

Meeting of:	Cabinet
Date of Meeting:	Monday, 18 November 2019
Relevant Scrutiny Committee:	Learning and Culture
Report Title:	Reshaping Services - Catering Project Update
Purpose of Report:	To provide Cabinet with an update regarding the Reshaping Services Catering Project and the proposal to establish a new wholly owned local authority trading company ('LATC'), specifically the progress made following on from Year 1 of the Commercial Business Plan, including progress against the actions taken, any changes required to the underpinning assumptions and further to set out proposals relating to the governance of the company.
Report Owner:	Cabinet Member for Education and Regeneration
Responsible Officer:	Paula Ham, Director of Learning and Skills
Elected Member and Officer Consultation:	Trevor Baker, Head of Strategy, Community Learning and Resources
Policy Framework:	This is a matter for Executive decision by the Cabinet
<p>Executive Summary:</p> <p>In April 2017, Cabinet agreed the proposal and implementation of the Vale of Glamorgan's first Local Authority Trading Company (Minute C3547). Delegated authority was granted to the Director of Learning and Skills, in conjunction with the Cabinet Member for Regeneration and Education to:</p> <ul style="list-style-type: none"> • Undertake the necessary consultation and engagement activity as described in the report; • Respond as appropriate to any points raised as part of the engagement and consultation process; • Report back to Cabinet any material changes to the proposals resulting from the consultation process; and • Progress the implementation of the proposals following conclusion of all necessary consultation and engagement activity. <p>This report and associated appendices provide the final update prior to the creation of 'The Big Fresh Catering Company' from 1st January 2020 aimed at transforming the way services are delivered to meet increasing financial pressures following years of austerity.</p>	

As the Council's first Local Authority Trading Company (LATC), The Big Fresh Catering Company will provide delicious, innovative food services for schools, business and events. All profits generated will be invested straight back into schools which use the service.

Following a reduction in budget of £460k since 2015, as an LATC, The Big Fresh Catering Company would become self-sustaining, removing the requirement for the remaining subsidy of £150k from the Council, while simultaneously establishing new income streams ensuring sustainability of the service and its staff, and enhancing the offer available to our schools and pupils.

The Big Fresh Catering Company will operate a service delivery model based on 4 key areas: Free School Meal Entitlement, School Meals (paid for meals), Miscellaneous Income (grants and awards) and Traded Income.

In addition to enhancing services to schools, the establishment of the Big Fresh Catering Company will enable the service to become self-sustaining, thus removing the Council's existing liability of the services revenue budget of £150k per annum, further contributing to the Reshaping Services programme.

The financial appraisal can be found in the relevant section of this report and is outlined in the appended Commercial Business Plan in greater detail and highlights a reduction of the Council's subsidy from £150k to £48,548 in 2019/20, and then generating a profit of (£13,762) in 20/21 and (£138,138) in 2021/22, eliminating any future subsidy from the Council.

Recommendations

- 1.** That Cabinet note the contents of this report and appendices which provide an update on the Reshaping Services Catering Project.
- 2.** That this report be considered in connection with the Commercial Business Plan included with the associated Part II report later in the agenda.
- 3.** That Cabinet agree to proceed with the transfer of services to a Local Authority Trading Company (LATC), wholly owned by the Council, and to begin operation from 1 January 2020.
- 4.** That Cabinet notes the establishment of a Shareholder Committee comprising the Council's Managing Director in his capacity as Director of Resources and the Cabinet Member for Education and Regeneration who will represent the Council as the shareholder of the company and who will be advised by a Shareholder Advisory Panel, consisting Council Officers.
- 5.** That Cabinet agrees that the Council should provide indemnities pursuant to the Local Authorities (Indemnities for Members and Officers) Order 2004 in relation to any financial/other liabilities arising for Councillors and Officers as follows:
 - Councillors and senior officers acting in good faith, working outside the Council as an authorised representative of the Council in respect of the wholly owned LATC in respect of acts or defaults covered by the Order;
 - Councillors and Officers' liabilities and legal costs in defending any claim brought against them for acting in good faith but outside the powers of the Council in relation to the wholly owned LATC will be indemnified in appropriate circumstances which will be considered on a case by case basis should the liability arise.
- 6.** The Cabinet agree that all indemnities are subject to the following provisions:
 - The indemnity will apply retrospectively to any act or failure to act which may have occurred before the date the indemnity was approved and shall continue to apply after the councillor, officer or other member has ceased to be a councillor, officer or other member of the Council as well as during his/her membership of or employment by the Council.
 - The indemnity shall only extend to actual loss and expense incurred. The indemnity does not cover any loss or expense for which the councillor, officer or other member can obtain re-imburement from any other source, including insurance whether taken out by the Council, councillor or officer, or by any other person or organisation;
 - Any application for an indemnity received from a Member or officer should be processed in accordance with the Council's procedures.
- 7.** That the Director of Learning and Skills be authorised, in consultation with the Leader of the Council, the Cabinet Member with portfolio responsibility for

Education and Regeneration, the Council's Monitoring Officer, and the Section 151 Officer to approve:-

- the Articles of Association Appendix 1 for the LATC, and the size and composition of its Board of Directors;
 - the Catering Services Agreement Appendix 2 between the Vale of Glamorgan Council and the LATC; and
 - such other documents as may be necessary to govern the LATC and to manage the relationship between the Council and the LATC.
8. That delegated authority be granted to the Council's Section 151/Head of Finance, in consultation with the Leader of the Council and Cabinet Member for Resources, the Council's Monitoring Officer and the Director of Learning and Skills to authorise future provision to the LATC compliant with state aid.
 9. That the report be referred to Council to make the necessary constitutional changes to establish the role of the Shareholder Committee.

Reasons for Recommendations

1. To ensure that Cabinet are satisfied that all necessary work has been undertaken to enable the Local Authority Trading Company to begin trading for the provision of Catering Services.
2. To ensure approval from Cabinet of the Commercial Business Plan in compliance with the Local Government (Best Value Authorities) (Power to Trade) Order 2009, and to allow the Part I and II reports to be considered together.
3. To ensure Cabinet are satisfied with the updates provided prior to the transfer of services to an LATC for the delivery of the Council's catering services from 1 January 2020.
4. To ensure appropriate governance arrangements are established.
5. In exercise of the Local Authorities powers to grant indemnities (subject to restrictions set out in Regulations) to cover the potential liability of Councillors and Officers involved in the LATC.
6. To ensure that in exercising the Local Authorities powers to grant indemnities that restrictions set out in legal Regulations are adhered to.
7. To progress the establishment of the LATC and associated service level agreements and such other agreements necessary to govern the LATC.
8. To authorise the Council's Section 151 Officer/Head of Finance, in consultation with the Leader and Cabinet Member for Resources, the Monitoring Officer, and the Director of Learning and Skills to make future provision to the LATC which is state aid compliant and which is subject to the prior written consent of the Controlling Shareholder.

9. To amend the Council's Constitution to reflect the establishment of the role and terms of reference of the Shareholder Committee.

1. Background

- 1.1 Over the last 9 years the Vale of Glamorgan Council has achieved over £55 million in savings in response to a challenging era of austerity. Demand for services and expectations of service have increased.
- 1.2 Business as usual, no matter how well managed, is no longer enough. In order to continue, statutory services are now in a position where a fundamental shift to their operating models, culture and infrastructure are a necessity to ensure their survival. Change cannot be done in isolation and innovation cannot be facilitated by small incremental changes.
- 1.3 The Catering Service was identified as a Tranche 1 project as part of the Council's Reshaping Services Programme with total required savings of £347k. All savings were achieved in October 2015 through cost-saving measures and the principle aim of the project then changed to focus on the sustainability of services for the future in light of reduced budgets.
- 1.4 A further £113k has been sought in contributing to the Council's savings targets, and through lean process efficiencies as part of the Reshaping Services programme. The total reduction in budget for this service over the last four years is therefore £460k.
- 1.5 Similar to many other Local Authorities, the Vale of Glamorgan Council is seeking to provide services on a commercial basis, where appropriate. The Council is facing unprecedented financial pressures and further savings need to be found at this time of austerity. In response to this, the Council launched its Reshaping Services programme, leveraging a mixed economy model to ensure services can continue where possible, and are fit for purpose in meeting the needs of citizens.
- 1.6 In addition to exploring alternative models of service delivery, income generation is being considered and is consistent with the aim and objectives of the Reshaping Services Programme.
- 1.7 The Council's Income Generation and Commercial Opportunities strategy was established to support consistency across the Council in its approach to income generation and commercial opportunities, and to enable opportunities to generate income to offset the cost of services. When reviewing the Catering Service as a project, three key objectives were set in respect of:
 - identifying and implementing the most suitable service delivery model for the Catering Service;
 - creating an efficient service that is able to adapt to future financial challenges; and
 - to capture opportunities to increase uptake and promote healthy school meals, and to explore commercial opportunities.

- 1.8** In April 2017, Cabinet approved an outline business plan which was based upon the proposed creation of a Local Authority Trading Company (LATC), which is an independent company wholly owned by the Local Authority for the delivery of Catering Services.
- 1.9** An LATC has the freedom to trade for profit in the market however it receives its overall directions from the Council. This model was deemed to be the most sustainable, following a robust options appraisal which evaluated a range of options for the future of the Catering Service to meet the above objectives. The Cabinet Report containing the original Business Plans and Options Appraisal, is contained in the background papers to this report as reference.
- 1.10** Under the LATC model, profits can be generated from both the public and private sector, increasing the target market from tens to hundreds of thousands. These profits would be reinvested into schools thereby releasing some of the financial burden from schools and neutralising the need for a subsidy from the Council.
- 1.11** It was recommended that the proposals be subject to scrutiny by the Learning and Culture Scrutiny Committee and Corporate Performance and Resources Scrutiny Committee respectively. Following unanimous support from the respective Committees, it was subsequently resolved by Cabinet that a Local Authority Trading Company should be created from April 2019. It was also resolved by Cabinet that a further report be brought to Cabinet in 2018 to provide an update regarding the progress made following on from Year 1 of the Business Plan.
- 1.12** On 3 September 2018, an update report was presented to Cabinet which included detail on progress made against the actions taken, any changes required to the underpinning assumptions and outlined proposals relating to governance of the company and next steps. The Cabinet Report from 3 September 2018, is contained in the background papers to this report for reference. At that meeting it was recommended that a further update be brought to Cabinet prior to the launch of the LATC, to provide a final update on the progress.
- 1.13** As part of the recommendations, the report was also referred to the Learning & Culture Scrutiny Committee for discussion on 18 October 2018. Members noted the progress to date and requested the committee continue to be updated on progress. This has been incorporated into the proposed governance structure outlined elsewhere in this report.
- 1.14** Changes required to enable the Council's first LATC are dependent on enablers from within the Learning and Skills directorate, as well as other areas of the Council and externally. The scale of change, resource implications, and lead times on external organisations have necessitated a delay to ensure appropriate due diligence prior to the proposal being considered by Cabinet.
- 1.15** This report therefore serves as the final update on progress since September 2018 and presents to Cabinet an updated Commercial Business Plan and recommends the creation of "The Big Fresh Catering Company", the Vale of Glamorgan's first Local Authority Trading Company, from 1st January 2020.

2. Key Issues for Consideration

Progress Update since September 2018

- 2.1** The LATC would be the outcome of significant deliverables from Tranche 1 of the Vale of Glamorgan's Reshaping Services programme, aimed at transforming the way services are delivered to meet increasing financial pressures following years of austerity. The LATC has been branded as The Big Fresh Catering Company.
- 2.2** As the Council's first Local Authority Trading Company, The Big Fresh Catering Company would provide delicious, innovative food services for schools, business and events. The service is driven by a Big Fresh initiative where all profits generated from our corporate and private business are invested straight back into the schools we work with.
- 2.3** As an LATC, The Big Fresh Catering Company would be self-sustaining, removing the requirement for a subsidy from the Council of £150k annually, while simultaneously establishing new income streams to generate profit to be reinvested into the company and its core service users: **schools**.
- 2.4** The Big Fresh Catering Company would operate a service delivery model based on 4 key areas:
- Free School Meal Entitlement
 - School Meals (paid for meals)
 - Miscellaneous Income (grants and awards)
 - Traded Income
- 2.5** As outlined above, the service has historically made significant savings, however the sustainability of the service necessitated a review of its operating structure, and the scale of change introduced the opportunity of establishing a Local Authority Trading Company. This model operates as a separate legal entity, wholly owned by the Council, but enabling an agile approach to service delivery on behalf of the Council.
- 2.6** The LATC model offers a number of advantages. The key ones relevant to delivering catering services include:
- The ability to trade outside of schools, in both public and private sectors, to generate profits up to 20% of turnover, currently valued at over £800k, annually.
 - Profits from this income can be reinvested into the service and core service users (schools) releasing the Council from its current subsidy of £150k into the service.
 - Freedom to procure outside of nationally agreed frameworks enabling food to be sourced locally, more sustainably and more affordably.
 - A change in culture creating a more agile approach to service delivery infrastructure.
 - Fundamentally, ensuring that we can support learning and development in schools by supplying healthy, vibrant and fresh meals, making a real difference to those who are eligible for free school meals. For some pupils, this is their only healthy meal of the day.

- 2.7** The Commercial Business Plan sets out how the core business is, and will always remain, about service to schools. Any profits generated through 'Teckal' trading will be invested into schools and the school meal service. The Commercial Business Plan deals fully with the Council's own position in respect of the company and the tight controls in place to protect the Council.
- 2.8** Significant engagement with parents, pupils, school based staff and commercial market research has been conducted, with new services being piloted across a number of schools. Sustainability and scalability of this increase and the diversification of options to be made available to schools will be reliant on the flexibility of trading as an LATC. Overall the schools worked with have recorded an average increase of 15% uptake of hot and choice meals.
- 2.9** Engagement with relevant Trade Unions has continued to ensure they are well equipped to support their members during the transition to the new model. A firm commitment has been made in this regard with no plans to deviate from this.
- 2.10** The implementation date for the creation of The Big Fresh Catering Company has been reviewed and it is proposed that the LATC starts trading on the 1st January 2020. This date has ensured that all appropriate due diligence from a financial, logistical, operational, legal and technical perspective could be completed prior to a final determination being made.
- 2.11** In order to facilitate cultural change a number of communication, engagement and training activities for catering staff have taken place over the period of this project and further sessions are planned. This included:
- A Commercial Awareness training course was rolled out to all catering staff during October 2018 to promote commerciality by challenging existing beliefs, fine tuning skills to better 'sell' the service, improving commercial awareness and planning for the future. The training has been well received by catering staff and has improved commercial acumen amongst staff.
 - Continued engagement with staff has taken place in relation to the company ethos and logo, which has been well attended and has ensured involvement and continued communication with staff.
- 2.12** A local Michelin starred chef has agreed to be involved with the Company when it starts trading. The bespoke Articles of Association provide for the appointment by the Shareholder Committee of an Expert Director who will greatly benefit the commercial opportunities available to the company.
- 2.13** The chef has agreed to be involved in enhancing some of the dishes on the menu as well as the creation of new dishes with the catering team, hosting school chefs within the restaurant to further enhance skill sets, work with pupils and staff to gain interest in their healthy diets and work with the catering team around holiday hunger issues within the Vale of Glamorgan.
- 2.14** A new website and brand identity has been developed. All marketing, menus and website information and content provided to schools and the general public will be presented bilingually.

- 2.15** A cultural shift in the relationship between Headteachers, school staff, the Council and the catering service has progressed well and will be required to continue to foster and maintain the co-operative ethos going forward.
- 2.16** In order to progress research and development of new products and recipes for the school meals service and the commercial trading arm of The Big Fresh Catering Company, one of the secondary schools will be identified as the R&D kitchen for this work to take place.
- 2.17** In response to parental and school feedback, and to provide flexibility, the catering service has rolled out a new till system, CYPAD, in all primary schools. This system replaces NRS and is cloud based. The system runs on 4G and integrates with ParentPay allowing parents to choose whether to select meals on the child's behalf at the time of payment or allow the child to select meals in school (using classroom interactive whiteboard and avatars through which children can gain 'badges' for healthy choices). It is thought this could encourage meal uptake as interaction from the pupils at registration is proving extremely popular and they are able to see photographs of the food that will be on offer during lunchtime so they know what to expect. The introduction of the system also helps to reduce paper in kitchens as all submissions are processed online. It could also potentially reduce food waste as children are more engaged in choosing their meal. To date, this has led to a financial saving of £2,800 and staff time saving of 35 days per annum. As more information is produced online this will automatically lead to further savings in the future. This approach is reflective of the company's commitment to agile working and responding to customer need.
- 2.18** The Big Fresh Catering Company model includes strategies for a mobile food service (food truck), events buffet service, profitable vending provision, and a bricks and mortar café. Details of these market opportunities and potential income are included below.

Mobile Food Provision

- 2.19** The Council's catering service owns a mobile food truck. The provision of food served from the mobile food truck is for the benefit of schools however market research undertaken clearly shows commercial opportunities exist to begin public trading following the establishment of the LATC. The mobile food truck will be leased to the Big Fresh Catering Company and will be rebranded as The Big Fresh Airstream.
- 2.20** The Big Fresh AirStream will sell a number of dishes and craft beverages out of its mobile kitchen. Trade will be conducted at a variety of venues including weekly and specialty markets, music festivals, food festivals and street food collectives. A number of street food opportunities to trade at events within the immediate area are available. A financial breakdown and sample menu is included in the Commercial Business Plan.
- 2.21** No additional management outside of the Big Fresh Catering leadership team would be required. Core staff could be used to operate the mobile food service on a separate contract (given the variation in duties requiring a new post) in

conjunction with dedicated part-time staff to cover core schools service hours during term time. It is intended that the Big Fresh AirStream be utilised throughout the year and be located at as many events as possible. The possibility of additional staff will be incorporated into the service as this progresses, funded by the profits of the service and not subsidised by schools.

Buffet Service

- 2.22** The existing catering service has a wealth of experience, and currently provides both bespoke and pre-planned buffet services to schools or corporate services upon request. Under the LATC, this provision is to be expanded to external companies, private events or parties, with an enhanced focus on customer service.
- 2.23** No staff costs have been identified as it is anticipated that these will be met within existing school-based resources and via Area Managers working within their school clusters. As the company progresses and may provide evening or weekend buffets then the staff costs would be reviewed and reflected in the buffet price to clients on a full cost recovery basis. Area Managers will be available to respond to buffet requests during school holiday periods. The buffet service will be marketed to local businesses and private functions in order to maximise income. Financial assumptions and sample menus are provided within the Commercial Business Plan.

Vending

- 2.24** The LATC recognises the value of providing a vending provision, and proposes commissioning a fully managed vending service via our corporate partner.
- 2.25** An agreement in principle has been negotiated, subject to incorporation of the LATC, that corporate partner will incur all costs associated with investment in equipment, maintenance, stock, branding and marketing and any vending associated services enabling a zero-cost provision for the LATC.
- 2.26** Under this model, profits above a given threshold are paid out to The Big Fresh Catering Company. Early piloting within The Vale of Glamorgan Civic Offices under existing agreements have demonstrated a forecasted income of approximately £1,000 per annum – at no cost to the Council.

Future Commercial Opportunities

- 2.27** There are also a number of additional business opportunities available under the advantages the LATC model provides for The Big Fresh Catering Company to consider as part of its long-term financial plan. These include, but are not limited to, a permanent concession stand or café, cooking club/wrap around care for school children (paid additional breakfast club hours and after school club), widening access through flexible payment options for single parents/parents with multiple dependents or vulnerable families, utilisation of unspent free school meal money for homework clubs including food provision and paid holiday clubs.
- 2.28** Consideration is also being given as to how the service could be linked to the Council's events and wedding services. The food truck will form a key part of the

company's external trading activities, alongside an events buffet service, profitable vending provision, and a bricks and mortar café.

- 2.29** A number of other leads and potential opportunities continue to be identified by the Council's Income Generation and Commercial Opportunities Board.

Added Value for Education & School Considerations

- 2.30** Headteachers have been engaged from the outset and continue to receive updates through regular cluster meetings on project progress. Headteachers continue to indicate that value for money and the finest meal offering to the pupils is their main priority for the future delivery of the service.
- 2.31** As set out in the Commercial Business Plan, it is proposed the company will operate with a "co-operative ethos". The company's customers will be involved in decision making with the proposal that there will be Headteacher representation on the Board of Directors from both Primary and Secondary schools. This is reflected in the proposed Articles of Association for The Big Fresh Catering Company.
- 2.32** Schools have indicated a desire to further incorporate meal service provision into the curriculum, by providing students with alternative learning experiences, apprenticeship schemes, and leveraging the expertise of industry experts as outlined above.
- 2.33** Opportunities via the LATC would also provide the ability for school-linked clubs to generate additional income under a profit-sharing model (with the schools being the beneficiary). This presents new income opportunities for PTA fundraising, for example, and offers a unique feature to draw in additional participants at events.
- 2.34** A stakeholder group comprising members of the Project Team and Headteachers from all three areas of the Vale of Glamorgan, met in June 2018, October 2018 and July 2019 to discuss project progress and a draft service catalogue was produced to outline services to be offered by the LATC.

