

**Dated**

**2024**

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**SOUTHEND-ON-SEA BOROUGH COUNCIL**

**SOUTHEND CARE LTD**

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**SOLE SHAREHOLDER AGREEMENT**

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**SHARPE PRITCHARD**

## PARTIES

- (1) **SOUTHEND-ON-SEA CITY COUNCIL** whose registered office is at Civic Centre, Victoria Avenue, Southend-on-Sea, Essex, England, SS2 6ER (**the Council**)
- (2) **SOUTHEND CARE LTD** (company number 10138562) whose registered office is at Civic Centre, Victoria Avenue, Southend-on-Sea, Essex, England, SS2 6ER (**the Company**)

## BACKGROUND

- (A) The Company was incorporated under the Companies Act 2006 on 21 April 2016. As at the date of this Agreement, the Council is the sole member of the Company.
- (B) For the purposes of compliance with Regulation 12 of the Public Contracts Regulations 2015, it is intended that the Council shall exercise a decisive influence over both the strategic objectives and the significant decisions of the Company.
- (C) The parties have entered into this agreement to regulate the manner in which the Company carries out its activities.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

In this Agreement:

**Accounting Reference Date** means 31 March.

**Articles** means the articles of association of the Company.

**Board** means the board of directors comprising the Directors from time to time of the Company.

**Business** has the meaning given in clause 2.1.

**Business Day** means a day (other than a Saturday, a Sunday or a public holiday in the United Kingdom).

**Business Plan** means the annual business plan of the Company as adopted in accordance with clause 2 from time to time.

**CEDR** means the Centre for Effective Dispute Resolution.

**Confidential Information** means, in relation to a person, all technical, commercial, financial or other information of whatever nature relating to that person's business, products, developments, services, trade secrets, know-how, personnel, supplies or historic current or potential customers, whether or not designated as confidential and whether disclosed orally, pictorially, in writing, by demonstration, by viewing, in machine readable form or by any other means.

**Council Representative** means the leader for the time being of the Council.

**Deed of Adherence** means a deed in the form or substantially in the form set out in Schedule 3.

**Directors** means the statutory directors of the Company and **Director** means any one of them.

**EIR** means the Environmental Information Regulations 2004 and any subordinate legislation made under the Regulations 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.

**Financial Year** means each accounting reference period of 12 months ending on the Accounting Reference Date.

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under the 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.

**Law** means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and
- (d) any relevant law embodied in the European Union (Future Relationship) Act 2020,

in each case in force in the United Kingdom.

**Prohibited Act** means any of the following acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
  - (iv) defrauding, attempting to defraud or conspiring to defraud the Council

**Reserved Matters** means the matters specified in Schedule 1.

- 1.2 In this Agreement:
- 1.2.1 clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement;
  - 1.2.2 unless the context otherwise requires, a reference to a clause or Schedule is to a clause of, or Schedule to, this Agreement and a reference to a paragraph is to a paragraph of the relevant Schedule;
  - 1.2.3 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person's personal representatives, successors, permitted assigns and permitted transferees;
  - 1.2.4 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
  - 1.2.5 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
  - 1.2.6 a reference to a **party** or the **parties** are to a party or the parties to this Agreement from time to time and any person who agrees to be bound by the provisions of this Agreement from time to time by executing a Deed of Adherence but, for the avoidance of doubt, shall not refer to any person who has ceased to have any obligations under this Agreement from time to time. A reference to a party shall include that party's successors, permitted assigns and permitted transferees;
  - 1.2.7 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision;
  - 1.2.8 a reference to **writing** or **written** includes email but not fax;
  - 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
  - 1.2.10 a reference to **this Agreement** (or any provision of it) or to any other agreement or document referred to in this Agreement is a reference to this Agreement, that provision or such other agreement or document as varied, amended or supplemented (in each case, other than in breach of the provisions of this Agreement) from time to time;
  - 1.2.11 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms; and
  - 1.2.12 the expressions **body corporate, holding company, subsidiary, parent undertaking, subsidiary undertaking** and **parent company** shall have the respective meanings given in the Companies Act 2006.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

