee incorporated in England and Wales with company number 14489313. The Secure Academy Trust is a charity.
- 1.3. In order for the Secure Academy Trust to establish and run a Secure 16 to 19 Academy in England, to be known as Oasis Restore (the “**Secure School**”), and in order for the Secretary of State to make payments to the Secure Academy Trust, the Secure Academy Trust must meet the requirements in this Agreement.
- 1.3A The Secure School is a Secure 16 to 19 Academy under section 1B of the Academies Act 2010 (as amended) and shall be principally concerned with providing full-time or part-time education suitable to the requirements of persons over compulsory school age but under 19. This designation means the Secure School will be a secure children’s home as defined in Regulation 2 of the Children’s Home (England) Regulations 2015. The Secure School will be built on care and quality, delivering a therapeutic environment in a secure setting. It will have child-focused providers, strong leaders with freedom and autonomy and a specialised workforce offering bespoke provision for individual children that has education, health, care and physical activity at its heart.
- 1.4. In this Agreement these capitalised words and expressions will have the following meanings:
 - “**Accounting Officer**” means the individual, appointed by the Secure Academy Trust, who is accountable to Parliament for stewardship of the Secure Academy Trust’s resources.
 - “**Annual Letter of Funding**” means the annual written confirmation of the Annual Operational Funding and Lifecycle Maintenance Funding provided by the Secretary of State to the Secure Academy Trust
 - “**Annual Operational Funding**” means the annual resource funding provided by the Secretary of State to the Secure Academy Trust to deliver services to operate the Secure School
 - “**Appropriate and Technical Organisational Measures**” has the meaning given to it by the UK GDPR.
 - “**Articles**” means the Secure Academy Trust’s articles of association.
 - “**AssetPlus**” means the assessment and planning interventions framework developed by the YJB, designed to provide a holistic end-to-end assessment and intervention plan, allowing one record to follow a child or young person throughout their time in the youth justice system.
 - “**AssetPlus Custody Module**” means information provided in relation to admissions and arrangements for release from custody as part of the assessment and planning interventions framework.
 - “**AssetPlus: Joint Working Protocol**” provides a framework of responsibilities and time frames for updating and sharing AssetPlus stages between youth justice services. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705579/AssetPlus_Joint_Working_Protocol_v1.3.pdf

“Assets” means equipment, consumables, materials and such other items used in the operation of the Secure School.

“Assisted Visits Scheme” means the scheme which ensures that approved family, carers and others are supported financially in order to maintain links with a relevant child

“Associated Documents” means the guidance, handbooks, and other documentation with which the Secure Academy Trust is required to comply under this Agreement.

“Budget Surplus” means an excess of Annual Operational Funding provided by the Secretary of State over actual expenditure in the Financial Year.

“Business Day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or any day which is a bank holiday with the meaning given to that expression in the Banking and Financial Dealings Act 1971.

“Controller” has the meaning given to it by the UK GDPR.

“Change in Law” means any change in Law after the date of this Agreement.

“Charity Trustees” means the directors of the Secure Academy Trust, who are responsible for the general control and management of the administration of the Secure Academy Trust.

“Chief Inspector” means His Majesty’s Chief Inspector of Education, Children’s Services and Skills.

“Children and Young People” means all individuals (whether sentenced or unsentenced) who are on roll at the Secure School and who will normally be between 12 and 17 years of age, and **“Child”** or **“Young Person”** shall be construed to mean any individual Children and Young People.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or is listed in Schedule 3.

“Control” means the power of an organisation or individual (‘A’) to ensure that the affairs of another organisation are conducted in accordance with A’s wishes, whether through share ownership or voting power, by agreement, because of powers conferred by articles of association or any other document, or otherwise; and **“Controls”** will be construed accordingly.

“Copyright” means as it is defined in section 1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“Critical Casework Panel” means a multi-disciplinary panel consisting of: YCS Casework Team, YCS Central Forensic Pathology Team, and Central operational representation from secure children’s homes, secure training centres, young offenders institution and NHS England providing oversight, assurance and support to professionals working with the most exceptionally complex young people in the youth custody estate.

“Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK, including the UK GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) and any other legislation and regulatory requirements which apply to the processing of Shared Personal Data (including, without limitation the Data Sharing Code) as well as guidelines and codes of practice issued by the relevant Supervisory Authority.

“Data Sharing Agreement” means the data sharing agreement entered into by the parties dated [insert date].

“Data Subject” has the meaning given to it by the UK GDPR.

“Database Rights” means as rights in databases are defined in section 3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“**EIR**” means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“**Exit Period**” means the period beginning on the earlier of:

- a) a Termination Notice; or
- b) a notice to terminate the Agreement pursuant to clause 6.1,

and ending on the termination of this Agreement.

“**Exit Plan**” means the plan required allowing for the cessation or transfer of the services as developed by the Secure Academy Trust and reviewed and maintained by the parties pursuant to clause **Error! Reference source not found.** (inclusive);

“**Financial Year**” means the period between 1st April to 31st March (inclusive).

“**Fire Safety Checklist**” means the HMPPS Fire Safety Checklist document provided by the Secretary of State to the Secure Academy Trust, as amended from time to time.

“**FOIA**” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“**Force Majeure Event**” means any event outside the reasonable control of either Party affecting its performance of its obligations under the Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party. This excludes any industrial dispute relating to the Secure Academy Trust or the staff of the Secure Academy Trust or any other failure in the Secure Academy Trust’s supply chain.

“**Gatsby Benchmarks**” means the eight benchmarks for good careers guidance as established by the Gatsby Charitable Foundation (registered charity no. 251988).

“**GDPR**” means the retained EU law version of the General Data Protection Regulation (Regulation (EU) 2016/679), as transposed into UK Law by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

“**General Change in Law**” means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort) affecting the Secure Academy Trust.

“**Guidance**” means guidance issued by or on behalf of the Secretary of State or Secretary of State for Education, as amended from time to time.

“**Healthcare Provider**” means the healthcare provider which is appointed by NHS England to provide healthcare services to the Secure School.

“**Healthcare Standards for Children and Young People in Secure Settings**” means the guidance and standards set out in by Royal College of Paediatrics and Child Health found at [RCPCH Healthcare Standards for Children and Young People 1.2 updated 2019-09.pdf](#) and updated and replaced from time to time.

“**Impact Assessment**” means a written assessment of the impact of a Variation as described in clause 7.20.

“**Intellectual Property Rights**” means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights

and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Joint Controller” and “Joint Processing” shall have the meanings given to them by the UK GDPR.

“Know-How” means all information, ideas, concepts, schemes, information, knowledge, techniques, methods and anything else in the nature of know-how relating to the subject-matter of this Agreement (not in the public domain or the other Party’s possession prior to the date of this Agreement) held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

“LA” means a local authority.

“Ladders of Intervention” the process of performance improvement and intervention escalation in Secure Schools as set out in Part 3 of the Secure School Assurance Handbook.

“Land” means the land at Sir Evelyn Rd, Rochester ME1 3YB, being part of the land registered with title number K746517 and demised by the Lease.

“Law” means law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply.

“Lease” means the lease, any subsequent variations to the lease or other occupational agreement between the Secure Academy Trust and the Secretary of State under which the Secure Academy Trust derives title to the Land.

“Lifecycle Maintenance” has the meaning given to it in the Secure Schools Financial Handbook.

“Lifecycle Maintenance Funding” means the funding provided by the Secretary of State to enable the Secure Academy Trust to meet its obligation under this Agreement to maintain the land and buildings to the standard as stated in the Lease.

“Lifecycle Maintenance Programme” means as set out in clause 3.20.

“Mobilisation Funding” means the funding provided by the Secretary of State to the Secure Academy Trust following entry into this Agreement to deliver activities that enable the Secure School to open to Children and Young People.

“Mobilisation Period” means the period commencing with the date of this Agreement and ending on the Secure School Opening Date.

“Mobilisation Plan” means the activities that are to be delivered by the Secure Academy Trust to ensure readiness to open the Secure School to Children and Young People.

“MOJ” means the Ministry of Justice

“Ofsted” means the Office for Standards in Education, Children’s Services and Skills.

“Parent” has the meaning of “parent” as defined in section 576 of the Education Act 1996 and “Parents” shall be construed accordingly.

“Party” means either the Secretary of State or the Secure Academy Trust and “Parties” shall be a reference to both of them.

“Personal Data” means as it is defined in the UK GDPR.

“Processing”, “Process” and “Processor” shall have the meanings given to them by the UK GDPR.

“Project Development Agreement” means the agreement between the Secure Academy Trust and the Secretary of State in respect of the Project Development Funding;

“Project Development Funding” means the funding provided by the Secretary of State to the Secure Academy Trust to enable the delivery of activities prior to entering into this Agreement.

“Project Development Period” means the period commencing on the date that the Project Development Agreement was entered into and ending on the date of this Agreement.

“Property Notice” means any order, notice, proposal, demand or other requirement issued by any competent authority (including the Landlord unless the Landlord is the Secretary of State for Education) which materially affects the Secure Academy Trust’s ability to use the Land for the purposes of the Secure School.

“Publicly Funded Assets” means (a) assets or property funded wholly or partly using payments made by or on behalf of the Secretary of State, and (b) publicly funded land as defined in paragraph 22(3) of Schedule 1 to the Academies Act 2010 (as amended).

“Replacement Secure Academy Trust” means any third-party organisation appointed by the Secretary of State in place of the Secure Academy Trust following the termination or partial termination of this Agreement.

“Reserves” means accumulation of income or expenditure to be used for future purposes.

“Reserves Policy” defines the level and use of Annual Operating Funding that is held against payment of future obligations.

“Restricted Reserve” means income and expenditure where specific terms and conditions of use are imposed by the relevant funding body.

“Request for Information” means a request for information under the FOIA or the EIR.

“Secretary of State’s Consent” means the Secretary of State’s specific, prior written consent, which will not be unreasonably withheld or delayed.

“Secure 16 to 19 Academy” means a 16 to 19 academy that is approved by the Secretary of State to restrict the liberty of children and young people in accordance with section 1B of the Academies Act 2010 (as amended) and designated as a secure children’s home as defined in Regulation 2 of the Children’s Home Regulations (England) 2015;

“Secure School Opening Date” means the date on which the Secure School opens for Children and Young People to attend, as set out in clause 1.26.

“Secure Academy Trust’s Funding Agreement Manager” means the person with primary responsibility for managing the Secure Academy Trust’s relationship with the Secretary of State.

“Secure Schools Assurance Handbook” means the document with that title published by the MOJ and amended from time to time, on behalf of the Secretary of State

“Secure Schools Financial Handbook” means the document with that title published by the MOJ and amended from time to time, on behalf of the Secretary of State.

“Secure Schools Governance Handbook” means the document with that title published by the MOJ and amended from time to time, on behalf of the Secretary of State

“SEN” means special educational needs and has the meaning set out in sections 20(1) of the Children and Families Act 2014.

“SEND Code of Practice” means the code of practice issued by the Secretary of State under section 77 of the Children and Families Act 2014 as revised from time to time.

“Special Category Personal Data” shall have the meaning given to it by the UK GDPR.

“Specific Change in Law” means a Change in Law that relates specifically to the operation of the Secure School.

“Teaching Staff” means teachers and the head teacher employed at the Secure School.

“Termination Notice” means a notice sent by the Secretary of State to the Secure Academy Trust, terminating this Agreement on the date specified in the notice.

“Termination Warning Notice” means a notice sent by the Secretary of State to the Secure Academy Trust in accordance with the provisions of clause 6 of this Agreement stating their intention to terminate this Agreement.

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Secure Academy Trust to operate the Secure School.

“UK GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018) and s. 205(4) of the Data Protection Act 2018.

“Variation” means a change to the terms of this Agreement.

“Variation Procedure” means the procedure to effect a Variation as set out in clauses 7.15 - 7.20 (inclusive).

“YCS” means the Youth Custody Service, an executive agency of the MOJ, the department for which the Secretary of State is responsible (or any successor body in place from time to time).