Statutory Requirements and Responsibilities – school meal provision

- 2.35** The Healthy Eating in Schools (Nutritional Standards & Requirements) (Wales) Regulations 2013 ('The Regulations') aim to make the food and drink provision throughout the school day healthier. The Regulations came into force on 2 September 2013 and applies to all maintained settings.
- 2.36** Schools/governing bodies must be able to produce evidence to the Local Authority, Estyn and Welsh Government on their adherence to statutory regulations and provide evidence of sound financial management related to school meals.
- 2.37** School meal funding is delegated to schools within the Vale of Glamorgan area, and as such, schools have the ability to opt out of local authority catering, those who choose to do so should be able to demonstrate that their food provision meets the standards within the Regulations. In order to do this, local authorities

and schools will need to plan their menus in advance and nutritionally analyse the lunch provision.

- 2.38** For schools that have their catering services provided by the local authority, or a provider on their behalf such as The Big Fresh Catering Company, nutritional analysis will be undertaken on behalf of the school for any menu, including those which include bespoke options.
- 2.39** For schools which choose to manage their own catering service and who plan their own menus, develop their own recipes and determines what food and drink is provided during the school day, the school together with the governing body will need to take responsibility for the calculation of the nutrient content of an average school lunch (e.g. in-house catering provision) and providing this data to meet statutory and local audit requirements.
- 2.40** Schools that contract out their catering service to a third-party external provider are responsible together with the governing body for assessing the extent to which the food and drink provision meets the regulations and local audit requirements and may want to specify that nutritional analysis is undertaken as part of the provider's contract.
- 2.41** There is naturally a cost for the provision of catering in every school. Part of the provision is statutory and therefore the Local Authority/Schools are required to provide this (it does not have to be a hot service). The functions associated with the catering provision are:
- Management of salaries - provision of operational arrangements for the service, financial accounting, procurement of goods and services, legislative training, helpdesk, control of asset information, management of EHO.
 - Staffing salaries – kitchen-based staff, peripatetic staff, supervisory and monitoring staff.
 - Overheads – payroll, HR, finance, ICT, property, insurance and legal services.
 - Food costs.
 - Operational costs – G4S, cleaning materials, stationery, cashless catering system, light equipment, uniforms, telephones, pool car charges, training, transaction charges for ParentPay.

Operational Developments

- 2.42** The Council's Income Generation and Commercial Opportunities Programme Board continues to meet on a monthly basis to consider and prioritise commercial opportunities across the authority of which the Catering Project forms part of the programme of work. The development of the LATC has been a standing item for discussion with regular updates having been provided. It should be noted that one of the objectives of the LATC is that all profits will be reinvested to develop the company and the schools that use the service, rather than generating income for the Council. As the Council intends to establish the LATC as a "Teckal" company, in accordance with the requirements of the Public Contracts Regulations 2015 ('PCR15') this will enable the Council to enter into

public contracts directly with the LATC, without the need for prior procurement under the PCR15. It is intended that the company will become self-sufficient by trading up to 20% of its turnover in the market. Further information is provided later in this report regarding the LATC structure.

- 2.43** The company name 'Big Fresh Catering Company' has been registered with Companies House to ensure the work done to-date on branding can be maintained should the Cabinet agree the recommendations, and to enable continued development of back-office systems, and banking services, and further processes which required a company registration number. The incorporation of the company for the purpose of registering the name only (a company name cannot be the same as another registered company name) has no consequence for the Council and does not pre-empt the Cabinet's decision. The company does not commence trading until the establishment of the Council's shareholder committee, and the appointment by them of the company's directors, including the employment transfer of the Executive Director and her staff, all of which follow any Cabinet decision. The company as incorporated can be dissolved with no consequence to the Council should it be decided not to progress this proposal. No assets or, staff transfer or agreements entered into prior to any formal decision being made by the Cabinet.
- 2.44** The project team comprising representatives from Learning & Skills, Legal, Human Resources, ICT, Property, Finance and Business Improvement continue to meet on a monthly basis to monitor progress of the project including the setting-up of the Big Fresh Catering Company. These meetings are documented with discussion points and actions for the following months meeting.
- 2.45** The team continue to work in line with the project's implementation plan which is updated regularly and documents the progress made. All actions necessary to the launch of the company have now been completed.
- 2.46** It is envisaged the project team will continue to meet for a period following the launch of the company to ensure that any issues arising are dealt with.
- 2.47** The Council's Internal Audit Team has undertaken an audit in order to provide assurances as to the overall governance arrangements of the Local Authority Trading Company and to deliver reasonable assurance to the Authority and the LATC on the adequacy of the internal control environment. This was undertaken prior to the launch of the Big Fresh Catering Company
- 2.48** Whilst a number of strengths and areas of good practice were identified, a limited assurance opinion was given due to a number recommendations that needed to be addressed as part of the initial setting up of the company. An action plan has been developed and further engagement with audit will be conducted leading up to and following the establishment of the LATC to consider progress and any future considerations.
- 2.49** The Council's external auditors, the Welsh Audit Office have been updated on a periodic basis.

The Structure of the LATC

- 2.50** The structure of the LATC will be a company limited by ordinary shares in which the Council will be the sole shareholder. The Council could provide funding to the LATC of up to €200,000 (Euro) over three rolling years, subject to compliance with certain other formalities, in reliance on the European Commission's de minimis Regulation (i.e. State Aid). The aim of the LATC is to negate any requirement for future subsidy from the Council, and it is projected that this will be realised in the third year of trading.
- 2.51** Further, to avoid any illegal state aid, provision will be made in the catering services agreement to ensure that use of accommodation and assets and any loan facilities made available to the LATC will be made on a transparent basis commensurate with prevailing market conditions.
- 2.52** A comprehensive Commercial Business Plan referred to elsewhere in this report will be reviewed on an annual basis and referred to the Shareholder Committee for approval. The Commercial Business Plan will be developed to include financial modelling and assumptions; outlining any tax and accounting implications for the LATC as well as a financial appraisal that will assess the financial implications for the Council going forward beyond Year 1 of trading. The LATC will be subject to Corporation Tax (see later in this report) on any profits made resulting from its activities.
- 2.53** The LATC will be able to rely on the Teckal exemption to procure services and works between parties without the need for OJEU procurement. Teckal (a European legal case codified in Regulation 12 of the Public Procurement Regulation 2015) allows a public authority to procure directly from an external company in which it has control, similar to obtaining services from its own departments, so that the requirement for open advertisement and tendering for public contracts, in accordance with the regulations does not apply.
- 2.54** The LATC will only be able to trade up to 20% of turnover annually in services that have not been entrusted to it by the Council externally i.e. 80% of annual turnover must be traded with the Council for its core business - school meals.

Proposed Governance Arrangements

- 2.55** The Council will be the sole shareholder. As the Controlling Shareholder it will need to appoint company directors to the LATC. The Shareholder Committee will appoint the Company Managing Director, the Council Councillor, Council Officer and Expert Director, and shall be entitled to remove the Council Councillor, Council Officer, and Expert Director from the shareholder committee in accordance with the proposed Articles of Association.
- 2.56** The LATC will have an initial shareholding of one share with a nominal value of £1.
- 2.57** The LATC will be governed by the following documents; Articles of Association, Catering Services Agreement, Commercial Business Plan, and operational policies which are considered necessary, including amongst others an agreement between the Council and the LATC regarding payroll and reimbursement of payroll, policies relating to Data Protection, Risk Management, Health and Safety, Financial Regulations, and Procurement Policy.

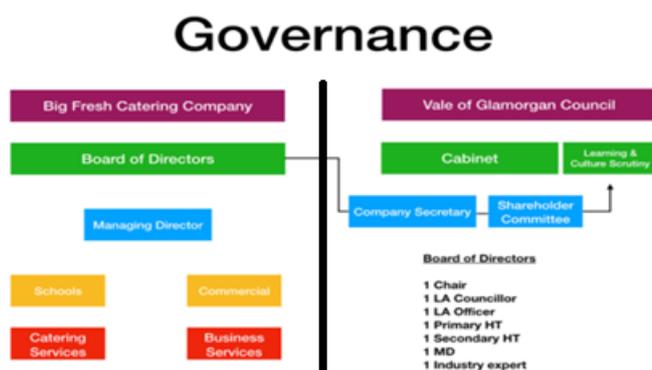
- 2.58** The Articles of Association of the LATC are proposed to be a bespoke form articles drafted in accordance with the Companies Act 2006. The Articles of Association set out the rules company officers who as Directors must follow when running the company. They cover the following general broad area's; defined terms; the Objects of the company; Directors; Director's powers and responsibilities and decision making; Process for Director's appointment and removal; shares and shareholders; decision making by shareholders; organisation of general meetings; voting at general meetings; Administrative arrangements e.g. communications and company seal; Directors indemnity and insurance.
- 2.59** The Articles of Association reflect shareholder consent matters which show the Council's influence over significant decision making.
- 2.60** Delegated authority will be granted to the Director of Learning and Skills, and statutory officers to agree any amendments to and approve the Articles of Association, Commercial Business Plan and Catering Services Agreement between the Vale of Glamorgan and the LATC. All Directors appointed to the LATC must be free to exercise their own judgement owing a statutory duty to act in the best interest of the LATC rather than the Council. Directors are required to promote the success of the LATC by exercising independent judgment, using reasonable skill, care and diligence, avoid conflicts of interest, not to accept benefits from the third parties, to declare an interest in any proposed transactions or arrangements, and to act within the powers that the Directors are given.
- 2.61** To ensure that the Directors understand their statutory duties under the Companies Act 2006 and that there is no real or perceived conflicts of interests relating to their dual role of being an officer of the Council and a Director of a company, the Council will ensure that relevant training is provided to the Directors and any other officers or elected Members who are closely involved with the LATC to ensure that they receive the correct guidance on Director duties and the management of conflict of interests Officers and Directors liability insurance will be required.
- 2.62** Council Directors of the LATC will be given indemnity under the Local Authorities (Indemnities for Members and Officers) Order 2004. Legal regulations give powers to Local Authorities powers to grant indemnities and/or to take out insurance to cover the potential liability of Councillors and Officers in a wide range of circumstances. It is up to each Council to decide whether to grant such indemnities, or take out insurance, and to decide (subject to restrictions set out in the regulations) the extent of such indemnities and insurance. Section 111(1) of the Local Government Act 1972 provides ancillary powers to local authorities that may permit them to indemnify members and officers in relation to decisions or acts if to do so would facilitate; or is incidental, or conducive, to the discharge of a function of the authority.
- 2.63** Further, the Local Authorities (Indemnities for Members and Officers) Order 2004 gives a specific power for authorities to grant indemnities and/or take out insurance to cover the potential liability of councillors and officers in a wider range of circumstances. Each local authority has the discretion to decide

whether to use the powers, and to decide the extent of such indemnities and insurance.

2.64 Letters of Appointment are being developed for each Director. Consideration may be given to appointing a Non-Executive Director which will help complement the range of skills and experience already available in-house.

2.65 The following diagram illustrates the governance structure of The Big Fresh Catering Company:

2.66



Shareholder Committee

2.67 To ensure good governance and to demonstrate there is a clear separation between the Council's role as the Local Authority and the Council's role as Shareholder, it is recommended that a Shareholder Committee is established comprising the Council's Managing Director as Director of Resources, and the Cabinet Member for Education and Regeneration, whose portfolio includes catering provision in schools. The Shareholder Committee will be advised by the Shareholder Advisory Panel consisting of Council Officers. The Income Generation and Commercial Opportunities Board has approved the proposed LATC's Commercial Business Plan which is being presented to Cabinet for noting under the associated Part II report, to be considered later in the agenda.

2.68 The purpose of the Shareholder Committee is to make decisions that are reserved matters for the shareholder committee; to exercise control as owners of the company in the agreement for the development of their strategic direction, operational and investment parameters, business plans and other matters. The shareholder committee will consider proposals put forward by the Directors of the LATC that might be outside of the agreed operational parameters and business plans. The Shareholder Committee will exercise oversight on performance and progress against the business plans and to receive reports on such matters including annual reports. It will exercise oversight on decision making and assurance that the statutory functions of the LATC are being properly discharged.

2.69 The Shareholder Committee will provide annual updates to the Learning and Culture Scrutiny Committee. This is a key aspect of the scrutiny process as the scrutiny committee must be able to exercise its powers in relation to the discharge of local authority functions under legislation and in establishing the

LATC appropriate provision should be made to facilitate scrutiny. The financial and propriety controls that apply to local authority controlled companies as set out in the 1989 Act will need to be complied with. These will be monitored by the shareholder committee and reported on for scrutiny to the relevant scrutiny committee.

2.70 Terms of Reference will need to be developed as part of the next steps following Cabinet's decision. The terms of reference will include, amongst other things:

- At the initial meeting of the Shareholder Committee to receive the documents which govern the creation of the LATC and to approve amongst other things the scheme of delegation and noting shareholder controls.
- Agree the appointment of the LATC Managing Director, Council Officer, Council Councillor and the Expert Director.
- Note and approve the annual Business Plan.
- An outline programme of activity for the forthcoming year.
- Any updated financial plan for the forthcoming year, including cash flow and forecast.
- Any proposed future services to be traded by the Company.
- The Company will undertake an annual review which will include a review of the Directors and services that are offered. This will include a review of the Company's Commercial Business Plan. This review will be considered at a meeting of the Shareholder Committee.

Relationship between the LATC and the Council

2.71 A key governance issue will be the relationship between the LATC'S internal management and the Council, the sole shareholder. To this end, it will be advisable for a scheme of delegation be drawn up structuring the relationship between the Council and the LATC. In general, shareholders' key role is to ensure that directors do not exceed their powers. The scheme of delegation should set out in detail the powers and responsibilities of the Council's sole shareholding of the company, how it will exercise that power and how the directors of the company and the shareholder will interact. It will set out which decisions are made by the Council and which decisions are made by the directors of the company. For example, the Council as the sole shareholder will have certain powers such as removing a director from office or changing the name of the company. The scheme of delegation will set out those matters provided for in the LATC'S Articles of Association.

2.72 The Shareholder Committee is not empowered to act as a director of the LATC and the Board of Directors of the LATC shall not seek or accept instruction from the Shareholder Committee as a Director or quasi-director.

2.73 The Shareholder Committee is empowered to consider the options available to the LATC for improving its performance or mitigating adverse consequences in light of actual or reasonably anticipated circumstances and offer non-binding proposals, recommendations, and opinions which will be without liability on the

part of the Council proposals, recommendations and opinions, without liability on the part of the Council or any individual member on any matter affecting the Council as a shareholder in the LATC. The Shareholder Committee may take into consideration solely the interests of the Council in giving any proposals, recommendations or opinion. All decision-making regarding business development and any consideration of commercial investment opportunities which may arise, would be a matter for the Board of Directors. However, the Council as the sole shareholder is required to approve any decisions that have an impact on the shareholder's rights.

- 2.74** The day to day operation of the LATC, development and new business opportunities, staff terms and conditions, and the development of internal procedures, will be the responsibility of the LATC's Board of Directors and are detailed in the proposed Articles of Association.
- 2.75** It is recommended that the Cabinet establishes good governance arrangements to monitor the activities and performance of the LATC and as such it is proposed that the Scrutiny Committee Learning and Culture has oversight of the LATC and receives annual performance reports on the operation of the LATC. Should any financial performance and strategies be commercially sensitive, the committee may need to review this in private. Any budgets for providing loans to the LATC, which would need to be advanced on commercial terms in observing state aid implications, will need to be approved by Full Council as part of the Council's budget framework.

Conflicts of Interest

- 2.76** Members and/or Officers of the Council who are appointed Directors of a company have a fiduciary duty to the company. They possess powers and duties of company directors while they are appointed directors, and as directors they are answerable to the membership of the company in accordance with the company's articles of association and company law.
- 2.77** The duty towards the company only applies when the individual is acting in their capacity as a director. When at council meetings or acting in a role as a local authority officer or elected member, they must act in the best interests of the council, subject to rules around confidentiality. Directors must have a clear understanding of which hat they are wearing at any time.
- 2.78** However, any elected Member appointed as a company director would still be bound by the Council's Code of Conduct.
- 2.79** The Companies Act 2006 codifies existing duties on directors and explicitly imposes a general duty on directors to avoid conflicts of interest which in part are mitigated by provisions in the Articles recognising certain inherent conflicts. When nominating the appointment of Directors it will be necessary to have regard to the potential for conflicts of interest.
- 2.80** Company Directors may incur personal liability for example, breach of duty, however, the company will insure against this risk and the Authority will indemnify any Council/Officer Directors.

2.81 Other considerations might include appointing Council Directors who do not have a role or post within the Authority which would bring them into conflict with their director responsibilities or put them in a position of making or advising on a Council decision relating directly to the company, which could give rise to challenges based on bias and predetermination. It may therefore be prudent for any Member with a role in services provided by the company, not to be on the Board and for any officers who are involved in a client role or in a statutory role e.g. the s.151 officer not to be on the Board of Directors.

2.82 As referred to training for Members and Officers who are to be Directors of the company will be provided to assist them in their new obligations and a protocol developed on how to deal with conflicts.

Management of Risk

2.83 Reshaping services and the scale/scope of the catering services programme carries with it an inherent level of risk in transferring public services to an LATC. However, robust governance and reporting arrangements set out elsewhere in this report illustrate how risks will be managed transparently at different levels of the organisation. Insurance will be put in place to limit risks of exposure. While this risk can be mitigated, it cannot be eliminated. These Measures are underpinned by having in place a risk register which sets out the key risks with a number of actions outlined below to identify these, manage and mitigate risk, where possible. These include:

Risk	How is it being mitigated	Risk Rating
Failure to set up trading arrangements in compliance with legislation	Consulted extensively, undertaken training, consulted with other authorities and public sector organisations and sourced external advice on governance arrangements	High
Trading which is ultra vires	The company will trade within statutory obligations, under clear governance arrangements as set out in para 2.55 to 2.62 of this Cabinet Report	Med
Possible challenge to state aid	The company will obtain full cost recovery of the service offerings	Low
Possibility of conflicts of interest arising for members or officers as Directors	Members and officers of the Council who are appointed Directors of the company have a fiduciary duty to the company. They possess powers and duties of	Low

	company directors and as directors they are answerable to the membership of the company in accordance with the company's articles of association and company law	
Failure to arrange adequate insurance cover for the company's liabilities assets	The company will lease assets from the Council and will be responsible for using them. The Council will maintain the reserve for any repairs and replacements. The Council has sought external professional advice to ensure State Aid regulations are being adhered to in relation to the roughly £1.6m in assets. The company's insurers will be kept up to date with any new areas of trading activity	High
Failure to arrange adequate insurance cover for the company's employees	The Council has sought external insurance advice regarding employee and public liability insurance cover. The company will use the Council's insurance provider to create separate insurance policy cover	High
Failure to comply with taxation laws relating to corporation tax and VAT	The Council has sought external professional tax and VAT advice which is reflected in the Articles of Association. Further advice will be sought on taxation planning	High
Consideration of fluctuating pension costs and implications of the McCloud/Sargeant judgement relating to unlawful age discrimination on the transitional arrangements for reformed judges and firefighter's pension schemes	The company will need to be aware that some members of the pension scheme may be compensated. The Board of Directors will be updated and made aware of the Employment Tribunal decision in order to determine funding will be available to cover these costs. The Council has sought advice from Cardiff and Vale	Med

	Pensions in relation to the continued inclusion in the current scheme. It was agreed that admitted body status was not required as the LATC will be an associated employer of the Council.	
Consideration of potential TUPE implications	Will be reviewed on a regular basis	Low
Trading company failure	The company will regularly benchmark itself against market forces in relations to fees and costs. Tight budgetary controls will be in place by the Shareholder Committee	Med
Conflict with interest over workload priorities of Council projects and Company projects	Effective resource planning and compliance with the corporate plan, discussions at Income Generation and Commercial Opportunities Board, and advice to Shareholder Committee from the relevant officers of the Council, as required	Low
Challenge from Council Auditors	The company would follow the CIPFA code of Local Authority accounting and all transactions would be identifiable via records and coding on Oracle	Low
Contractual disputes	Ability to source legal advice from in-house legal as a starting point including checking all contracts before they are entered into	Low
Lack of capacity to manage additional work	Careful consideration and allocation when planning staff resource and on-going review of staffing requirements based on service and trading need	Low
Failure to communicate with all stakeholders	A thorough and careful evaluation of staff, Headteachers, parents and pupils has been undertaken	Low

	to ensure assumptions of creating the proposed Local Authority Trading Company were understood through consultation and engagement sessions over the last 3 years	
The LATC not added to the Redundancy Modification Order	The Council has sought advice in relation to the Redundancy Modification Order (RMO). Now that the company has been incorporated, this can be considered. If the LATC is not added to the RMO then terms and conditions regarding long service history cannot be guaranteed if staff reapply for positions within other Councils.	Med
Failure for the company to provide end of year accounts for submission by the Council to HMRC	The Council has sought external accountancy advice from in relation to ongoing corporation ongoing financial accounts preparation	Med
Insufficient market research	Market research, piloting in schools (assumptions tested) Market research has been undertaken of the types of external trading that is currently being enjoyed in the market place. New menus and engagement with pupils and parents have seen a 15% increase in the meals served in the schools where the work was carried out. There is now a rolling programme to include further schools on a termly basis into the new modelling of the service provision on offer.	Low

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

- 3.1** This project forms part of the Reshaping Services transformational change programme and as such contributes to the Council's Corporate Plan 2016-2020.
- 3.2** The catering service makes an important contribution to the Council's Well-being Outcomes in the following ways:

An Inclusive and Safe Vale

- 3.3** The catering service and the Big Fresh Catering Company ensures that learning and development in schools is supported by supplying healthy, vibrant and fresh meals, making a real difference to those who are eligible for free schools meals. For many children, this is their only meal of the day.
- 3.4** The service also ensures that menus comply with the government nutritional standards allowing children to achieve their potential. It is of paramount importance that food provision is inclusive and that the service is able to cater for those with specific diets for cultural reasons, religious reasons or due to allergens.