## **2 THE BUSINESSES AND BUSINESS PLANNING**

- 2.1 The business of the Company (the **Business**) shall be to implement the Business Plan for the time being adopted by the Company and without limitation to:
- 2.1.1 undertake residential care activities for the elderly and disabled and other social work activities without accommodation in accordance with its Business Plan then in force and on terms agreed between the Company and the Council;
  - 2.1.2 provide services to any person in accordance with its Business Plan then in force and on terms agreed between the Company and that person;
  - 2.1.3 provide such other services as the Council may from time to time determine and on terms agreed between the Company and the relevant counterparty/ies; and
  - 2.1.4 to maximise all commercial opportunities available to the Company.
- 2.2 The Company's Business Plan for a given Financial Year shall be:
- 2.2.1 prepared by the Company in accordance with the timetable agreed by the Council and the Company from time to time; and
  - 2.2.2 considered and, if thought fit, approved by the Council as a Reserved Matter.

## **3 COUNCIL'S ROLE AS ULTIMATE SHAREHOLDER**

- 3.1 The Council will monitor the business and operations of the Company. The Company shall, upon request, (and subject to any restrictions on disclosure imposed by Law) have unlimited, unrestricted and prompt access to any Company information and documents.
- 3.2 Where consent or approval is expressed in this Agreement to be required of the Council, the Company shall communicate such request for consent or approval to the Council Representative. Such consent or approval shall be given in writing in advance of the decision or matter requiring consent or approval and the Council shall use its reasonable endeavours to communicate any such decision, consent or approval (including any decision not to give consent or approval) to the Company within a period of 60 days from receipt of the request provided that the Council shall not be deemed to have made a decision or given its consent or approval by virtue of the fact that it has not communicated the same within that time limit.
- 3.3 Where the Company requires the Council to make any decision or provide any consent or approval, the Company shall provide such material information as the Council may require to enable it to consider the decision, consent or approval in question.
- 3.4 Once a consent or approval is given in accordance with clause 3.2 then, to the extent a special or an ordinary resolution is required pursuant to the Companies Act 2006 or otherwise, the Company shall prepare and circulate to its member a draft resolution for consideration and, if thought fit, approval by that member. The Company's member shall approve any resolution which is in line with a consent or approval of the Council.
- 3.5 The Company shall ensure that the Board chair and and/or any employees of the Company as requested by the Council shall attend such meetings or parts of meeting(s) of the Council as the Council may reasonably require and shall answer questions put by the Council and provide information regarding the activities of each Company as reasonably requested.

## **4 DECISION-MAKING**

- 4.1 Except as set out in clause 4.2, insofar as a matter is a Reserved Matter relating to a Company, the Company shall not make any decision in relation to, or undertake, that Reserved Matter except with the prior written consent of the Council and such consent shall, subject to clause 3 above, be sought with the intention to facilitate decisions being given by the Council as soon as reasonably practicable.
- 4.2 Clause 4.1 shall not apply in connection with any decision or action relating to a Reserved Matter:
- 4.2.1 expressly approved in the Business Plan then in force; or
- 4.2.2 to the extent the same decision has been taken by the Council in accordance with an agreement between the Council and the Company.
- 4.3 If any agreement between the Council and the Company is validly varied in accordance with its terms, the relevant sections of the Business Plan shall be deemed amended on and with effect from the date of the variation of the agreement to the extent (but only to the extent) such amendment is necessary to ensure that the Business Plan is fully consistent, and does not conflict, with the terms of that agreement.
- 4.4 With the exception of the Reserved Matters, the Business and all affairs of the Company shall be managed by the Board; and, subject to clause 4.5 below, the Board shall have full and complete authority, power and discretion to direct, manage and control the relevant business and affairs of that Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incidental to the management of the relevant Company.
- 4.5 The Council shall procure that the Company, and, in so far as it may legally do so, the Company, agrees that it, shall:
- 4.5.1 carry on and conduct its business and affairs in pursuance of:
- (a) its Business Plan then in force;
  - (b) its Articles;
  - (c) all laws relating to companies as amended from time to time;
  - (d) sound governance and good business practice; and
  - (e) in a proper and efficient manner; and
- 4.5.2 use all reasonable endeavours to obtain and, if necessary, maintain in full force and effect all licences (including statutory licences), consents and authorities necessary to own and operate its assets and to carry on its business properly and effectively and in accordance with the Business Plan then in force.

## **5 BOARD OF DIRECTORS**

- 5.1 The Board shall be composed of such persons and shall conduct their dealings in accordance with their Articles and this Agreement provided that the Council may by notice in writing nominate any person as a Director and, if so nominated, the Company shall appoint the nominee as a Director.