“YCS Funding Agreement Manager” means the person in YCS with primary responsibility for managing YCS’ relationship with the secure academy trust

“YCS Placements Guidance” means the (Youth Custody Service Placement Team Overview on Operational Procedures Guidance, 2017)) found at: [Youth Custody Service Report Template \(publishing.service.gov.uk\) \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) as updated and replaced from time to time.

“YCS Placements Team” means the team at the YCS who perform the YCS’s key statutory function to place children and young people under the age of 18 who have been remanded or sentenced by a court into youth detention accommodation.

“YJB” means the Youth Justice Board.

“Youth Justice Application Framework” or **“YJAF”** means an online platform created for youth offending teams and the Secure Estate to communicate effectively (including sharing AssetPlus, case diary entries etc) and download formal documents and templates from the YJB.

“Youth Justice National Standards” means the Guidance and standards set out in [Microsoft Word - Standards for children in youth justice services 2019.doc.docx \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) as updated and/or replaced from time to time.

1.5. Not used.

1.6. A reference in this Agreement to any party or body includes its successors.

- 1.7. Any words following the terms 'include', 'including' or 'in particular' are by way of illustration, not limitation.
- 1.8. A reference in this Agreement to land or Land includes any buildings or structures on the land or Land.
- 1.9. References to this Agreement include any and all annexes.
- 1.10. References to the "Secretary of State" are references to the Secretary of State for Justice and shall include a reference to the YCS and the MOJ acting on the Secretary of State's behalf.
- 1.11. Where any legislation, legal requirement or published guidance is referred to, unless otherwise stated, the following terms should be interpreted as follows:
 - a) the "school" refers to the Secure School;
 - b) the "head teacher" may refer to the head or principal or relevant director of the Secure School;
 - c) the "pupils" or "students" refers to Children and Young People; and
 - d) the Secure Academy Trust will be deemed to be the "responsible authorities".
- 1.12. References in this Agreement to any named legislation, legal requirement or published guidance should be taken to include any amendment to or replacement of it.
- 1.13. If any questions arise about how this Agreement should be interpreted, the answer will be decided by the Secretary of State, after discussion with the Secure Academy Trust.

General Obligations of the Secure Academy Trust

- 1.14. Not used.
- 1.15. The Secure Academy Trust must ensure that the Secure School meets all the statutory and other requirements of a Secure 16 to 19 Academy as an approved provider of secure accommodation pursuant to section 1B of the Academies Act 2010 (as amended). The Secure Academy Trust must also ensure that the Secure School meets the statutory and other requirements of a secure children's home (as defined in Regulation 2 of the Children's Homes (England) Regulations 2015) as an approved provider of secure accommodation.
- 1.16. The Secure Academy Trust must :
 - a) conduct the Secure School within the terms and requirements of:
 - i. this Agreement;
 - ii. the Articles;
 - iii. any legislation or legal requirement as updated and/or replaced from time to time that applies to a Secure 16 to 19 Academy and any legislation or legal requirement that applies to secure children's homes, including but not limited to that legislation referred to herein and otherwise referred to in the Associated Documents;
 - iv. Healthcare Standards for Children and Young People in Secure Settings;
 - v. the Secure Schools Financial Handbook;
 - vi. the Secure Schools Assurance Handbook
 - vii. the Secure Schools Governance Handbook;

- viii. the Lease;
 - ix. the Data Sharing Agreement; and
 - x. the Exit Plan; and
- b) have due regard to the guidance (as updated and/or replaced from time to time) that applies to a Secure 16 to 19 Academy, including but not limited to the guidance referred to herein and otherwise referred to in the Associated Documents.
- 1.17. The Secretary of State may from time to time amend the Secure Schools Financial Handbook, the Secure Schools Assurance Handbook, and the Secure Schools Governance Handbook on written notice to the Secure Academy Trust. Upon amendments being made to the Secure Schools Financial Handbook, the Secure Schools Assurance Handbook, and the Secure Schools Governance Handbook, the Secure Academy Trust must ensure that it complies with the requirements of such amended documents within 3 months of being provided with the amended documents or by such other date as the Secretary of State may reasonably require.
- 1.18. No amendment or variation to this Agreement will be effective unless it is made in accordance with the Variation Procedure.
- 1.19. The Secure Academy Trust must, as soon as is reasonable, establish an appropriate mechanism for receiving and managing donations for the purpose of its aims as specified in the Articles.
- 1.20. The Secure Academy Trust must ensure that so far as is reasonably practicable and consistent with this Agreement and the Equality Act 2010, the policies and practices adopted by the Secure School enable Children and Young People of all faiths and none to play a full part in the life of the Secure School, and do not disadvantage Children and Young People of any faith or none. For the avoidance of doubt, this requirement applies irrespective of the proportion of Children and Young People of any faiths or none at the Secure School.
- 1.21. The Secure Academy Trust shall not at any time seek to designate the Secure School as a school with religious character.
- 1.22. The Secure Academy Trust shall:
- a) discuss the faith, religion, and beliefs of the relevant Child or Young Person promptly upon their arrival at the Secure School and shall always have due regard to the religions, faith, and beliefs of the Children and Young People when taking any actions regarding the Children and Young People; and
 - b) shall comply with its obligation to provide collective worship (“**Collective Worship**”) in accordance with Further and Higher Education Act 1992 . The Secure Academy Trust recognises that attendance at Collective Worship shall be at the discretion of each of the Children and Young People and shall not mandate attendance and/or penalise non-attendance at Collective Worship. The Secure Academy Trust shall support and facilitate Children and Young People that wish to attend Collective Worship and shall provide multi-faith, accessible chaplaincy services to support Children and Young People pastorally.
- 1.23. The Secure Academy Trust acknowledges that equality and diversity is highly valued by the Secretary of State and agrees that it shall perform its obligations under this Agreement in an anti-discriminatory manner regardless of the protected characteristics of such Children and Young People. The Secure Academy Trust must act in accordance with the Equality Act 2010 and comply with the Public Sector Equality Duty found under Section 149 of the Act.
- 1.24. The Secure Academy Trust shall offer to all Children and Young People, and provide to those Children and Young People that wish to receive it, the teaching of religious education.
- 1.25. The Secure Academy Trust is not required to publish information under this Agreement if to do so would breach its obligations under Data Protection Legislation.

Secure School opening date

- 1.26. The Secure Academy Trust will open the Secure School on [5 February 2024].
- 1.27. The Secure Academy Trust agrees that prior to the Secure School Opening Date:
 - a) the Secure School is an institution for the purposes of the Chief Inspector's duties under sections 118(2) and 125 of the Education and Inspections Act 2006 and, accordingly, the
 - b) Chief Inspector may inspect the Secure School before that date.
- 1.28. The Secure Academy Trust shall complete within the applicable timescales all registrations and/or approvals the Secure School is required by law to hold, including but not limited to registration as a Children's Home in accordance with Part 2 of the Care Standards Act 2000, and approval as a Secure 16-19 Academy in accordance with section 1B(4) of the Academies Act 2010 (as amended) (each as defined within the applicable legislation).

Governance

- 1.29. The Secure School will be governed by a board comprising the Charity Trustees of the Secure Academy Trust (the "**Board of Charity Trustees**").
- 1.30. The Secure Academy Trust must have regard to any Guidance on the governance of secure academy trusts, including (but not limited to) as set out in the Secure Schools Financial Handbook, the Secure Schools Assurance Handbook and the Secure Schools Governance Handbook.
- 1.31. The Secure Academy Trust must provide to the Secretary of State the names of all new or replacement Charity Trustees and members ("**Replacements**") of the Secure Academy Trust, stating whether such Replacements have been appointed or elected, the date of appointment or election for the relevant Replacement and, where applicable, the name of the Charity Trustee or member the relevant Replacement has replaced as soon as is practicable and in any event within 14 days of the relevant Replacement's appointment or election.
- 1.32. In accordance with the process which is more fully set out in the Secure Schools Governance Handbook, the Secure Academy Trust must not appoint any new Replacement until it has first informed the relevant Replacement and the relevant Replacement has agreed that its name will be shared with the Secretary of State to enable the Secretary of State to assess the suitability of the relevant Replacement.
- 1.33. The Secure Academy Trust must not amend or remove the provisions in its Articles relating to the appointment or election or the resignation or removal of Charity Trustees or members (the "**Governance Articles**") without the Secretary of State's Consent.
- 1.34. Before any change to the Governance Articles is proposed, the Secure Academy Trust must give notice to the Secretary of State of:
 - a) the proposed amendment or removal; and
 - b) the reason for it.
- 1.35. If the Secretary of State consents to the proposed changes, the Secure Academy Trust shall make any changes to the Articles as soon as reasonably practicable and provide the Secretary of State with a copy of the amended Articles and the resolution(s) approving them.

RUNNING OF THE SECURE SCHOOL

Length of school day and year

- 2.1. The Secure School will operate all year round and twenty-four hours a day. How time is organised to balance education, enrichment and leisure, including the length of the school day and year in terms of education provision, is the responsibility of the Secure Academy Trust.

Secure School staff

- 2.2. The Secure Academy Trust must comply with the obligations that apply to it by virtue of the Safeguarding and Vulnerable Groups Act 2006 in respect of, but not limited to, the performance of barred list checks.

- 2.3. The Secure Academy Trust must comply with the Further Education (Providers of Education)(England) Regulations 2006 (SI 2006/3199) as if the Academy were a further education institution subject to the following modifications:

- a) references to “a further education institution” or “the institution” shall be treated as references to the Secure Academy Trust, except in regulations 9(1)(b) and 19(2)(a)(ii) where they shall have their normal meaning;
- b) references to “new member of staff” shall include the Charity Trustees and the Chair of the Board and in respect of them:
 - i. the obligation to carry out an enhanced disclosure and barring service check as provided for in section 5(5) will apply whether or not their position will involve a relevant activity;
 - ii. the reference in section 6 to “considering his suitability for a position that will involve a relevant activity” will be treated as a reference to considering his suitability for a position as a Charity Trustee or Chair of the Board, as appropriate;
 - iii. references to “beginning work at the further education institution” shall be treated as references to beginning work as a Charity Trustee or Chair of the Board, as appropriate.

- 2.4. 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.

- 2.5. The Secure Academy Trust must designate:

- a) a staff member at the Secure School as responsible for promoting the educational achievement of students at the Secure School who are being looked after by an LA, or are no longer looked after by a LA because of an adoption, special guardianship or child arrangements order, or because they have been adopted from ‘state care’ outside England and Wales; and
- b) a “Special Needs Coordinator” as defined in section 67 of the Children and Families Act 2014,

and in doing so shall comply with all obligations imposed by all legislation, guidance (as updated and made available from time to time) and other requirements which apply to maintained schools, as though it were a maintained school as referred to by such legislation and guidance. The Secure Academy Trust must ensure the persons designated under this clause each undertake appropriate training and have regard to any guidance issued by the Secretary of State.

- 2.6. The Secure Academy Trust shall ensure all staff have appropriate qualifications and experience to fulfil the requirements of the roles for which they are employed, including, for the avoidance of doubt all qualifications and experience required by law.
- 2.7. Pay and conditions of service for all staff, including teachers, are the responsibility of the Secure Academy Trust subject to clauses 2.8 and 2.9 below.
- 2.8. The Secure Academy Trust must ensure that all teachers employed by the Secure Academy Trust have access to the Teachers' Pension Scheme ("**TPS**") and, in so doing, must comply with the requirements of this scheme and with Fair Deal for staff pensions guidance published by HM Treasury. The Secure Academy Trust must also deduct employee contributions and pay all such employee and employer contributions and other sums as required to the TPS.
- 2.9. The Secure Academy Trust must ensure that all staff employed by the Secure Academy Trust other than teachers have access to the Local Government Pension Scheme ("**LGPS**") and, in doing so, the Secure Academy Trust must comply with the requirements of the LGPS and with Fair Deal for staff pensions guidance published by HM Treasury. The Secure Academy Trust must also deduct employee contributions and pay all such employee and employer contributions and other sums as required to the LGPS.
- 2.10. Where a member of the Teaching Staff employed at the Secure School applies for a teaching post at another academy, a maintained school, a pupil referral unit or a further education institution, the Secure Academy Trust must at the request of the board of governors or academy trust of that other educational institution:
- a) advise in writing whether or not, in the previous two years, there have been any formal capability considerations or proceedings for that teacher at the Secure School or any other school;
 - b) give written details of the concerns which gave rise to any such consideration of that teacher's capability, the duration of the proceedings and their outcome.
- 2.11. Not used.