An Environmentally Responsible and Prosperous Vale

- 3.5** Sustainability is of key importance to the Big Fresh Catering Company, and in partnership with suppliers the Company will strive to source fresh and seasonal ingredients from local producers throughout the year. The Company aims to positively influence the diet of young people and always consider where the food we serve comes from, how it was produced and how many 'food miles' are involved. This is included in the Commercial Business Plan.

An Aspirational and Culturally Vibrant Vale

- 3.6** All profits generated by the Big Fresh Catering Company will be reinvested into schools, which supports this outcome.
- 3.7** The service aims to ensure menus are accessible, reflective of the actual food being served, and up to date through our new 21st Century Schools approach to school catering, schools will have greater ability to leverage these channels and better integrate the process of meal selection into the curriculum, if desired, as outlined in the Commercial Business Plan.

An Active and Healthy Vale

- 3.8** Through the launch of the Big Fresh Catering Company, the catering service are broadening the reach of children's sessions with the introduction of healthy eating initiatives and gamification of healthy eating choices in schools. This will provide exposure to more children via Health and Wellbeing assemblies and support School Food Policies and School Nutrition Action Groups.
- 3.9** The Catering Management Team are members of the Welsh Network of Healthy Schools steering group, the Nutritional steering group, Welsh Local Government Association's Special Dietary Working Group and regional and national member of the Lead Authority in CAtering in Education (LACA).

3.10 This project will contribute to the following internal/external plans, policies and strategies:-

- Corporate Plan 2016-20
- The Healthy Eating in Schools (Nutritional Standards and Requirements) (Wales) Regulations 2013
- Food Information for Consumers Regulations (EU FIC)
- School Standards & Organisation (Wales) Act 2013

4. Resources and Legal Considerations

Financial

4.1 The table below shows the income and expenditure forecasts for the first three years of the LATC trading:

	2019/20	2020/21	2021/22
Total Staff	£2,159,866	£2,192,790	£2,245,077
Total Premises	£60,589	£61,009	£61,432
Total Transport	£22,543	£26,293	£26,486
Total Supplies & Services	£1,699,298	£1,729,469	£1,775,789
Total Admin Services	£28,700	£28,987	£29,277
TOTAL EXPENDITURE	£3,970,997	£4,038,549	£4,138,060
FSM Income	-£1,129,436	-£1,046,606	-£1,068,256
Primary Meals Income	-£1,795,454	-£1,925,100	-£2,063,240
Secondary Income	-£843,111	-£900,092	-£960,764
Special Schools Income	-£31,421	-£33,673	-£36,072
Traded Income	-£5,236	-£28,106	-£28,179
Misc Income	-£117,791	-£118,734	-£119,686
TOTAL INCOME	-£3,922,449	-£4,052,310	-£4,276,198
SHORTFALL/(SURPLUS)	£48,548	(-£13,762)	(-£138,138)
COUNCIL SUBSIDY	£102,000	0	£0

4.2 The above table highlights a reduction in the Council's subsidy of £102,000 in the first year and eliminating the subsidy of £150k entirely in the second and third year, with an operating profit of £13,762 and £138,138. The financial appraisal is broken down further and explained in more detail in the Commercial Business Plan contained in the Part II report.

VAT and Corporation Tax

- 4.3** The Council has sought external professional VAT and Tax advice to ascertain the best company structure from a tax perspective. The provision of school meals to the Vale of Glamorgan Schools will be delivered at arms-length i.e. through the LATC. The proposed Articles of Association and the Catering Service Agreement reflects this. The activities undertaken by the LATC i.e. the provision of school meals to the Vale of Glamorgan Schools is trade for tax purposes. Income received in respect of these services would be taxable in the LATC and subject to corporation tax. The income will be offset by any revenue trade related expenses, such as employment costs, materials and other consumables.
- 4.4** Corporation tax is charged at 20% of adjusted profits. The VAT tax registration threshold is £85K. The projected income of the company means that it would be required to be registered for VAT by year 3 and will be within the Making Tax Digital regime. The LATC is required to notify HMRC within three months of the trade commencing and prepare corporation tax returns for each tax accounting period, to be filed within 12 months of the end of each period, with payments of corporation tax due nine months following each tax accounting period, unless BFCC falls within the quarterly instalment payment regime.
- 4.5** The proposed Articles of Association and contracts to be put in place will reflect the way in which school meals are provided by the LATC and the approvals required by the Shareholder Committee who is the Controlling Shareholder in this company structure. On-going tax advice, audit, and additional advice in respect of consolidating the accounts will be obtained by the LATC and will include on-going corporation tax compliance, and financial accounts preparation to ensure full compliance with tax legislation. The company finances will be run in such a way as to maximise savings to the Council and the return to the Council schools, subject always to the wishes of the Shareholder Committee which is underpinned by the Articles of Association and Catering Services Agreement.
- 4.6** The recommended company structure allows post-tax profits from the Teckal traded element to be paid as directed by the LATC by passing a special resolution, however, the way in which the Articles are drafted means that this will always need the approval of the Controlling Shareholder i.e. the Council's Shareholder Committee represented by members of the Income Generation and Commercial Opportunities Board.

Use of Assets

- 4.7** All school-based and mobile food provision assets remain with the Council. The company will lease the assets from the Council and will be responsible for the exclusive use of them. The Council will maintain the reserve for any repairs and replacements. The current value of assets is approximately £1.6m. Equipment costs in a primary school are valued at approximately £50k, and £120k for a secondary school. A representative finance example of leasing costs for a primary school are outlined assuming the following compliment of heavy goods: for schools who don't use The Big Fresh Catering Company they will be also be required to pay the leasing costs as required by The Big Fresh Catering Company.

MKN Oven	£10,000
Dishwasher	£5,000
Induction Unit	£7,000
Bain Marie	£2,000
Hot Cupboard	£1,250
Fridges x 2	£1,500
Freezers x 2	£1,500
Cashless Tills	£1,350
Extraction canopy	£10,000 – 15,000

Representative 3 year Fixed Term Lease for a Primary School (24% interest)

First Payment:	£5,205
33 Monthly payments:	£1,735
Total cost of leasing:	£62,460

Accommodation

- 4.8** It is proposed that the new LATC will initially continue to occupy the existing office accommodation within the Council’s Civic Offices. An appropriate market rent has been determined by the Council’s Operational Manager, Property Services, for the use of the Council’s office accommodation which will be reviewed at appropriate times to ensure the Council receives full market value for the accommodation that the LATC utilises. Essentially the LATC will be leasing office space from the Council. In addition, the Airstream vehicle will be parked overnight at Court Road Depot initially (with the location to be reviewed by the Council and agreed with the LATC should Court Road depot not be suitable or available to the LATC in the future). An appropriate rental for the parking space will be agreed between the Operational Manager, Property with the LATC.

Employment

- 4.9** Members will be aware that there is important Human Resource and Employment related implications associated with the implementation of the LATC. The process requires a clear communication and engagement strategy with staff and respective Trade Unions throughout the implementation period.
- 4.10** It is the intention of the Council that the LATC will ensure on-going recognition of the recognised Trade Unions – GMB, Unison and Unite and discussions will continue to ensure support to their members during and after the transition to the new model. Management and Trade Union’s colleagues continue to meet regarding this proposal.
- 4.11** The EIA, found at Appendix 3 makes reference to the current staffing profile and to the TUPE implications associated with the creation of the LATC. The EIA identifies that the proposals will have a neutral impact upon staff as their contractual terms and conditions will remain the same. The proposed model will involve the transfer of staff from the public authority to The Big Fresh Catering Company. Therefore, the [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(SI 2006/246\)](#) (TUPE) governing staff transfers would apply. The new employer effectively steps into the Council’s shoes with regard to the

transferring employees. All of the transferor's rights, powers, duties and liabilities under or in connection with the transferring employees' contracts pass to the new employer and any acts or omissions of the old employer (the Council) before the transfer are treated as having been done by the new employer (regulation 4(2), TUPE).

- 4.12** The TUPE regulations afford the transferring employees protection in respect of continuity of employment and contractual terms and conditions of employment at the point of transfer. Should The Big Fresh Catering Company not be successful in operating the catering provision then the employees of The Big Fresh Catering Company would transfer back into the employment of the Council under the TUPE regulations with protection of continuity of service and their contractual terms and conditions at the time they transfer back in. This would not take into account any changes that may have occurred within the Council whilst the service is operated by The Big Fresh Catering Company. The alternative would be for the Council to seek a different company through the tender process to provide this service at which point the employees would transfer under TUPE to the new company. The company will adopt the Council's statutory policies. Any non-statutory policies will need to be confirmed by the Board of Directors and adapted when required. However, it is anticipated that any applicable Vale of Glamorgan policies will be used as a basis for development by the company.

Two Tier Workforce

- 4.13** A 'two tier' workforce is not permitted in Wales, where TUPE transferred staff work beside staff on different terms and conditions. All staff working for the company will have the same terms and conditions. Corporate policies and procedures will be reviewed and specifically tailored to the needs to the Company and its staff.
- 4.14** The Commercial Business Plan was drafted on the basis that the existing number of staff at all levels within the Catering service are retained. No changes are proposed to the number, grade or the nature of the duties required of staff at the current time. As such, no redundancy costs have been considered as part of the Plan.
- 4.15** The impact of the National Living Wage and associated National Pay Awards have been considered as part of the calculation of salary costs, with forecast uplifts in this rate across the five years of the Commercial Business Plan. Uplifts have further increased since the development of the original Business Plan as a result of an increase in the National Living Wage and 2019/20 National Pay Award and the impact of this upon the Financial Appraisal as highlighted within the relevant section of this report.
- 4.16** A proposed timeline for the change in the service process has been designed based upon a go live date for the LATC of 1st January 2020 and reflects the complexities outlined in the Commercial Business Plan. This was formulated by Human Resources and Legal officers. The timeline aims to ensure the continuing engagement of staff and Trade Unions and ensures all statutory consultation requirements are met.

Pensions

- 4.17** The LATC will seek admission to the Local Government Pension Scheme (LGPS) for all transferring staff. The Council will fund any costs that will be incurred as a result of arranging admission into the LGPS.
- 4.18** A Funding Report has been obtained from the Fund actuaries during October 2019. The valuation was based on the assumption that the Vale of Glamorgan Council would fully fund any deficit at the point staff are transferred and therefore there will be no opening deficit for the LATC's pension fund. This deficit will therefore remain with the Vale of Glamorgan and will increase the employer's contribution rate for the Council. The existing risk associated with pensions, however, would remain with the Council regardless of whether a LATC were to be established, or not. The actuaries report estimates that currently, future contributions into the fund would be at the rate of 18.8% of pensionable pay, if the fund remains open to new entrants. It is proposed that new staff should be able to join the LATC's pension scheme.
- 4.19** The actuaries calculations are based on the 2016 funding strategy (updated for financial market conditions) as the 2019 funding strategy has not been finalised. The contribution figures could therefore change for the year commencing 1st April 2020.
- 4.20** The value of assets and liabilities are volatile and change over time. This can result in a change to the contribution rate, with any deficit resulting in an increase in the value of employer's contributions required. The Council will need to take the decision as to whether this risk is to be borne by the LATC or whether it is covered by the Council. The risk could remain with the Council if it is agreed that the LATC pays a fixed contribution rate regardless of any future surpluses or deficits. It is proposed that all risk in the change of future contribution rates is transferred to the LATC. The LATC would be expected to fund any pension strain associated with redundancy/early retirement from the date of transfer of staff to the new company.
- 4.21** Pensions discretions will be the same as the existing agreed discretions for the Council.
- 4.22** A tripartite agreement will be entered into between the Council, the BFCC and the Cardiff and Vale Pension Authority.
- 4.23** In December 2018 the Government lost a Court of Appeal case (the McCloud/Sargeant judgement) which related to unlawful age discrimination on the transitional arrangements for the reformed judges and firefighters pension schemes. It is considered that there will be implications for the LGPS because the same transitional arrangements were utilised. The Court has found that those too far away from retirement age to qualify for transitional protection have been unfairly discriminated against. The Government is engaging with the Employment Tribunal to agree how the discrimination will be remedied and it is uncertain how members in the LGPS would be compensated. No allowance for any potential liability has been included in the calculation provided by the actuary.

4.24 A summary of the timeline for the project is as set out below, which sets out key tasks which will be subject to change as the project progresses:

Key HR Activities	Description	Timescale
On-going communication and engagement	Engagement and communication with staff and trade unions	Current – December 2019
Formal consultation in relation to a TUPE transfer	To meet statutory requirements to be undertaken by the transferring council and the company. To include any 'measures' that will be undertaken post transfer (i.e. any proposals regarding the staffing that the company is considering as required by the legislation)	October 2019 - December 2019 Measures letters issued mid-November for transfer to take place on 1 January 2020
Management of TUPE transfer exercise	Final scoping of transferring staff. Exchange of information. Completion of 'due diligence'.	November - December 2019
Potential transfer date	Formal transfer of remaining staff to new company employer	1 January 2020

Legal (Including Equalities)

4.25 The Council has the power to establish and operate the proposed LATC using its powers under section 95 of the Local Government Act 2003. A Local Authority is permitted to trade in anything that it is authorised to do under its ordinary functions provided this is not a function which amounts to a statutory service which it is obliged to provide.

4.26 Section 512 of the Education Act 1996 provides the Council with the power, not a duty to provide milk, meals, and other refreshments to registered pupils at any school maintained by the authority, other persons who receive education at such a school, and children who receive relevant funded nursery education.

4.27 The company must be one within the meaning of Part 5 of the Local Government and Housing Act 1989 i.e. one which is limited by shares or guarantee. There are controls placed on local authority involvement in companies. This requires that local authorities ensure any directors appointed to a LATC are not disqualified

from being a local authority member and information must be provided to the Local Authorities auditor as well as being transparent to members of the public.

- 4.28** The Council is required to comply with the Local Government (Best Value Authorities) (Power to Trade) (Wales) Order 2006. This requires the Council to consider and approve a suitable Commercial Business Plan for establishing a company. The Commercial Business Plan must include details about the objectives of the business, the investment and other resources required to achieve those objectives; any risks the business might face and how significant these risks are; and the expected financial results of the business together with any relevant outcomes that the business is expected to achieve. The Order requires that any accommodation, services, staff, or other support provided by the Council must be charged for by the Council at least covering the costs in full but potentially at market rate to demonstrate that the company is not being subsidised by the Council. Similarly, any financial assistance in the form of grants, loans or guarantees should be provided under terms of a formal agreement entered into for commercial purposes. State Aid consideration are required to be considered when making the final decision as to any support that is given to the wholly owned company.
- 4.29** The establishment of a wholly owned LATC creates a new legal entity under the Council's ownership but with the ability to charge for services in such a manner as to recover not only the cost of providing the services but at a profit. The surplus available to the company to reinvest or be made available to the schools who buy into the service.
- 4.30** The Council is complying with the above provision as set out in this report. During the next two months, the Project Team will focus on the Legal requirements for the creation of a LATC.
- 4.31** Since the Cabinet's resolution in April 2017 the service has focused on increasing school meal uptake, establishing, at a local level, the development of commercial opportunities around branding and marketing, as outlined elsewhere in this report, and completing all preparatory work for the creation of the LATC prior to its incorporation. To ensure transparency and competitiveness in line with the private sector and to ensure compliance with state aid rules, should these be applicable, the LATC, when created, should not be subsidised by the Council, which means that the Council should ensure that any contract opportunities are provided to the LATC at market rates. In relation to the kitchen equipment and premises this will involve ensuring that the LATC receives no more than a market operator would receive for carrying out the contract, or pays no less than a market operator would be required to pay in exchange for the opportunity.
- 4.32** The Council has to satisfy its public sector duties under the Equalities Act 2010, including specific Welsh public sector duties. Pursuant to these legal duties Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics include; age, gender reassignment, sex, race - including ethnic or national origin,

colour or nationality, disability, sexual orientation, religion or belief - including lack of belief, pregnancy and maternity.

4.33 An equality impact assessment may have four possible outcomes, though more than one may apply to a single policy. These include:

- No major change – the impact assessment demonstrated that the policy was robust; there was no potential for discrimination or adverse impact. All opportunities to promote equality have been taken.
- Adjust the policy – the impact assessment identified potential problems or missed opportunities. The policy was adjusted to remove barriers or better promote equality.
- Continue the policy – the impact assessment identified the potential for adverse impact or missed opportunities to promote equality. The justification(s) for continuing with it have been clearly set out. (The justification must be included in the impact assessment and must be in line with the duty to have due regard. Compelling reasons will be needed for the most important relevant policies.)
- Stop and remove the policy – the impact assessment identified actual or potential unlawful discrimination. The policy was stopped and removed or changed.

4.34 A full Equalities Impact Assessment has been completed and is appended to this report as Appendix 3 considering the implications of implementing the Local Authority Trading Company. This proposal is considered to have a neutral impact on protected characteristics. Any changes will be reported to members in a timely manner.

5. Background Papers

Cabinet Report - April 2017 (Original Business Plan and options appraisal)

<https://www.valeofglamorgan.gov.uk/Documents/Committee%20Reports/Cabinet/2017/17-04-24/Reports/Reshaping-Services-%E2%80%93-Catering-Project-Cabinet-Report.pdf>

Cabinet Report - September 2018 (Update Report)

https://www.valeofglamorgan.gov.uk/en/our_council/Council-Structure/minutes,_agendas_and_reports/reports/cabinet/2018/18-09-03/Reshaping-Services-Catering-Project-Update.aspx

Adopted on: 2019

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

BIG FRESH CATERING COMPANY LIMITED¹

COMPANY NUMBER: [•]

¹ **CL Note:** This name is currently available at Companies House.

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Company number: [•]

THE COMPANIES ACT 2006

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

OF

BIG FRESH CATERING COMPANY LIMITED (the "Company")

(Adopted by special resolution passed on 2019)

INTRODUCTION

1 Interpretation

1.1 The following definitions and rules of interpretation shall apply in these Articles:

Act

the Companies Act 2006.

Annual School Meeting

means the annual meeting of the Schools in September, at which, the School Director will be elected by the Schools.

Articles

the Company's Articles of association for the time being in force.

Board

means the board of directors of the Company from time to time.

Business Day

a day other than a Saturday, Sunday or public holiday in England and Wales, on which banks in London are open for business.

Chairperson

the Chairperson appointed to the Board, in accordance with the provisions of the Articles.

Conflict

a situation in which a director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company.

Controlled Company

means a company within the meaning of Regulation 1(4) of the Local Authorities (Companies) Order 1995.

Controlling Shareholder

a registered holder for the time being of not less than 75% in nominal value of the equity share capital of the Company from time to time.

Council Officer

an officer of the Vale of Glamorgan Council, appointed by the Controlling Shareholder as a director of the Board, in accordance with the provisions of the Articles.

Council Councillor

a councillor of the Vale of Glamorgan Council, appointed by the Controlling Shareholder as a director of the Board, in accordance with the provisions of the Articles.

Eligible Director

a director who would be entitled to vote on the matter at a meeting of directors (but excluding any director whose vote is not to be counted in respect of the particular matter).

Expert Director

an individual with experience in the catering industry, appointed by the Controlling Shareholder as a director of the Board, in accordance with the provisions of the Articles.

Group

the Company, any subsidiary or any holding company of the Company from time to time, and any subsidiary from time to time of a holding company and member of the Group shall mean any of them.

holding company

has the meaning given in Article 1.6.

Managing Director

means the executive managing director of the Company from time to time.

Model Articles

the model Articles for private companies limited by shares contained in Schedule 1 of the Companies (Model Articles) Regulations 2008 (SI 2008/3229), as amended prior to the date of adoption of these Articles, and reference to a numbered Model Article is a reference to that Article of the Model Articles.

Regulations

means the Public Contracts Regulations 2015.

School Director

a headteacher of one of the Schools, appointed by the headteachers of the Schools as a director of the Board, in accordance with the provisions of the Articles.

Schools

means the schools currently registered with the Vale of Glamorgan Council, to receive school meals from the Company.

subsidiary

has the meaning given in Article 1.6.

Teckal

means the codified rule of EU procurement law, as set out within Directive 2014/24/EU and Regulation 12 of the Regulations, deriving from the Teckal case (*Teckal Srl v Comune de Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia (C-108/98)* [1999] ECR I-8121) pursuant to which, the requirement for open advertisement and tendering for public contracts, in accordance with the Regulations, does not apply.

Vale of Glamorgan Council

means The Vale of Glamorgan Council of Holton Road, Barry CF63 4RU.

- 1.2 Unless expressly provided otherwise in these Articles, words and expressions which have particular meanings in the Model Articles shall have the same meanings in these Articles, subject to which and unless the context otherwise requires, words and expressions which have particular meanings in the Act shall have the same meanings in these Articles. The final paragraph of Model Article 1 shall not apply to the Company.
- 1.3 Headings in these Articles are used for convenience only and shall not affect the construction or interpretation of these Articles.
- 1.4 A reference in these Articles to a numbered Article is a reference to the relevant Article of these Articles unless expressly provided otherwise.

- 1.5 Unless expressly provided otherwise in these Articles, a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of:
- 1.5.1 any subordinate legislation made under it, whether before or after the date of adoption of these Articles; and
 - 1.5.2 any amendment or re-enactment, whether before or after the date of adoption of these Articles and includes any statute, statutory provision or subordinate legislation, which it amends or re-enacts.

