OLDHAM TOTAL CARE LIMITED

DIRECTORS' SERVICE AGREEMENT AND GOVERNANCE PROTOCOL

For Executive and Non-Executive Directors

Company: Oldham Total Care Limited
Shareholder: Oldham Metropolitan Borough Council
Status: Wholly Owned Local Authority Trading Company
Version: Draft 4.0

1. Parties and Status

This Directors' Service Agreement and Governance Protocol ("Agreement") applies to each person appointed as a director of Oldham Total Care Limited ("the Company").

The Company is a wholly owned Local Authority Trading Company of Oldham Metropolitan Borough Council ("the Council" or "OMBC").

This Agreement is intended to set out the principal terms upon which Directors are expected to discharge their functions and to clarify the relationship between the Board, the Council and the OTC Steering Committee.

This Agreement does not constitute a contract of employment unless expressly incorporated into an Executive Director's contract of employment. In the event of any inconsistency between this Agreement and the Companies Act 2006, the Company's Articles of Association or any other binding constitutional document, the latter shall prevail.

2. Definitions

In this Agreement:

"Articles" means the Articles of Association of the Company as amended from time to time.

"Board" means the board of directors of the Company.

"Director" means any Executive or Non-Executive Director appointed to the Board.

"Executive Director" means a Director who also holds an executive management position within the Company.

"Non-Executive Director" means a Director who does not hold an executive management position within the Company.

"Reserved Matters" means those matters which require the prior approval of OMBC as shareholder in accordance with the Articles, Shareholder Agreement or other agreed governance arrangements.

"Shareholder" means Oldham Metropolitan Borough Council.

"Steering Committee" means the OTC Steering Committee established by OMBC to provide strategic oversight, shareholder assurance and an interface between the Council and the Company.

"Shareholder Agreement" means any agreement entered into between OMBC and the Company governing their respective rights and responsibilities.

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3. Governance Framework

3.1 The Company shall be governed as a separate legal entity in accordance with applicable company law and its constitutional documents.

3.2 The governance arrangements shall maintain a clear distinction between:

(a) OMBC as shareholder;

(b) OMBC in any commissioning, contracting or statutory capacity;

(c) the Board as the body responsible for the governance and direction of the Company;

(d) the Executive Management of the Company; and

(e) the Steering Committee as the principal strategic interface between the Company and OMBC.

3.3 No serving elected Member or officer of OMBC shall serve as a Director of the Company.

3.4 OMBC Member and officer involvement in the strategic oversight of the Company shall be exercised through the Steering Committee and through such formal shareholder arrangements as OMBC may determine.

3.5 Nothing in this Agreement shall permit the Steering Committee or any Council department to assume the statutory functions of the Board or the day-to-day management of the Company.

4. Appointment

4.1 Each Director shall be appointed in accordance with the Articles and any applicable shareholder or Board approval arrangements.

4.2 A Director shall receive written confirmation of:

(a) the date of appointment;

(b) the term of appointment;

(c) whether the appointment is Executive or Non-Executive;

(d) the expected time commitment;

(e) remuneration, if any;

(f) committee appointments;

(g) any particular duties attaching to the appointment; and

(h) the arrangements governing resignation, termination or removal.

4.3 Appointments shall have regard to the skills and experience required for the effective governance of the Company.

4.4 The Board shall periodically review its skills, composition and succession requirements.

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5. Duties of Directors

5.1 Each Director shall at all times comply with the duties imposed upon directors by the Companies Act 2006 and any other applicable law.

5.2 Without limitation, each Director shall:

(a) act within the powers conferred upon them;

(b) promote the success of the Company;

(c) exercise independent judgement;

(d) exercise reasonable care, skill and diligence;

(e) avoid or properly manage conflicts of interest;

(f) not accept benefits from third parties in circumstances prohibited by law; and

(g) declare interests in proposed or existing transactions or arrangements where required.

5.3 The duties of a Director are owed to the Company.

5.4 A Director shall not act solely as the representative of any third party, including OMBC, where doing so would conflict with the Director's statutory duties to the Company.

6. Responsibilities of the Board

6.1 The Board shall be collectively responsible for the governance, strategy and stewardship of the Company.

6.2 The Board's responsibilities shall include:

(a) determining the strategic direction of the Company;

(b) approving the Company's business plan and budget;

(c) maintaining oversight of financial performance and financial sustainability;

(d) determining the Company's risk appetite;

(e) ensuring that appropriate systems of internal control are maintained;

(f) overseeing statutory and regulatory compliance;

(g) approving material corporate policies and strategies;

(h) scrutinising Executive Management performance;

(i) monitoring performance against agreed objectives;

(j) ensuring that material risks are appropriately identified and managed;

(k) maintaining appropriate arrangements for assurance and audit; and

(l) reporting to the Steering Committee and shareholder in accordance with this Agreement and the Company's governance arrangements.