Charging

- 2.12. There shall be no charge to the Children and Young People for the, admission (including placement and attendance) of Children and Young People at the Secure School. This clause 2.12 does not prevent the Secure School receiving funds from a third party in respect of the admission and attendance of Children and Young People with SEN to the Secure School.
- 2.13. Notwithstanding clause 2.12, the Secure Academy Trust may, at the discretion of the Secretary of State and with the Secretary of State's Consent, charge people who are not Children and Young People at the Secure School for use of its facilities
- 2.14. Any use of the Secure School by people who are not Children and Young People must not be to the detriment of the education or welfare of the Children and Young People.

Capacity

- 2.15. Subject to any lower capacity figure provided for in the Mobilisation Plan in respect of the first year of operation of the Secure School, and unless explicitly agreed otherwise with the Secretary of State, from the Secure School Opening Date, the Secure Academy Trust must ensure that the Secure School has the capacity to accommodate, educate and care for 49 Children and Young People (“**Planned Capacity**”) to the standards required by law of a 16 to 19 Academy and a secure children’s home in accordance with the requirements of this Agreement.

Students

- 2.16. The Secure Academy Trust must ensure that the Secure School meets the needs of all individual Children and Young People, including students with SEN and disabilities.

- 2.17. The Secure Academy Trust must comply with:

- a) section 66 of the Children and Families Act 2014 as it applies to 16-19 academies;
- b) section 67 of the Children and Families Act 2014 and regulations 49 and 50 of the Special Educational Needs and Disability Regulations 2014 as if the Secure School were a mainstream school (within the meaning given to that term in section 83 of the Children and Families Act 2014) that is an academy school;
- c) section 68 of the Children and Families Act 2014 as if the Secure School were an academy school; and
- d) section 69 of the Children and Families Act 2014 and regulations 51 and 52 of, and Schedule 1 to, the Special Educational Needs and Disability Regulations 2014 as if the Secure School were an academy school and as if references to ‘pupils’ are to Children and Young People at the Secure School,

and in complying with these obligations the Secure Academy Trust must have regard to the relevant provisions of the SEND Code of Practice.

- 2.18. 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, for those Children and Young People that require such services.

Curriculum

- 2.19. The curriculum is the responsibility of the Secure Academy Trust.

- 2.20. The Secure Academy Trust must ensure that the curriculum provided to students is balanced and broadly based, and includes English, mathematics, computing, physical education, sport and vocational options. The curriculum should be tailored to Children and Young People’s needs and help them to develop the skills they need to live productive and fulfilling lives.

- 2.21. The Secure Academy Trust must publish on the Secure School’s website information about its curriculum, including:

- a) the content of the curriculum;
- b) its approach to the curriculum;

- c) where applicable, the GCSE options and other Key Stage 4 qualifications, or other future qualifications specified by the Secretary of State for Education, offered by the Secure School; and
 - d) how Parents can obtain more information about the Secure School's curriculum.
- 2.22. The Secure Academy Trust must not allow any view or theory to be taught as evidence-based if it is contrary to established scientific or historical evidence and explanations. This clause applies to all subjects taught at the Secure School.
- 2.23. Where relevant to the curriculum the Secure Academy Trust must provide for the teaching of evolution as a comprehensive, coherent and extensively evidenced theory.
- 2.24. The Secure Academy Trust must prevent political indoctrination, and secure the balanced treatment of political issues, in line with the requirements for maintained schools set out in the Education Act 1996, and have regard to any Guidance.
- 2.25. The Secure Academy Trust must ensure the Secure School actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.
- 2.26. The Secure Academy Trust must ensure the Secure School promotes principles that support equality of opportunity for all.

Careers Support

- 2.27. The Secure Academy Trust must ensure that careers guidance is provided at the Secure School in accordance with the requirements on maintained schools in the Education Act 1997. The Academy Trust must:
- a) provide independent careers guidance in accordance with Department for Education statutory guidance that has been developed in line with the eight Gatsby benchmarks of Good Career Guidance; and
 - b) ensure that there is an opportunity for a range of education and training providers to access Children and Young People in years 8-13 for the purpose of informing them about approved technical education qualifications or apprenticeships.

Assessment

- 2.28. The Secure Academy Trust must ensure that students at the Secure School take part in assessments of student performance appropriate to the qualifications offered by the Secure School.
- 2.29. The Secure Academy Trust must ensure that it publishes information in relation to the Secure School's performance on the Secure Academy Trust's website as the Secretary of State may request from time to time.

Emergency and Contingency Arrangements

- 2.30. The Secure Academy Trust shall be responsible for the safety of all staff and Children and Young People in the event of a fire. The Secure Academy Trust shall, prior to the Secure School Opening Date, design and implement suitable policies and procedures for fire safety and evacuation which comply with the Fire Safety Checklist, and shall provide such fire safety policies and procedures to the Secretary of State upon reasonable request. The Secretary of State and/or its appointed inspection team (including for the avoidance of doubt the HMPSS Fire Safety Team) shall be entitled to conduct an annual fire safety inspection of the Secure School and the Secure Academy Trust shall provide all reasonable assistance to enable such inspections. Where the Secretary of State determines that the Secure School fails its fire safety inspection, Secretary of State shall be entitled to require the Secure

Academy Trust to comply with Secretary of State's reasonable instructions in respect of fire safety and shall be entitled to conduct repeat fire safety inspections on reasonable notice until it is satisfied that such inspection has been successfully passed.

Use of Youth Justice Recording Systems

- 2.31. The Secure Academy Trust shall ensure that the Secretary of State's electronic case management system, YJAF and Secure Estate AssetPlus assessment tool (and such replacement or successor tools from time to time as directed by the Secretary of State) are used for Children and Young People in their care.
- 2.32. YJAF (and any replacement or successor tool from time to time as directed by the Secretary of State) shall be used during the Children and Young People's detention for all case management, sentence planning, assessment and risk recording, and for all other relevant and key information in line with the AssetPlus: Joint Working Protocol (and any supplementary, replacement or successor guidance and/or protocols from time to time in force).

Escort, Release, Resettlement, and Transitions

- 2.33. The movement of the Children and Young People between the Secure School and Courts, and between 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. To the extent that the Secure Academy Trust subcontracts its transport and escort obligations to a third party supplier, the Secure Academy Trust shall ensure such subcontractor is, and the subcontractor's staff are, subject to standards, checks, and other assessments of suitability and fitness to work which are no less robust as those deployed by the Secure Academy Trust in hiring and assessing its own employees. The Secretary of State may from time to time require, and the Secure Academy Trust shall provide promptly upon request, such information, assurance and/or evidence of the arrangements with the subcontractor (including for the avoidance of doubt the policies, procedures and/or contractual arrangements in place) as the Secretary of State deems reasonably necessary to demonstrate the suitability of the subcontractor.
- 2.34. The Secure Academy Trust shall have due regard to, and shall act in accordance with, Standards 4 (In Secure Settings) and 5 (On Transition) of the Youth Justice National Standards in respect of all resettlement and transition activity during the term of this Agreement.

Placements and Admissions

- 2.35. The Secure Academy Trust shall comply in all respects with the YCS Placements Guidance.
- 2.36. The Secure Academy Trust shall have regard to the AssetPlus Custody Module (and/or such replacement or successor training and/or guidance and/or framework in place from time to time as directed by the Secretary of State) and respond to the YCS Placements Team within a timely manner of receiving the necessary paperwork. Where the Secure Academy Trust is not reasonably able to review the necessary paperwork and respond within a timely manner it shall promptly upon receipt of such necessary paperwork notify the YCS Placements Team and agree an alternative deadline with which it shall comply.
- 2.37. The Secure Academy Trust shall have policies and processes in respect of new placements at the Secure School that include the management of multiple and late-night admission of placements and shall ensure such policies and procedures are created with due regard to guidance applicable to secure children's homes and Secure 16 to 19 Academies.
- 2.38. The Secure Academy Trust shall have in place processes to ensure the legality of detention and, where there are doubts, act to resolve them promptly. These processes shall include but not be limited to checking that a custodial warrant is in place.
- 2.39. The Children and Young People shall, in accordance with a statement agreed between the Secure Academy Trust and the Secretary of State, be informed by the Secure Academy Trust of their legal

rights, with particular focus on ensuring they understand their rights, and are offered access to services which support them in the exercise of such rights.

- 2.40. If a Child and/or Young Person challenges the legality of their detention during their admission, the Secure Academy Trust shall give the Child and/or Young Person access to facilities which will allow them to immediately contact a legal adviser and/or relative or friend, where appropriate.
- 2.41. Pursuant to its obligations under Regulation 16 and Schedule 1 of the Children's Homes (England) Regulations 2015 the Secure Academy Trust shall develop, and keep under review, a "**Statement of Purpose**" (as defined in the legislation). The Secure Academy Trust shall (a) have due regard, and shall cater for, the needs of all Children and Young People in the justice system within its Statement of Purpose, and (b) consult with, and take into account the opinions of the YCS, when it is developing the Statement of Purpose and as part of each review and update it makes. The parties agree that the Secure Academy Trust shall be entitled to determine the final content of the Statement of Purpose, subject to its compliance with this clause.
- 2.42. The Secure Academy Trust shall use its best endeavours to accept all Children and Young People referred to it by YCS (each a "**Referral**" and together "**Referrals**") in accordance with the Statement of Purpose, the Secure Academy Trust's obligations under law (including, but not limited to, its duties pursuant to regulation 14 of the Children's Homes (England) Regulations 2015), its obligations under this Agreement, and taking into account the legal status of the Secure School as a Secure 16 to 19 Academy under section 1B of the Academies Act 2010 (as amended). To the extent that the Secure Academy Trust considers the Referral of a Child and/or Young Person in the Secure School by YCS to be inappropriate and/or in contradiction with the Statement of Purpose, the Secure Academy Trust shall promptly notify YCS and the parties shall collaborate in good faith to determine whether the Referral shall be withdrawn. If the Secure Academy Trust at any time decides not to admit a Referral, it shall within three (3) Business Days document its decision and the reasons and justification for such decision and shall provide such documentation to the Secretary for State and/or its nominated recipient. The Secure Academy Trust shall not accept Referrals by any other route without the Secretary of State's Consent.
- 2.43. The Secure Academy Trust shall give due consideration to all Referrals from YCS and shall ensure all decisions made in respect of Referrals are in-keeping with the principles of equality and non-discrimination.

SAT/YCS Relationship and Notification Arrangements

- 2.44. If a bedroom becomes unavailable, the Secure Academy Trust's Funding Agreement Manager shall report to the YCS Funding Agreement Manager as soon as is practicable and the Secure Academy Trust shall complete all necessary repairs within a timescale agreed between the Parties. Should such repairs be scheduled to take longer than two Business Days, then the Secure Academy Trust's Funding Agreement Manager shall discuss the reasons for such scheduled timescale with the YCS Funding Agreement Manager and/or the YCS Head of Placements.

Healthcare

- 2.45. The Parties shall prior to the Secure School Opening Date work with NHS England to design an integrated operating model that incorporates health provision commissioned by NHS England and shall inform all work and relationships within the Secure School.
- 2.46. The Secure Academy Trust shall provide all reasonable support and assistance to the Healthcare Provider in order that the Healthcare Provider can effectively deliver the Healthcare Standards for Children and Young People in Secure Settings, including but not limited to permitting such access to the Secure School as is reasonably required in order that the Healthcare Provider and NHS England can effectively deliver its duties.
- 2.47. The Secure Academy Trust shall together with the Healthcare Provider and prior to the Secure School Opening Date design an operating model for integrated education, care, health, and wellbeing which shall inform all work and relationships within the Secure School.