This Article 1.5 shall not apply to the definition of Model Articles in Article 1.1.

- 1.6 A reference to a holding company or subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Act and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company, even if its shares in that other company are registered in the name of (a) another person (or its nominee), by way of security or in connection with the taking of security, or (b) its nominee.
- 1.7 Any words following the terms including, include, in particular 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.
- 1.8 Where the context permits, other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.9 The Model Articles shall apply to the Company, except in so far as they are modified or excluded by, or are inconsistent with, these Articles.
- 1.10 Model Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 19, 20, 38, 39, 42, 52 and 53 shall not apply to the Company.
- 1.11 In Model Article 25(2)(c), the words "*evidence, indemnity and the payment of a reasonable fee*" shall be deleted and replaced with the words "*evidence and indemnity*".
- 1.12 In Model Article 30(4), the words "*the terms on which shares are issued*" shall be deleted and replaced with "*the rights attached to any shares*".
- 1.13 In Model Article 32(a), the words "*the terms on which the share was issued*" shall be deleted and replaced with "*the rights attached to the share*".
- 1.14 Model Article 44(3) shall be amended by the insertion of the words "*A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made*" as a new paragraph at the end of that Model Article.

OBJECTS

2 Objects of the Company

The objects of the Company are to provide a wide range of catering services, including but not limited to the delivery of school meals to primary schools and secondary schools in the Vale of Glamorgan, in a manner which ensures that the Company is and remains controlled by the Vale of Glamorgan Council and carries out the essential part of its activities for the Vale of Glamorgan Council and or legal persons controlled by it, within the meaning of Regulation 12 of the Regulations.

DIRECTORS

3 Directors' general authority

Subject to the Articles, the directors are responsible for the management of the Company's business, for which purpose, they may exercise all of the powers of the Company.

4 Shareholders' Reserve Power

Any or all powers of the directors (or any of them) shall be restricted in such respects, to such extent and for such duration as the Controlling Shareholder may from time to time, by notice in writing to the Company, prescribe.

5 Constraint on directors' powers to carry out certain matters

5.1 Unless it has been set out in (or is ancillary or conducive towards doing anything in) the Company's then current business plan, the directors and/or the Company may not do any thing other than in the ordinary course of business, without the prior consent of the Controlling Shareholder.

5.2 The directors shall exercise the powers of the Company in a way that ensure that, at all times, for so long as the Company is a Controlled Company:

5.2.1 the Company shall not engage in activities for party political purposes or publish or arrange for the publication of, any material which, in whole or in part, appears to be designed to affect public support for a political party;

5.2.2 the Company shall not give financial or other assistance to a person for the publication of material which the Company is prohibited by Article 5.2.1 from publishing itself;

5.2.3 the Company shall have mentioned on all documents (being of any kind mentioned in section 82 of the Act) the fact that it is a Company controlled by a local authority; and

5.2.4 the Company shall not engage in any activity in which Vale of Glamorgan Council has no power to engage.

5.3 The Directors shall exercise the powers of the Company, observing at all times, that the Company shall not, without the prior written consent of Vale of Glamorgan Council, undertake any activity or incur any expenditure covered by section 137 of the Local Government Act 1972, as amended, which, if aggregated with Vale of Glamorgan Council's spending within that section, would exceed its financial limit under that section for the relevant year.

6 Directors' Meetings

6.1 Subject as provided in these Articles, the directors may participate in directors' meetings for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.

6.2 Meetings of the directors shall take place at least once a month².

6.3 All decisions made at any meeting of the directors or of any committee of the directors shall be made only by resolution and resolutions at any meeting of the directors or committee of the directors shall be decided by a majority of votes.

6.4 If at any time before or at any meeting of the directors, or of any committee of the directors, all directors participating should request that the meeting be adjourned or reconvened to another time or date (whether to enable further consideration to be given to any matter, or for other directors to participate or for any other reason, which need not be stated) then such meeting shall be adjourned or reconvened accordingly, and no business shall be conducted at that meeting after such a request has been made. No meeting of directors may be adjourned pursuant to this Article more than once.

6.5 Any Director may validly participate in a meeting of the directors through 'skype', telephone conference or any other method of virtual meeting attendance, provided that all directors participating in the meeting are able to hear and speak to each other throughout the meeting. A director so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in quorum and be entitled to vote. Subject to the Act, all business

² **CL Note:** As discussed, it may be advisable for there to be regular meetings of the Board.

transacted in such manner by the directors (or a committee of the directors) shall be deemed to be validly and effectively transacted, notwithstanding that a quorum of directors is not physically present in the same place. If the directors cannot or do not decide upon where such a meeting shall be deemed to take place, then it shall be where the Chairperson of the meeting is located.

- 6.6 If the directors participating in the meeting will not be in the same place, the notice of the meeting should, if possible, specify how it is proposed that they should communicate with each other during the meeting.
- 6.7 The directors shall be entitled to invite relevant third parties to attend any meeting of the directors, where such attendance is deemed by the directors to be worthwhile or necessary to the matters to be transacted at the relevant meeting, provided that such third parties agree to be bound by the obligations of confidentiality imposed by the Company. For the avoidance of doubt, no such third party shall count in the quorum or be entitled to vote at any meeting of the directors.

7 Calling a directors' meeting

- 7.1 Any director may call a meeting of the directors by giving not less than seven Business Days' notice of the meeting, or such shorter period of notice as agreed in writing by all the directors, or by authorising the Company Secretary to give such notice.
- 7.2 Notice of any directors' meeting must be accompanied by:
- 7.2.1 an agenda, specifying in reasonable detail, the matters to be raised at the meeting; and
 - 7.2.2 copies of any papers to be discussed at the meeting.
- 7.3 Matters not on the agenda, or business, conducted in relation to those matters, may not be raised at a meeting of directors, unless all the directors agree in writing.

8 Quorum for directors' meetings

- 8.1 No business shall be conducted at any meeting of directors, unless a quorum is present at the beginning of the meeting, and also when business is voted on.
- 8.2 Subject to Article 8.3, the quorum for the transaction of business at any meeting of the directors (including adjourned meetings) must include the Council Officer and Council Councillor.
- 8.3 However, for the purposes of any meeting (or part of a meeting) held pursuant to Article 13 to authorise a Conflict, if there is only one Eligible Director in office other than the Interested Director(s) (as defined in Article 13.1), the quorum for such meeting (or part of a meeting) shall be one Eligible Director.

9 Chairing directors' meetings

- 9.1 The post of Chairperson of the board of directors will be held by an independent person, as appointed in accordance with Article 16.6. Unless he or she is unable or unwilling to do so, they shall preside at every meeting of directors at which he/she is present.
- 9.2 If the Chairperson for the time being is unable to attend any meeting of the board of directors, the Council Officer and Council Councillor may nominate another director to act as chair at the meeting.
- 9.3 The Chairperson shall not³ have a casting vote at meetings of the board of directors.

³ **CL Note:** We discussed removing the casting vote for the Independent Chairperson at Board level. This was a point you were going to check with the board. Doing this will give the Council more control at Board level.

10 Directors may delegate

- 10.1 Subject to the Articles, the directors may delegate any of the powers which are conferred on them under the Articles:
- 10.1.1 to such person or committee;
 - 10.1.2 by such means;
 - 10.1.3 to such an extent;
 - 10.1.4 in relation to such matters; and
 - 10.1.5 on such terms and conditions,
as they think fit.
- 10.2 If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person or committee to whom they are delegated.
- 10.3 The directors may revoke any delegation in whole or part, or alter its terms and conditions.
- 10.4 The directors may also establish advisory panels to advise them on any matter relating to the Company's operations. The directors shall not delegate powers under the provisions of this Article to any such advisory panel.

11 Committees

- 11.1 Any committee of the directors must include the Council Officer or Council Councillor.
- 11.2 The provisions of these Articles which govern the taking of decisions by directors shall apply to meetings of any committee of the directors.

12 Transactions or other arrangements with the Company

- 12.1 Subject to section 177(5) and (6) and section 182(5) and (6) of the Act, and provided he has declared the nature and extent of his interest in accordance with the requirements of the Act, a director who is in any way, whether directly or indirectly, interested in an existing or proposed transaction or arrangement with the Company:
- 12.1.1 may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise (directly or indirectly) interested;
 - 12.1.2 shall be an Eligible Director for the purposes of any proposed decision of the directors (or committee of directors) in respect of such existing or proposed transaction or arrangement in which he is interested;
 - 12.1.3 shall be entitled to vote at a meeting of directors (or of a committee of the directors) or participate in any unanimous decision, in respect of such existing or proposed transaction or arrangement in which he is interested;
 - 12.1.4 may act by himself or his firm in a professional capacity for the Company (otherwise than as auditor) and he or his firm shall be entitled to remuneration for professional services as if he were not a director;
 - 12.1.5 may be a director or other officer of, or employed by, or a party to a transaction or arrangement with, or otherwise interested in, any body corporate in which the Company is otherwise (directly or indirectly) interested; and
 - 12.1.6 shall not, save as he may otherwise agree, be accountable to the Company for any benefit which he (or a person connected with him (as defined in section 252 of the Act)) derives from any such transaction or arrangement or from any such office or employment or from any interest in any such body corporate and no such transaction or arrangement

shall be liable to be avoided on the grounds of any such interest or benefit, nor shall the receipt of any such remuneration or other benefit constitute a breach of his duty under section 176 of the Act.

- 12.2 A director does not need to declare an interest if his interest in a matter arises solely as a result of his employment by Vale of Glamorgan Council.

13 Directors' conflicts of interest

- 13.1 The directors may, in accordance with the requirements set out in this Article 13, authorise any Conflict proposed to them by any director which would, if not authorised, involve a director (an **Interested Director**) breaching his duty under section 175 of the Act to avoid conflicts of interest.

- 13.2 Any authorisation under this Article 13 will be effective only if:

13.2.1 to the extent permitted by the Act, the matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the directors under the provisions of these Articles, or in such other manner as the directors may determine;

13.2.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director; and

13.2.3 the matter was agreed to without the Interested Director voting, or would have been agreed to if the Interested Director's vote had not been counted.

- 13.3 Any authorisation of a Conflict under this Article 13 may (whether at the time of giving the authorisation or subsequently) impose on the Interested Director such conditions or limitations, or be granted subject to such terms, as the directors may think fit, for the purposes of dealing with the Conflict, and the Interested Director will be obliged to conduct himself in accordance with any such terms and conditions.

- 13.4 The directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, before such revocation or variation, in accordance with the terms of such authorisation.

- 13.5 A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the Company for any remuneration, profit or other benefit that he derives from, or in connection with, a relationship involving a Conflict which has been authorised by the directors in accordance with these Articles, by the Company or by these Articles (subject in each case, to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

14 Records of decisions to be kept

Where decisions of the directors are taken by electronic means, such decisions shall be recorded by the directors in a form that enables the directors to retain a copy of such decisions.

15 Number of directors

Unless otherwise determined by special resolution the number of directors shall not be subject to any maximum but shall not be less than one. A sole director shall have all the powers, duties and discretions conferred on or vested in the directors by these Articles.

16 Appointment and removal of directors⁴

- 16.1 The Controlling Shareholder shall appoint the Managing Director of the Company.

⁴ **CL Note:** *The appointment provisions included here have been based on discussions to date, but may need further consideration.*

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- 16.2 The Controlling Shareholder shall also be entitled to appoint the Council Officer, the Council Councillor and Expert Director, and shall be entitled to remove the Council Officer, the Council Councillor and Expert director from office (whether or not appointed pursuant to this Article 16).
- 16.3 Model Article 18 shall be amended by the inclusion of the words "*notification of a Council Officer's, Council Councillor's or Expert Director's removal is received by the Company from the Controlling Shareholder pursuant to Article 16.1*" as a new paragraph (g) at the end of that Model Article.
- 16.4 Any removal of a director pursuant to Article 16.1 shall be without prejudice to any claim for breach of contract under any employment agreement between the Company and the director so removed.
- 16.5 The School Director shall be appointed following election by a majority vote of the headteachers of the Schools, at the Annual School Meeting, and the provisions of Model Article 18 shall apply to the termination of that appointment.
- 16.6 The Chairperson of the Board shall be appointed by unanimous agreement by the Council Officer, Council Councillor, Expert Director and School Director and the provisions of Model Article 18 shall apply to termination of that appointment.

17 Retirement of directors

- 17.1 Subject to Article 17.2, the Directors shall hold an annual meeting of the Directors at least four weeks before each anniversary of the incorporation of the Company, which shall be the annual retirement meeting.
- 17.2 The usual term of office for a School Director shall be one year, at the end of which, they shall retire. However, a retiring School Director shall be eligible for re-appointment as a School Director. The annual retirement meeting for the School Director shall be the Annual School Meeting.
- 17.3 The usual term of office for an Expert Director and the Chairperson shall be two years, at the end of which, they shall retire. However, a retiring Expert Director or Chairperson shall be eligible for re-appointment as an Expert Director or Chairperson respectively.
- 17.4 The usual term of office for a Council Officer or Council Councillor shall be four years, at the end of which, they shall retire. However, a retiring Council Officer or Council Councillor shall be eligible for re-appointment as a Council Officer or Council Councillor.

18 Alternate directors

- 18.1 Any director (other than an alternate director) (**Appointor**) may appoint any person (whether or not a director) to be an alternate director, to exercise the Appointor's powers, and carry out the Appointor's responsibilities, in relation to the taking of decisions by the directors, in the absence of the Appointor.
- 18.2 Any appointment or removal of an alternate director must be effected by notice in writing to the Company (and to the alternate on removal) signed by the Appointor, or in any other manner approved by the directors.
- 18.3 The notice must:
- 18.3.1 identify the proposed alternate; and
 - 18.3.2 in the case of a notice of appointment, contain a statement signed by the proposed alternate that he is willing to act as the alternate of the director giving the notice.
- 18.4 An alternate director has the same rights, in relation to any decision of the directors, as the alternate's Appointor.

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- 18.5 Except as the Articles specify otherwise, alternate directors:
- 18.5.1 are deemed for all purposes to be directors;
 - 18.5.2 are liable for their own acts and omissions;
 - 18.5.3 are subject to the same restrictions as their Appointors; and
 - 18.5.4 are not deemed to be agents of or for their Appointors,
- and, in particular (without limitation), each alternate director shall be entitled to receive notice of all meetings of directors, and of all meetings of committees of directors of which his Appointor is a member.
- 18.6 A person who is an alternate director but not a director may, subject to him being an Eligible Director, be counted as participating for the purposes of determining whether a quorum is present at a meeting of directors (but only if that person's Appointor is an Eligible Director and is not participating).
- 18.7 A director who is also an alternate director is entitled, in the absence of his Appointor(s), to a separate vote on behalf of each Appointor (provided that an Appointor is an Eligible Director in relation to that decision), in addition to his own vote on any decision of the directors.
- 18.8 An alternate director may be paid expenses and may be indemnified by the Company to the same extent as if he were a director, but shall not be entitled to receive from the Company any remuneration in his capacity as an alternate director, except such part (if any) of the remuneration otherwise payable to the alternate's Appointor as the Appointor may, by notice in writing to the Company from time to time, direct.
- 18.9 An alternate director's appointment as an alternate (in respect of a particular Appointor) terminates:
- 18.9.1 when the alternate's Appointor revokes the appointment by notice to the Company and the alternate in writing, specifying when it is to terminate; or
 - 18.9.2 on the occurrence, in relation to the alternate, of any event which, if it occurred in relation to the alternate's Appointor, would result in the termination of the Appointor's appointment as a director; or
 - 18.9.3 when the alternate director's Appointor ceases to be a director for whatever reason.

19 Directors remuneration and expenses

- 19.1 Directors may undertake any services for the Company that the directors decide.
- 19.2 Directors are entitled to such remuneration as the directors determine:
- 19.2.1 for their services to the Company as directors; and
 - 19.2.2 for any other service which they undertake for the Company,
- provided that non-executive directors may only receive allowances pursuant to the Local Authorities (Companies) Order 1995, and executive directors may only be remunerated pursuant to their terms and conditions of employment with the Company.
- 19.3 The Company may pay any reasonable expenses which the directors properly incur in connection with their attendance at:
- 19.3.1 meetings of directors or committees of directors;
 - 19.3.2 general meetings; or

- 19.3.3 separate meetings of the holders of any class of shares or of debentures of the Company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Company.

20 Secretary

The directors may appoint any person who is willing to act as the secretary for such term, at such remuneration, and on such conditions, as they may think fit and from time to time remove such person and, if the directors so decide, appoint a replacement, in each case by a decision of the directors.

SHARES AND SHAREHOLDERS

21 Shares

The ordinary shares carry the following rights.

22 Teckal compliance

No shares shall or may be held by, or allotted, issued, granted, transferred or pledged to, nor may any right to subscribe for or to convert any security into any shares be granted to, any person which would cause the Company to lose its status as a Teckal compliant company, such that the Company could no longer contract with any of the shareholders or any legal persons controlled by them, within the meaning of Regulation 12 of the Regulations without first having to comply with the EU procurement rules and/or the Regulations.

23 Issue of new shares

The directors shall not exercise any power of the Company to allot shares or other securities in, or to grant rights to subscribe for, or convert into, shares or other securities of, the Company without the prior written consent of the Controlling Shareholder (if any). Without limitation, the powers of the directors under section 550 of the Act are limited accordingly.

24 Transfer of shares

- 24.1 In these Articles, reference to the transfer of a share includes the transfer, assignment or other disposal of a beneficial or other interest in that share, or the creation of a trust or encumbrance over that share, and reference to a share includes a beneficial or other interest in a share.
- 24.2 No share shall be transferred without the prior written consent of the Controlling Shareholder (if any) or if the Company does not have a Controlling Shareholder for the time being, with consent of all shareholders for the time being.
- 24.3 The directors must register any duly stamped transfer made in accordance with these Articles and shall not have any discretion to register any transfer of shares which has not been made in compliance with these Articles.

25 Purchase of own shares

- 25.1 Subject to the Act, but without prejudice to any other provision of these Articles, the Company may purchase its own shares, in accordance with Chapter 4 of Part 18 of the Act, including, without limitation, with cash up to any amount in a financial year, not exceeding the lower of:
- 25.1.1 £15,000.00; and
- 25.1.2 The value of 5% of the Company's share capital.
- 25.2 Subject to the remaining provisions of this Article, on a purchase or redemption of Shares under Part 18 of the Act, the Company may hold the shares or any of them in treasury, deal with any of the shares, at any time, in accordance with section 727 of the Act or cancel any of the shares, at any time, in accordance with section 729 of the Act.

26 Dividends

- 26.1 The Company may, by special resolution⁵, declare dividends. A dividend must not be declared unless the directors have made a recommendation as to its amount and such a dividend must not exceed the amount recommended by the directors.
- 26.2 The Company may, by special resolution, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets or equivalent value.
- 26.3 A shareholder may waive their entitled to a dividend or other distribution payable in respect of a share, by giving the Company notice in writing to that effect.

27 Capital

Subject to the Articles, the directors may, if authorised by a special resolution, decide to capitalise any profits of the Company, whether or not they are available for distribution and appropriate any capitalised sum to the persons who would have been entitled to it, if it were distributed by way of dividend.

28 Quorum for general meetings

- 28.1 No business other than the appointment of the chair of the meeting in accordance with Article 29 is to be transacted at a general meeting, unless a quorum is present at the commencement of the meeting, and also when that business is voted on.
- 28.2 Where the Company has only one shareholder for the time being, one qualifying person (as defined in section 318 of the Act) present at the meeting shall be a quorum. In any other case, the quorum shall be:
- 28.2.1 the Controlling Shareholder present in person, by proxy, or by authorised representative; or
- 28.2.2 if the Company does not have a Controlling Shareholder for the time being, any two shareholders present in person, by proxy or by authorised representative.
- 28.3 A director or other persons who are not shareholders may be invited to attend a general meeting of the Company, where such attendance is deemed to be worthwhile or necessary, but such persons shall not be entitled to count in quorum or vote on the business of the meeting.

29 Chairing general meetings

- 29.1 The Chairperson of the board of directors shall chair general meetings. If the Chairperson is unable to attend any general meeting, the shareholders present at the general meeting shall be entitled to appoint another present at the meeting to act as chair, and the appointment of the chair of the meeting must be the first business of the meeting.
- 29.2 The Chairperson shall not have a casting vote at a general meeting.

30 Voting

At a general meeting:

- 30.1 on a show of hands, every shareholder who is present in person or by proxy shall have one vote (unless the proxy is himself a shareholder entitled to vote);
- 30.2 on a poll every shareholder present in person or by proxy shall have one vote for each share of which he is the holder; and

⁵ **CL Noted:** as drafted, this means any dividends will need the approval of the Controlling Shareholder.

- 30.3 on a vote on a written resolution, every shareholder has one vote for each share of which he is the holder.

31 Poll votes

- 31.1 A poll may be demanded at any general meeting by a qualifying person (as defined in section 318 of the Act) present and entitled to vote at the meeting.
- 31.2 Article 44(3) of the Model Articles shall be amended by the insertion of the words "*A demand so withdrawn shall not invalidate the result of a show of hands declared before the demand was made*" as a new paragraph at the end of that Article.

32 Proxies

- 32.1 Model Article 45(1)(d) shall be deleted and replaced with the words "*is delivered to the Company in accordance with the Articles not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised, and in accordance with any instructions contained in the notice of the general meeting (or adjourned meeting) to which they relate*".
- 32.2 Model Article 45(1) shall be amended by the insertion of the words "*and a proxy notice which is not delivered in such manner shall be invalid*" as a new paragraph at the end of that Model Article.