6.3 The Board shall not delegate any duty or decision which, as a matter of law or under the Articles, is required to be exercised by the Directors.

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7. Executive Directors

7.1 An Executive Director shall have both the statutory responsibilities of a Director and such executive responsibilities as may be assigned under their employment arrangements or delegated authority.

7.2 Executive Directors shall be responsible for implementing the strategy, policies and decisions approved by the Board.

7.3 Executive Directors shall ensure that the Board receives timely, accurate and sufficient information to enable it properly to discharge its duties.

7.4 Executive Directors shall act within the authority delegated to them by the Board and shall refer matters to the Board where the limits of that authority are exceeded.

7.5 Nothing in an Executive Director's management responsibilities shall diminish their individual duties as a Director.

8. Non-Executive Directors

8.1 Non-Executive Directors shall provide independent judgement, scrutiny and challenge.

8.2 Non-Executive Directors shall have the same statutory duties as Executive Directors.

8.3 Their role shall include:

(a) contributing to the development of strategy;

(b) scrutinising the performance of Executive Management;

(c) challenging financial, commercial and strategic assumptions;

(d) reviewing the adequacy of risk management and internal control;

(e) contributing relevant professional or sector expertise;

(f) monitoring delivery against agreed objectives; and

(g) contributing to Board evaluation, succession and remuneration matters where appropriate.

8.4 Non-Executive Directors shall not normally undertake operational management functions.

9. Chair

9.1 The Chair shall be responsible for the effective leadership and operation of the Board.

9.2 The Chair shall:

(a) ensure that meetings are properly conducted;

(b) promote effective contribution by all Directors;

(c) facilitate constructive challenge and debate;

(d) ensure that Directors receive sufficient and timely information;

(e) maintain an appropriate distinction between Board governance and executive management;

(f) oversee the effectiveness of Board committees;

(g) lead the periodic evaluation of the Board; and

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(h) maintain an effective working relationship with the Chair of the Steering Committee.

9.3 The Chair shall ensure that material matters requiring shareholder awareness are escalated through the appropriate governance route.

10. OTC Steering Committee

10.1 The Steering Committee shall provide the principal strategic interface between OMBC and the Company.

10.2 Its membership, terms of reference and meeting arrangements shall be determined separately by OMBC.

10.3 The Steering Committee shall not form part of the Board and shall not exercise the statutory duties or powers of the Directors.

10.4 The purpose of the Steering Committee shall include:

(a) receiving assurance as to the performance and governance of the Company;

(b) reviewing delivery against agreed strategic objectives;

(c) considering the financial sustainability of the Company;

(d) receiving information concerning material corporate risks;

(e) considering matters of strategic significance to OMBC as shareholder;

(f) considering matters which may require shareholder approval or intervention; and

(g) maintaining an effective strategic relationship between OMBC and the Company.

10.5 The Steering Committee may challenge, scrutinise and seek assurance from the Board but shall not assume responsibility for the management or direction of the Company.

11. Reporting to the Steering Committee

11.1 The Board shall provide the Steering Committee with such information as is reasonably required to enable OMBC to discharge its responsibilities as shareholder.

11.2 Reporting shall be proportionate and strategic and shall ordinarily include:

(a) performance against the approved business plan;

(b) financial performance and forecast position;

(c) performance against material corporate objectives;

(d) principal corporate risks;

(e) material legal, regulatory or contractual matters;

(f) significant governance matters;

(g) material changes in the Company’s operating environment; and

(h) progress against any agreed improvement or transformation programme.

11.3 Reporting to the Steering Committee shall not extend to routine operational management unless a particular operational matter has become sufficiently material to constitute a strategic, financial, legal, regulatory or reputational risk.

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12. Escalation

12.1 The Board shall ensure that material matters are brought promptly to the attention of the Steering Committee and, where appropriate, OMBC as shareholder.

12.2 A matter shall be treated as material where it may reasonably be expected to:

(a) materially affect the financial position of the Company;

(b) impair delivery of the approved business plan;

(c) expose the Company or OMBC to material legal, regulatory or contractual risk;

(d) significantly alter the Company's risk profile;

(e) materially affect the reputation of the Company or OMBC;

(f) require additional shareholder support or intervention; or

(g) otherwise warrant consideration by OMBC before the next scheduled reporting cycle.