Application of Frameworks

- 2.48. The Secure Academy Trust must engage with the Secretary of State on the development of revised or new operational policy to ensure that practise, process, and requirements are kept up to date in line with but not limited to, legislation, relevant literature and evidence, and wider MOJ policy and strategy. This engagement should comprise attendance at relevant forums, and the provision of sufficient resource to review, comment on, and help shape operational policy intentions suitable for application across the youth secure estate.

Separation Policy

- 2.49. The Secure Academy Trust shall record each decision to separate (meaning action taken that is necessary to prevent injury to any person or serious damage to property) one or more Children and Young Person and include in such record the date, time, and duration of such separation, and the reasons, evidence, authorisation, and defensibility of such decision to separate.
- 2.50. Not used

Meals

- 2.51. The Secure Academy Trust must provide catering in accordance with Children's Homes (England) Regulations 2015, having regard to the School Food Standards which apply to academies, and which accommodates children's dietary requirements (be they related to food intolerances, allergy, cultural or religious reasons).
- 2.52. The Secure Academy Trust must comply with all applicable food standards legislation and health and safety legislation in its performance of its obligations.

Assisted Visits Scheme

- 2.53. The Secure Academy Trust shall be responsible for administering the Assisted Visits Scheme, where applicable, which ensures that approved family, carers and others are supported financially in order to maintain links with a relevant child.

Critical Case Pathway

- 2.54. The Secure Academy Trust may be required to provide information to the Critical Casework Panel at short notice or on ad hoc occasions. In such cases, the Secure Academy Trust will ensure that any information is provided within the timeframe agreed by YCS Placements and the Secure Academy Trust.

FUNDING

Application of the Secure Schools Financial Handbook

- 3.1 In accordance with clause 1.16, the Secure Academy Trust must follow the requirements of, and have regard to the guidance in, the Secure Schools Financial Handbook.
- 3.2 The Secure Academy Trust must submit information about its finances to the Secretary of State in accordance with the Secure Schools Financial Handbook, or as otherwise specified by the Secretary of State.

Funding Streams

- 3.3 The Secretary of State will 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. The funding streams are summarised below with further detail described in the Secure Schools Financial Handbook

Project Development Funding

- 3.4 The Parties acknowledge that in advance of entry in this Agreement, the Secretary of State has provided Project Development Funding to the Secure Academy Trust for necessary expenditure incurred by the Secure Academy Trust during the Project Development Period in relation to the development of the Secure School.
- 3.5 Not used.
- 3.6 The Parties acknowledge that the payment of Project Development Funding by the Secretary of State is described in the Project Development Agreement and the Secure School Financial Handbook. The Secure Academy Trust will report expenditure of Project Development Funding as required by the Secure School Financial Handbook.
- 3.7 The Secretary of State will review any Project Development Funding underspends accumulated by the Secure Academy Trust during the Project Development Period and at the date of this Agreement may recover Project Development Funding from the Secure Academy Trust or reduce future payments of Mobilisation Funding paid to the Secure Academy Trust. The amount of Project Development Funding clawed-back or off-set against the Mobilisation Funding shall be limited to the amount of underspend generated.

Mobilisation Funding

- 3.8 The Secretary of State will provide funding to the Secure Academy Trust for the Mobilisation Period to support the Mobilisation Plan.
- 3.9 The Secretary of State will pay Mobilisation Funding to the Secure Academy Trust as described in the Secure School Financial Handbook. The Secure Academy Trust will report expenditure of Mobilisation Funding as described in the Secure School Financial Handbook.
- 3.10 The Secretary of State will review any Mobilisation Funding underspends accumulated by the Secure Academy Trust during the Mobilisation Period. At the Secure School Opening Date, the Secretary of State may recover Mobilisation Funding from the Secure Academy Trust or reduce future payments of Annual Operational Funding paid to the Secure Academy Trust. The amount of Mobilisation Funding clawed-back or set-off against the Annual Operational Funding shall be limited to the amount of underspend generated.

- 3.11 The Secure Academy Trust must promptly notify the Secretary of State of any other income streams received by the Secure Academy Trust that support the Mobilisation Plan. The Secure Academy Trust shall report to the Secretary of State on the expenditure of Mobilisation Funding as required by the Secure School Financial Handbook.

Annual Operational Funding

- 3.12 The Secretary of State will pay the Annual Operational Funding to the Secure Academy Trust to cover the cost of all Services provided from the Secure School Opening Date. In this clause “**Services**” are as described in the Secure Schools Financial Handbook and exclude Lifecycle Maintenance which is funded separately.
- 3.13 Annual Operational Funding will be calculated and agreed with the Secure Academy Trust as described in the Secure Schools Financial Handbook and notified to the Secure Academy Trust in an Annual Letter of Funding or equivalent, sent before the relevant Financial Year begins.
- 3.14 Unless agreed otherwise by the Secretary of State and subject to any lower capacity figure provided for in the Mobilisation Plan in respect of the first year of operation of the Secure School, the Secure Academy Trust shall ensure sufficient resources are in place to enable the Secure Academy Trust to meet the Planned Capacity (or the lower capacity agreed by the Secretary of State and the Secure Academy Trust as part of the Mobilisation Plan) regardless of the number of Children and Young People the Secretary of State places in the Secure School at any given time.
- 3.15 The Secretary of State will pay the Annual Operational Funding in 12 equal monthly instalments on or before the first day of each month following the Secure School Opening Date. In the first year of operation only, this payment schedule may be adjusted to reduce cashflow risk to the Secure Academy Trust and will be pro-rated if the Secure School Opening Date does not fall on the first day of a Financial Year. The detailed arrangements for payment will be set out in the Annual Letter of Funding, or an equivalent.
- 3.16 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 separate from other Reserves linked to other income streams (including Lifecycle Maintenance Funding). The Academy Trust will not be permitted to hold funds in this Restricted Reserve in excess of 10% of total current Annual Operational Funding
- 3.17 Budget Surplus can only be used for the benefit of the Children and Young People accommodated within the Secure Academy Trust or as specified in writing by the Secretary of State.
- 3.18 Any unspent Annual Operational Funding at the end of a Financial Year which is not permitted to be carried forward in accordance with clause 3.16 will, on the request of the Secretary of State, be returned by the Secure Academy Trust to the Secretary of State or the Secretary of State may take the unspent Annual Operational Funding into account in the payment of subsequent Annual Operational Funding.
- 3.19 In the event that either the Secure Academy Trust or Secretary of State identify a shortfall of Annual Operational Funding during a Financial Year, the process as set out in clause 3.28 must be followed

Lifecycle Maintenance Funding

- 3.20 The Secretary of State will agree with the Secure Academy Trust a programme of works for the Secure School based on an independent lifecycle review as set out in the Lease and described in the Secure Schools Financial Handbook (the “**Lifecycle Maintenance Programme**”). The Secretary of State will have final discretion over the timing of the Lifecycle Maintenance programme and the value of any Lifecycle Funding provided to the Secure Academy Trust in respect of the Lifecycle Maintenance programme. The Secretary of State shall not unreasonably withhold Lifecycle Maintenance Funding from the Secure Academy Trust.

- 3.21 For the avoidance of doubt, Lifecycle Maintenance is generally limited to the repair and replacement of the existing fabric of the land and buildings at the Secure School. Enhancements which result in increased value of the land and buildings at the Secure School are funded in accordance with clause 3.27.
- 3.22 The Secure Academy Trust must spend Lifecycle Funding only on and strictly in accordance with the agreed Lifecycle Maintenance Programme. 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 separate to any other Reserves linked to other income streams (including Annual Operational Funding).
- 3.23 At the end of a Lifecycle Maintenance Programme period, the Secretary of State will complete a reconciliation of expenditure against the Lifecycle Maintenance Funding provided. Any unspent Lifecycle Maintenance Funding will, on the request of the Secretary of State, be returned by the Secure Academy Trust to the Secretary of State or the Secretary of State may take the unspent Lifecycle Maintenance Funding into account in the payment of subsequent Lifecycle Maintenance Funding as specified in the Secure School Financial Handbook.
- 3.24 The Secretary of State may, at their discretion, withhold payments of Lifecycle Maintenance Funding and/or require the Secure Academy Trust to repay all or part of the Lifecycle Maintenance Funding if:
- a) in its use of the Lifecycle Maintenance Funding, the Secure Academy Trust does not comply with this Agreement or any of the conditions specified by the Secretary of State from time to time in respect of the Lifecycle Funding; or
 - b) the Lifecycle Maintenance does not accord with the programme of works approved by the Secretary of State; or
 - c) the Lifecycle Maintenance project is not completed within the timeframe agreed by the Parties.
- 3.25 Further information on Lifecycle Maintenance Funding is set out in the Secure Schools Financial Handbook

Other Funding

- 3.26 Other expenditure requirements of the Secure Academy Trust in respect of the Secure School, which are not funded by the Secretary of State as Annual Operational Funding or Lifecycle Maintenance Funding as described above, may be funded either:
- a) by the Secure Academy Trust from the Reserves of the Secure Academy Trust; or
 - b) to the extent that the Reserves of the Secure Academy Trust are insufficient, by the Secretary of State following the submission of a bid (in accordance with the Secure Schools Financial Handbook) by the Secure Academy Trust to the Secretary of State. Any bid by the Secure Academy Trust for additional expenditure beyond that agreed in the Annual Letter of Funding, shall be at the discretion of the Secretary of State and the Secretary of State reserves the right not to fund any such submission.
- 3.27 Categories of expenditure that are included in this funding route are described in the Secure School Financial Handbook.

Funding Associated with Ofsted Registration Requirements

- 3.28 The Secure Academy Trust is obliged to maintain the Secure School building to a standard that remains registerable with Ofsted as a secure children's home and, if this obligation would require the Secure

Academy Trust to complete works over and above their obligations regarding routine and Lifecycle Maintenance as outlined in this Agreement and the Lease, they must apply to the Secretary of State for additional funding, using the process described in the Secure School Financial Handbook.

- 3.29 The Secretary of State will review any proposal for additional funding made by the Secure Academy Trust, alongside the standards required by Ofsted to register the Secure School as a secure children's home and (if relevant) any specific recommendations made by Ofsted in respect of the Secure School, to ensure that the proposal represents value for money and appropriately addresses the required standards (and where relevant any recommendations made by Ofsted) and providing that the proposal made by the Secure Academy Trust represents value for money, appropriately addresses the required standards (and where relevant any recommendations made by Ofsted), and is made in accordance with the process described in the Secure Schools Financial Handbook, the Secretary of State shall, subject to clause 3.30, ensure that the Secure Academy Trust is adequately funded to maintain the Secure School building to a standard that remains registerable with Ofsted as a secure children's home.
- 3.30 Any additional funding and/or permission to complete the works may be withheld by the Secretary of State if:
- a) there is good reason to believe that, even with such alterations, the Secure School would not meet the standards required for the Secure School to be registrable as a secure children's home by Ofsted;
 - b) the extent of the works required to meet the Ofsted standards for registration of the Secure School as a secure children's home require expansion or significant reconfiguration of the Land of the Secure School (e.g. the purchase or transfer of new land);
 - c) the works required to meet the Ofsted standards for registration of the Secure School as a secure children's home would limit the number of places for Children and Young People to less than the Planned Capacity or otherwise significantly prevent the Secure Academy Trust from discharging its obligations under this Agreement or the Lease;
 - d) the investment required to meet the Ofsted standards for registration of the Secure School as a secure children's home does not represent value for money for the youth secure estate. (e.g. the money would provide the same or more high-quality spaces in secure youth accommodation if spent differently).
- 3.31 The Secure Academy Trust must maintain an asset register of all Assets fully or partially funded by the Secretary of State and make this available on request.

