

North Yorkshire County Council

Executive

26 November 2019

Consideration of potential investment opportunity YPO Strategic Investment

A number of the attached appendices contain information of the type defined in paragraph 1 of Part 1 of Schedule 12A Local Government Act 1972 (as amended) and are therefore confidential.

Report of the Corporate Director (Strategic Resources) and Assistant Chief Executive (Legal and Democratic Services)

1.0	Purpose of report
1.1	To provide the Executive with an overview of a proposed transaction by the Yorkshire Purchasing Organisation (YPO) and the opportunity to consider the Business Case, risk profile and finance options in order to inform the decision to be taken at the YPO Management Committee.
1.2	To allow Executive the opportunity to consider proposed amendments to the governance arrangements of YPO. These have been proposed by Wakefield Council, as the Lead Authority on behalf of YPO, and are intended to safeguard the arrangements for the benefit of the Founder Members should the YPO Management Committee resolve to pursue the transaction.

2.0 Issues

- 2.1 The proposed strategic investment seeks to safeguard the stated objectives of YPO as a public sector organisation that maintains effective, efficient and economical arrangements for the supply of goods, materials, works and services by providing excellent quality, service and competitive prices, while optimising the profits available for distribution to its members and customers and delivering a high quality service which saves time and money.
- 2.2 If the transaction proceeds as outlined it is anticipated that there will be increased dividends from YPO. If at least 10 Founder Members enter into the Supplemental Agreement each Council can have confidence that the opportunity outlined in the appendices can be progressed by the Management Committee at YPO to strengthen the business without significant risk to them as YPO Founder Members.
- 2.3 YPO' activities bring benefits to the District in ethical purchasing resulting in lower purchase prices for goods and services, local jobs in YPO and local supply chains and environmental benefits generated by YPO's approach to sustainable procurement and adherence to UN Sustainability Goals.
- 2.4 The YPO was founded in 1974 and is a joint local government service for procurement of goods and services. The membership has changed over the years but currently comprises

13 'Founder Member' local authorities; Barnsley, Bolton, Bradford, Calderdale, Doncaster, Kirklees, Knowsley, North Yorkshire, Rotherham, St Helens, Wakefield, Wigan and York.

- 2.5 Wakefield Council currently acts as the 'Lead Authority' providing a range of services to YPO including employing YPO's staff, providing internal audit and s151 and Monitoring Officer functions.
- 2.6 The YPO does not have a legal personality separate to that of its Members. In practical terms this means for example that it cannot directly enter into contracts, employ staff or own property. It is subject to local government legislation in terms of its powers and governance on the same basis as its member local authorities.
- 2.7 The YPO is currently governed by a management agreement (at Appendix 4) dated September 2011 which designates as Founder Members the 13 Authorities who participate in YPO under a Joint Committee arrangement established under sections 101 and 102 of the Local Government Act 1972 and The Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations 2000. Under the Management Agreement each Founder Member has one vote at the Management Committee and these votes are of equal standing. No single local authority/Founder has a controlling interest. Founder members are entitled to dividends and to vote on how the dividends are allocated amongst YPO members. The Management Committee is supported by an advisory strategic officer group which includes relevant officers from each Founder Member Council.
- 2.8 In addition there are two further categories of 'membership', 'Associate Membership' and 'Ordinary Membership'. Neither category has a substantive role in the governance but as customers of YPO are also eligible to a 'dividend' paid from any surplus accumulated by YPO in a financial year. Associate Members (and Founder Members) receive a dividend in cash. Ordinary members receive their dividend in the form of discounts on future purchases. In addition to achieving a range of non-financial benefits, the YPO has also been successful in delivering financial benefits to the Members and the dividend distribution for Wakefield Council for 2019 operating year was £0.4m.
- 2.9 A combination of increasing operating costs and an increasingly competitive market environment has meant that the YPO has been considering for some time the opportunity for new business strategies and diversification in order to safeguard and promote its strategic objectives. The YPO Management Team considers that the majority of the opportunities to cut costs have now been taken. Some further investment in the business will be needed in the medium term and the growth into new markets, whilst positive, will be a protracted process. Thus it will become increasingly difficult to keep dividends at current levels This has led to the proposed transaction more fully described in the exempt appendices.
- 2.10 A combination of increasing operating costs and an increasingly competitive market environment has meant that the YPO has been considering for some time the opportunity for new business strategies and diversification in order to safeguard and promote its strategic objectives. The YPO Management Team considers that the majority of the opportunities to cut costs have now been taken. Some further investment in the business will be needed in the medium term and the growth into new markets, whilst positive, will be a protracted process. Thus it will become increasingly difficult to keep dividends at current levels This has led to the proposed transaction more fully described in the exempt appendices.
- 2.11 The proposed transaction has been discussed with YPO Strategic Officers from each Founder Members including their s151 and Monitoring Officers (or their representatives). The proposed transaction has also been considered by elected members at the YPO Management Committee who resolved to take the proposal to the next stage and commission external financial and legal advisors to undertake due diligence