- 5.2 The minimum number of Directors on the Board shall be three non-executive Directors. The number of non-executive Directors must exceed the number of executive Directors.
- 5.3 The Board shall meet at least quarterly and on such dates as they may agree and if no agreement can be made, on such date and time as the Chairman may determine. The quorum for a meeting of the Board shall be two directors and two non-executive directors.
- 5.4 An agenda for a meeting of the Board will be prepared and distributed to each Director no less than four business days prior to the meeting. Full details of the agenda and supporting documents shall also be sent to the Council Representative.
- 5.5 Draft minutes of a meeting of the Board must be sent to each Director and the Council Representative as soon as practicable after the meeting.
- 5.6 The Company shall review its Board every year to ensure that the composition and membership of the Board is such that it has the ability to sufficiently understand the Company's obligations and make sufficiently robust decisions in relation to those obligations.
- 5.7 On the nomination of a Director to the Board of the Company (whether by the Council or otherwise), the Board of the Company shall issue to that person the Letter of Appointment of a Director in the form or substantially in the form contained in Schedule 2 together with a summary of a Director's duties in relation to the Company.
- 5.8 Directors will cease to be appointed to a Board in accordance with the terms of the Letter of Appointment of a Director or otherwise:
- 5.8.1 if an elected member of the Council, 2 (two) months from ceasing to be an elected member of the Council unless the Council in its absolute discretion considers that, due to specific skill sets or experience that the relevant individual has, it would be in the Company's interests for that individual to remain on the relevant Board;
- 5.8.2 if an officer of the Council, upon ceasing to be an officer of the Council;
- 5.8.3 if an employee of the Company, upon ceasing to be an employee of that Company.
- 5.9 The Council Representative shall have the right to attend or appoint one named individual to attend (but not vote at) any Board meetings and to receive papers in relation to such meetings at the same time as those papers are given to the Directors.

## **6 POLICIES AND PROCEDURES**

- 6.1 In respect of policies and procedures of the Company (**Policies and Procedures**) and subject always to the terms of this Agreement:
- 6.1.1 the Company shall adopt necessary Policies and Procedures that enable it to act legally, efficiently and appropriately as a wholly owned subsidiary of a local authority. In the absence of any such Policies and Procedures, the Company shall adopt the relevant Policies and Procedures of the Council as the case may be;
- 6.1.2 at all times the Company shall operate Policies and Procedures which are consistent with the Council's Medium Term Financial Strategy and Corporate Plan 2023-2027 (or any superseding documents).

## **7 PROVISION OF INFORMATION**

- 7.1 The Council may from time to time specify by notice in writing the Company's proposed obligations in respect of the provision of information.
- 7.2 The Company shall use all reasonable endeavours to ensure that annual accounts are prepared in line with any agreed timetable and according to any timescale for the Council's closedown procedures. The Company shall provide the relevant information to the Council for the incorporation in the Council's accounts, as appropriate, and will follow the Council's accounting policies to ensure consolidation.
- 7.3 The Company shall produce annual accounts in accordance with the relevant sections of the Companies Act 2006 and associated regulations and any relevant financial reporting standards.
- 7.4 The Company shall deliver to the Council Representative in writing the annual accounts of that Company as soon as practicable and at the latest by three (3) months after the end of the relevant Financial Year, and audited if that is a requirement, as soon as practicable and at the latest by six (6) months after the end of the relevant Financial Year.

## **8 PREVENTION OF BRIBERY**

8.1 The Company:

8.1.1 shall not, and shall procure that any Director, officer, employee, adviser or representative of any of them shall not, in connection with this Agreement commit a Prohibited Act;

8.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.

8.2 The Company shall:

8.2.1 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

8.2.2 within 10 Business Days of the date of this Agreement, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Company) compliance with this clause 8 by the Company and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Company shall provide such supporting evidence of compliance as the Council may reasonably request.

8.3 The Company shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any of its Directors, officers, employees, advisers or representatives of the company from committing a Prohibited Act and shall enforce it where appropriate.

8.4 If any breach of clause 8.1 is suspected or known, the party in breach must notify the Council immediately.

8.5 If any Company notifies the Council that it suspects or knows that there may be a breach of clause 8.1, such company must respond promptly to the Council's enquiries, co-operate with any



investigation, and allow the Council to audit books, records and any other relevant documentation.