Other Funding Sources

- 3.32 The Secure Academy Trust may spend or accumulate funds from private sources or public sources, in line with any conditions described in the Secure Schools Financial Handbook
- 3.33 Healthcare services delivered by the Healthcare Provider will be commissioned and paid for by NHS England
- 3.34 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

General

- 4.1. In order for the Secretary of State to provide funding to the Secure Academy Trust, the Secure Academy Trust must be fulfilling the financial and reporting requirements in this Agreement.
- 4.2. In its conduct and operation, the Secure Academy Trust must apply financial and other controls which meet the requirements of regularity, propriety and value for money in line with HM Treasury's Managing Public Money.
- 4.3. The Secure Academy Trust must appoint an Accounting Officer and must notify the Secretary of State of that appointment, and in entering into this Agreement the Secure Academy Trust confirms that an Accounting Officer will be appointed within 3 months. The Secure Academy Trust must assign to the Accounting Officer the responsibilities of the role set out in the Secure Schools Financial Handbook and HM Treasury's publication 'Managing Public Money'.
- 4.4. The Secure Academy Trust must abide by the obligations of, and have regard to, the guidance for, charities and charity trustees issued by the Charity Commission and, in particular, the Charity Commission's guidance on 'Protecting Charities from Harm'. Any references in this document which require charity trustees to report to the Charity Commission should instead be interpreted as reporting to the Secretary of State in their capacity as the principal regulator under the Charities Act 2011 of qualifying academy trusts which operate a Secure 16 to 19 Academy

Annual accounts and audit

- 4.5. The Secure Academy Trust must prepare and file with Companies House the annual reports and accounts required by the Companies Act 2006.
- 4.6. In addition, the Secure Academy Trust must prepare its annual reports and accounts for each Financial Year:
 - a) in accordance with the Charity Commission's 'Accounting and Reporting by Charities: Statement of Recommended Practice', as if the Secure Academy Trust were a registered charity; and
 - b) additionally, as the Secretary of State directs.
- 4.7. The Secure Academy Trust's accounts must be audited annually by independent auditors appointed in line with the Secure Schools Financial Handbook.
- 4.8. 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. The accounts must also be accompanied by such other audit reports, relating to the use of grants and other matters, as the Secretary of State directs.
- 4.9. The Secure Academy Trust's annual report must include the names of all members of the Secure Academy Trust who served during the year.
- 4.10. The Secure Academy Trust's annual reports and accounts, and the auditor's reports, must be submitted to the Secretary of State in line with the departmental reporting deadlines, as specified within the Secure School Financial Handbook and subject to amendment by the Secretary of State from time to time.
- 4.11. Subject to clause 7.31, the Secure Academy Trust must publish on its website its annual reports and accounts, current memorandum of association, Articles and this Agreement and the names of its

Charity Trustees and members. The Secretary of State may also publish the Secure Academy Trust's annual reports and accounts, and the audit report, as the Secretary of State sees fit.

Keeping financial records

- 4.12. The Secure Academy Trust must keep proper accounting records. Statements of income and expenditure, statements of cash flow and balance sheets must be produced in such form and frequency as the Secretary of State directs.

Access to financial records

- 4.13. The books of accounts and all relevant records, files and reports of the Secure Academy Trust, including those relating to financial controls, must be open at all reasonable times to officials of the MOJ, the YCS and the National Audit Office, and to their agents and contractors, for inspection or carrying out value for money assessments. The Secure Academy Trust must give those officials and contractors reasonable assistance with their enquiries. For the purposes of this clause '**relevant**' means in any way relevant to the provision and use of funds provided by the Secretary of State under this Agreement.
- 4.14. The Secretary of State may, at their expense, 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 Secure Academy Trust's financial management.

Acquiring and disposing of Publicly Funded Assets

- 4.15. In relation to Publicly Funded Assets, the Secure Academy Trust must not, without the Secretary of State's Consent:
- a) acquire or dispose of freehold land and buildings;
 - b) take up or grant a lease of land and buildings;
 - c) dispose of any other class of capital asset above the threshold as set out in the Secure School Financial Handbook.
- 4.16. Other than the exceptions set out in 4.15, the Secure Academy Trust can dispose of other fixed Assets without the Secretary of State's approval subject to achieving the best price that can reasonably be obtained, and maintaining the principles of regularity, propriety and value for money.

Retaining proceeds from the disposal of capital assets

- 4.17. 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, at their request, an amount of the sale proceeds equivalent to the proportion of the original cost of the acquisition or enhancement which was met by or on behalf of HM Government.

Transactions outside the usual planned range

- 4.18. In relation to Publicly Funded Assets, the Secure Academy Trust must not, without the Secretary of State's Consent:

- a) give any guarantees, indemnities or letters of comfort, except such as are given in normal contractual relations; or
- b) write off any debts or liabilities owed to it; or
- c) offer to make any special payments as defined in HM Treasury's publication 'Managing Public Money' (including ex gratia payments, staff severance payments and compensation payments)

if the value of those transactions would be above any threshold specified in the Secure Schools Financial Handbook.

- 4.19. The Secure Academy Trust must give the Secretary of State 30 days' notice, (or shorter period as the Secretary of State may agree of its intention to take any of the actions in clause 4.19(a) – (c) regardless of whether the Secretary of State's Consent is required.
- 4.20. 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 in the Secure Schools Financial Handbook, or otherwise specified by the Secretary of State.

Borrowing & Investments

- 4.21. Secure Academy Trusts **must** obtain Secretary of State approval for borrowing (including but not limited to, leases and overdraft facilities) from any source. Secure Academy Trusts must not use Publicly Funded Assets to secure borrowing.
- 4.22. The Secure Academy Trust should follow the Charity Commission's guidance on Investments. Secretary of State approval **must** be obtained for investment transactions that are novel, contentious and/or repercussive or place Secretary of State funding at significant financial or reputational risk.
- 4.23. In order to limit the exposure of the Secretary of State to the risk of long-term financial liabilities, the Secure Academy Trust must not, without Secretary of State's Consent, enter into a fixed term contract or financial commitment with a third party that exceeds 5 years without the inclusion of a break clause that allows termination of that contract or commitment within a period of 5 years or less.

Insurance

- 4.24. Unless otherwise specified by the Secretary of State, the Secure Academy Trust must take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Secure Academy Trust. The Secretary of State must be provided with the most recent copy of the policy or policies of insurance.

Reserves Policy

- 4.25. The Secure Academy Trust **must**:
 - a) have a Reserves Policy which complies with The Charity Commission's Charity Statement of Recommended Practice and in line with this Agreement: and
 - b) ensure that the Reserves Policy defines all Reserves relevant to the Secure Academy Trust including those Restricted Reserves required as part of this Agreement; and
 - c) ensure that the Secretary of State is provided with the Secure Academy Trust's most up-to-date version of its Reserves Policy.

LAND CLAUSES

Restrictions on Land transfer

5.1 The Secure Academy Trust **must**:

- a) within 28 days of the signing of this Agreement in circumstances where the Land is demised to the Secure Academy Trust prior to the date of this Agreement, or otherwise within 28 days of the demise of the Land to the Secure Academy Trust, apply to the Land Registry using Form RX1 for the following restriction (the “**Restriction**”) to be entered in the proprietorship register for the Land:

No disposition of the registered estate by the proprietor of the registered estate, or by the proprietor of any registered charge, is to be registered without a written consent signed by the Secretary of State for Justice 102 Petty France, London SW1H 9AJ or the Secretary of State for Justice’s conveyancers;

- b) take any further steps required to ensure that the Restriction is entered on the proprietorship register of the Secure Academy Trust’s title;
- c) promptly confirm to the Secretary of State when the Restriction has been registered;
- d) if it has not registered the Restriction, allow the Secretary of State to do so in its place; and
- e) not, without the Secretary of State’s Consent, apply to disapply, modify, cancel or remove the Restriction, whether by itself, a holding company, a subsidiary company, or a receiver, administrator or liquidator acting in the name of the Secure Academy Trust.

Obligations of the Secure Academy Trust

5.2 The Secure Academy Trust must comply with the Lease.

5.3. The Secure Academy Trust must not, without the Secretary of State’s Consent:

- a) grant any consent or licence; or
- b) create or allow any encumbrance including charging the land; or
- c) part with or share possession or occupation; or
- d) enter into any onerous or restrictive obligations

in respect of all or part of the Land Provided that that the Secure Academy Trust may grant a licence or share occupation of part of the Land with a body or individual providing services or facilities which are within the uses permitted by the Lease and where no relationship of landlord and tenant arises as a result of such occupation.

5.3 The Secure Academy Trust must obtain the Secretary of State’s Consent before taking any action, including the service of any notice or waiver of any condition, under any contract relating to the acquisition of the Land.

5.4 If the Secure Academy Trust is, or if it is reasonably foreseeable that it will be, in material breach of the Lease, the Secure Academy Trust must immediately give written notice to the Secretary of State stating what the breach is and what action the Secure Academy Trust has taken or proposes to take to remedy it, including timescales where appropriate.

- 5.5 After notifying the Secretary of State under clause 5.4, the Secure Academy Trust must:
- a) promptly give the Secretary of State all the information requested by the Secretary of State about the breach;
 - b) allow the Secretary of State to take all necessary action, with or instead of the Secure Academy Trust, to remedy or prevent the breach, and
 - c) use its best endeavours to help the Secretary of State to remedy or prevent the breach.
- 5.6 If the Secure Academy Trust has not entered into the Lease by 31 October 2023 the Secretary of State may serve a Termination Notice.

Property Notices

- 5.7 If the Secure Academy Trust receives a Property Notice, it must:
- a) send a copy of it to the Secretary of State within 14 days, stating how the Secure Academy Trust intends to respond to it;
 - b) promptly give the Secretary of State all the information requested by the Secretary of State regarding the Property Notice;
 - c) allow the Secretary of State to take all necessary action, with or instead of the Secure Academy Trust, to comply with it, and
 - d) use its best endeavours to help the Secretary of State in connection with it.

Sharing the Land

- 5.8 If:
- a) the Secure Academy Trust or the Secretary of State serves notice to terminate this Agreement under clause 6.1; or
 - b) the Secretary of State considers, having consulted with the Secure Academy Trust, that not all the Land is needed for the operation of the Secure School at for the Planned Capacity,

the Secure Academy Trust must share occupation of the Land with such other academy trust and/or operator (whether private or public) as the Secretary of State considers appropriate and enter into any legal arrangements which the Secretary of State requires for this purpose subject to the terms of the Lease Provided that any associated reasonable costs directly arising from the legal arrangements will be payable by the Secretary of State.

- 5.9 In the event of any inconsistency between the provisions of this Agreement and the Lease, the provisions of this Agreement will prevail and, for the avoidance of doubt, nothing in the Lease precludes any requirement in this Agreement for the Secure Academy Trust to obtain the consent of the Secretary of State for any matters or dealings relating to the Land.

TERMINATION

Termination by either Party

- 6.1. Either Party may terminate this Agreement by giving notice to the other of not less than the minimum period for payments to continue under an 'Academy agreement' in respect of a Secure 16 to 19 Academy as set out in Section 2(2)(a) of the Academies Act 2010.
- 6.2. Either Party may terminate this Agreement in accordance with clauses 7.55 to 7.57.

Termination Warning Notice

- 6.3. The Secretary of State may, in accordance with the Ladders of Intervention, serve a Termination Warning Notice where it considers that:
- a) the Secure Academy Trust has breached the provisions of this Agreement; or
 - b) there is an unacceptably low standard of education, health, wellbeing or care; or
 - c) there has been a serious breakdown in the way the Secure School is managed or governed; or
 - d) the safety of students or staff is threatened; or
 - e) 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, to the specified timescales and/or has not provided enough information and evidence for commissioners to be confident that improvements will be made.
- 6.4. A Termination Warning Notice served under clause 6.3 will specify:
- a) the action the Secure Academy Trust must take;
 - b) the date by which the action must be completed; and
 - c) the date by which the Secure Academy Trust must make any representations, or confirm that it agrees to undertake the specified action.
- 6.5. The Secretary of State will consider any representations from the Secure Academy Trust which the Secretary of State receives by the date specified in the Termination Warning Notice. The Secretary of State may amend the Termination Warning Notice to specify further action which the Secure Academy Trust must take, and the date by which it must be completed.
- 6.6. If the Secretary of State considers that the Secure Academy Trust has not responded to the Termination Warning Notice as specified under clause 6.4 (c), or has not completed the action required in the Termination Warning Notice under clauses 6.4 (a) and (b) (and any further action specified under clause 6.5) the Secretary of State may serve a Termination Notice.