- 2.12 This due diligence is expected to conclude in early December. Discussions on finance options and governance have led to the proposal outlined in the appendices. Authority is sought to enter into the relevant agreements, once officers have had the opportunity of reviewing the completed due diligence documentation.
- 2.13 The proposal is that the Lead Authority provides the funding and makes the transaction on behalf of all of the Founder Members. Founder Members will be asked stand behind the Lead Authority's position through a Supplemental Agreement which will outline the position should a Founder member wish to withdraw during the loan period or the Joint Committee terminate with liabilities in excess of assets
- 2.14 In order to safeguard the position of Founder Members who will be carrying the risk of the proposed transaction it is recommended that each Founder Member enter into a Supplemental Agreement, which amends the Management Agreement. This will require any Authority serving notice to leave YPO during the ten-year loan period to accept a contingent liability for an equal share of the loan outstanding at that time (principal sum and interest) to be paid if YPO is later wound up and assets are insufficient to cover the liability. The Agreement ring fences an element of the dividends to be paid to Founder Members along with a specific requirement for the management committee to have regard to the risk carried by the Founder Members when setting the split of dividends between Founder and Associate Members. If all 13 Founder Members wish to proceed and accept this Supplemental Agreement the risk to each is a 1/13th share of the loan. Should any Founder Members choose to withdraw before the proposed transaction it is suggested that as long as 10 Founder Members remain and enter into the Supplemental Agreement, the rise in risk level is acceptable given the potential benefits
- 2.15 It is anticipated that each of the 13 Founder Members will consider this report from 20 November 2019.
- 2.16 Due diligence is expected to conclude in early December and arrangements have been made for relevant officers to meet with the external advisors to receive the outcome. This will allow the relevant statutory officers to review the due diligence work that has been undertaken by the consultants. YPO Management Committee is expected to meet to consider whether to enter into the transaction after the conclusion of due diligence

3.0 Options *(insert or delete)*

- 3.1 Option 1 – confirm support for the proposed transaction and agree to enter into the Supplemental Agreement. This will allow the Lead Authority to borrow and acquire on behalf of YPO to expand and consolidate the business. There will be protection of the position of Founder Members who will receive a ring fenced dividend before further distribution with the comfort that other Founder Members will accept a contingent liability for the loan through the Supplemental Agreement in the event that they wish to withdraw from YPO during the loan period. This option is recommended for the reasons set out in the appendices.
- 3.2 Option 2 – do not support the proposed transaction and Supplemental Agreement.
- 3.3 Should the YPO Management Committee still resolve to go ahead with the transaction and if two thirds of members' resolve to enter into a Supplemental Agreement (which amends the Management Agreement), the Council could be in a position of taking on the risk without being able to withdraw in advance. YPO does not want to put Founder Members in such a position. For that reason it is suggested that any Council who is fundamentally opposed to the transaction should have the opportunity to withdraw now without the normal 12 months' notice on 31 December 2019 with an option of transferring to Associate Member status.

Taking this option would mean the Council is not exposed to the risk of the transaction and loan but would mean that the Council would not receive dividend payments after 2019. This option is therefore not recommended.

- 3.4 If the Management Committee resolves not to enter into the proposed transaction YPO could continue as present. In that case a Supplemental agreement is not required. However, in an increasing competitive market with rising costs, the existing benefits to the Council may reduce over the medium to longer term. This option is not recommended.