12.3 The Board and Steering Committee shall adopt the principle of timely escalation rather than retrospective reporting of matters which have already crystallised.

13. Relationship Between the Board and Steering Committee

13.1 The relationship between the Board and the Steering Committee shall be one of strategic accountability and shareholder assurance.

13.2 The Steering Committee may:

(a) request information and assurance;

(b) scrutinise strategic performance;

(c) challenge assumptions;

(d) raise shareholder concerns;

(e) make recommendations to the Board;

(f) make recommendations to OMBC; and

(g) consider matters requiring formal shareholder decision.

13.3 The Steering Committee shall not:

(a) direct employees of the Company;

(b) assume executive management responsibility;

(c) substitute itself for the Board;

(d) determine matters properly delegated to Executive Management; or

(e) exercise powers reserved by law to the Directors.

13.4 Formal shareholder powers shall be exercised by OMBC through the mechanisms set out in the Articles, Shareholder Agreement, Reserved Matters or other lawful delegation.

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14. Relationship with OMBC

14.1 The parties recognise that OMBC may have more than one relationship with the Company, including as:

(a) shareholder;

(b) commissioner;

(c) contracting authority;

(d) strategic partner; and

(e) local authority exercising statutory functions.

14.2 Those roles shall, so far as reasonably practicable, be kept distinct.

14.3 The Company shall not be treated as an operational department of OMBC.

14.4 Where matters arising from commissioning, contracting or other arrangements have a material impact upon the strategic or financial interests of the Company, the Board shall ensure that the matter is considered through the appropriate governance arrangements.

15. Corporate Performance

15.1 The Board shall establish and maintain an appropriate corporate performance framework.

15.2 The framework shall enable the Board to assess, at an appropriate level:

(a) financial performance;

(b) delivery against strategic objectives;

(c) organisational effectiveness;

(d) service performance;

(e) statutory and regulatory compliance;

(f) risk management;

(g) workforce performance; and

(h) delivery of significant change or improvement programmes.

15.3 The detailed performance measures shall be determined by the Board and may be amended from time to time.

15.4 The Steering Committee shall receive a summary of corporate performance sufficient to enable it to exercise effective strategic oversight and shareholder assurance.

16. Reserved Matters

16.1 Matters requiring the prior approval of OMBC as shareholder shall be set out in a separate Schedule of Reserved Matters.

16.2 Reserved Matters may include:

(a) material changes to the nature or strategic direction of the Company;

(b) significant borrowing;

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(c) material capital commitments outside the approved business plan;

(d) significant acquisitions or disposals;

(e) establishment of subsidiaries or joint ventures;

(f) amendments to the Company's constitutional arrangements;

(g) matters relating to share capital; and

(h) such other matters as may be agreed between the Company and OMBC.

16.3 The Steering Committee may consider and make recommendations in relation to a Reserved Matter but shall not be deemed to have exercised shareholder approval unless formally authorised to do so.

17. Conflicts of Interest

17.1 Each Director shall disclose any actual, potential or perceived conflict of interest in accordance with applicable law and the Company's policies.

17.2 The Company shall maintain a Register of Directors' Interests.

17.3 A Director shall disclose an interest as soon as reasonably practicable after becoming aware of it.

17.4 Where appropriate, the Director shall:

(a) refrain from receiving relevant papers;

(b) withdraw from the relevant discussion;

(c) abstain from voting; and

(d) comply with any further arrangements determined by the Board.

17.5 The Board may obtain independent legal or governance advice where the proper management of a conflict is uncertain.

18. Confidentiality

18.1 Directors shall keep confidential all information received in their capacity as a Director which is confidential by its nature or designated as confidential.

18.2 A Director shall not use confidential information for personal advantage or for the improper advantage of any other person or organisation.

18.3 Nothing in this clause shall prevent disclosure:

(a) required by law;

(b) authorised by the Board;

(c) required under an agreed shareholder reporting arrangement; or

(d) necessary for the proper discharge of the Director's statutory duties.

18.4 The obligations in this clause shall continue after a Director ceases to hold office.

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19. Conduct and Attendance

19.1 A Director shall devote sufficient time to the affairs of the Company to discharge their responsibilities properly.

19.2 Directors shall:

(a) attend Board and relevant committee meetings;

(b) prepare adequately for meetings;

(c) read and consider Board papers;

(d) contribute constructively;

(e) exercise independent judgement;

(f) maintain appropriate knowledge of the Company and its activities;

(g) undertake relevant training; and

(h) maintain appropriate standards of professional conduct.