Termination by the Secretary of State after inspection

- 6.7. If the Chief Inspector has made a report under either:
- a) section 124(4)(a) or 125(4)(a) of the Education and Inspections Act 2006; or

- b) section 31 of the Care Standards Act,

and stated that it does not consider that any of the education, training or care services inspected in the Secure School to be of a quality adequate to meet the reasonable needs of those receiving it, the Secretary of State may, in accordance with the Ladders of Intervention, serve a Termination Warning Notice, specifying the date by which the Secure Academy Trust must make any representations.

6.8. The Secretary of State may serve a Termination Warning Notice if:

- a) the Secure School and/or Secure Academy Trust is subject to statutory enforcement action by Ofsted and/or the Care Quality Commission; and/or
- b) following an inspection under the social care common inspection framework, Ofsted judges the Secure School to be “inadequate”; and/or
- c) the Secretary of State, acting on advice from Ofsted, decides not to grant renewed approval for the accommodation to be used as secure accommodation for the purpose of restricting the liberty of children,

and such Termination Warning Notice shall specify improvement which the Secretary of State requires the Secure Academy Trust to make, and the date by which such improvements must be made.

6.9. If the Secretary of State has served a Termination Warning Notice under clause 6.7 or clause 6.8 and:

- a) in the case of a Termination Warning Notice under clause 6.7, has not received any representations from the Secure Academy Trust by the date specified in the notice; or
- b) in the case of a Termination Warning Notice under clause 6.7, having considered the representations made by the Secure Academy Trust remains satisfied that this Agreement should be terminated; or
- c) in the case of a Termination Warning Notice under clause 6.8, the improvements specified in the Termination Warning Notice have not been made by the date by which such improvements had to be made,

the Secretary of State may serve a Termination Notice.

Termination by the Secretary of State

6.10. The Secretary of State may serve a Termination Notice if any of the following events occurs, or if it considers that there is a serious risk that any of them may occur:

- a) the Secure Academy Trust calls a formal or informal meeting of its creditors or enters into any formal or informal composition or arrangement with its creditors; or
- b) the Secure Academy Trust proposes a voluntary arrangement within section 1 of the Insolvency Act 1986; or
- c) the Secure Academy Trust cannot pay its debts within the meaning of section 123 of the Insolvency Act 1986 with, for the purposes of this clause, section 123 (1)(a) of this Act having an effect as if £10,000 were substituted for £750. The Secure Academy Trust will not be considered unable to pay its debts for the purposes of this clause if it is contesting any such demand in good faith; or
- d) the Secure Academy Trust has a receiver and manager (except those appointed by the Charity Commission under the Charities Act 2011), administrator or administrative receiver appointed over all or part of its undertakings, assets or income; or

- e) any distraint, execution or other process is levied or enforced on any of the Secure Academy Trust's property and is not paid out, withdrawn or discharged within 15 Business Days; or
- f) the Secure Academy Trust has passed a resolution for its winding up; or
- g) an order is made for the winding up or administration of the Secure Academy Trust.

6.11. The Secure Academy Trust must promptly notify the Secretary of State, with an explanation of the circumstances, after receiving any petition which may result in an order for its winding up or administration.

6.12. If

- a) any Charity Trustee or member of the Secure Academy Trust refuses to consent to any checks required under this Agreement, or as otherwise requested by the Secretary of State; or
- b) the Secretary of State determines that any Charity Trustee or member of the Secure Academy Trust is unsuitable,

the Secretary of State may:

- i. direct the Secure Academy Trust to ensure that the Charity Trustee or member resigns or is removed within 42 days, failing which the Secretary of State may serve a Termination Notice; or
- ii. serve a Termination Notice.

6.13. For the purposes of clause 6.12(a) Charity Trustee or member of the Secure Academy Trust will be "**unsuitable**" if that Charity Trustee or member:

- a) has been convicted of an offence;
- b) has been given a caution in respect of an offence;
- c) is subject to a relevant finding in respect of an offence; or
- d) has engaged in relevant conduct,

as a result of which, the Secretary of State considers that that Charity Trustee or member is unsuitable to take part in the management of the Secure School.

6.14. For the purposes of clause 6.13:

- a) a Charity Trustee or member of the Secure Academy Trust will be subject to a "**relevant finding**" in respect of an offence if:
 - i. that Charity Trustee or member has been found not guilty of the offence by reason of insanity;
 - ii. that Charity Trustee or member has been found to be under a disability and to have done the act charged against them in respect of the offence; or
 - iii. a court outside the United Kingdom has made a finding equivalent to that described in paragraphs (i) and (ii) above.
- b) "**relevant conduct**" is conduct by a Charity Trustee or member of the Secure Academy Trust which is:

- i. aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
- ii. found to be in breach of professional standards by a professional body; or
- iii. so inappropriate that, in the opinion of the Secretary of State, it makes that Charity Trustee or member unsuitable to take part in the management of the Secure School.

6.15. If:

- a) at any time before the Secure School Opening Date, the Secretary of State considers that:
 - i. the Secure School would, on opening, provide an unacceptably low standard of education, health, wellbeing or care; or
 - ii. the safety of Children and Young People or staff at the Secure School would, on opening, be threatened; or
 - iii. the staff employed at the Secure School are unsuitable; or
 - iv. there is a serious breakdown in the way the Secure Academy Trust is being managed or governed; or
- b) on the Secure School Opening Date:
 - i. the designated building is not ready and/or suitable to accommodate the opening of the Secure School;
 - ii. the designated site and/or service has not met Ofsted requirements in order to achieve registration as a children's home;
 - iii. the designated site and/or service is not approved for use as secure accommodation;
 - iv. the Secure School is not registered with Ofsted;
 - v. the Healthcare Provider has not been procured by NHS England;
 - vi. the Secretary of State considers there to be an insufficient number of staff recruited and appropriately trained for roles required to enable the Secure School to operate; and/or
 - vii. the Secure School is not able, whether by law or in the Secretary of State's opinion, to open due to legal challenge,

the Secretary of State may either:

- A. require the Secure Academy Trust:
 - i. not to open the Secure School; or
 - ii. not to use any building or other structure on the Land,

until each relevant matter in paragraphs (a) or (b) above has been resolved to the Secretary of State's satisfaction; or

- B. excluding where clause 6.15(b)(v) above occurs, serve a Termination Notice.

Change of Control

- 6.16. The Secretary of State may at any time, subject to clause 6.17, serve a Termination Notice if there is a change:
- a) in the Control of the Secure Academy Trust; or
 - b) in the Control of a legal entity that Controls the Secure Academy Trust.
- 6.17. Where a person ('P') is a member or director of a body corporate (as a corporation sole or otherwise) by virtue of an office, no change of Control arises merely by P's successor becoming a member or director in P's place.
- 6.18. The Secure Academy Trust must promptly 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.
- 6.19. When notifying the Secretary of State under clause 6.18, the Secure Academy Trust must seek the Secretary of State's agreement that, if the Secretary of State is satisfied with the change of Control, the Secretary of State will not exercise their right to terminate this Agreement under clause 6.16.

Termination for irremediable breach

- 6.20. Where the Secretary of State reasonably considers that failings in the performance, management and / or governance of the Secure School or the Secure Academy Trust are so severe that such failings are incapable of remedy within a safe and appropriate timeframe ("**Irremediable Breach**"), the Secretary of State may issue a Termination Notice specifying the date by which this Agreement will terminate and setting out directions for exit and transition planning arrangements.
- 6.21. The following is a non-exhaustive list of Irremediable Breaches that would entitle the Secretary of State to issue a Termination Notice under Clause 6.20:
- a) the Secure Academy Trust committing any offence under (i) the Bribery Act 2010 or (ii) legislation or common law concerning fraudulent acts, or otherwise defrauding, attempting to defraud or conspiring to defraud the Secretary of State;
 - b) there is serious safeguarding malpractice or criminal activity in the Secure School that indicate systemic failings in governance which are incapable of remedy within a safe and appropriate timeframe;
 - c) there are serious security breaches at the Secure School (such as corruption) that indicate systemic failings in governance which are incapable of remedy within a safe and appropriate timeframe.

Funding during notice period

- 6.22. If the Secretary of State serves a Termination Warning Notice or a Termination Notice the Academy Trust may continue during the notice period to receive placements to the Secure School (unless the Secretary of State specifies otherwise), and to receive Annual Operational Funding in accordance with this Agreement.
- 6.23. A forecast of expected costs up to and including the termination date together with details of any third party contracts and their payment terms and conditions will be submitted to the Secretary of State no later than 3 months after the issue of a Termination Notice. The Secure Academy Trust must follow the processes for managing expenditure as described in the Secure School Financial Handbook

- 6.24. Except with the Secretary of State's Consent, the Secure Academy Trust must not make any commitments during the Exit Period that commits the Secretary of State to expenditure for the operation of the Secure School beyond the termination date. No decision made by the Secure Academy Trust will commit the Secretary of State to further payments unless otherwise agreed.

Effect of Termination

- 6.25. If this Agreement is terminated, the Secure School will cease to be a "16 to 19 Academy" within the meaning of section 1B of the Academies Act 2010 (as amended). The Secure School's approval to deliver a secure children's home (as defined in Regulation 2 of the Children's Homes (England) Regulations 2015) may also be reviewed.
- 6.26. Subject to clauses 6.27 and 6.28, if the Secretary of State terminates this Agreement under clause 6.1 the Secretary of State will indemnify the Secure Academy Trust. If the Secretary of State terminates this Agreement otherwise than under clause 6.1, the Secretary of State may at their discretion indemnify or compensate the Secure Academy Trust.
- 6.27. The amount of any such indemnity or compensation will be determined by the Secretary of State, having regard to representations made to them by the Secure Academy Trust, and after taking into account any remaining funds within Reserves attributable to Secretary of State funding, and will be paid as and when the Secretary of State considers appropriate.
- 6.28. The categories of expenditure incurred by the Secure Academy Trust in consequence of termination, for which the Secretary of State may indemnify the Secure Academy Trust under clause 6.26, may include:
- a) staff compensation and redundancy payments including any relevant pension scheme liabilities;
 - b) compensation payments in respect of broken contracts; limited to actual costs incurred as a result of that breakage;
 - c) expenses of disposing of Publicly Funded Assets or adapting them for other purposes;
 - d) legal and other professional fees in relation to exiting the Agreement; and
 - e) dissolution expenses.
- 6.29. If this Agreement is terminated, and the Secure Academy Trust owns capital Assets which have been partly or wholly funded by HM Government, the Secure Academy Trust must, as soon as possible after the termination date:
- a) transfer a proportion of those capital Assets, equal to the proportion of the original financial contribution made by HM Government, to a nominee of the Secretary of State to use for educational purposes; or
 - b) if the Secretary of State directs that a transfer under clause 6.29(a) is not required, pay to the Secretary of State at the termination date (or, by agreement with the Secretary of State, at the date of their subsequent disposal) a sum equivalent to the proportion of the original financial contribution made by HM Government.

Exit and Transition Planning

- 6.30. The Secure Academy Trust shall, within three (3) months after the Secure School Opening Date, deliver to the satisfaction of the Secretary of State an Exit Plan to allow the cessation or seamless transfer of the operation of the Secure School provided under this Agreement, in the event that the Agreement is terminated by either Party in compliance with the terms of this Agreement.