4.0 **Strategic Implications**

- 4.1 The Council participates in YPO as a high quality public sector procurement organisation that maintains effective, efficient and economical arrangements for the supply of goods, materials, works and services by providing excellent quality, service and competitive prices, while optimising the profits available for distribution to its members and customers.
- 4.2 YPO delivers social value for all Founder Members through its procurement policies which actively seek to engage with local businesses and encourage YPO supply chains to measure and embed social impact. YPO annually publishes the social, economic and environmental impact of its procurement through its annual benefits statement.
- 4.3 Discussion on the proposed transaction and proposal to enter into a Supplemental Agreement has taken place with YPO Strategic Officers Group. The Independent Director, who is the Chief Financial Officer of Asda is supportive of the proposed transaction. The YPO Management Committee resolved to proceed to due diligence.

5.0 **Financial Implications**

- 5.1 The proposed transaction is set out in detail in the confidential appendices to this report. The strategic business case, which models the forecast income and expenditure over a ten-year period, outlines potentially significant financial and non-financial benefits to the YPO, its customers, the Founder Members, and the wider public sector.
- 5.2 External financial advice has been commissioned to undertake financial due diligence. This due diligence is expected to be completed by early December. There is a financial risk arising from the proposed transaction. To help mitigate this, the business case has been based on a prudent set of assumptions and has been risk-assessed and stress-tested to financially model different scenarios. In addition, there will be dedicated project management resource deployed to support transitional arrangements and strengthened senior capacity at board level. A full risk assessment and potential mitigation is set out in the Appendices D & E.
- 5.3 The proposal is that Wakefield Council, as the Lead Authority, would provide the funding and makes the transaction on behalf of all of the Founder Members. Founder Members will be asked stand behind the Lead Authority's position through a Supplemental Agreement to the Management Agreement which will outline the position should a Founder member wish to withdraw during the loan period or the Joint Committee terminates with liabilities in excess of assets.

6.0 **Legal Implications**

- 6.1 YPO is a public sector procurement organisation operated through a Joint Committee structure. The final approval of the proposed transaction will be taken at YPO Management Committee in the light of decisions on the matters set out in this report by all Founder

Members. External legal advice has been taken on the powers of Founder Members to undertake this transaction.

- 6.2 The Councils will rely on the powers under s111 Local Government Act 1972 and the Local Authority (Goods and Services) Act 1970 as the primary purpose of the proposal is to bolster and enhance the current Goods & Services Act operation of YPO in the context of a dynamic market place. The transaction is intended to enhance the resilience of YPO's core business in serving the public sector including its ability to deliver on its declared social and economic objectives and not for commercial purposes.
- 6.3 In addition, the Council can rely on the General Powers of Competence ("GPOC") under Section 1 of the Localism Act 2011. Section 4 of the Localism Act 2011 enables the local authority to do for a commercial purpose anything that it is empowered to do under GPOC. The section 4 trading powers prescribe which company structures may be used.
- 6.4 Initially YPO will purchase the shares in the Company and any aspects of the enhanced business which cannot be operated using those powers will be operated through a company structure. Section 95 of the Local Government Act 2003 enables relevant authorities "to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions" i.e. anything which they are empowered to do in legislation. The section 95 power can be limited by order and authorities exercising it must have regard to the guidance issued by the Secretary of State.
- 6.5 To adhere to the requirements under this legislation the lead local authority must prepare a business case supporting the exercise of the section 95 power, which the authority must approve (Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009). In the event that YPO Proceed with the transaction and subsequently trade through a company for a period of time, then the business case appended to this report as Appendix C satisfies the requirements of the Local Government Power to Trade Order for Wakefield as the Lead Authority holding the assets in Trust.

7.0 Equalities Implications

- 7.1 The County Council's proposed decision is to provide a guarantee to a loan to Wakefield Council to purchase a company. Therefore, it is considered that there are no adverse implications to any protected characteristics in the County Council's proposed decision. Separate consideration may need to be undertaken by the Lead authority.

8.0 Information Governance Implications

- 8.1 There will need to be careful consideration of how client data is transferred between any purchased organisation and YPO, but this will be considered by Wakefield Council as the host authority

9.0 Reasons for Recommendations

- 9.1 To enable YPO to continue to provide benefits to members into the long term.