8.6 The Council may terminate this Agreement or any other agreement with the Company concerned by written notice with immediate effect if any such Company or Director, officer, employee, adviser or representative of such Company (in all cases whether or not acting with such Company's knowledge) breaches clause 8.1.

8.7 Any notice of termination under clause 8.6 must specify:

8.7.1 the nature of the Prohibited Act;

8.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and

8.7.3 the date on which this Agreement shall terminate.

8.8 Any dispute relating to:

8.8.1 the interpretation of this clause 8; or

8.8.2 the amount or value of any gift, consideration or commission;

shall be determined by the Council and its decision shall be final and conclusive.

8.9 Any termination under clause 8.6 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## **9 TERMINATION**

9.1 Subject to clauses 9.2 and 9.3 and other provisions of this Agreement, this Agreement may be terminated by the Council serving no less than (a) six months' written notice on the Company or (b) the notice period for termination in any agreement for the provision of care services between the Council and the Company, whichever is the longer.

9.2 The Council may terminate this Agreement immediately where required in accordance with any Law or in accordance with the provisions of this Agreement.

9.3 Termination of this Agreement shall not affect any accrued rights or liabilities of any person or any liability or obligation arising under or pursuant to this Agreement or any other agreement or arrangement between any of the parties hereto or, except where this Agreement expressly provides to the contrary, affect the provisions of:

9.3.1 clause 1 (*Definitions and Interpretation*);

9.3.2 this clause 9 (*Termination*);

9.3.3 clause 10 (*Confidentiality*);

9.3.4 clause 11 (*Freedom of Information*);

9.3.5 clause 14 (*Assignment and Subcontracting*);

9.3.6 clause 17 (*Severance*);

- 9.3.7 clause 16 (*Rights and Remedies*);
- 9.3.8 clause 20 (*Notices*);
- 9.3.9 clause 21 (*Entire Agreement*);
- 9.3.10 clause 22 (*Variation*);
- 9.3.11 clause 23 (*Conflict with the Articles*);
- 9.3.12 clause 24 (*Costs and Expenses*);
- 9.3.13 clause 25 (*Set-off*);
- 9.3.14 clause 26 (*No Partnership or Agency*); and
- 9.3.15 clause 27 (*Governing Law and Jurisdiction*);

which shall continue in full force and effect after termination.

## **10 CONFIDENTIALITY**

- 10.1 Each party undertakes that they shall not at any time hereafter use or disclose (in each case except for the purpose of exercising its rights and fulfilling its obligations under this Agreement) to any person any Confidential Information of any other party which may have or may in future come to its knowledge or possession, provided that any party may share such information:
  - 10.1.1 with its professional advisers or to those of its directors, members, officers, employees, advisers and representatives who are directly concerned with the relevant party or its business;
  - 10.1.2 as may be required by any applicable law or by any supervisory or regulatory body with whose rules it is necessary for that party to comply;
  - 10.1.3 in connection with any proceedings arising out of or in connection with this Agreement; or
  - 10.1.4 once it enters the public domain otherwise than by reason of a breach of this clause 10.1.
- 10.2 All parties shall use its reasonable endeavours to prevent the use or disclosure of any such Confidential Information otherwise than in accordance with this clause 10.
- 10.3 Notwithstanding the restrictions in clause 10.1, any party may use such Confidential Information for the purpose of the promotion of the SCL Business.
- 10.4 Each Director shall be entitled to disclose to the Council all information to which the Council is entitled to be provided from time to time under this Agreement.
- 10.5 The parties shall use their reasonable endeavours to procure that any of their officers, employees, advisers and representatives coming into receipt of such Confidential Information shall be informed upon receipt that such information is confidential and (so far as such party is able to procure the same) shall comply with the provisions of this clause 10.5 in respect of such Confidential Information as if they were parties.

- 10.6 Where any party is required by any law, regulation or governmental or regulatory authority to retain any information (or copies of such information) of any other party, it shall notify the other party in writing of such retention giving details of the information that it is required to retain.