19.3 Persistent failure to attend meetings or properly discharge the responsibilities of office may be taken into account in considering continuation of the appointment.

20. Remuneration and Expenses

20.1 Any remuneration payable to a Director shall be determined in accordance with the Articles, applicable contractual arrangements and any shareholder requirements.

20.2 No Director shall participate in determining their own remuneration except to the extent lawfully permitted.

20.3 Reasonable expenses properly incurred in carrying out Company business may be reimbursed in accordance with the Company's expenses policy.

21. Indemnity and Insurance

21.1 Subject to the Companies Act 2006 and the Articles, the Company may provide Directors with such indemnities as are lawfully permitted.

21.2 The Company shall maintain appropriate directors' and officers' liability insurance where the Board considers this appropriate.

21.3 Nothing in this Agreement shall indemnify a Director against liability where such indemnification is prohibited by law.

22. Board Evaluation and Development

22.1 The Board shall periodically review its effectiveness.

22.2 The review may include consideration of:

(a) Board composition;

(b) the contribution of individual Directors;

(c) the quality of Board challenge;

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(d) the effectiveness of Board committees;

(e) the relationship between the Board and Executive Management;

(f) the relationship between the Board and Steering Committee; and

(g) the overall effectiveness of the Company's governance arrangements.

22.3 Directors shall undertake such induction and continuing professional development as is reasonably necessary for the proper discharge of their duties.

23. Assurance and Audit

23.1 The Board shall ensure that appropriate internal and external assurance arrangements are maintained.

23.2 These may include:

(a) internal audit;

(b) external audit;

(c) legal and regulatory review;

(d) risk assurance;

(e) governance review; and

(f) Board effectiveness review.

23.3 Material findings arising from assurance activity shall be reported to the Board and, where appropriate, to the Steering Committee.

24. Resignation, Removal and Termination

24.1 A Director may resign by giving written notice in accordance with the Articles and any applicable contractual arrangements.

24.2 A Director may be removed from office only in accordance with:

(a) applicable law;

(b) the Articles;

(c) any Shareholder Agreement; and

(d) any applicable service or appointment agreement.

24.3 Upon ceasing to hold office, a Director shall:

(a) return Company property;

(b) cease to represent themselves as authorised to act for the Company;

(c) comply with continuing confidentiality obligations; and

(d) provide such reasonable handover as the Company may require.

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25. Review and Variation

25.1 This Agreement shall be reviewed periodically and normally at least annually.

25.2 It shall also be reviewed where there is:

(a) a material change in the Company's governance arrangements;

(b) an amendment to the Articles or Shareholder Agreement;

(c) a material legislative or regulatory change;

(d) a significant governance issue; or

(e) a material change to the Steering Committee arrangements.

25.3 Any material amendment shall be approved in accordance with the Company's governance arrangements.

26. Governing Law and Jurisdiction

26.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales.

26.2 Subject to any alternative dispute-resolution arrangements agreed between the parties, the courts of England and Wales shall have jurisdiction in relation to any dispute arising from this Agreement.

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27. Acknowledgement

I acknowledge that I have received, read and understood this Directors' Service Agreement and Governance Protocol.

I acknowledge that my statutory duties as a Director are owed to Oldham Total Care Limited and that I am required to act in accordance with applicable law, the Articles of Association and the Company's governance arrangements.

I further acknowledge the respective and distinct roles of the OTCL Board, Executive Management, the OTC Steering Committee and Oldham Metropolitan Borough Council as shareholder.

Director

Name: _____

Signature: _____

Date: _____

For Oldham Total Care Limited

Name: _____

Position: _____

Signature: _____

Date: _____

Acknowledged for and on behalf of Oldham Metropolitan Borough Council as Shareholder

Name: _____

Position: _____

Signature: _____

Date: _____

Governance Principle

For the avoidance of doubt, the parties acknowledge that:

OMBC owns the Company; the Board governs and directs the Company; Executive Management manages the Company; and the OTC Steering Committee provides the principal strategic interface through which OMBC receives assurance, exercises challenge and considers matters relevant to its position as shareholder.

Nothing in the Steering Committee arrangements shall displace the statutory duties of the Directors or the corporate status of Oldham Total Care Limited as a separate legal entity.

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