ADMINISTRATIVE ARRANGEMENTS

33 Change of company name

The name of the Company may be changed only with the consent of the Controlling Shareholder (if any) and otherwise by a special resolution of the shareholders.

34 Means of communication to be used⁶

- 34.1 Subject to Article 34.2, any notice, document or other information shall be deemed served on, or delivered to, the intended recipient:
- 34.1.1 if delivered by hand, on signature of a delivery receipt or at the time the notice, document or other information is left at the address;
 - 34.1.2 if sent by pre-paid United Kingdom first class post, recorded delivery or special delivery to an address in the United Kingdom, at 9.00 am on the second Business Day after posting;
 - 34.1.3 if sent by pre-paid airmail to an address outside the country from which it is sent, at 9.00 am on the fifth Business Day after posting;
 - 34.1.4 if sent by reputable international overnight courier to an address outside the country from which it is sent, on signature of a delivery receipt; or
 - 34.1.5 if sent or supplied by e-mail, one hour after the notice, document or information was sent or supplied; and
 - 34.1.6 if deemed receipt under the previous paragraphs of this Article 34.1 would occur outside business hours (meaning 9.00 am to 5.30 pm, Monday to Friday, on a day that is not a public holiday in the place of deemed receipt), at 9.00 am on the day when business next starts in the place of deemed receipt. For the purposes of this Article, all references to time are to local time in the place of deemed receipt.
- 34.2 To prove service, it is sufficient to prove that:

⁶ **CL Note:** Please confirm if notices and documents can be sent by email.

- 34.2.1 if delivered by hand or by reputable international overnight courier, the notice was delivered to the correct address; or
- 34.2.2 if sent by post or by airmail, the envelope containing the notice was properly addressed, paid for and posted; or
- 34.2.3 if sent by e-mail, the notice was properly addressed and sent to the e-mail address of the recipient.

35 Company Seal

- 35.1 Any Company seal may only be used by the authority of the directors and the directors may decide by what means and in what form any common seal is to be used.
- 35.2 Unless otherwise decided by the directors, if the Company has a common seal and it is affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.
- 35.3 For the purposes of this Article, an authorised person is:
 - 35.3.1 any director of the Company;
 - 35.3.2 the Company secretary (if any); or
 - 35.3.3 any person authorised by the directors for the purpose of signing documents, to which the common seal is applied.

36 Indemnity and insurance

- 36.1 Subject to Article 36.2, but without prejudice to any indemnity to which a relevant officer is otherwise entitled:
 - 36.1.1 each relevant officer shall be indemnified out of the Company's assets, against all costs, charges, losses, expenses and liabilities incurred by him as a relevant officer:
 - (a) in the actual or purported execution and/or discharge of his duties, or in relation to them; and
 - (b) in relation to the Company's (or any associated company's) activities as trustee of an occupational pension scheme (as defined in section 235(6) of the Act),
including (in each case) any liability incurred by him in defending any civil or criminal proceedings, or regulatory investigation or action, in which judgment is given in his favour, or in which he is acquitted, or the proceedings are, or the investigation or action is, otherwise disposed of without any finding or admission of any material breach of duty on his part, or in connection with any application in which the court grants him, in his capacity as a relevant officer, relief from liability for negligence, default, breach of duty or breach of trust in relation to the Company's (or any associated company's) affairs; and
 - 36.1.2 the Company may provide any relevant officer with funds to meet expenditure incurred or to be incurred by him in connection with any proceedings, investigation, action or application referred to in Article 36.1.1, and otherwise may take any action to enable any such relevant officer to avoid incurring such expenditure.
- 36.2 This Article 35 does not authorise any indemnity to the extent that such indemnity would be prohibited or rendered void by any provision of the Companies Acts, or by any other provision of law, and any such indemnity is limited accordingly.
- 36.3 The directors may decide to purchase and maintain insurance, at the expense of the Company, for the benefit of any relevant officer in respect of any relevant loss.
- 36.4 In this Article 35:

- 36.4.1 **associated company** means any member of the Group and **associated companies** shall be construed accordingly;
- 36.4.2 **relevant loss** means any loss or liability which has been, or may be incurred, by a relevant officer, in connection with that relevant officer's duties or powers in relation to the Company, any associated company or any pension fund or employees' share scheme of the Company (or associated company); and
- 36.4.3 **relevant officer** means any director or other officer, or former director or other officer of the Company, or an associated company (including any company which is a trustee of an occupational pension scheme as defined by section 235(6) of the Act, but excluding in each case any person engaged by the Company (or associated company) as auditor (whether or not he is also a director or other officer), to the extent he acts in his capacity as auditor).

[Insert date]

Relating to:

Catering Services Agreement

- 01 Vale of Glamorgan Council
- 02 Big Fresh Catering Company

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THIS AGREEMENT is made on [DATE] 2019

BETWEEN

- (1) The Vale of Glamorgan Council of Civic Offices, Holton Road, Barry, CF63 4RU (**Council**); and
 - (2) Big Fresh Catering Company Limited a company incorporated in England & Wales with registered number [COMPANY NUMBER], whose registered office is at [ADDRESS] (**BFCC**),
- each of Council and BFCC being a party and together the Council and BFCC are the parties.

BACKGROUND

- (A) The Council wishes to outsource the provision and management of its school meal provision and other catering services to BFCC.
- (B) BFCC has agreed to provide the Catering Services to the Council on the terms and conditions set out in this Agreement.

AGREED TERMS

1 Definitions

1.1 In this Agreement:

Affiliate

with respect to any entity, means any other entity Controlling, Controlled by or under common Control with such entity; [INCLUDING FOUNDATION & RELIGIOUS SCHOOLS]

Applicable Laws

means as applicable from time to time:

- (a) the laws of England and Wales;
- (b) any other laws; and
- (c) any policies, guidelines or industry codes made by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business (in each case whether or not legally binding),

which apply to the performance of the Catering Services or to which either party is subject;

BFCC Equipment

means the equipment other than the Kitchen Equipment, provided by or on behalf of BFCC as part of the Catering Services;

BFCC Material

means any Material owned by BFCC or licensed to BFCC other than under this Agreement (excluding, in each case, the Council Material);

BFCC Personnel

means all employees, officers, staff, other workers, agents and consultants of BFCC and/or of any Sub-contractors who are engaged in the performance of the Catering Services from time to time;

BFCC Software

means all computer programs (whether in machine readable, optically readable or any other format) and all materials relating to such computer programs and/or their operation, modification, support and/or maintenance which are provided or utilised by BFCC in the provision of the Catering Services (excluding the Council Software);

Bribery Laws

means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable United Kingdom laws, legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent laws in any other relevant jurisdiction;

Business Day

means a day other than a Saturday, Sunday or bank or public holiday when banks in London are open for business;

Catering Services

means the Catering Services, functions and responsibilities outlined in this Agreement including those Catering Services, functions and responsibilities outlined in the Catering Services Schedule and all Termination Assistance (as they may evolve during the Term and as they may be supplemented, enhanced, modified or replaced in accordance with this Agreement) to be performed by or on behalf of BFCC under this Agreement, including those set out in clause 2 and Service means any of such Catering Services (or part of them);

Catering Services Schedule

means Schedule 1 to this Agreement describing certain of the Catering Services that are to be performed by BFCC for the Council under this Agreement;

Catering Services Start Date

[INSERT DATE OR REFER TO CRITERIA—FOR EXAMPLE IN THE CATERING SERVICES SCHEDULE—THAT WILL DEFINE THE START DATE (EG COMPLETION OF DUE DILIGENCE OR TRANSITION)];

Change

means any change to this Agreement including to any of the Catering Services;

Change Control Procedure

means the process by which any Change is agreed as set out in clause 29;

Change of Control

means a change in the Control of BFCC or any Sub-contractor of BFCC, as applicable;

Change Request

means a written request (in the case of the Council) or a written recommendation (in the case of BFCC) for a Change submitted by one party to the other in the form set out in Schedule 4;

Charges

means the fees, costs and expenses payable by the Council to BFCC for the performance of the Catering Services, as set out in the Charges Schedule;

Charges Schedule

means the payment schedule set out at Schedule 2;

Confidential Information

means any information, however conveyed or presented, that relates to the business, affairs, operations, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel, customers and/or suppliers of the disclosing party, together with all information derived by the receiving party from such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked 'confidential'), or which ought reasonably be considered to be confidential;

Contract Year

means a period of 12 months commencing on the Catering Services Start Date and/or each anniversary of the Catering Services Start Date;

Control

means the power of a person to secure (i) by means of the holding of shares or the possession of voting power in an entity, or (ii) by virtue of any powers conferred by the articles of

association or other document regulating or relating to an entity, that the affairs of that entity are conducted in accordance with that person's wishes and 'Controlled' and 'Controlling' (and similar expressions) shall be construed accordingly;

Controller

has the meaning given in applicable Data Protection Laws from time to time;

Council Material

means any Material:

- (a) owned, licensed or used by the Council or a third party licensor of the Council prior to the Term;
- (b) owned (or to be owned) by the Council or its third party licensor pursuant to this Agreement; and/or
- (c) licensed from, or made available or supplied by the Council;

Council Software

means the computer programs (whether in machine, optically readable or any other format) and all materials relating to such computer programs and/or their operation, modification, support and/or maintenance:

- (a) owned, licensed or used by the Council or a third party licensor of the Council prior to the Term;
- (b) owned (or to be owned) by the Council or its third party licensor pursuant to this Agreement; and/or
- (c) licensed from, or made available or supplied by the Council;

Data Protection Laws

means any Applicable Laws relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Catering Services, including:

- (a) the GDPR;
- (b) the Data Protection Act 2018;
- (c) any laws which implement any such laws;
- (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and
- (e) all guidance, guidelines, codes of practice and codes of conduct issued by any relevant Data Protection Supervisory Authority relating to such Data Protection Laws (in each case whether or not legally binding);

Data Protection Supervisory Authority

means the Information Commissioner's Office or any replacement or additional regulator, authority or body responsible for administering Data Protection Laws;

Data Subject

has the meaning given in applicable Data Protection Laws from time to time;

Default

means any default of either party in complying with its obligations under this Agreement;

Disaster

means a disruption to the performance of the Catering Services (whether caused by a natural or man-made phenomenon or occurrence) that is acknowledged by the Council to be a Disaster;

Disaster Recovery Plan

means a written document detailing the procedures to be followed and actions to be taken in order to recover from a Disaster and restore the Catering Services such that they are performed in accordance with this Agreement;

Effective Date

means [INSERT DATE];

Employee

means any person who immediately prior to the Effective Date was an employee of the Council and assigned to the Catering Services;

Employee Information

means an up to date and accurate list containing for each individual the information listed in regulation 11(2) of the TUPE Regulations and the information listed in Schedule 3;

Employee Liabilities

means all liabilities, including but not limited to claims for redundancy payments, unlawful deductions from wages, unfair, wrongful or constructive dismissal compensation, compensation for age, sex, race or disability discrimination or discrimination on the grounds of religion, belief, age or sexual orientation or claims for equal pay, compensation for less favourable treatment of part-time workers, and any other claims whether in tort (including negligence), contract, statute or otherwise, and any demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation, and any expenses and legal costs on an indemnity basis;

Employment Costs

means all costs associated with the employment of BFCC Personnel including all taxes, national insurance, pension contributions and other costs related to the same;

Extended Term

means a period of [NUMBER] years;

GDPR

means the General Data Protection Regulation, Regulation (EU) 2016/679;

Good Industry Practice

in relation to any undertaking and any circumstances, means the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or company engaged in the same type of activity under the same or similar circumstances;

Initial Term

means a period of [NUMBER] years commencing on the [Effective Date OR Catering Services Start Date];

Intellectual Property Rights or IPRs

means patents, any extensions of the exclusivity granted in connection with patents, utility models, registered designs, trade marks, service marks, applications for any of the foregoing, the right to apply for and be granted any of the foregoing, rights in trade names, business names, brand names, get-up, logos, domain names and URLs, copyrights, design rights, rights in inventions, rights in know-how, rights in databases, trade secrets and any other intellectual property rights which subsist in documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature and all other forms of intellectual property right which may exist anywhere in the world;

International Organisation

has the meaning given in applicable Data Protection Laws from time to time;

Kitchen Equipment

means the kitchen equipment owned, leased, hired, licensed or used by the Council and either installed at, or otherwise made available by or on behalf of the Council at, the School from time to time, including the kitchen equipment detailed [in the Catering Services Schedule];

Material

means any methodology or process, documentation, data or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions (including any modifications thereto);

Modern Slavery Policy

means the Council's anti-slavery and human trafficking policy in force from time to time;

Personal Data

has the meaning given in applicable Data Protection Laws from time to time;

Personal Data Breach

has the meaning given in applicable Data Protection Laws from time to time;

processing

has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including process, processed and processes shall be construed accordingly);

Processor

has the meaning given in applicable Data Protection Laws from time to time;

Protected Data

means Personal Data received from or on behalf of the Council, or otherwise obtained by BFCC (or anyone acting on its behalf) in connection with the performance of BFCC's obligations under this Agreement;

Replacement Supplier

means any third party supplier providing Catering Services to the Council (or any of the Council's Affiliates) which are identical or substantially similar to any of the Catering Services and which the Council (or any of the Council's Affiliates) receives in substitution for any of the Catering Services following termination of this Agreement;

Retail Prices Index

means the Retail Prices Index (all items excluding mortgages) as published by the Office for National Statistics from time to time, or failing such publication, that other index as the parties may agree most closely resembles such index;

School(s)

means the schools listed in **Error! Reference source not found.** at which BFCC shall provide the Catering Services in accordance with the terms of this Agreement;

Sub-contract

means any contract between BFCC and a third party (other than an employee) pursuant to which BFCC agrees to source the performance of the Catering Services (or any of them) from that third party;

Sub-contractor

means those persons with whom BFCC enters into a Sub-contract and the direct and indirect agents, contractors and sub-contractors of any such Sub-Contractor contracted to perform the Catering Services (or any of them);

Sub-processor

means any Sub-contractor engaged by BFCC (or by any other Sub-processor) for carrying out any processing activities in respect of the Protected Data;

Term

shall have the meaning given in clause 20.1;

Termination Assistance

means the necessary assistance (which shall include knowledge transfer), as may be reasonably required by the Council, to be provided by BFCC to the Council to complete the transition of all or part of the Catering Services from BFCC to a third party designated by the Council or to the Council following the date of termination of this Agreement or the date of any notice of termination, at the Council's election and request;

Termination Assistance Period

means the period of time during which BFCC provides Termination Assistance to the Council; and

TUPE Regulations

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, re-enacted or extended from time to time).

1.2 In this Agreement:

- 1.2.1 a reference to this Agreement includes its schedules;
- 1.2.2 a reference to a party includes that party's personal representatives, successors and permitted assigns;
- 1.2.3 a reference to a person includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a gender includes each other gender;
- 1.2.5 words in the singular include the plural and vice versa;
- 1.2.6 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.7 the table of contents, background section and any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement; and
- 1.2.8 without prejudice to the provisions of clause 7, a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under this Agreement.

2 Catering Services

- 2.1** The Catering Services include all of the Catering Services set out in the Catering Services Schedule and all Termination Assistance which, as from the Catering Services Start Date, the Council appoints BFCC to provide.
- 2.2** BFCC undertakes to perform the Catering Services in a timely and efficient manner in accordance with the provisions of this Agreement, Good Industry Practice and all Applicable Laws.
- 2.3** BFCC shall perform as part of the Catering Services any other Catering Services, functions and responsibilities (including incidental services, functions or responsibilities) not expressly stated in this Agreement as being within the scope of BFCC's responsibilities (or otherwise set out in the Catering Services Schedule) but of a reasonably required nature to ensure the due performance of the Catering Services agreed to be provided to the Council by BFCC under this Agreement in accordance with Good Industry Practice.
- 2.4** BFCC shall perform additional services (being, for the avoidance of doubt, services other than those referred to in clauses 2.1 to 2.3 (inclusive) or in this Agreement) at the written request of the Council [such as for example but without limitation [INSERT DETAILS]].

-
- 2.5** The performance by BFCC of all additional services requested by the Council pursuant to clause 2.4 are subject to the provision by the Council to BFCC of, and agreement of the parties to, a Change Request. Once agreed in a Change Request, such additional services shall form part of the Catering Services.
- 2.6** In performing each part of the Catering Services, BFCC shall at all times:
- 2.6.1 allocate sufficient resources to perform the Catering Services:
 - (a) in accordance with any dates specified for performance, as amended from time to time by agreement between the parties via the Change Control Procedure, or otherwise, if no dates are specified for completion of a particular Service, as soon as possible but in any event, within a reasonable period of time; and
 - (b) in accordance with the provisions of this Agreement;
 - 2.6.2 ensure that any BFCC Personnel who are engaged in the performance of any Catering Services shall, if required by the Council, attend such meetings at the School or elsewhere as may be reasonably required by the Council;
 - 2.6.3 ensure that BFCC has, and BFCC Personnel have, all necessary qualifications and certification required to provide the Catering Services including food hygiene and health and safety certification. BFCC Personnel shall at BFCC's cost attend any such courses that are necessary for BFCC to provide the Catering Services in accordance with Good Industry Practice;
 - 2.6.4 ensure the Catering Services meet all applicable health and safety and food safety standards;
 - 2.6.5 ensure the safekeeping of any keys, passes or other means of accessing the Schools and kitchens within the Schools provided to BFCC for the purposes of providing the Services under this Agreement. Any such keys and passes shall only be used in accordance with any instruction received from the Council and/or the relevant School.
 - 2.6.6 ensure that the Catering Services are performed in the most cost-effective manner consistent with the required level of quality and performance as set out in this Agreement.
- 2.7** If the levels at which the Catering Services are performed by BFCC under this Agreement do not meet the service levels (or any of them) set out in the Catering Services Schedule, or the standards of performance set out elsewhere in this Agreement, BFCC shall:
- 2.7.1 advise the Council immediately;
 - 2.7.2 investigate, assemble and preserve pertinent information with respect to and report on the causes of the problem;
 - 2.7.3 advise the Council as and to the extent requested by the Council of the status of remedial efforts being undertaken with respect to such problem;
 - 2.7.4 minimise the impact of and correct the problem and begin meeting the affected service levels as soon as reasonably practicable; and
 - 2.7.5 take appropriate preventative measures so that the problem does not reoccur.
- 2.8** BFCC shall be responsible for providing the facilities, personnel and other resources as necessary to perform the Catering Services at no additional charge beyond the Charges.
- 2.9** BFCC acknowledges that it is not being appointed as an exclusive supplier of any of the Catering Services and the Council may at any time perform any part of the Catering Services itself or procure them from a third party. [CAPITAL: IS THIS CORRECT?]
- 2.10** BFCC agrees to co-operate with the staff at the Schools and any third parties engaged by the Council or the Schools in connection with the Catering Services.

- 2.11** BFCC shall, during the Term be responsible for the maintenance and upkeep of any Kitchen Equipment licensed to BFCC by the Council pursuant to clause [x] of this Agreement.

3 Kitchen Equipment

- 3.1** With effect from the Catering Services Start Date the Council hereby grants a licence, or where necessary shall procure a licence from the School, for the BFCC to use the Kitchen Equipment in the relevant school exclusively for the Purposes of providing the Catering Services at the relevant School.
- 3.2** The aggregate licence fee for the Kitchen Equipment is [£AMOUNT] per annum. The first licence fee shall be payable by BFCC to the Council on or before the Catering Service Start Date and each subsequent licence fee shall be payable annually on or before the anniversary of the Catering Services Start Date for the remainder of the Term.
- 3.3** Risk in the Kitchen Equipment shall pass to BFCC from the Catering Service Start Date and BFCC shall be responsible for any the upkeep and maintenance of the Kitchen Equipment until such time as risk in the Kitchen Equipment passes back to the Council on termination of the Agreement.
- 3.4** The Council warrants that the Kitchen Equipment was maintained in an operable standard capable of being used to provide Catering Services (“Operable Standard”) before the Catering Service Start Date. If BFCC can demonstrate that the Kitchen Equipment does not meet an Operable Standard, BFCC’s sole remedy shall be for the Council to repair the Kitchen Equipment so that it does meet such an Operable Standard.
- 3.5** On termination of this Agreement pursuant to clause 20 the Council shall inspect the Kitchen Equipment. If the Kitchen Equipment is in an Operable Standard Risk in the Kitchen Equipment shall pass back to the Council. If any Kitchen Equipment does not meet an Operable Standard BFCC shall be liable for the cost of repairing such Kitchen Equipment and Risk in such Kitchen Equipment shall not pass back to the Council until such time as the relevant Kitchen Equipment is repaired by or on behalf of BFCC so that it meets an Operable Standard.

4 School Premises

- 4.1** The Council shall, and where necessary shall procure the right from the School or any relevant third party, grant the access to the School kitchens and such other parts of the School as BFCC reasonably requires for the exclusive purpose of providing the Catering Services to the Schools.
- 4.2** BFCC shall have access to such facilities, and utilities at the School as are specified in Schedule 5.
- 4.3** In the event of the expiry or termination of the agreement, the Council shall on reasonable notice provide BFCC with such access as BFCC reasonably requires to the Schools to remove any BFCC Equipment. All such equipment shall be promptly removed by BFCC; and
- 4.4** BFCC shall notify the Council and the relevant School immediately upon becoming aware of any damage caused by BFCC, its agents, BFCC Personnel or Sub-contractors to any property of the Council or the relevant School, to any of the School or to any property of any other recipient of the Catering Services in the course of providing the Catering Services.