## **11 FREEDOM OF INFORMATION**

- 11.1 The parties acknowledge that the parties are subject to the requirements of the FOIA and the EIR and the parties shall, where reasonable, assist and co-operate (at their own expense) with the other parties to enable the other parties (where required) to comply with their information disclosure obligations.
- 11.2 Where the Council receives a request under FOIA or EIR which relates to the operations of the Company, it may notify the Company in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA and where the Company receives a request under FOIA or EIR which relates to the operations of the Council, it may notify the relevant Council (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA). Following any such notification, each party shall afford the notified party an opportunity to make any comments or representations in respect of the disclosure of the information sought. The notified party shall respond within five Business Days of receipt of this notification. Subject to Clauses 15.3 and 15.4, the party in receipt of the request under FOIA or EIR shall take into account any such comments or representations in so doing and to the extent that it is permissible and reasonably practical for it to do so shall not respond to the request until the five Business Days response period referred to above has passed.
- 11.3 Each party shall be responsible for determining in its absolute discretion whether any information requested under the FOIA and EIR:
- 11.3.1 is exempt from disclosure; or
  - 11.3.2 is to be disclosed in response to a request for information.
- 11.4 Each party acknowledges that the other party may be obliged under the FOIA and EIR to disclose information:
- 11.4.1 without consulting with the other parties where it has not been practicable to achieve such consultation; or
  - 11.4.2 following consultation with the other parties and having taken their views into account.

## **12 DATA PROTECTION**

The parties shall comply with Law relating to data protection at all times when carrying out their respective obligations pursuant to this Agreement and any other agreement to which it is a party.

## **13 FURTHER ASSURANCE**

Each party shall at its own cost and expense, on being required to do so by another party now or at any time in the future, do or procure the doing of all such acts and things and/or execute or procure the execution of all such deeds and documents in a form satisfactory to such other party which such other party may reasonably consider necessary for giving effect to this Agreement.

## **14 ASSIGNMENT AND SUB-CONTRACTING**

- 14.1 This Agreement is personal to the parties and no party shall assign, transfer, subcontract or deal in

any other manner with any of its rights and obligations under this Agreement without the prior written consent of the Council. Each party hereby undertakes and represents to the other parties that it is entering into this Agreement only for its own benefit.

14.2 This Agreement shall be binding on and shall endure for the benefit of each party's successors.

## **15 WAIVERS AND CONSENTS**

15.1 A waiver of any right or remedy under this Agreement or by Law, or any consent given under this Agreement, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

15.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this Agreement. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this Agreement by the Council shall be effective unless it is in writing.

## **16 RIGHTS AND REMEDIES**

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

## **17 SEVERANCE**

If any provision (or part of a provision) of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this Agreement.

## **18 COUNTERPARTS**

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

## **19 THIRD PARTY RIGHTS**

Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## **20 NOTICES**

### **20.1 Delivery**

Any notice or other communication required to be given to a party under or in connection with this Agreement shall be:

- 20.1.1 in writing;
- 20.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by electronic mail; and

20.1.3 sent to:

- (a) the Council at:  
Civic Centre  
Victoria Avenue  
Southend-on-Sea  
Essex  
SS2 6ER  
Email: [...]  
Attention: [...]
- (b) the Company at:  
Civic Centre  
Victoria Avenue  
Southend-on-Sea  
Essex  
SS2 6ER  
Email: [...]  
Attention: [...]

or to any other address or email address as is notified in writing by one party to the other from time to time.

## 20.2 **Receipt**

Any notice or other communication shall be deemed to have been received:

- 20.2.1 if delivered by hand, at the time it is left at the relevant address;
- 20.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and
- 20.2.3 if sent by electronic mail, upon receipt by the party to which it is given.

A notice or other communication given as described in clause 20.2.1 or clause 20.2.2 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

## 20.3 **Receipt by Council**

Any notice or other communication given to the Council shall be deemed to have been received only on actual receipt.

## 21 **ENTIRE AGREEMENT**

- 21.1 This Agreement and the documents referred to in it (including the Articles and any Deed of Adherence) constitute the entire agreement between the parties relating to its/their subject matter and supersede

all previous agreements between the parties relating to such matters.

21.2 Each of the parties acknowledges that in agreeing to enter into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement and/or the documents referred to in it) made by or on behalf of any other party before the signature of this Agreement. Each of the parties waives:

21.2.1 all rights and remedies which, but for this clause 21.2, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance; and

21.2.2 all rights and remedies, other than remedies for breach of contract available in respect of a breach of this Agreement and/or the documents referred to in it, which, but for this clause 21.2, might otherwise be available to it in respect of the falsity of any representation or warranty set out in this Agreement and/or the documents referred to in it,

provided that nothing in this clause 21.2 shall limit or exclude any liability for fraud or dishonesty on the part of any party.