10.0 Recommendations

That the Executive:

- 10.1 Notes the transaction proposed by YPO as outlined in the report and exempt appendices and indicate the Authority's view on the proposal to inform a vote at YPO Management Committee

- 10.2 Confirms its financial backing for the transaction by agreeing to underwrite the loan through entering into a Supplemental Agreement and delegates authority to the Corporate Director (Strategic Resources) and Assistant Chief Executive (Legal and Democratic Services) to approve the Supplemental Agreement set out at Appendix F, subject to:
- i) At least 10 of the 13 Founder Members remaining as Founder members and agreeing to enter into the Supplemental Agreement,
 - ii) The satisfactory completion of legal and financial due diligence on the proposal giving confidence to proceed and
 - iii) A resolution of the YPO Management Committee to enter into the transaction proposed

Gary Fielding
Corporate Director – (Strategic Resources)

County Hall
Northallerton

Author of report – Barry Khan, Assistant Chief Executive (Legal and Democratic Services)
Presenter of report – Gary Fielding, Corporate Director – (Strategic Resources)

Background Documents – None

Appendices:
Appendix A - Dividend Distribution
Appendix B - Existing Management Agreement

Confidential Appendices:
Appendix C - Business Case - exempt
Appendix D - Risk Profiling - exempt
Appendix E - Finance Model - exempt
Appendix F - Draft Supplemental Agreement – exempt

Appendix A – 2018 Founder Member Dividend Distribution Vs 2017.

Members	Total Dividend (£'s)		
	2017	2018	Movement
Barnsley MBC	373,245	379,145	5,900
Bolton MBC	370,170	383,325	13,154
Bradford MDC	631,022	690,832	59,811
City of York	256,607	259,599	2,992
Doncaster MBC	419,050	451,014	31,964
Kirklees MC	613,110	660,833	47,723
Knowsley MBC	301,148	299,839	-1,310
MB of Calderdale	322,507	317,688	-4,819
North Yorkshire CC	675,912	697,860	21,947
Rotherham MBC	399,777	437,659	37,882
St Helens MBC	337,824	343,677	5,853
Wakefield MdC	429,013	440,943	11,930
Wigan MBC	400,684	412,043	11,359
Members Total	5,530,070	5,774,456	244,386

THIS AGREEMENT is made on the 8th day of September 2011

BETWEEN: BARNSELY METROPOLITAN BOROUGH COUNCIL of the first part; THE BOROUGH COUNCIL OF BOLTON of the second part; THE CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL of the third part; THE BOROUGH COUNCIL OF CALDERDALE of the fourth part; DONCASTER ^{SDF} ~~METROPOLITAN~~ BOROUGH COUNCIL of the fifth part; THE COUNCIL OF THE BOROUGH OF KIRKLEES of the sixth part; KNOWSLEY METROPOLITAN BOROUGH COUNCIL of the seventh part; NORTH YORKSHIRE COUNTY COUNCIL of the eighth part; the ROTHERHAM BOROUGH COUNCIL of the ninth part; ST HELENS BOROUGH COUNCIL of the tenth part; THE COUNCIL OF THE CITY OF WAKEFIELD of the eleventh part; WIGAN BOROUGH COUNCIL of the twelfth part; THE COUNCIL OF THE CITY OF YORK of the thirteenth part.

WHEREAS:

- (1) The above parties are referred to in this Agreement as 'the Founder Member Authorities' collectively and as 'Founder Member Authority' individually, irrespective of whether they were founding members on formation of the Yorkshire Purchasing Organisation in 1974 or became members thereafter
- (2) The Yorkshire Purchasing Organisation (referred to in this agreement as YPO) was established in 1974 to maintain effective, efficient and economical arrangements for the supply of goods, materials and services.
- (3) This agreement replaces an earlier agreement agreed in 2001, relating to the governance of YPO, and will govern the operation of YPO from 8th September 2011

IT IS HEREBY AGREED AS FOLLOWS:

1. OBJECTIVES AND PURPOSE OF YPO

- (1) YPO shall be a procurement organisation, maintaining effective, efficient and economical arrangements for the supply of goods, materials, works and services, by providing excellent quality, service and competitive prices, whilst optimising the profits available for distribution to its members and customers.
- (2) YPO shall (unless agreed otherwise by at least two thirds of the Founder Member Authorities) be a public sector organisation committed to professional, open, sustainable, caring relationships with its members, customers, staff and suppliers, and in doing so shall help the UK public sector by delivering a high quality service which saves them time and money.
- (3) In conducting its business, YPO shall:
 - (i) Provide all the general supplies and services required by local government and other public/third sector bodies, as permitted under legislation;
 - (ii) Optimise profitability by delivering cost effective services that contribute to customers' efficiency;
 - (iii) Ensure through periodic reviews that the effectiveness, efficiency and profitability of YPO is at least comparable with that of other similar organisations;
 - (iv) Utilise profits to support business investment, to reward membership and to incentivise usage;