5 Warranties

- 5.1** Each party warrants and represents that:
- 5.1.1** it has full capacity and authority to enter into and perform this Agreement;
- 5.1.2** this Agreement is executed by a duly authorised representative of that party; and
- 5.1.3** there are no actions, suits or proceedings or regulatory investigations pending or, to that party’s knowledge, threatened against or affecting that party before any court or

administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement.

5.2 BFCC warrants and represents that:

- 5.2.1 it will perform and procure the performance of its obligations under this Agreement in compliance with all Applicable Laws;
- 5.2.2 it shall discharge its obligations under this Agreement using personnel of required skill, experience and qualifications and with all due skill, care and diligence including in accordance with Good Industry Practice and use all services necessary to provide the Catering Services efficiently and cost effectively; and
- 5.2.3 it has in place and will action as necessary and in any event immediately upon the request of the Council a Disaster Recovery Plan that shall provide for the continuation of the performance of the Catering Services with minimal interruption in the event of a Disaster and that it shall discuss with the Council, and update as necessary, the Disaster Recovery Plan at least once in every Contract Year.

6 Confidentiality

6.1 Except to the extent set out in this clause 6, or where disclosure is expressly permitted elsewhere in this Agreement, each party agrees to keep confidential, both during the Term and thereafter, all Confidential Information of the other and not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

6.2 Clause 6.1 shall not apply to the extent that such information is:

- 6.2.1 already known to or in possession of the receiving party prior to its disclosure;
- 6.2.2 publicly available at the time of its disclosure or becomes publicly available through no wrongful act of the receiving party;
- 6.2.3 rightfully received from a third party without obligation of confidentiality;
- 6.2.4 independently developed by the receiving party without breach of this Agreement or access to the applicable Confidential Information of the other party; or
- 6.2.5 required to be disclosed by Applicable Law (provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any such disclosure),

except that clauses 6.2.1 to 6.2.4 (inclusive) shall not apply to Protected Data.

6.3 Subject to clause 6.9, BFCC may only disclose the Council's Confidential Information to BFCC Personnel and Sub-contractors who are directly involved in the performance of the Catering Services and who need to know the information. BFCC shall ensure that all BFCC Personnel and Sub-contractors are aware of, and comply with, the confidentiality obligations set out in this clause 6.

6.4 BFCC shall not, and shall procure that BFCC Personnel do not, use any of the Council's Confidential Information otherwise than for the purposes of this Agreement.

6.5 The Council shall be entitled to disclose the Confidential Information of BFCC:

- 6.5.1 to any consultant, contractor or other person engaged by the Council, provided such third party agrees to comply with confidentiality obligations no less onerous than those set out in this clause 6; or
- 6.5.2 for the purpose of the examination and certification of the Council's accounts.

6.6 The Council shall ensure that any employee to whom it discloses BFCC's Confidential Information is made aware of the Council's obligations of confidentiality under this clause 6.

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- 6.7** On the termination of this Agreement for any reason BFCC shall forthwith return or, at the Council's designation, forthwith destroy all Confidential Information of the Council (and all copies thereof whether held by BFCC by computer, paper or other means) in its possession or control on the date of termination (including, if required, by way of electronic data transfer) and certify to the Council that it has done so. This clause 6.7 is without prejudice to BFCC's additional obligations and Council's additional rights under clause 7.
- 6.8** For the purposes of this Agreement, the Confidential Information of the Council shall be deemed to include all Protected Data.
- 6.9** To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any of clause 7.

7 Data protection

- 7.1** The parties agree that the Council is a Controller and that BFCC is a Processor for the purposes of processing Protected Data pursuant to this Agreement. BFCC shall, and shall ensure its Sub-processors and each of BFCC Personnel shall, at all times comply with all Data Protection Laws in connection with the processing of Protected Data and the provision of the Catering Services and shall not by any act or omission cause the Council (or any other person) to be in breach of any of the Data Protection Laws. Nothing in this Agreement relieves BFCC of any responsibilities or liabilities under Data Protection Laws.
- 7.2** BFCC shall only process (and shall ensure BFCC Personnel only process) the Protected Data in accordance with Part 1 of Schedule 6, this Agreement and the Council's written instructions from time to time (including when making any transfer to which clause 7.13 relates) except where otherwise required by Applicable Laws (and in such a case shall inform the Council of that legal requirement before processing, unless Applicable Laws prevent it doing so on important grounds of public interest). BFCC shall immediately inform the Council if any instruction relating to the Protected Data infringes or may infringe any Data Protection Law.
- 7.3** BFCC shall at all times implement and maintain appropriate technical and organisational measures to protect Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access. Such technical and organisational measures shall be at least equivalent to the technical and organisational measures set out in Part 2 of Schedule 6 and shall reflect the nature of the Protected Data.
- 7.4** BFCC shall not permit any processing of Protected Data by any Sub-contractor or other third party (except its and its authorised Sub-processors own employees that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the prior specific written authorisation of that Sub-processor by the Council and only then subject to such conditions as the Council may require.
- 7.5** As at the date of this Agreement, the Council authorises the appointment (only) of the Sub-processors listed [INSERT WHERE LISTED AND SET OUT IN THAT ACCOMPANYING DOCUMENT WHAT PROCESSING THE SUB-PROCESSOR MAY UNDERTAKE] solely to the extent necessary for the purposes identified therein.
- 7.6** BFCC shall ensure that access to Protected Data is limited to the authorised persons who need access to it to supply the Catering Services.
- 7.7** BFCC shall prior to the relevant Sub-processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-processor under a binding written contract containing the same obligations as under this clause 7 in respect of Protected Data that (without prejudice to, or limitation of, the above):
- 7.7.1** includes providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing of the Protected Data will meet the requirements of all Data Protection Laws; and
- 7.7.2** is enforceable by BFCC,

and ensure each such Sub-processor complies with all such obligations.

- 7.8** BFCC shall remain fully liable to the Council under this Agreement for all the acts and omissions of each Sub-processor and each of BFCC Personnel as if they were its own.
- 7.9** BFCC shall ensure that all persons authorised by BFCC or any Sub-processor to process Protected Data are reliable and:
- 7.9.1 adequately trained on compliance with this clause 7 as applicable to the processing;
 - 7.9.2 informed of the confidential nature of the Protected Data and that they must not disclose Protected Data;
 - 7.9.3 subject to a binding and enforceable written contractual obligation to keep the Protected Data confidential; and
 - 7.9.4 provide relevant details and a copy of each agreement with a Sub-processor to the Council on request.
- 7.10** BFCC shall (at its own cost and expense) promptly provide such information and assistance (including by taking all appropriate technical and organisational measures) as the Council may require in relation to the fulfilment of the Council's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws).
- 7.11** BFCC shall (at its own cost and expense) provide such information, co-operation and other assistance to the Council as the Council [reasonably] requires (taking into account the nature of processing and the information available to BFCC) to ensure compliance with the Council's obligations under Data Protection Laws, including with respect to:
- 7.11.1 security of processing;
 - 7.11.2 data protection impact assessments (as such term is defined in Data Protection Laws);
 - 7.11.3 prior consultation with a Data Protection Supervisory Authority regarding high risk processing; and
 - 7.11.4 any remedial action and/or notifications to be taken in response to any Personal Data Breach and/or any complaint or request relating to either party's obligations under Data Protection Laws relevant to this Agreement, including (subject in each case to the Council's prior written authorisation) regarding any notification of the Personal Data Breach to Data Protection Supervisory Authorities and/or communication to any affected Data Subjects.
- 7.12** BFCC shall (at no cost to the Council) record and refer all requests and communications received from Data Subjects or any Data Protection Supervisory Authority to the Council which relate (or which may relate) to any Protected Data promptly (and in any event within THREE DAYS of receipt) and shall not respond to any without the Council's express written approval and strictly in accordance with the Council's instructions unless and to the extent required by Applicable Laws.
- 7.13** BFCC shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the UNITED KINGDOM or to any International Organisation without the prior written consent of the Council (which may be refused or granted subject to such conditions as the Council deems necessary).
- 7.14** BFCC shall maintain complete, accurate and up to date written records of all categories of processing activities carried out on behalf of the Council. Such records shall include all information necessary to demonstrate its and the Council's compliance with this clause 7, the information referred to in Articles 30(1) and 30(2) of the GDPR and such other information as the Council may reasonably require from time to time. BFCC shall make copies of such records available to the Council promptly (and in any event within THREE DAYS) on request from time to time.

- 7.15** BFCC shall (and shall ensure all Sub-processors shall) promptly make available to the Council (at BFCC's cost) such information as is reasonably required to demonstrate BFCC's and the Council's compliance with their respective obligations under this clause 7 and the Data Protection Laws, and allow for, permit and contribute to audits, including inspections, by the Council (or another auditor mandated by the Council) for this purpose at the Council's request from time to time. BFCC shall provide (or procure) access to all relevant premises, systems, personnel and records during normal business hours for the purposes of each such audit or inspection upon reasonable prior notice (not being more than TWO Business Days) and provide and procure all further reasonable co-operation, access and assistance in relation to any such audit or inspection.
- 7.16** BFCC shall promptly (and in any event within 24 hours) notify the Council if it (or any of its Sub-processors or BFCC Personnel) suspects or becomes aware of any suspected, actual or threatened occurrence of any Personal Data Breach in respect of any Protected Data.
- 7.17** BFCC shall promptly (and in any event within 24 hours) provide all information as the Council requires to report the circumstances referred to in clause 7.16 (above) to a Data Protection Supervisory Authority and to notify affected Data Subjects under Data Protection Laws.
- 7.18** BFCC shall (and shall ensure that each of the Sub-processors and BFCC Personnel shall) without delay (and in any event within 3 days), at the Council's written request, either securely delete or securely return all the Protected Data to the Council in such form as the Council reasonably requests after the earlier of:
- 7.18.1 the end of the provision of the relevant Catering Services related to processing of such Protected Data; or
 - 7.18.2 once processing by BFCC of any Protected Data is no longer required for the purpose of BFCC's performance of its relevant obligations under this Agreement,
- and securely delete existing copies (except to the extent that storage of any such data is required by Applicable Laws and, if so, BFCC shall inform the Council of any such requirement).
- 7.19** BFCC shall indemnify and keep indemnified the Council against:
- 7.19.1 all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, sanctions, expenses, compensation paid to Data Subjects (including compensation to protect goodwill and ex gratia payments), demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Data Protection Supervisory Authority) arising out of or in connection with any breach by BFCC of its obligations under clause 7; and
 - 7.19.2 all amounts paid or payable by the Council to a third party which would not have been paid or payable if BFCC's breach of clause 7 had not occurred.
- 7.20** Unless otherwise expressly stated in this Agreement BFCC's obligations and the Council's rights and remedies under this clause 7 are cumulative with, and additional to, any other provisions of this Agreement.
- 7.21** This clause 7 shall survive termination or expiry of this Agreement for any reason.

8 Anti-bribery

- 8.1** For the purposes of this clause 8 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and guidance published under it.
- 8.2** BFCC shall ensure that it and each person referred to in clauses 8.2.1 to 8.2.3 (inclusive) does not, by any act or omission, place the Council in breach of any Bribery Laws. BFCC shall comply with all applicable Bribery Laws in connection with the performance of the Catering Services and this Agreement, ensure that it has in place adequate procedures to prevent any breach of this clause 8 and ensure that:
- 8.2.1 all of its BFCC Personnel, Sub-contractors or and other member of its supply chain;

8.2.2 all others associated with BFCC; and

8.2.3 each person employed by or acting for or on behalf of any of those persons referred to in clauses 8.2.1 and/or 8.2.2,

involved in performing the Catering Services or with this Agreement so comply.

8.3 Without limitation to clause 8.2, BFCC shall not in connection with the performance of the Catering Services and/or this Agreement make or receive any bribe (which term shall be construed in accordance with the Bribery Act 2010) or other improper payment or advantage, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.

8.4 BFCC shall immediately notify the Council as soon as it becomes aware of a breach [or possible breach] of any of the requirements in this clause 8.

8.5 BFCC shall provide ongoing training for BFCC Personnel in compliance with BFCC's obligations under this clause 8.

9 Modern slavery

9.1 BFCC undertakes, warrants and represents that:

9.1.1 neither BFCC nor any of its BFCC Personnel, Sub-contractors or any other member of its supply chain has:

(a) committed an offence under the Modern Slavery Act 2015 (an MSA Offence); or

(b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

(c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

9.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;

9.1.3 [its responses to the Council's modern slavery and human trafficking due diligence questionnaire are complete and accurate; and]

9.1.4 it shall notify the Council immediately in writing if it becomes aware or has reason to believe that it, or any of its BFCC Personnel, Sub-contractors or any other member of its supply chain has breached or potentially breached any of BFCC's obligations under this clause 9. Such notice to set out full details of the circumstances concerning the breach or potential breach of BFCC's obligations.

9.2 BFCC shall prepare and deliver to the Council no later than [DATE] each calendar year, an annual slavery and human trafficking report setting out the steps it has taken to ensure slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

9.3 BFCC shall provide ongoing training for BFCC Personnel in compliance with BFCC's obligations under this clause 9.

10 Inspection

10.1 BFCC shall allow the Council and/or the Council's duly authorised representatives (including the Council's auditors and other advisers) to inspect all Kitchen Equipment and any BFCC Equipment and BFCC Materials stored on, used at or to be used at the School (or other equipment or materials stored by BFCC on the School) at all reasonable times during normal working hours.

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- 10.2** BFCC grants the Council and/or the Council's duly authorised representatives (including the Council's auditors and other advisers) access, at all reasonable times during normal working hours, to BFCC Personnel and all relevant records held by BFCC, for whatsoever purpose. BFCC shall provide the Council and the Council's duly authorised representatives with all reasonable co-operation, and assistance in respect of the above.
- 10.3** The parties shall bear their own costs and expenses incurred in respect of an inspection carried out in accordance with this clause 10, unless the inspection identifies a material Default by BFCC, in which case BFCC shall reimburse the Council for all its reasonable costs incurred in the course of the inspection.
- 10.4** If an inspection identifies that:
- 10.4.1 the Council has overpaid any Charges, BFCC shall refund to the Council the amount overpaid (plus interest on such amount in accordance with clause 16.7 from the date of payment until the date of the refund) within 30 Business Days from the date of receipt of an invoice or notice to do so; and
- 10.4.2 the Council has underpaid any Charges, the Council shall pay to BFCC the amount of the underpayment by the end of the calendar month following the month in which an invoice is received in respect of the underpayment.
- 10.5** The audit and inspection rights under this clause 10 are in addition, and without prejudice to, the further audit or inspection obligations of BFCC or rights of the Council under clause 7 and each may be exercised separately.

11 Intellectual property rights

- 11.1** The Council shall retain ownership of, and BFCC shall not acquire any right, title or interest in or to, any IPRs in any Council Material or the Council Software.
- 11.2** BFCC shall have no right to use any of the Council's names, logos or trade marks on or in relation to any of its products or services unless express written consent is granted by the Council.
- 11.3** The Council grants to BFCC and to the extent necessary, to the Sub-contractors and BFCC Personnel, or shall use commercially reasonable endeavours to procure the grant of, a royalty free, non-exclusive, non-transferable licence (or, where relevant, an appropriate sub-licence) during the Term (and, if longer, any Termination Assistance Period) to use the Council Material and the Council Software to the extent necessary and for the sole purpose of providing the Catering Services.
- 11.4** BFCC grants to the Council, its (direct and indirect) sub-contractors and, to the extent necessary, its and its (direct and indirect) sub-contractor's employees, officers, staff, other workers, agents and consultants, a perpetual, irrevocable, worldwide, non-exclusive, royalty-free licence for the duration of the Term and the Termination Assistance Period to use, copy, modify, enhance and maintain BFCC Material and BFCC Software, for the purpose of the Council receiving the Catering Services and for the purpose of providing or receiving identical or substantially similar services to the Catering Services following termination of this Agreement (whether such services are carried out by the Council or by a Replacement Supplier).
- 11.5** BFCC shall indemnify and keep indemnified the Council, the Council's Affiliates and all their respective officers, employees, staff, other workers, agents, consultants and (direct and indirect) sub-contractors against all claims, proceedings, damages, costs and expenses arising out of or in connection with any claim of infringement of any IPR or other proprietary rights, alleged to have occurred because of systems or other resources provided by BFCC to the Council, or based upon BFCC's performance of the Catering Services.
- 11.6** Unless prohibited by law (including any obligation of confidentiality) the Council agrees to give to BFCC notice in writing of any claims, actions or proceedings being made, threatened or brought against the Council in connection with any matter to which the indemnity in clause 11.5 applies.

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- 11.7** BFCC shall, at its own expense, conduct any litigation with third parties and all negotiations for a settlement of any third party claim which is subject to the indemnity set out in clause 11.5 and shall keep the Council informed in writing of developments in the litigation or negotiations. The Council shall (at BFCC's cost) give BFCC reasonable assistance in connection with any such litigation or negotiation and the Council agrees not to make any material admission which might be prejudicial to BFCC.
- 11.8** In addition to BFCC's obligation to indemnify under clause 11.5, if any item used by BFCC to provide the Catering Services under this Agreement infringes or is likely to infringe a third party's IPR, BFCC shall promptly and at its own expense: (i) procure the right to continue using such item; (ii) replace or modify the item to make their use non-infringing, providing that any such replacement or modification shall not degrade the performance, functionality or the quality of the affected item or detrimentally impact upon the Catering Services such that the Catering Services do not comply with this Agreement, and BFCC shall ensure that such replacement or modification shall be carried out as soon as reasonably practical so as to avoid or reduce so far as possible any interruption in the Council's and its Affiliates' business operations or the provision of the Catering Services; or (iii) if BFCC can demonstrate to the Council's reasonable satisfaction that it cannot do either of the above, remove the item from the Catering Services if requested by the Council and the parties shall discuss the impact of the removal on the value and performance of the Catering Services and the Charges with the intent of reducing the Charges to reflect such removal. In default of agreement on such impact, the Council may terminate this Agreement by reason of BFCC's material breach.
- 11.9** The remedies stated in this clause 11 are without prejudice to any other remedy the Council may have in relation to the provision of the Catering Services.

12 TUPE

- 12.1** The parties agree that the outsourcing of the Catering Services to BFCC shall constitute a service provision change as defined in regulation 3(1)(b) of the TUPE Regulations and that on the Effective Date the employment of the Employees shall transfer to BFCC pursuant to the TUPE Regulations.
- 12.2** The Council shall be responsible for and shall indemnify and keep indemnified BFCC and its Affiliates in full against:
- 12.2.1 any Employee Liabilities and Employment Costs arising out of or in connection with:
- (a) the employment or engagement of the Employees or any other person; or
 - (b) the termination of the employment or engagement of any person,
- in each case by the Council or its Affiliates during the period prior to the Effective Date; and
- 12.2.2 any failure by the Council or its Affiliates to comply with its obligations under the TUPE Regulations.
- 12.3** BFCC shall be responsible for and shall indemnify and keep indemnified the Council in full against:
- 12.3.1 any Employee Liabilities and Employment Costs arising out of or in connection with the employment or engagement of the Employees or (except as provided in clauses 12.5 and 12.6) any other person by BFCC or its Affiliates on and after the Effective Date;
- 12.3.2 any failure by BFCC or its Affiliates to comply with its or their obligations under the TUPE Regulations; and
- 12.3.3 any claim against the Council or its Affiliates by any Employee under regulation 4(9) or 4(11) of the TUPE Regulations.
- 12.4** The Council shall not during the period between the date of this Agreement and the Effective Date:

- 12.4.1 increase or decrease the number of Employees performing the Catering Services by more than [INSERT NUMBER]%;
 - 12.4.2 increase the remuneration of any Employee other than by an annual pay increase of no more than [INSERT NUMBER]% or otherwise change the terms and conditions of employment of any Employee;
 - 12.4.3 terminate the employment or engagement of any Employee; or
 - 12.4.4 cease to assign any Employee to the Catering Services.
- 12.5** If any person, other than an Employee, employed or engaged by the Council or any of the Council's Affiliates transfers or alleges that his employment or engagement (or any liability related to it) transfers to BFCC or any of BFCC's Affiliates or any Sub-contractor under the TUPE Regulations or otherwise as a result of BFCC or any Sub-contractor providing the Catering Services, the parties will discuss how to address the situation. In the absence of any agreement, BFCC, any of BFCC's Affiliates or any Sub-contractor (as applicable) may dismiss any such person.
- 12.6** The Council will indemnify and will keep indemnified BFCC and BFCC's Affiliates (for its or their benefit and the benefit of any relevant Sub-contractor) from all Employee Liabilities which BFCC, any of BFCC's Affiliates or any relevant Sub-contractor may incur as a result of the TUPE Regulations applying or being alleged to apply including any Employee Liabilities arising out of or in connection with any dismissal permitted by clause 12.5 (including the cost of employment until the date of dismissal).

13 Employee information

- 13.1** Subject to any obligations under Data Protection Laws, the Council will provide the Employee Information in respect of the Employees to BFCC no later than 28 days prior to the Effective Date.
- 13.2** Subject to any obligations under Data Protection Laws, BFCC will provide the Employee Information in respect of BFCC Personnel to the Council upon request by the Council:
- 13.2.1 at any time during the last six months of the Initial Term or of any Extended Term; or
 - 13.2.2 at any time after notice to terminate this Agreement has been given by either party.