## **22 VARIATION**

No variation to the terms of this Agreement shall be effective unless made in writing and signed by each of the parties and any person who agrees to be bound by this Agreement.

## **23 CONFLICT WITH THE ARTICLES**

If any provision of this Agreement is inconsistent with a provision of the Articles of the Company, then the terms of this Agreement shall prevail and the member(s) of the Company agree to procure the making of any amendment to the Company's Articles as soon as reasonably practicable which is required in order to make the Articles consistent with the provisions of this Agreement and the Council hereby consents to any such changes to the Company's Articles.

## **24 COSTS AND EXPENSES**

All costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement and all other documents referred to in it shall be borne by the Council, save for any private advice sought by any party which shall be for the cost of that party.

## **25 SET-OFF**

All amounts falling due under this Agreement shall be paid in full without any set-off or counterclaim.

## **26 NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties or any of them, or to authorise any party to act as agent for any other party, and no party shall have authority to act in the name or on behalf of or otherwise to bind any other party in any way.

## **27 GOVERNING LAW AND JURISDICTION**

27.1 This Agreement is governed by and shall be construed in accordance with the laws of England and each party submits to the exclusive jurisdiction of the courts of England for all purposes relating to this Agreement.

This Agreement has been executed as a deed and has been entered into on the date stated at the beginning of it.

**AS WITNESS** the hands of the parties or their duly authorised representatives the day and year first before written

Executed as a deed by affixing ) Seal  
the common seal of )  
**SOUTHEND-ON-SEA CITY COUNCIL** )

)  
in the presence of )  
)  
..... )  
Authorised signatory )

Executed as a deed by )  
**SOUTHEND CARE LTD** )

acting by....., )  
a director, in the presence of ) **Director**

Signature: .....

Name of witness: .....

Address: .....

Occupation of witness:

## SCHEDULE 1 – RESERVED MATTERS

Insofar as a matter is a Reserved Matter relating to the Company, the Company shall not make any decision in relation to, or undertake, that Reserved Matter except with the prior written consent of the Council.

Number	Reserved Matter
<b>Changes to the Company</b>	
1.	Varying in any respect the articles or the rights attaching to any of the shares or memberships (as applicable) in the Company.
2.	Participating in any partnership or joint venture vehicle (incorporated or not).
3.	Passing any resolution for its winding up or presenting any petition for its administration (unless it has become insolvent).
4.	Amalgamating or merging with any other company or business undertaking.
5.	Changing a Company's registered office.
6.	Changing a Company's name.
7.	A change in the status of the Company from a limited company to a public limited company or from a company limited by shares to any other form of legal entity.
<b>Shares and Capital of the Company</b>	
8.	Apply for the listing or trading of any shares in its issued capital or debt securities on any stock exchange or market (where applicable).
9.	Permitting the registration of any additional shareholder of the Company.
10.	Forming any subsidiary or acquiring shares in any other company or participating in any partnership or joint venture (incorporated or not).
11.	Increasing, reducing, sub-dividing, consolidating, re-denominating, cancelling, purchasing or redeeming any of the capital of, or allotting or issuing of shares or other securities in the capital of the Company.
12.	Altering any rights attaching to any class of share in the capital of the Company, or creating any option, warrant or any other right to acquire or subscribe for any shares or other securities in the capital of the Company.
<b>Indebtedness</b>	
13.	Approval of the Company indebtedness save for trade credit in the normal course of business.
<b>Board of Directors</b>	
14.	Approval of the appointment and appointment terms (including remuneration on appointment) of the Board of Directors following a recruitment process jointly with the Company
15.	Agreeing to the removal of any non-executive Director of the Company.
16.	Approval of the appointment and appointment terms (including remuneration on appointment) of the role of Managing Director or comparable role following a recruitment process jointly with the Company'
	Entering into or varying any contract of employment providing for the payment of remuneration (including pension and other benefits) of staff in excess of a rate of £100,000 per annum or