- (v) Be informed by, and be consistent with, the innovation and efficiency plans of the Founder Member Authorities and those of regional bodies;
- (vi) Play a constructive role in helping to shape, and benefit from, developments in the national procurement agenda.

2. POWERS OF YPO

In conducting its business as defined in paragraph 1 above, YPO shall at all times

- (i) act within the powers conferred to it by law including but not limited to the Local Authorities (Goods and Services) Act 1970, Sections 101 and 102 of the Local Government Act 1972 and The Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations 2000 (in relation to to the joint discharge of functions) together with Section 111 of the Local Government Act 1972 and to the extent it confers specific power to enter into Contracts Section 1 of the Local Government (Contracts) Act 1997, and Regulation 22 of the Public Contract Regulations 2006 (all as amended from time to time) and
- (ii) comply with all other relevant law.

3. MEMBERSHIP OF YPO

- (1) There shall be three types of YPO membership – a Founder Member Authority; an Associate Member Authority and an Ordinary Member
- (2) Founder Member Authorities shall participate in YPO under a joint committee arrangement established in exercise of the Founder Member Authorities powers under Sections 101 and 102 of the Local Government Act 1972 and The Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations 2000

- (3) No further 'Founder Member Authorities' shall be permitted under this Agreement or otherwise
- (4) Each Founder Member Authority shall appoint annually two of its elected members as members of YPO (who may also act as a substitute for each other) and each Founder Member Authority shall also be entitled to appoint two additional substitute members. A substitute Member may attend meetings (including sub-committee meetings) of YPO in place of an appointed member who is unable to attend. It shall be the responsibility of each Founder Member Authority to arrange such a substitution on their own behalf.
- (5) Each Founder Member Authority shall have one vote at Management Committee meetings of YPO, and these votes shall be of equal standing
- (6) The Founder Member Authorities shall select by majority vote in the Management Committee one of their number to act as Lead Authority, with the role and functions specified in SECTION 4 of this agreement.
- (7) A vote to replace the Lead Authority shall take place at the written request of the Lead Authority or at the written request of at least one third of the Founder Member Authorities, setting out their reasons for requesting a vote to take place.
- (8) With the agreement of two thirds of the Founder Member Authorities, via a resolution of the Management Committee, YPO may grant Associate Membership, in accordance with SECTION 8 of this agreement.
- (9) All individual customer account holders shall be Ordinary Members of YPO, in accordance with SECTION 9 of this Agreement.

4. ROLE OF THE LEAD AUTHORITY

The Lead Authority for the time being is the Council of the City of Wakefield, which shall perform the following functions on behalf of the Founder Member Authorities:

- (1) Provide the Management Committee with appropriately qualified staff to carry out the roles of Section 151 Officer and Monitoring Officer in relation to YPO;
- (2) Act as employer for all staff of the Management Committee, including the Board of Directors, and to provide such Human Resources input as the Lead Authority considers necessary for the effective discharge of this responsibility;
- (3) Provide an effective internal audit service at a level agreed between the Section 151 Officer and the Audit Sub-Committee of the Management Committee, including such attendance by Auditors at the Audit Sub-Committee as is necessary to properly discharge this responsibility;
- (4) Provide effective Committee Administration services to the Management Committee and appropriate sub-committees, at a level considered necessary by the Monitoring Officer;
- (5) Provide effective banking and resource management services on behalf of YPO;
- (6) Consult Founder Member Authorities on changes to Financial Procedure Rules, Standing Orders, Delegation Schemes and this Agreement, and make recommendations to the Management Committee;
- (7) Chair the Strategic Officers Advisory Group;

- (8) Assist the Management Committee to monitor the performance of the Managing Director;
- (9) Have the authority to defer any proposal to incur expenditure or let any contract by the Board of Directors, pending the outcome of a report to the Management Committee or the Executive Sub-Committee of YPO as appropriate

and shall charge the cost of such services to the Management Committee.