14 Personnel

- 14.1** At all times, BFCC shall ensure that:
- 14.1.1 each of BFCC Personnel is suitably qualified, adequately trained and capable of performing the applicable Catering Services in respect of which they are engaged;
 - 14.1.2 there is an adequate number of BFCC Personnel to perform the Catering Services properly; and
 - 14.1.3 each of BFCC Personnel complies with the Council's policies and procedures notified to BFCC in writing when working on the Council's sites.
- 14.2** BFCC shall be liable for paying all Employment Costs from the Effective Date and shall be responsible for making all deductions required by Applicable Laws.
- 14.3** Should the Council, acting reasonably, consider that any member of BFCC Personnel should be removed from the provision of the Catering Services BFCC shall have one month from the date on which the Council notifies BFCC of that fact to provide a replacement member of BFCC Personnel who is reasonably acceptable to the Council.
- 14.4** Except in relation to a relevant transfer to a Replacement Supplier under the TUPE Regulations, neither the Council nor BFCC will, during the period of this Agreement or for a period of [12] months following expiry or termination of this Agreement, howsoever caused, directly or indirectly solicit or attempt to solicit from the employment of the other party or its

Affiliates any person employed or engaged by the other who during the period of [12] months prior to the expiry or termination of this Agreement was involved in the provision of the Catering Services.

15 Employees on termination

- 15.1** The parties will comply with their obligations to provide information to a Replacement Supplier about the individuals assigned to the Catering Services and to inform and consult with affected employees in relation to any potential transfer to a Replacement Supplier under the TUPE Regulations.
- 15.2** Notwithstanding clause 14.4, if the undertaking of any services by a Replacement Supplier does not constitute a relevant transfer under regulation 3 of the TUPE Regulations, either the Council or the Replacement Supplier or their respective Affiliates shall be entitled to make an offer of employment or engagement to any BFCC Personnel.
- 15.3** BFCC shall not at any time during the last SIX months of the Initial Term or of any Extended Term or at any time after notice to terminate this Agreement has been given by either party:
- 15.3.1 increase or decrease the number of BFCC Personnel performing the Catering Services by more than [INSERT NUMBER]%;
 - 15.3.2 increase the remuneration of any BFCC Personnel other than by an annual pay increase of no more than [INSERT NUMBER]% or otherwise change the terms and conditions of employment of any BFCC Personnel;
 - 15.3.3 terminate the employment or engagement of any BFCC Personnel; or
 - 15.3.4 cease to assign any BFCC Personnel to the Catering Services.
- 15.4** If any person employed or engaged by BFCC or any of BFCC's Affiliates or any Sub-contractor other than BFCC Personnel in respect of whom BFCC provides Employee Information in accordance with clause 13.2 transfers or alleges that his employment or engagement (or any liability related to it) transfers to the Council or any of the Council's Affiliates or any Replacement Supplier or any of its (direct or indirect) sub-contractors (as applicable) as a result of the cessation of all or part of the Catering Services for whatever reason, the parties will discuss how to address the situation. In the absence of any agreement, the Council, any of the Council's Affiliates or any Replacement Supplier or its (direct or indirect) sub-contractors (as applicable) may dismiss any such person.
- 15.5** BFCC will indemnify and will keep indemnified the Council and the Council's Affiliates (for its or their benefit and for the benefit of any Replacement Supplier or its (direct and indirect) sub-contractors) from all Employee Liabilities which the Council, any of the Council's Affiliates or any Replacement Supplier or its (direct and indirect) sub-contractors may incur as a result of the TUPE Regulations applying or being alleged to apply including Employee Liabilities arising out of or in connection with any dismissal permitted by clause 15.4 (including the cost of employment until the date of dismissal).

16 Charges

- 16.1** In consideration of the performance of the Catering Services by BFCC, BFCC shall be entitled to invoice the Council for the Charges for each of the Catering Services in accordance with the Charges Schedule monthly in arrears. Each invoice issued by BFCC shall include those details as are reasonably specified by the Council including as necessary to satisfy the Council's internal accounting and charge-back requirements.
- 16.2** The Council shall pay all undisputed invoices by the end of the calendar month following the month in which such invoice is received.
- 16.3** All Charges are fixed for the Initial Term. Thereafter, subject to a Change agreed by the parties pursuant to the Change Control Procedure, BFCC may increase the Charges on an annual basis upon written notice in writing to the Council in line with the Retail Prices Index in the preceding Contract Year or, if lower, by 3%.

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- 16.4** If the Council receives an invoice from BFCC which it reasonably believes includes a sum which is not valid and properly due:
- 16.4.1 the Council shall notify BFCC in writing as soon as reasonably practicable;
 - 16.4.2 the Council's failure to pay the disputed Charges shall not be deemed to be a breach of this Agreement;
 - 16.4.3 the Council shall pay the balance of the invoice which is not in dispute by the due date for payment of the invoice in accordance with clause 16.2;
 - 16.4.4 to the extent that the Council is obliged, following resolution of the dispute, to pay an amount, then BFCC may charge interest in accordance with clause 16.7 from the original due date for payment of the invoice in accordance with clause 16.2 until the date of payment;
 - 16.4.5 to the extent that BFCC is obliged to refund an amount to the Council, then interest shall be added to that amount in accordance with clause 16.7 from the date of payment of the invoice until the date of the refund (except for refunds of prepayments by Council due to the Council exercising its termination rights); and
 - 16.4.6 once the dispute has been resolved, where either party is required to make a balancing payment, it shall do so within [TEN] Business Days of the date on which such dispute is resolved.
- 16.5** BFCC shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this Agreement. Such records as relate to each invoice sent to the Council for the Charges shall be provided to the Council with the relevant invoice and, in accordance with generally accepted accounting principles applied on a consistent basis, shall be retained for inspection by the Council for a minimum period of seven years (unless a longer period is required by law or regulation in which case such longer period will be deemed to apply) following the end of the Term (or, if later, the end of the Termination Assistance Period).
- 16.6** BFCC shall not suspend the supply of Catering Services if any payment is overdue unless it is entitled to terminate this Agreement under [clause 20.6.1 OR clause 20.8].
- 16.7** Interest shall be payable under this Agreement (including on any overdue payments) at the rate of 2% per annum above the base rate of [BANK] in force from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount.
- 16.8** Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Agreement and in no event shall the Council be responsible for any fees, charges or expenses not identified in this Agreement (including the Charges Schedule) as being payable by the Council and, where applicable, calculated in accordance with this Agreement (including the Charges Schedule).
- 16.9** The Council may retain or set off any sums owed to it by BFCC or a BFCC Affiliate which have fallen due and are payable against any sums due to BFCC under this Agreement.

17 Value added tax

All prices are exclusive of value added tax (if any) or any other locally applicable equivalent sales taxes (VAT), which is payable by the Council at the rate and in the manner from time to time prescribed by law. Unless otherwise agreed between the parties, BFCC shall be responsible for all other taxes which are incurred as a result of this Agreement and the Catering Services being provided.

18 Liability

- 18.1** Nothing in this Agreement shall exclude or limit the liability of either party:

18.1.1 for death or personal injury caused by that party's negligence;

- 18.1.2 in respect of the obligation of the Council to pay valid and undisputed Charges;
- 18.1.3 for fraud or fraudulent misrepresentation;
- 18.1.4 in the case of BFCC, for any wilful misconduct by BFCC;
- 18.1.5 for any liabilities arising in connection with the employment indemnities described in clauses 12 or 15 or Schedule 3;
- 18.1.6 for any breach by BFCC of clause 6 or clause 7;
- 18.1.7 for any liabilities arising in connection with the data protection indemnity set out in clause 7.19 and/or the IPR indemnity set out in clause 11.5; or
- 18.1.8 for any matter which it would be unlawful for such party to exclude or attempt to exclude its liability.

18.2 Subject to clause 18.1, the Council's aggregate liability (howsoever arising, including in negligence) under or in connection with this Agreement shall be limited to 125% of the Charges paid or due and payable (ie for Catering Services performed and goods supplied) in the last full year of this Agreement prior to the cause of action giving rise to the relevant claim or series of connected claims. The Council shall have no liability to BFCC for the loss or theft of any BFCC Equipment or other equipment or materials provided, used and/or stored by BFCC at the School, or any damage caused to the same howsoever arising.

18.3 Subject to clause 18.1, BFCC's maximum liability (howsoever arising, including in negligence) for each claim or series of connected claims arising under or in connection with this Agreement shall be the greater of £1,000,000 or 200% of the Charges paid or due and payable (ie for Catering Services performed and goods supplied) in the last full year of this Agreement prior to the cause of action giving rise to the relevant claim or series of connected claims.

19 Insurance

19.1 BFCC shall put in place prior to the Effective Date and maintain in force, at its own cost, at least the following insurance policies with reputable insurance companies to cover its relevant potential liabilities in connection with this Agreement:

- 19.1.1 employers liability insurance in respect of BFCC employees engaged directly or indirectly in the performance of BFCC's obligations under this Agreement; and
- 19.1.2 public liability insurance in respect of any sum or sums BFCC may become liable to pay by reason of its indemnities referred to in clause 11 and any other potential liability to the Council in respect of work carried out by BFCC and BFCC Personnel.

19.1.3 [CAPITAL: IS THERE ANY OTHER INSURANCE YOU WOULD LIKE US TO LIST?]

19.2 The maintenance of the above insurances is the sole responsibility of BFCC and the Council shall not be required to bear any of the cost thereof.

19.3 BFCC shall ensure that the Council's interest is noted on each insurance policy (except the employers' liability insurance policy), or that a generic interest clause has been included.

19.4 BFCC shall, on the request of the Council, produce to the Council a copy of each of the policies of insurance referred to at clause 19.1 and receipts for the payment of the current premiums or a broker's letter confirming the same.

20 Duration and Termination

20.1 This Agreement shall begin on the Effective Date and shall remain in effect for the Initial Term (and any extensions pursuant to clause 20.3) (Term), unless and until terminated by either party in accordance with the provisions of this Agreement.

-
- 20.2** Unless this Agreement is extended in accordance with clause 20.3 at the end of the Initial Term (or any subsequent Extended Term), this Agreement shall automatically expire at the end of the Initial Term (or Extended Term, as applicable).
- 20.3** The Council may, at its option, provide notice to BFCC, such notice to be given by the Council at least THREE months prior to the end of the Initial Term, that it wishes to extend the Initial Term on the same provisions as set out in this Agreement (or, if the Council wishes to renegotiate any such provisions, on those provisions agreed by the parties), by an Extended Term. No less than THREE months prior to the end of the first Extended Term (and each Extended Term thereafter), the Council may, at its option, provide notice to BFCC that it wishes this Agreement to continue for a further Extended Term on the same provisions as set out in this Agreement (or, again, if the Council wishes to renegotiate any such provisions, on those provisions agreed by the parties) [provided that the aggregate number of Extended Terms under this clause 20.3 does not exceed TWO.
- 20.4** During the Term, the Council may terminate this Agreement (or the Catering Services, or any of them) for convenience on giving not less than SIX months prior written notice to BFCC.
- 20.5** BFCC may terminate this Agreement (or the Catering Services, or any of them) for convenience at any time during any Extended Term (but not, for the avoidance of doubt, during the Initial Term) on giving not less than SIX months prior written notice to the Council.
- 20.6** This Agreement may be terminated immediately by the Council if:
- 20.6.1 BFCC is in material breach of the terms of this Agreement and fails to remedy the same within 30 days of receiving notice to do so; or
 - 20.6.2 an order shall be made or an effective resolution passed for the dissolution or winding-up of the [[BFCC] OR other party] except in the event of solvent reconstruction or amalgamation where the amalgamated or reconstructed party agrees to adhere to this Agreement; or
 - 20.6.3 BFCC makes an assignment for the benefit of its creditors or has a receiver or administrator appointed over its business and/or assets or has a resolution passed or a court order is made placing it in liquidation; or
 - 20.6.4 BFCC is unable to pay its debts (including within the meaning of Section 123(1) of the Insolvency Act 1986) or ceases to or threatens to cease to carry on its business.
- 20.7** The Council may terminate this Agreement on written notice to BFCC if:
- 20.7.1 BFCC is in breach of any of clauses 7, 8, and 9;
 - 20.7.2 there is a Change of Control of BFCC to which the Council reasonably objects; or
 - 20.7.3 BFCC fails to meet service levels as set out under the Catering Services Schedule for three consecutive months or four months in any six-month period.
- 20.8** BFCC may only terminate this Agreement if the Council fails to pay undisputed Charges for which properly submitted invoices have been delivered above 50% of current year's contracted Catering Services and within a rolling 180 day period. BFCC agrees that prior to exercising its rights and where reasonably possible before unpaid invoices reach this level, it shall escalate any non-payments to the Council's senior management.
- 20.9** During any period of notice of termination all provisions of this Agreement shall continue to apply.
- 20.10** Following termination or expiry of this Agreement all provisions of this Agreement shall continue to apply for the duration of any period during which Termination Assistance is provided (except that BFCC shall not be required to provide Catering Services other than Termination Assistance and the Council not be liable for any further Charges except those due for Termination Assistance).

21 Termination assistance

- 21.1** For up to SIX months following the effective date of expiry or termination of this Agreement or following the date of any notice of termination, at the Council's election and request, BFCC shall provide Termination Assistance to the Council.
- 21.2** Any fees, costs or expenses payable by the Council to BFCC for the Termination Assistance shall be, in respect of the performance of Catering Services as part of the Termination Assistance, at the rates as set out in the Charges Schedule or at such lower rates as are equitable in the circumstances and, in respect of any other Termination Assistance, at such rates as shall be equitable in the circumstances and agreed by the parties in advance. Where BFCC terminates this Agreement pursuant to clause 20.5 or the Council terminates this Agreement pursuant to clauses 20.6 or 20.7, BFCC shall provide the Termination Assistance at no charge.
- 21.3** The parties hereby acknowledge that damages may not be an adequate remedy for the Council in the event that BFCC fails to provide Termination Assistance in accordance with the provisions of this Agreement and that the Council may apply to the courts to seek injunctive relief in respect of such failure.

22 Consequences of termination

- 22.1** On termination or expiry of this Agreement for whatever reason, BFCC shall:
- 22.1.1 subject to the performance of all Catering Services requested to be performed by the Council as part of Termination Assistance, immediately stop the performance of all Catering Services except the Termination Assistance;
 - 22.1.2 immediately invoice the Council for all Charges in respect of Catering Services performed prior to termination and/or refund any sums paid in advance for Catering Services not performed; and
 - 22.1.3 uninstall and remove from the School all BFCC Equipment,
and all rights granted to BFCC under clause 11.3 shall immediately cease.
- 22.2** Any provision of this Agreement which expressly or by implication is intended to continue in force after termination will do so notwithstanding termination or expiry of this Agreement.

23 Dispute resolution

- 23.1** If any dispute arises between the parties out of or in connection with this Agreement, the matter shall be referred to senior representatives of each party who shall use their reasonable endeavours to resolve it.
- 23.2** If the dispute is not resolved within 14 DAYS of the referral being made under clause 23.1, the parties shall resolve the matter through mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 23.3** Either party may issue formal legal proceedings or commence arbitration at any time whether or not the steps referred to in clauses 23.1 and 23.2 have been completed. OR Until the parties have completed the steps referred to in clauses 23.1 and 23.2, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief.

24 Notices

- 24.1** Notices under this Agreement shall be in writing and sent to a party's address as set out on the first page of this Agreement (or to the email address set out below). Notices may be given, and shall be deemed received:
- 24.1.1 by first-class post: TWO Business Days after posting;
 - 24.1.2 by airmail: SEVEN Business Days after posting;

24.1.3 by hand: on delivery; and

24.1.4 BY EMAIL TO [ADDRESS] IN THE CASE OF THE COUNCIL AND [ADDRESS] IN THE CASE OF BFCC: ON RECEIPT OF A DELIVERY OR READ RETURN EMAIL.

24.2 This clause does not apply to notices given in legal proceedings or arbitration.

25 Announcements

No announcement or other public disclosure concerning this Agreement or any of the matters contained in it shall be made by, or on behalf of, a party without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any court, any governmental, regulatory or supervisory authority (including any recognised investment exchange) or any other authority of competent jurisdiction.

26 Force majeure

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from any event beyond the reasonable control of that party. The party affected by such an event shall promptly notify the other party in writing when such an event causes a delay or failure in performance and when it ceases to do so. If such an event continues for a continuous period of more than 3 months, the party not affected may terminate this Agreement by written notice to the other party.

27 Further assurance

Each party shall at the request of the other, and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to this Agreement.

28 Assignment and Sub-contracting

28.1 Subject to clause 28.2, BFCC shall not be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the express written consent of the Council.

28.2 Subject to clause 7, BFCC may Sub-contract all or part of its obligations under this Agreement to a recognised competent third party provided the Council has consented in writing to the Sub-contractor.

28.3 Despite its right to Sub-contract pursuant to this clause 28, BFCC shall remain responsible for all acts and omissions of all Sub-contractors and BFCC Personnel as if they were its own. An obligation on BFCC under the provisions of this Agreement to do, or refrain from doing, any act or thing shall include an obligation on BFCC to procure that each Sub-contractor and each of BFCC Personnel also do, or refrain from doing, such act or thing.

28.4 The Council shall be entitled to assign this Agreement to any of its Affiliates at any time.

29 Change control procedure

29.1 Where the Council or BFCC sees a need to change this Agreement (or any of the provisions therein, including the Catering Services Schedule), whether in order to include an additional service, function or responsibility to be performed by BFCC for the Council under this Agreement, to amend the Catering Services or the service levels as set out in the Catering Services Schedule or otherwise, the Council may at any time request, and BFCC may at any time recommend, such Change and a Change Request shall be submitted by the party requesting/requiring (as applicable) the Change to the other. Such Change shall be agreed by the parties only once the Change Request is signed by both parties.

29.2 Each Change Request shall conform to the requirements of Schedule 4.

29.3 Until such Change is made in accordance with clause 29.1, the Council and BFCC shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms prior to such Change.

29.4 Any discussions which may take place between the Council and BFCC in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.

29.5 Any Catering Services or other work performed by BFCC and/or BFCC Personnel to the Council which have not been agreed in accordance with the provisions of this clause 29 shall be undertaken entirely at the expense and liability of BFCC.

30 Variation

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

31 Set off

Subject to clause 16.9, each party shall pay all sums that it owes to the other party under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

32 No partnership or agency

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the parties nor make any party the agent of another party.

33 Severance

If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

34 Waiver

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

35 Third party rights

Save for relevant third parties expressed to be beneficiaries of the indemnities specified in clauses 11.5,12 or 15 and Schedule 3 (who may enforce their respective rights and benefits under those indemnities in accordance with the Contracts (Rights of Third Parties) Act 1999), a person who is not a party to this Agreement may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999. For the avoidance of doubt however this Agreement may be amended or rescinded by agreement between the parties without the consent of any third party.

36 Entire agreement

36.1 The parties agree that this Agreement and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

36.2 Each party acknowledges that it has not entered into this Agreement or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement or any documents entered into pursuant to it, except in the case of fraudulent misrepresentation. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.

37 Counterparts

- 37.1** This Agreement may be signed in any number of separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement.
- 37.2** Each party may evidence their signature of this Agreement by transmitting BY EMAIL a signed signature page of this Agreement in PDF format together with the final version of this Agreement in PDF or Word format, which shall constitute an original signed counterpart of this Agreement. Each party adopting this method of signing shall, following circulation BY EMAIL, provide the original, hard copy signed signature page to the other parties as soon as reasonably practicable.

38 Governing law and jurisdiction

- 38.1** This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 38.2** Subject to clause 23.3, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

THIS AGREEMENT has been entered into on the date stated at the beginning of it.

Please replace execution clauses as appropriate.

Signed by [INSERT FULL NAME OF DIRECTOR]
for and on behalf of	Director
BIG FRESH CATERING COMPANY LIMITED	

and

Signed by [INSERT FULL NAME OF AUTHORISED SIGNATORY]
for and on behalf of	Authorised signatory
Vale of Glamorgan Council	

Schedule 1 Catering Services

1 Catering Services overview

- 1.1** This Schedule describes the services to be performed by BFCC on the terms and conditions of this Agreement. Defined terms used in this Schedule shall have the meanings set out in clause 1 of the Agreement unless the context requires otherwise.
- 1.2** The services shall consist of the following service lines:
- 1.2.1 [INSERT SERVICE], as described in paragraph 2; and
- 1.2.2 [INSERT SERVICE] as described in paragraph 3.
- 1.3** BFCC shall provide the services at the Schools and from the following locations:

BFCC location	Service element
[INSERT DETAILS OF ANY DIFFERENT PREMISES USED]	[SPECIFY SERVICE TO BE PROVIDED FROM THIS LOCATION]

2 [SERVICE LINE A]

- 2.1** BFCC shall provide [SPECIFY CATERING SERVICES] for the Council's [DESCRIBE WHICH OF THE COUNCIL'S BUSINESS DIVISIONS WILL BE BENEFITTING].
- 2.2** The specific services, functions and deliverables to be provided are as follows:

Reference number	Description	Deliverable (if any)

3 [SERVICE LINE B]

- 3.1** BFCC shall provide [SPECIFY CATERING SERVICES] for the Council's [DESCRIBE WHICH OF THE COUNCIL'S BUSINESS DIVISIONS WILL BE BENEFITTING].
- 3.2** The specific services, functions and deliverables to be provided are as follows:

Reference number	Description	Deliverable (if any)

Schedule 2 Charges

[INCLUDE DESCRIPTION OF CHARGES]

Schedule 3 Employee information

Date of birth	Pay and allowances	Last [INSERT NUMBER] years' total gross remuneration	Bonus, incentive, share or option scheme participation	Other benefits	Employer pension contributions	Entitlement to non-statutory payments on termination of employment for redundancy or any other reason

Schedule 4 Form of Change Request

[INCLUDE FORM OF CHANGE CONTROL]

Schedule 5 School

[LIST OF SCHOOLS AND WHERE NECESSARY THIRD PARTY REQUIRED TO GRANT ACCESS AND/OR LICENCE TO KITCHEN EQUIPMENT]

[DETAILS OF UTILITIES AND ANY OTHER FACILITIES]

Schedule 6 Data protection

Part 1 Data processing details

Processing of the Protected Data by BFCC under this Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this Schedule 6, Part 1.