Number	Reserved Matter
17.	increasing the remuneration of staff (including pension and other benefits) to a rate in excess of £100,000 per annum. For the avoidance of doubt, prior written Council consent is not required for annual inflationary remuneration increases.
18.	Approval to remunerate any person who is an employee, officer, or Councillor of the Council.
19.	The devolution or transfer of management control of the LATC to persons outside the Board of Directors, and if approved, the terms of such devolution.
<b>Business Plan, Budget, Projects and Policies</b>	
20.	Adopting or amending a Business Plan and budget in respect of a Financial Year.
21.	Approval to enter into any contract under which the total consideration is greater than £250,000.
22.	Approval to enter into a contract for new work with a value in excess of £250,000.
23.	Approval or projects that do not form part of the Business Plan.
24.	Approval of the Company's code of conduct for employees and directors.
25.	Approval of the Company's Financial Regulations.
26.	Approval of the Company's following policies: <ul style="list-style-type: none"> <li>• Risk management</li> <li>• Anti-money laundering</li> <li>• Procurement</li> <li>• Anti-fraud and corruption</li> <li>• Anti-Bribery.</li> </ul>
27.	Undertaking any business or action which is inconsistent with the Business Plan then in force or omitting to undertake any action which is required by that Business Plan except with the prior written consent of the Council

**SCHEDULE 2 - – LETTER OF APPOINTMENT OF A NOMINATED DIRECTOR**

[on the headed notepaper of the Company]

To: [Name and address of Nominated Director]

[Date]

Dear ●

● Limited (the **Company**)

This letter contains the terms which we have discussed and agreed for your appointment as a director of the Company, as [a][the] Nominated Director of Southend-on-Sea Borough Council (the **Council**). Your appointment is made pursuant to and is subject to the terms and conditions set in the Sole Shareholder's Agreement dated ● (**Agreement**).

You shall not be entitled to any fees or remuneration save as paid to you by your appointer or as otherwise expressly agreed in writing.

You shall be expected to attend Board meetings and general meetings (where requested) of the Company. You shall receive details of all such meetings in advance.

You shall not, whether during the appointment or after its termination, except in the proper course of your duties or as required by law, use or divulge, and shall use all reasonable endeavours to prevent the use or disclosure of, any trade or business secrets or any information concerning the business or finances of the Company or of any dealings, transactions, or affairs of the Company or any client, customer or supplier of the Company which comes to your knowledge during the course of this appointment and shall comply with the provisions of clause 13.7 (*Confidentiality*) of the Agreement as if it applied to you. You shall, however, be entitled to disclose information to the shareholder appointing you as permitted under the Agreement.

The appointment shall automatically cease in relation to the Company in the event that: (a) you resign as a director; or (b) upon the delivery of a notice from the Council in accordance with the Company's Articles of Association removing you from office in relation to the Company. Without limitation to (a) and (b) above, in signing this letter, you acknowledge that your office is subject to the terms of the Agreement and the Company's Articles of Association and may be determined as permitted under the terms of the Agreement and the Articles and that upon such termination you shall vacate office in relation to the Company forthwith without raising any claim whatsoever against the Company.

On termination of your appointment, you agree that you shall promptly return to the Company all papers and property of the Company which are in your possession or under your control.

Please indicate your acceptance and acknowledgement of these terms by signing the attached copy and returning it to me. I look forward to seeing you at our next Board meeting.

Yours sincerely

.....  
Signatory, duly authorised  
for and on behalf of the Company

I agree to and acknowledge the terms and conditions set out above relating to my appointment as director of the Company.

Signed .....

Dated .....

**SCHEDULE 3 – DEED OF ADHERENCE**

**THIS DEED** is made on

BY ● of ● (company number ●) whose registered office is at (company address) (the **Covenantor**) in favour of the persons whose names are set out in the schedule to this deed and is supplemental to the Group Shareholder Agreement dated ● made by (1) Southend-on-Sea City Council, (2) Southend Care Ltd ● and (3) ● (the **Agreement**)

**THIS DEED WITNESSES** as follows:

- 1 The Covenantor confirms that it has been given and read a copy of the Agreement and covenants with each person named in the schedule to this deed to perform and be bound by all the terms of the Agreement and to perform the obligations contained in the Agreement which are expressed to be performed by a [Company] (as defined in the Agreement), as if the Covenantor were a party to the Agreement.
- 2 This deed is governed by the laws of England and Wales.

**IN WITNESS WHEREOF** this deed has been executed by the Covenantor and is intended to be and is hereby delivered on the date first above written.

**[Insert correct execution block]**

Executed as a deed by )  
● )  
acting by a director and a director/ ) .....  
Secretary ) **Director**  
 )  
 ) .....  
 ) **Director/Secretary**

SCHEDULE – List of parties to Shareholder's Agreement including those who have executed earlier deeds of adherence