The performance of the Lead Authority will be considered by the Strategic Officers Advisory Group annually and formally reviewed at least every five years.

5. PROCEDURE RULES AND SCHEMES OF DELEGATION

- (1) The Management Committee and Board of Directors shall operate at all times in accordance with approved:

- (i) Financial Procedure Rules;
- (ii) Standing Orders;
- (iii) Contract Standing Orders;
- (iv) Officer Delegation Scheme.

- (2) Any proposed amendments to the documents in 5(1) shall be subject to:

- (i) A period of at least 8 weeks prior consultation with Founder Member Authorities by the Monitoring Officer;
- (ii) A report to the Management Committee by the Monitoring Officer setting out the results of the consultation, and making recommendations;

- (iii) The agreement of at least two thirds of the total membership of the Management Committee.

6. JOINT COMMITTEE ARRANGEMENTS

- (1) The democratic management of YPO shall be vested in the Joint Committee, which shall be known as the Management Committee of YPO.
- (2) The Management Committee shall meet at least 3 times per year in March, June (AGM) and November, and such other times as agreed from time to time by the Chair of the Committee. Each meeting shall have a duration of a maximum of 2 hours unless otherwise agreed by a majority of the Management Committee.
- (3) Quorum and substitution arrangements for the Management Committee shall be as set out in this document and the approved Standing Orders of YPO.
- (4) The remit of the Management Committee shall be that agreed by YPO Management Committee held on 25 September 2009 – minute 23 (4), and be subject to a review at each Annual General Meeting of the Management Committee.
- (5) The Management Committee shall appoint annually from its membership those sub-committees that it considers necessary to discharge its duties and responsibilities under this Agreement, and shall include at least an Executive Sub-Committee and an Audit Sub-Committee and a Scrutiny Sub-Committee.
- (6) Prior to each Management Committee meeting, the Lead Authority shall convene a meeting of officers, drawn from the Founder Member Authorities, to be known as a 'Strategic Officers Advisory Group', with a

remit to examine draft reports to the Management Committee, raise issues of concern relating to YPO business and to facilitate the pre-briefing of members. It shall be the responsibility of each Founder Member Authority to make available, wherever possible, an officer of director or appropriate status to attend such meetings.

7. CODE OF CORPORATE GOVERNANCE

- (1) The Management Committee shall keep under review its code of corporate governance and associated documents, including the register of corporate risk, following recommendations by the Audit Sub-Committee.
- (2) YPO managers and such other officers as may be required shall agree to attend on request the scrutiny committees of the Founder Member Authorities to assist in their assessment of the effectiveness of YPO operations and assurance procedures.

8. ASSOCIATE MEMBERSHIP

- (1) At the time of this Agreement, Associate Membership is granted to Leeds City Council and the Metropolitan Borough of Bury.
- (2) Associate Members will be entitled to a share of dividend payments under SECTION 10(3)(ii) of this Agreement for annual levels of usage in excess of the usage level in the full calendar year immediately prior to Associate Membership being granted, in accordance with a scheme to be drawn up annually by the Management Committee.
- (3) Associate Members shall not receive a vote, or be entitled to attend 'in confidence' parts of Management Committee meetings.
- (4) Associate Members will be invited to attend an annual meeting with the Executive Sub-Committee, or participate in such other means of

discussion as are agreed by the Management Committee, and a report on the outcome of such discussions shall be presented to each Annual General Meeting of the Management Committee.

9. ORDINARY MEMBERSHIP

- (1) All individual customer account holders shall be Ordinary Members of YPO.
- (2) Ordinary Members shall be entitled to a share of dividend payments under SECTION 10(3)(iii) of this Agreement in accordance with a scheme to be drawn up annually by the Management Committee.
- (3) Ordinary Members shall not receive a vote, or be entitled to attend 'in confidence' parts of Management Committee meetings.