1 Subject-matter of processing:

[INSERT]

2 Duration of the processing:

[INSERT]

3 Nature and purpose of the processing:

[INSERT]

4 Type of Personal Data:

[INSERT]

5 Categories of Data Subjects:

[INSERT]

6 Specific processing instructions:

[INSERT]

Part 2 Minimum technical and organisational security measures

1 Without prejudice to its other obligations, BFCC shall implement and maintain at least the following technical and organisational security measures to protect the Protected Data:

1.1 In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with this Agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, BFCC shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR.

1.2 [CAPITAL: ANY ADDITIONAL SECURITY MEASURES]

Equality Impact Assessment

Appendix 3

Please click on headings to find [general guidance](#) or section guidance with an example.

You will find supporting information in appendices at the end of the guidance.

When you start to assess your proposal, arrange to meet Tim Greaves, Equality Co-ordinator, for specific guidance. Send the completed form to him for a final check and so that he can publish it on our Vale of Glamorgan equality web pages.

Please also contact Tim Greaves if you need this equality impact assessment form in a different format.

1. [What are you assessing?](#)

Local Authority Trading Company (LATC) resulting from the Reshaping Services Project.

To create a new company to deliver and develop the catering service for internal and external customers. To commercially develop the school meals service and trade externally with public and private sector businesses. The service will create a highly trained, commercial facing workforce promoting and delivering opportunities for everyone to develop, learn and succeed.

2. [Who is responsible?](#)

Name	Carole Tyley	Job Title	Catering Manager
Team	Catering	Directorate	Learning and Skills

Equality Impact Assessment

3. When is the assessment being carried out?

Date of start of assessment	March 2016 - Updated October 2019
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4. Describe the proposal?

<p>What is the purpose of the proposal?</p> <p>To commercially develop the school meals service and trade externally with public and private sector businesses. The service will create a highly trained, commercial facing workforce promoting and delivering opportunities for everyone to develop, learn and succeed.</p>
<p>Why do you need to put it in place?</p> <p>The Catering Service was identified as a Tranche 1 project as part of the Council's Reshaping Services Programme with total required savings of £347,000. All savings were achieved in October 2015 through cost-saving measures and the principle aim of the project then changed to focus on the sustainability of services for the future, in light of reduced budgets.</p> <p>In April 2017, Cabinet approved a Business Case which was based upon the proposed creation of a Local Authority Trading Company for the delivery of Catering Services. This model was deemed to be the most sustainable, following a robust options appraisal which evaluated a range of options for the future of the Catering Service to meet the project's objectives.</p>
<p>Do we need to commit significant resources to it (such as money or staff time)?</p> <p>A project team has been established to implement the LATC as the most sustainable</p>

Equality Impact Assessment

model for the future delivery of the Catering Service, which comprises colleagues from Learning and Skills, Legal, HR, Property, ICT, Finance and Business Improvement.

What are the intended outcomes of the proposal?

An LATC will be created for the delivery of Catering Services from 1 November 2019.

Who does the proposal affect?

- Employees of the Catering Service
- Headteachers/Governors of Schools
- Customers of the Catering Service
- Vale of Glamorgan Council Internal Departments

Note: If the proposal affects lesbian, gay, homosexual, or transgender people, ensure you explicitly include same-sex couples and use gender neutral language.

Will the proposal affect how other organisations work?

As an internal department of the Council, the Catering Service currently pays the Council for the provision of support services. The amounts allocated are derived from a council-wide formula. Any external service provider would not contribute to central recharges. On that basis, and with the aim of retaining as many council services as possible the LATC is adopting the approach used with schools, who similarly operate independently with delegated budgets, and as such as reflected the SLA costs paid by schools to secure the services listed below on offer by the Council. The LATC will have a fiduciary duty to ensure value for money and will not be in a position to subsidise central costs. Should rates offered by the Council be not broadly comparable to those commercially available

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the LATC will be required to source services elsewhere to ensure value for money.

Will the proposal affect how you deliver services?

The service will continue to provide school meals for all pupils from age 3 to 19. This policy is intended to increase and improve the quality of provision of the service to its client and customers. Currently the school population is 22,665 (100%). The service offers catering to 18,202 (80%) of this population. In addition, the service will trade with external customers and tender for new business. All profits will be reinvested into the school meals service.

Will the proposal impact on other policies or practices?

See above regarding Central Services provided currently by the Council.

Can you change the proposal so that it further promotes equality of opportunity and fosters good relations?

- Terms and conditions will remain unchanged for all staff
- Service provision will continue to provide school meals for all pupils from age 3 to 19
- Policy is intended to increase and improve the quality of provision of the service to its client and customers

How will you achieve the proposed changes?

Project team to continue to follow the implementation plan, manage risks and

Equality Impact Assessment

communicate effectively with all stakeholders.

Who will deliver the proposal?

Project Team comprising colleagues from Learning and Skills, Legal, HR, Property, ICT, Finance and Business Improvement.

How will you know whether you have achieved the proposal's purpose?

- Creation of the LATC from 1 November 2019
- Regular reviews with the LATC Board to ensure the objectives of the company are being met

5. What evidence are you using?

Engagement (with internal and external stakeholders)

The proposal to create an LATC has been consulted on since 2015. Consultation and engagement has taken place with a series of stakeholders.

The project team has recognised the importance of listening to a range of views, both internal and external to the Council in formulating the business case for change.

This has involved periodic all staff briefings which have been well attended and the contribution of staff has been positive.

Equality Impact Assessment

A regular forum with the recognised trade unions has been established. It is proposed that these mechanisms (in addition to any other formal processes required) will be continued throughout the implementation of the changes.

The Cabinet Report which recommended a LATC be created was referred to the Learning & Culture and Corporate Performance & Resources Scrutiny Committees for their consideration before Cabinet reached a final determination on this matter. It was proposed that when being brought back to Cabinet to make their decision, the views of the Scrutiny Committees as well as staff and the trade unions were provided in order for Cabinet to make a detailed and informed decision on how to proceed.

The following describes the specific consultation and engagement work that has been undertaken to date.

Staff and Unions

A significant process of engagement with staff was delivered in the summer of 2015 whereby all members of staff were invited to a series of briefing sessions on the challenges facing the Council and introduced the response in the form of Reshaping Services.

In addition to these sessions, the Catering Manager ran a workshop with the Catering staff on the 24th July 2015 to introduce them to the alternative service delivery models that have been considered as part of this project. Staff showed interest in the potential for an alternative delivery model to be adopted in future.

Staff engagement sessions were again held during August 2016, February and August 2017, April 2018, October 2018 and July 2019 to provide an update on the project. All staff were invited (and their attendance outside of 27 contracted hours paid) and were given the opportunity to submit any questions on the project and describe their priorities for the future of the service. The feedback provided as part of this engagement exercise

Equality Impact Assessment

was provided to Cabinet to inform their decision to create the LATC.

There has been engagement with Trade Unions to date via both corporate and service specific forums. During the development of the business plans, Unison helpfully provided the project team with a number of questions/comments which again was provided to Cabinet to inform their decision to create the LATC. The questions and comments raised by Trade Unions were used throughout the development of the business plans. Answers to the questions were also provided to Cabinet. Trade Union meetings continue on a monthly basis.

A staff reference group was created to continue engagement with staff representatives. This group has met on a number of occasions and it is anticipated this group will be involved in the ongoing development and implementation of the model.

Consultation with staff and the recognised unions is legally required and will be on-going throughout this project as indicated in the timeline set out in the relevant Cabinet Reports. It was also taken account of when preparing the business plan.

Engagement with relevant Trade Unions will continue to ensure that they are well equipped to support their members during the transition to the new model. A firm commitment has been made in this regard with no plans to deviate from this.

Headteachers

The project team has attended both the primary and secondary Headteacher steering groups to provide updates on the project. Headteachers were given the opportunity to provide their priorities for the catering service and these were included in the relevant business plans.

Headteachers have been involved from the beginning and continue to be updated on the progress of the project. The project team have attended both Primary and Secondary

Equality Impact Assessment

Headteacher Cluster Meetings to provide an update on the project. Headteachers were asked a number of questions on the current proposals during the Headteacher steering group.

Headteachers indicated that value for money was their main priority for the future service. 12 Headteachers expressed interest in being involved in the future of the school meal service and 14 Headteachers felt the local authority trading company model was worth considering for other services to schools.

As described in the report, it is proposed that the local authority trading company will operate with a “cooperative ethos”. This means that the company’s customers will be involved in decision making and it is proposed that there will be Headteacher representation on the Board of Directors.

A stakeholder group comprising members of the Project Team and Primary School Headteachers from all three areas of the Vale of Glamorgan, met in June and October 2018 and May 2019 to discuss project progress and to discuss a draft service catalogue produced to outline services to be offered by the LATC. The Headteachers appeared positive about the plans for the service and the more they learned about the proposals of the company the more interested they became. It is proposed that this stakeholder group will continue to meet on a quarterly basis and further updates will feature within cluster meetings.

Consultation (with internal and external stakeholders)

The project team will maintain a regular consultation and communication process as part of the implementation of the LATC with both staff and Trade Unions.

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See above for more information on the activities that have taken place.

National data and research

The project is being managed in line with the following internal/external plans, policies and strategies:

- Corporate Plan 2016-20
- Wellbeing of Future Generations (Wales) Act 2015
- The Healthy Eating in Schools (Nutritional Standards and Requirements) (Wales) Regulations 2013
- Food Information for Consumers Regulations (EU FIC)
- School Standards & Organisation (Wales) Act 2013

Advice has been sought and will continue to be sought from other Councils who have adopted similar models for their Catering service e.g. Flintshire and Plymouth. This has helped to share best practice and to inform the implementation plans.

During June 2018, an external gateway review of the Catering Project was undertaken by a company called C.Co. The review approach was to conduct an initial 'desktop' review of project documentation and to discuss key elements of the project during an on-site period. The assessment was undertaken using an established, evidence-based model for local government 'spin outs' that considers implications and responsibilities for governance, Human Resources; ICT; Legal; Finance; together with arrangements for the buyback of Council services.

The key findings of the review were that the project is deliverable but will require a structured project plan with clear priority and accountability, the clear commitment of the

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wider organisation to the project's priority status, the designation and freeing up of appropriate resource to support the delivery of the project and the recognition and remediation of the Council's commercial knowledge and skills gaps.

The recommendations from the C.Co review are a focus for the project team going forward and have been incorporated into the implementation plan to ensure they remain a priority.

Local data and research

See previous sections

6. How robust is the evidence?

Does it show what the impact will be (positive and negative)?

There is no impact on protected characteristic groups.

What are the gaps?

There are no gaps identified at the current time, but this will continue to be monitored as the project progresses and addressed appropriately.

What will you do about this?

There are no gaps identified at the current time, but this will continue to be monitored as

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the project progresses and addressed appropriately.

What monitoring data will you collect?

The project is being governed by the Project Sponsor acting as a liaison between the Project Team and the Income Generation and Commercial Opportunities Programme Board who meet on a monthly basis. The Income Generation and Commercial Opportunities Programme Board is a programme of work, which forms part of the Council's Reshaping Services Programme. It is intended that as the project progresses this continues as the formal mechanism for reporting project progress, as it ensures all key stakeholders are represented and updated.

Effective governance is essential in creating the LATC to ensure the requirements of the Teckal Exemption are satisfied, to demonstrate that it exerts control and influence over the LATC. A balance between the Council's strategic control and influence whilst still enabling the Directors of the LATC to have operational responsibility for delivering the strategic objectives.

The structure of the LATC will reflect a number of key relationships, governance, and contractual relationships with the Council, including:

- 100% shareholder with monitoring arrangements via the Shareholder Committee
- Commissioning authority with a contract for services delivery by the LATC

The above provides a legal and governance framework for the company which will be a registered company under the Companies Act 2006 and the service contracts referred to.

Nature and duties of the Executive Shareholder Committee:

- Exert influence and control over the LATC on behalf of the Council, this complies

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with the Teckal exemption;

- The committee will represent the Council's strategic requirements for the catering service and will have delegated powers to make decisions for the Council on its behalf.

The extent to which the Shareholder Committee exerts its influence and control will be determined by meetings held on a periodic basis when the Committee will report on:

- Service and quality performance using Key Performance Indicators (the contract will determine the agreed service levels);
- Future service development;
- Financial scrutiny against agreed business plan; and
- Annual review of the business plan.

How often will you analyse and report on this?

See above

Where will you publish monitoring data and reports?

n/a

7. [Impact](#)

Is there an impact?

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There is no impact on protected characteristic groups.

If there is no impact, what is the justification for thinking this? Provide evidence.

Age

The LATC will be created at Companies House. The service will undergo a major transformation as part of the Reshaping Services programme. The service provision will continue to provide school meals for all pupils from age 3 to 19. This policy is intended to increase and improve the quality of provision of the service to its client and customers. Currently the school population is 22,665 (100%). The service offers catering to 18,202 (80%) of this population.

In addition, the service will trade with external customers and tender for new business. All profits will be reinvested into the school meals service.

Employees of the catering service are identified in the following age ranges 18-50 (53%) and 50+ (47%). The employees of the service will continue to provide school meals to our customers. There will be no changes to terms and conditions as this will remain an in-house service, this will have neutral/insignificant impact on our customers and staff because of their age.

Disability

The LATC will continue to provide school meals to all pupils. The catering service will maintain its compliancy with Healthy Eating legislation, allergen legislation and develop

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food choices accordingly. The catering service currently provides school meals to 39% of its available customers (18,202), a proportion of our customers are disabled pupils. The service currently offers appropriate cutlery, crockery and furniture to enable the pupils to dine in a social space. This will continue to be provided for our disabled pupils.

0% of staff within the catering service are disabled (limited a little), 92.2% are not disabled and 7.8% preferred not to say. Their employment opportunities will not be negatively impacted by this policy as terms and conditions will remain the same.

Gender

Currently the catering services' employee gender breakdown is 4% male (7) and 96% female (167). The school meals service historically employed female staff due to term time working which proved successful for women to work whilst their children were in school and care for their children during school holiday periods. Over the past 5-7 years, this has positively changed and male members of staff have and will continue to be appointed to the service after successful interview. There will be no detriment to either gender as the service will continue to provide school meals to all pupils. Terms and conditions remain unchanged for all members of staff.

During the recent Scrutiny Committee meetings of Learning & Skills and Corporate Performance & Resources, a Member related to concerns that the Council was seeking to reshape a service staffed predominantly by female employees. The nature of the business has resulted in this gender imbalance, however, it is the intention of the trading company to broaden the appeal of the service and hopefully make it more diverse. There will neutral impact of different genders as terms and conditions are replicated for female and male employees.

Dining halls will continue to be set up to allow our customers (pupils) to sit, eat and socialise together. There will be no changes on the creation of the LATC as core business is still to provide school meals. All external customers will be treated equally.

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Gender Reassignment

Oracle shows that there is no data recording trans people within its staff. Under sexual orientation, 'Other' is recorded as (0%).

Schools do not collect this information about pupils. The LATC will continue to provide school meals to all pupils regardless of it orientation. A better catering service will be developed for all of our community. No protected characteristics will be at a detriment as they choose the service/catering options they require. The LATC will conduct its business with neutral effect on all customers internal and external.

Marriage and Civil Partnerships

Currently the catering services' breakdown on marital status and civil partnership of those who chose to answer is 10 (5.7%) divorced, 1 (0.6%) in a same sex civil partnership which has now legally dissolved, 0 (0.0%) legally separated, 120 (69%) married, 4 (2.3%) not recorded, 0 (0%) living with a partner, 3 (1.7%) preferred not to say, 3 (1.7%) separated but still legally married, 32 (18.4%) single and 1 (0.6%) widowed. This policy decision will have no bearing on whether clients/staff/customers are married or in a civil partnership. The catering service is available to all. The LATC will continue to conduct its business with neutral effect on all customers internal and external.

Pregnancy and/or Maternity

Pregnant employees will be looked after via the Council's maternity and adoption policy and all rights afforded to them, this policy will not have any negative impact on their status. As staff will be transfer under TUPE all terms and conditions will remain the same. There are no current pregnant members of staff in the service. Pregnant clients/customers will continue to be offered nutritious meals within the catering service. Nutrients are balanced to ensure one third of the daily requirement is received in each meal served. No

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data is available of pregnant customers presently using the service.

Race

Currently, employees of the catering services' race data who chose to answer is 174 (100%), 107 (61.5%) are white/british, 4 (2.3%) are white/english, 3 (1.7%) are white/Scottish, 33 (19%) white/welsh and 5 (2.9%) are white other. The LATC will respect and embrace the ethnic make up of its employees. Staff will transfer under TUPE to the LATC and therefore these figures will remain unchanged for the new Company.

Data relating to the race of customers of the LATC is 2,613 (12%) of pupils. However, the LATC, if requested will endeavour to provide and enhance any requested food products/menus that caters for all ethnic groups within in its service. Eg the LATC will provide a number of ethnic menu options, if requested for its community and celebrate festival days with themed events.

Religion

Employees of the current catering services' religious beliefs who chose to answer are 68 (39.1%) Christian, 55 (31.6%) no religion and 51 (29.3%) not recorded. The service respects that its employees have a right to live their lives and carry out their work in whatever religious belief/non belief they have. Staff will transfer under TUPE to the LATC and therefore these figures will remain unchanged for the new Company.

Data relating to the religious beliefs of its customers is not currently known. However, the LATC, if requested will endeavour to provide and enhance any requested food products/menus that caters for all religious groups within in its service. Eg the current service provides halal food for its muslim community when requested, it supports the request for non service during Ramadam.

Sexual Orientation

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Currently, the catering services' employees data on sexual orientation is, Heterosexual/Straight 124 (71.3%), 1 (0.6%) Gay or Lesbian and 49 (28.2%) not recorded/preferred not to say. The same staff will transfer under TUPE to the LATC and all terms and conditions will remain for the new Company.

There is currently no local data on the sexual orientation of customers. A quality catering service will be developed for all of our community. No protected characteristics will be at a detriment as they choose the service/catering options they require.

Welsh Language

The LATC will produce all information bi-lingually. There will be no change to this commitment under the Welsh Language Scheme. Staff are currently encouraged to undertake all free training and learn to welcome its customers bilingually. Staff working within schools through the medium of Welsh are encouraged to speak to pupils in Welsh where possible. Welsh schools help with the basic learning of welcoming pupils and talking about menu choices in Welsh.

If there is likely to be an impact, what is it?

Age

Disability

Gender reassignment, including gender identity (ensure policies explicitly include same-sex couples and use gender neutral language)

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Marriage and civil partnership (discrimination only)

Pregnancy and Maternity

Race

Religion and belief

Sex

Sexual orientation (ensure policies explicitly include same-sex couples and use gender neutral language)

Welsh language

Human rights

How do you know?

Explain this for each of the relevant protected characteristics as identified above.

See above

What can be done to promote a positive impact?

Explain this for each of the relevant protected characteristics as identified above.

See above

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What can be done to lessen the risk of a negative impact?

Explain this for each of the relevant protected characteristics as identified above.

See above

Is there a need for more favourable treatment to achieve equal outcomes? (Disability only)

n/a

Will the impact be positive, negative or neutral?

Explain this for each of the relevant protected characteristics as identified above.

Neutral impact for all protected characteristics.

8. Monitoring ongoing impact

Date you will monitor progress

Ongoing monitoring during the implementation phase of project.

Measures that you will monitor

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Date you will review implemented proposal and its impact

Governance arrangements for the LATC are currently being considered as part of the project. Initial proposals are that the Board of Directors for the company will constitute seven members including an Independent Chair, a Primary School representative, a Secondary School representative, one Officer, one Member, a Managing Director and an Industry Expert, as it has been recognised that there is a need for expert advice in regard to external trading.

Impact on all stakeholders will be considered as part of Board Meetings.

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9. Further action as a result of this equality impact assessment

Possible Outcomes	Say which applies
No major change	X
Adjust the policy	
Continue the policy	
Stop and remove the policy	

10. Outcomes and Actions

Recommend actions to senior management team n/a
Outcome following formal consideration of proposal by senior management team n/a

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11. [Important Note](#)

Where you have identified impacts, you must detail this in your Cabinet report when seeking approval for your proposal.

n/a

12. [Publication](#)

Where will you publish your approved proposal and equality impact assessment?

Staffnet

Vale of Glamorgan Council Website

In addition to anywhere you intend to publish your approved proposal and equality impact assessment, you must send a copy to Tim Greaves, Equality Co-ordinator, to publish on the equality pages of the Vale of Glamorgan website.

13. [Authorisation](#)

Approved by (name)	Carole Tyley
Job Title (senior manager)	Catering Manager
Date of approval	1 October 2019

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Date of review	30 September 2020
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