- 6.31. The Secure Academy Trust shall review the Exit Plan on an annual basis thereafter and update as necessary. The Parties shall use reasonable endeavours to agree the amended contents of the Exit Plan.
- 6.32. The Exit Plan shall set out, as a minimum:
- a) a detailed description of both the transfer and cessation processes during the Exit Period, including a detailed timetable;
 - b) how the operation of the Secure School will transfer to any Replacement Secure Academy Trust and/or the Secretary of State;
 - c) details of any contracts/arrangements which will be available for transfer to the Secretary of State and/or the Replacement Secure Academy Trust upon the termination of this Agreement together with any reasonable costs required to effect such transfer;
 - d) proposals for the identification and return of all Assets of the Secretary of State in the possession of and/or control of the Secure Academy Trust or any third party;
 - e) how the Secure Academy Trust will ensure that there is no disruption to or degradation of the operation of the Secure School during the Exit Period; and
 - f) the Secure Academy Trust's nominated first point of contact.
- 6.33. After receipt by either Party of a Termination Notice, the Parties shall promptly discuss, agree, and include within the Exit Plan any other information or assistance reasonably required by the Secretary of State or a Replacement Secure Academy Trust to enable smooth transfer or termination of operation of the Secure School and such information as the Secretary of State shall reasonably require in order to facilitate any potential Replacement Secure Academy Trust undertaking due diligence.
- 6.34. During the term of this Agreement, the Secure Academy Trust shall promptly create and maintain a detailed register of all Assets of the Secure Academy Trust and other relevant agreements that the Secure Academy Trust has entered into in connection with the operation of the Secure School and make such register available to the Secretary of State upon request.
- 6.35. The Secure Academy Trust shall take reasonable endeavours to ensure that all licences for Third Party Software and all other relevant agreements shall be assignable and/or capable of novation to the Secretary of State and/or any Replacement Secure Academy Trust (at no additional cost) upon the Secure Academy Trust ceasing to operate the Secure School.
- 6.36. Should the Secretary of State serve notice to terminate this Agreement in accordance with clause 6 the Secure Academy Trust shall:
- a) provide to the Secretary of State any reasonable assistance requested by the Secretary of State including assistance to facilitate the orderly transfer of responsibility for and operation of the Secure School to the Authority and/or its Replacement Secure Academy Trust; and
 - b) work with the Secretary of State to identify staff who are critical in the operation of the Secure School. The Secure Academy Trust shall not make redundant or terminate the employment of any such staff, or otherwise cause such staff to leave the Secure School until this Agreement ends or until such time as the Parties agree.
- 6.37. Upon termination of this Agreement (or at such a date as the Parties agree), the Secure Academy Trust shall:
- a) vacate the Secure School;

- b) remove any Assets of the Secure Academy Trust together with any other materials used by the Secure Academy Trust to operate the Secure School and shall leave the Secure School in a clean, safe and tidy condition; and
- c) return any Assets of the Secretary State to the Secretary of State or such other Government body as the Secretary of State may specify.

OTHER CONTRACTUAL ARRANGEMENTS

Information

- 7.1 The Secretary of State shall give the Secure Academy Trust any information it reasonably requires of them for the running of the Secure School.
- 7.2 The Parties shall comply with the Data Protection Legislation and the terms of the Data Sharing Agreement agreed between the Parties.

Access by the Secretary of State's Officers

- 7.3 The Secure Academy Trust must allow MOJ and YCS officials to enter the Academy at any reasonable time. All records, files and reports relating to the running of the Secure School must be available to them at any reasonable time. MOJ and/or YCS officials may attend and speak at any meetings of the Board of Charity Trustees or any other meetings of Directors of the Secure Academy Trust, but will withdraw from any discussion of the Secure School's or the Secure Academy Trust's relationship with the Secretary of State or any discussion of bids for funding to the Secretary of State.
- 7.4 The following documents must be provided to the Secretary of State or any person nominated by the Secretary of State on request:
- a) the agenda for every meeting of the Board of Charity Trustees or any committee to which it delegates any of its functions;
 - b) the draft minutes of every such meeting, if they have been approved by the chairman of that meeting;
 - c) the signed minutes of every such meeting; and
 - d) any report, document or other paper considered at any such meeting.
- 7.5 The Secure Academy Trust may exclude from items provided under clause 7.4 any content relating to:
- a) a named teacher or other person employed, or proposed to be employed, at the Academy;
 - b) a named student at the Secure School; and
 - c) any matter which, the Secure Academy Trust reasonably believes should remain confidential.

Information Sharing with Local Authorities – Statutory Responsibilities

- 7.6 The Secure Academy Trust must provide:
- a) the name, address and date of birth of the student;
 - b) the name and address of a Parent of the student;
 - c) information in the institution's possession about the student (except if the student concerned (in the case of a student who has attained the age of 16) or a Parent of the student concerned (in the case of a student who has not attained the age of 16) has instructed the Secure Academy Trust not to provide information of that kind);

upon request under section 14 of the Education and Skills Act 2008 from a LA (for the purpose of enabling or assisting it to exercise its functions under Part 1 of that Act); or

upon request under section 72 of that Act from a body providing services under sections 68 or 70(1)(b) or the Act (for the purposes of providing such services).

Notices

7.7 A notice or communication to a Party in connection with this Agreement:

- a) must be in writing (excluding email, except where agreed in advance) and in English;
- b) must be delivered by hand or sent by pre-paid first-class post or other next Business Day delivery service;
- c) will be deemed to have been received:
 - i. if delivered by hand, at the time when a delivery receipt is signed or when the notice is left at the address in paragraph (d), or
 - ii. if posted, at 9.00 am on the second Business Day after posting; and
- d) must be sent to the Party for the attention of the contact and at the address listed as follows (or to a different contact or address previously notified to the sending Party, the change taking effect five Business Days after deemed receipt of the notice):

Name of Party	Position of contact	Address
Secretary of State	[tbc]	Ministry of Justice, 102 Petty France, London SW1H 9AJ
Secure Academy Trust	Chair of Board of Charity Trustees	Oasis Restore Trust, 1 Kennington Road, London, SE1 7QP

Modern Slavery Act

7.8 Where it applies, the Secure Academy Trust shall, comply with the Modern Slavery Act 2015 and must have in place throughout the period of the Agreement policies and procedures to ensure full compliance.

7.9 The Secure Academy Trust must ensure that all sub-contracts that it enters into in relation to the operation of the Secure School include an obligation for the relevant sub-contractor to comply with the Modern Slavery Act 2015 with special emphasis on express anti-slavery and anti-human trafficking provisions.

7.10 The Secure Academy Trust shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain.

7.11 Not used

7.12 Not used

7.13 Not used

7.14 Not used

Variations

7.15 Either Party may request a Variation by submitting a request to the other Party in the form set out in Schedule 1 ("**Variation Form**").

7.16 Where the Secure Academy Trust requests the Variation:

- a) the Secure Academy Trust must provide an Impact Assessment to the Secretary of State along with the Variation Form;
- b) the Secretary of State shall respond to the Secure Academy Trust within 10 Business Days of receipt of both the Variation Form and the Impact Assessment either:
 - i. confirming the approval or rejection of the Variation and the reason for the decision; or
 - ii. requesting, from the Secure Academy Trust, such further information on the Variation as is reasonably required to enable the Secretary of State to determine whether the Variation should be approved or rejected and the Secretary of State shall inform the Secure Academy Trust of its decision and reasoning within a reasonable timeframe of receiving the requested further information; and
- c) if any further information requested by the Secretary of State from the Secure Academy Trust is not provided within 10 Business Days of request (or such other timeframe agreed by the Parties), the Variation shall be deemed to be withdrawn.

7.17 Where the Secretary of State requests the Variation:

- a) subject to clause 7.17(b) and following receipt of the Variation Form, the Secure Academy Trust shall provide the Secretary of State with an Impact Assessment as soon as reasonably practicable (taking into account the Secretary of State's proposed implementation date for the Variation);
- b) the Secretary of State shall provide to the Secure Academy Trust as soon as reasonably practicable any relevant information held by the Secretary of State that the Secure Academy Trust may reasonably require in respect of the Variation and/or to enable it to complete the Impact Assessment;
- c) following receipt by the Secretary of State of the Impact Assessment from the Secure Academy Trust, the Secretary of State and the Secure Academy Trust shall meet to consider the proposed Variation and the matters raised in the Impact Assessment.

7.18 Following the meeting pursuant to clause 7.17(c), and having due regard to the charitable objects of the Secure Academy Trust and its legal obligations as an operator of a secure children's home and a Secure 16 to 19 Academy, the Secretary of State may, implement a Variation to the following clauses without the consent of the Secure Academy Trust:

- a) clause 2.15 to the extent such Variation is to the Planned Capacity; and
- b) clause 3.16 to the extent such Variation is to the Budget Surplus with which the Secure Academy Trust is permitted to operate,

the Secretary of State shall notify the Secure Academy Trust of its decision whether to implement the Variation within 10 Business Days of the meeting.

- 7.19 Other than the changes set out in clause 7.18 which are determined by the Secretary of State, the Secure Academy Trust is not required to accept a Variation request made by the Secretary of State and will notify the Secretary of State of its decision to proceed or reject the Variation request pursuant to clause 7.17 within 10 Business Days of the meeting pursuant to clause 7.17(c).
- 7.20 Each Impact Assessment undertaken by the Secure Academy Trust shall be completed in good faith and shall include:
- a) details of the proposed Variation;
 - b) details of the impact of the proposed Variation on the Secure School and the Secure Academy Trust's ability to meet its other obligations under this Agreement;
 - c) any variation to the terms of this Agreement that will be required as a result of that impact,
 - d) details of the cost impact (whether the cost increases or decreases) of implementing the proposed Variation; and
 - e) a proposed timetable for the implementation, taking into account where the Variation request is made by the Secretary of State, any proposed implementation date provided by the Secretary of State, together with any proposals for the testing of the Variation;
- 7.21 Not used.
- 7.22 Not used.
- 7.23 Not used
- 7.24 Not used.
- 7.25 Not used.

Change in Law

- 7.26 The Secure Academy Trust is neither relieved of its responsibilities or obligations in the operation of the Secure School as the result of:
- a) a General Change in Law; or
 - b) a Specific Change in Law.
- 7.27 If a Specific Change in Law occurs or will occur either Party may:
- a) notify the other Party as soon as reasonably practicable of the likely effects of that change, including whether any:
 - i. change is required to the operation of the Secure School; and
 - ii. if relief from compliance with the Secure Academy Trust's obligations is required; and
 - iii. shall provide the other Party with proposals:
 - (A) for the minimisation of any increase in costs, including in respect of the costs of its supply chain; and
 - (B) as to how the Specific Change in Law may or has affected the cost of providing the operation of the Secure School.

- 7.28 If a General Change in Law occurs, either Party may request that the other Party follows the process set out at clause 7.27 as if it were a Specific Change in Law.
- 7.29 In anticipation of or following a Specific Change in Law or a General Change in Law either Party may request a Variation by notifying the other Party in writing of the Variation in accordance with the Variation process set out in clauses 7.15 to 7.25, subject to such Variation not taking effect until the date on which the Specific Change in Law or General Change in Law takes effect.