10. PAYMENT OF DIVIDENDS

- (1) In March of each year, upon receipt of the pre-audit accounts for the previous year the Management Committee shall determine the level of dividend to be paid (if any) but any dividend so determined will not be paid until the accounts have been completed and approved by the s151 Officer.
- (2) The overall dividend sum to be distributed (if any) shall be drawn from accumulated reserves, after deducting a sum which takes account of known risks, to ensure that YPO remains a going concern during the forthcoming year, and after deducting the cost of any development proposals agreed by the Management Committee.
- (3) The distribution formula shall contain the following elements:
 - (i) A cash sum to be divided equally between the Founder Member Authorities to reflect their risk of ownership;

- (ii) A cash sum to reward usage of YPO products and services in all modes of supply (including framework contracts) by the Founder Member Authorities and Associate Members with the weightings between types of membership and modes of supply being determined by the Management Committee;
 - (iii) A sum to reward usage of Ordinary Members in the form of a credit voucher against future purchases.
- (4) The weightings attached to 3(i) to 3(iii) above shall be agreed annually by the Management Committee.

11. APPOINTMENT OF STAFF

- (1) The Management Committee shall determine the size, scope and conditions of service of the Board of Directors of YPO, after receiving appropriate professional advice from the Lead Authority.
- (2) The Management Committee shall appoint annually an 'Appointments Committee' with responsibility for the appointment and disciplinary procedures of the Board of Directors and appraising the performance of the Managing Director.
- (3) The Board of Directors shall make arrangements to establish and appoint all other staff in accordance with the approved budget and officer delegation scheme, and to ensure that its HR policies and procedures are in accordance with best practice.
- (4) All staff shall be employed by the Lead Authority on behalf of YPO on terms and conditions agreed by the Lead Authority, subject to SECTION 11(1) of this Agreement.

- (5) The Board of Directors shall make such arrangements with Trades Unions to facilitate effective employee relations, through the periodic Joint Consultative Committee, and the Lead Authority shall be entitled to attend meetings of the Committee as it sees fit.

12. ASSETS

- (1) All existing and future assets shall vest in the Lead Authority in trust for the Founder Member Authorities on terms to be agreed by the Management Committee.

13. WITHDRAWAL OF MEMBERS

- (1) A Founder Member Authority wishing to withdraw from membership of YPO shall give to the Lead Authority at least 12 months' written notice expiring on the 31 December. A Founder Member Authority withdrawing shall be responsible for an equal share of any deficit that is held in the accounts in the financial year of withdrawal, but shall not be entitled to any dividend payment under SECTION 10(3)(i) of this Agreement, or a share of any assets held in trust by the Lead Authority under SECTION 12(1) of this Agreement.
- (2) Associate Members under SECTION 8 of this Agreement can do so in writing without a notice period, but will not be entitled to any dividend payment under SECTION 10(3)(ii) of this Agreement for the financial year in which the withdrawal takes place.

14. TERMINATION

Notwithstanding the provisions of SECTION 13(1) of this Agreement, if two thirds of the Founder Member Authorities agree, following a resolution by the Management Committee, this Agreement may be terminated on the 31 December in any year.

- (1) The terms of termination shall require:
 - (i) The payment of any outstanding dividend to Associate Members under SECTION 10(3)(ii) of this Agreement which would have been paid out had the termination not taken place;
 - (ii) Any accumulated deficit to be borne by the Founder Member Authorities equally;
 - (iii) Any accumulated surplus in the YPO accounts, and the realised value of any assets held in trust by the Lead Authority under SECTION 12(1) of this Agreement, to be shared equally between the Founder Member Authorities.

15. AMENDMENT

- (1) If two thirds of the Founder Member Authorities agree, following a resolution by the Management Committee, this Agreement may be amended at any time upon terms agreed by the Founder Member Authorities.

16. LITIGATION

- (1) The institution and defence of necessary litigation by YPO arising out of the exercise of its responsibilities shall be undertaken in a representative capacity by the Lead Authority, or such other Founder Member Authority as appointed by the Lead Authority.
- (2) The Lead Authority, or such other Founder Member Authority undertaking the litigation, shall be indemnified by the Founder Member Authorities.

17. INTERPRETATION AND ARBITRATION

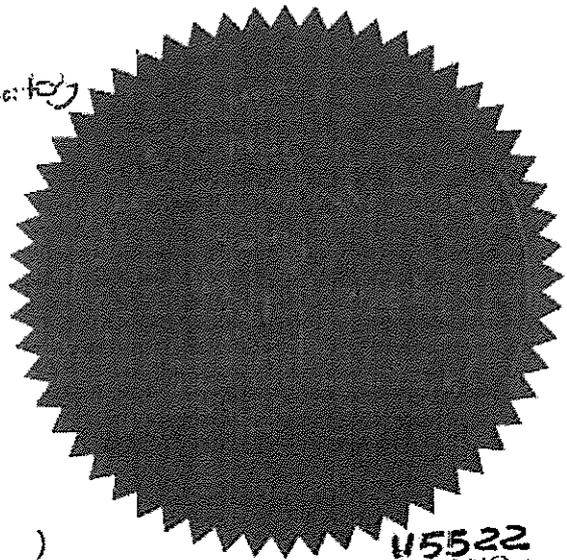
- (1) In applying the terms of this Agreement, all parties shall act reasonably

- (2) Where a fraction of Membership is referred to in this Agreement, this should be rounded up to the nearest whole number.
- (3) If at any time any dispute or difference shall arise between the Founder Member Authorities or any of them respecting any matters arising out of this Agreement or the meaning or effect of this Agreement or anything herein contained or the rights or liabilities of any of the Founder Member Authorities the dispute or difference shall be referred to and settled by a single arbiter to be appointed by the Founder Member Authorities but if they cannot agree to be nominated by the Local Government Association.

THE COMMON SEAL OF BARNSLEY)
 METROPOLITAN BOROUGH COUNCIL)
 was hereunto affixed in the presence of:)

Authorised Signatory

THE COMMON SEAL OF THE BOROUGH
 COUNCIL OF BOLTON
 was hereunto affixed in the presence of:



15522
 SEALING NO.
 [Redacted]

ADMINISTRATIVE OFFICER
 THE COMMON SEAL OF THE CITY OF)
 BRADFORD METROPOLITAN DISTRICT COUNCIL)
 was hereunto affixed in the presence of:)

CITY SOLICITOR



94044

THE COMMON SEAL OF THE)
BOROUGH COUNCIL OF CALDERDALE)
was hereunto affixed in the presence of:)

SEAL NO
236 037

PHUGHES
HEAD OF DEMOCRATIC AND
PARTNERSHIP SERVICES

THE COMMON SEAL OF DONCASTER)
METROPOLITAN BOROUGH COUNCIL)
was hereunto affixed in the presence of:)

*Authorised By The Assistant Director
- Legal And Democratic Services 61295*

THE COMMON SEAL OF THE COUNCIL)
OF THE BOROUGH OF KIRKLEES)
was hereunto affixed in the presence of:)

No. 003057

Authorised Signatory

THE COMMON SEAL OF THE COUNCIL)
OF THE KNOWSLEY METROPOLITAN)
BOROUGH COUNCIL)
was hereunto affixed in the presence of:)

GRAN No: 21106

AUTHORITY: CY COLLEGE &
REGISTRATION.

AUTHORISED SIGNATORY

THE COMMON SEAL OF NORTH YORKSHIRE)
COUNTY COUNCIL)
was hereunto affixed in the presence of:)

40599

**AUTHORISED
SIGNATORY**

THE COMMON SEAL OF ROTHERHAM
BOROUGH COUNCIL
was hereunto affixed in the presence of:

376

DULY AUTHORISED
OFFICER

THE COMMON SEAL OF ST HELENS
BOROUGH COUNCIL
was hereunto affixed in the presence of:

AUTHORISED SIGNATORY

THE COMMON SEAL OF THE COUNCIL
OF THE CITY OF WAKEFIELD
was hereunto affixed in the presence of:

Bernadette Livesey
Service Director
Legal & Governance

No: 64893

326/11

THE COMMON SEAL OF WIGAN
BOROUGH COUNCIL
was hereunto affixed in the presence of:

HEAD OF SERVICE - LEGAL & RISK

THE COMMON SEAL OF THE
COUNCIL OF THE CITY OF YORK
was hereunto affixed in the presence of:

6915

Glen McCusker LLB
Solicitor

Dated

8th September

2011

The Councils of the County of North Yorkshire and the Districts of Barnsley,
Bolton, Calderdale, Doncaster, Kirklees, Knowsley, Rotherham,
St Helens, Wigan and the Cities of Bradford, Wakefield and York

AGREEMENT

Management Agreement – Yorkshire Purchasing Organisation

Service Director
Legal & Governance
County Hall
WAKEFIELD
WF1 2QW