Confidential Information

- 7.30 Except to the extent set out expressly below or if disclosure or publication is expressly allowed elsewhere in the Agreement, each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Agreement.
- 7.31 Each Party hereby gives its consent to the other Party to publish the whole Agreement (but with any information which is Confidential Information belonging to either Party redacted) including from time to time agreed changes to the Agreement, to the general public.
- 7.32 If required by the Secretary of State, the Secure Academy Trust shall ensure that its staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Agreement in a form approved by the Secretary of State. The Secure Academy Trust shall maintain a list of the non-disclosure agreements completed in accordance with this clause.
- 7.33 If requested by the Secretary of State, the Secure Academy Trust shall give the Secretary of State a copy of the list and, subsequently upon request by the Secretary of State, copies of such of the listed non-disclosure agreements as required by the Secretary of State. The Secure Academy Trust shall ensure that its staff, professional advisors and consultants are aware of the Secure Academy Trust's confidentiality obligations under the Agreement.
- 7.34 The Secure Academy Trust may disclose the Secretary of State's Confidential Information only to its staff, contractors or service providers who are directly involved in operating the Secure School and who need to know the information, and shall ensure that such staff are aware of and shall comply with the obligations in these clauses as to confidentiality.
- 7.35 Each Party shall not, and shall procure that its staff do not, use any of the other Party's Confidential Information received otherwise than for the purposes of the Agreement.
- 7.36 Clause 7.30 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Agreement (or any other contract between the Secretary of State and the Secure Academy Trust); or
 - (e) it is independently developed without access to the other Party's Confidential Information.
- 7.37 Nothing in clause 7.30 prevents the Secretary of State disclosing any Confidential Information obtained from the Secure Academy Trust:

- (a) for the purpose of the examination and certification of the Secretary of State's accounts;
- (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Secretary of State has used its resources;
- (c) to Parliament and Parliamentary committees;
- (d) to any Crown Body and the Secure Academy Trust hereby acknowledges that all government departments receiving such Confidential Information may further disclose the Confidential Information to other government departments on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department;
- (e) to any consultant, contractor or other person engaged by the Secretary of State who are engaged in the operation of the Secure School; or
- (f) in accordance with clause 7.31,

provided that, in disclosing information under clauses 7.37 (d) and (e), the Secretary of State discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- 7.38 Nothing in clauses 7.30 to 7.35 prevents either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- 7.39 The Secretary of State shall use reasonable endeavours to ensure that any government department, employee or third party to whom the Secure Academy Trust's Confidential Information is disclosed pursuant to clause 7.37 is made aware of the Secretary of State's obligations of confidentiality.
- 7.40 If the Secure Academy Trust does not comply with clauses 7.30 to 7.35 the Secretary of State may terminate the Agreement immediately on notice to the Secure Academy Trust and/or seek injunctive relief in any competent jurisdiction.
- 7.41 To ensure that no unauthorised person gains access to any Confidential Information or any data obtained under this Agreement, the Secure Academy Trust shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 7.42 Not used
- 7.43 Each Party shall:
 - (a) immediately notify the other Party of any breach of security in relation to Confidential Information and all data obtained by virtue of this Agreement and will keep a record of such breaches;
 - (b) use best endeavours to recover such Confidential Information or data however it may be recorded; and
 - (c) co-operate with each other in any investigation as a result of any breach of security in relation to Confidential Information or data.

Freedom of Information

- 7.44 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the EIR.

- 7.45 The Secure Academy Trust shall consult the Secretary of State in relation to all Requests for Information relating in full or in part to the business of the Secretary of State that it receives as soon as practicable and in any event within 2 Business Days of receipt. Where the Secretary of State, acting reasonably, notifies the Secure Academy Trust that the relevant Request for Information should properly be responded to by the Secretary of State, the Secure Academy Trust shall:
- (a) give the Secretary of State a copy of all Information in its possession or control in the form that the Secretary of State requires within 5 Business Days (or such other period as the Secretary of State may specify) of the Secretary of State's request;
 - (b) provide all necessary assistance as reasonably requested by the Secretary of State to enable the Secretary of State to comply with its obligations under the FOIA and EIR; and
 - (c) not respond directly to such Request for Information unless authorised to do so in writing by the Secretary of State.
- 7.46 The Secretary of State shall notify the Secure Academy Trust of all Requests for Information relating to the Secure Academy Trust or information held by the Secure Academy Trust that it receives as soon as practicable and in any event within 2 Business Days of receipt and shall:
- (a) give the Secure Academy Trust a copy of all Information in its possession or control in the form that the Secure Academy Trust requires within 5 Business Days (or such other period as the Secure Academy Trust may specify) of the Secure Academy Trust's request; and
 - (b) provide all necessary assistance as reasonably requested by the Secure Academy Trust to enable the Secure Academy Trust to comply with its obligations under the FOIA and EIR.
 - (c) Not respond directly to such a Request for Information unless authorised to do so in writing by the Secure Academy Trust.
- 7.47 Each Party consult with the other in order to determine whether any other Confidential Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

Intellectual Property Rights

- 7.48 All Intellectual Property Rights:
- (a) which existed and were vested in the Secure Academy Trust prior to the date of this Agreement; or
 - (b) which may be created during the term of the Agreement by the Secure Academy Trust in carrying out its obligations under this Agreement,
- shall vest, and remain vested, in the Secure Academy Trust.
- 7.49 All Intellectual Property Rights which existed and were vested in the Secretary of State prior to the date of this Agreement shall vest, and remain vested, in the Secretary of State.
- 7.50 The Secure Academy Trust hereby grants
- (a) a royalty-free, irrevocable, non-exclusive licence to the Secretary of State, for all of the Secure Academy Trust's Intellectual Property Rights which are created during the term of the Agreement by the Secure Academy Trust operation of the Secure School. This licence shall take effect on the date of this Agreement or (in the case of rights arising after the date of the

Agreement) as a present licence of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights created by the Secure Academy Trust; and

(b) shall execute all documents and do all acts as are necessary to facilitate such licence.

7.51 The Secure Academy Trust shall:

- (a) waive or procure a waiver of any moral rights held by it or any third party in copyright material created for the purposes of operating the Secure School;
- (b) in respect of all Intellectual Property Rights created by third parties for the purposes of the Secure Academy Trust's operation of the Secure School, grants to the Secretary of State a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Secretary of State an authorised sub-licence, to use, reproduce, modify and develop such Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free and irrevocable and shall include the right for the Secretary of State to sub-license, transfer, novate or assign to any other party ("**Indemnified Persons**");
- (c) not infringe any Intellectual Property Rights of any third party in operating the Secure School; and
- (d) indemnify and keep indemnified the Secretary of State and Indemnified Persons from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Secretary of State and Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause 7.51, except to the extent that any such claim results directly from:
 - i. items or materials based upon designs supplied by the Secretary of State; or
 - ii. the use of data supplied by the Secretary of State which is not required to be verified by the Secure Academy Trust under any provision of the Agreement.

7.52 The Secure Academy Trust shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Secretary of State, the Secure Academy Trust or Indemnified Person) arising from the performance of the Secure Academy Trust's obligations under the Agreement, , except to the extent that any such claim results directly from:

- (a) items or materials based upon designs supplied by the Secretary of State; or
- (b) the use of data supplied by the Secretary of State which is not required to be verified by the Secure Academy Trust under any provision of this Agreement

("Third Party IP Claim"), provided that the Secure Academy Trust shall at all times:

- i. consult the Secretary of State on all material issues which arise during the conduct of such litigation and negotiations;
- ii. take due and proper account of the interests of the Secretary of State; and
- iii. not settle or compromise any claim without informing from the Secretary of State.

7.53 If any Third-Party IP Claim is made or in the reasonable opinion of the Secure Academy Trust is likely to be made, the Secure Academy Trust shall notify the Secretary of State and any relevant Indemnified Person, at its own expense and, if such claim is successful or compromised on terms which require the Secure Academy Trust or the Secretary of State or an Indemnified Person as the case may be to cease using the relevant third party Intellectual Property Rights, shall (without prejudice to the rights of the Secretary of State under clause 7.51) use its best endeavours to:

- (a) modify any or all of the performance of its obligations under this Agreement without reducing the performance or functionality of the same so as to avoid the infringement or the alleged infringement; or
- (b) procure a licence to use the Intellectual Property Rights and perform the obligations which are the subject of the alleged infringement, on terms which are acceptable to the Secretary of State.

7.54 The Secure Academy Trust grants to the Secretary of State and, if requested by the Secretary of State, to a Replacement Secure Academy Trust, a royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Secure Academy Trust developed during the term of the Agreement for the purposes of the operation of the Secure School and which the Secretary of State (or the Replacement Secure Academy Trust) reasonably requires in order for the Secretary of State to exercise its rights under, and receive the benefit of, the Agreement.

Force Majeure.

7.55 If a Party is prevented or delayed from performing its obligations under this Agreement by a Force Majeure Event (“**Affected Party**”), it shall not be in breach of this Agreement or liable for such delay or failure to perform its obligations. The time for performance of such obligations shall be extended accordingly.

7.56 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event (and in any event, within 2 Business Days) 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
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

7.57 Where either Party considers that a Force Majeure Event renders the fulfilment of obligations under this Agreement physically, economically, or commercially unviable for a continuous period of more than six (6) months either Party may propose to terminate this Agreement by giving three (3) months written notice to the other Party.

General provisions

7.58 Not used

7.59 The Secure Academy Trust cannot assign this Agreement.

7.60 Failure to exercise, or a delay in exercising, any right or remedy of the Secretary of State under this Agreement (including the right to terminate it), or a single or partial exercise of such a right or remedy, is not a waiver of, and does not prevent or restrict any initial or further exercise of, that or any other right or remedy.

7.61 Termination of this Agreement will not affect the accrued rights, remedies, obligations or liabilities of the parties to this Agreement existing at termination.

7.62 This Agreement may be executed in any number of counterparts, each of which when executed and delivered will constitute a duplicate original, but all of which will together constitute the same agreement.

7.63 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in

accordance with the law of England and Wales, and submitted to the exclusive jurisdiction of the courts of England and Wales.

- 7.64 This Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.
- 7.65 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to any other party to enforce any term of this Agreement.
- 7.66 The rights of the Parties to rescind or vary this agreement are not subject to the consent of any other person.

This Agreement was executed as a Deed on

[2023]

Executed on behalf of the **Secure Academy Trust** by:

.....

And

.....

Director

Director

Or

.....

Company Secretary

in the presence
of

.....

Witness

Name:

Address:

The Corporate Seal of

THE SECRETARY OF STATE FOR JUSTICE

affixed to this deed is authenticated by:

.....

Duly Authorised

Schedule 1: Variation Form and Agreement Change Notice

Variation Form

(For completion by the Party requesting the Variation)

Agreement:	Party requesting Variation:
Change Request Number:	Proposed implementation date:
<p>Full description of requested Change (including proposed changes to wording of the Contract where possible):</p> <p>[DN: If this is a significant change it should include a section asking for information on how the Variation will be managed whilst maintaining ongoing activities]</p>	
<p>Reasons for requested Change:</p> <p>[DN: This shall include impact on the operation of the Secure School and anticipated consequences if the Variation is or is not agreed.]</p>	
<p>Effect of requested Change:</p> <p>[DN: This shall include the impact on other organisations other than the Parties, including local authorities]</p>	
<p>Assumptions, dependencies, risks and mitigation (if any):</p>	
<p>Variation Request Form prepared by (name):</p>	
<p>Signature:</p>	
<p>Date of Variation:</p>	

Agreement Change Notice (“ACN”)

(For completion by the Authority once the Variation has been agreed in principle by both Parties. Variations do not become effective until this form has been signed by both Parties.)

Agreement:		Variation requested by:	
Change Number:			
Date on which Variation takes effect:			
Agreement between: The [Secretary of State for Justice] and [Name of Secure Academy Trust]			
It is agreed that the Agreement is amended as follows: [Insert details of the variation (including any to the price and deliverables/obligations) based on the information provided in the Variation Form and any subsequent discussions/negotiations, cross referencing the wording of the original Agreement, as previously changed (if applicable), where possible.]			
Words and expressions in this ACN shall have the meanings given to them in the Agreement. The Agreement, including any previous ACNs, shall remain effective and unaltered except as amended by this ACN.			
Signed for and on behalf of [the Secretary of State for Justice]		Signed for and on behalf of [insert name of Secure Academy Trust]	
Signature		Signature	
Name		Name	
Title		Title	
Date		Date	

Schedule 2: Confidential Information

1. In this Schedule 2 the Parties have sought to identify confidential information that is genuinely confidential and the disclosure of which would be contrary to the public interest.
2. Where possible the Parties have sought to identify when any relevant information will cease to fall into the category of Information to which this Schedule 2 applies.

CONFIDENTIAL INFORMATION	DATE	DURATION CONFIDENTIALITY	OF