

**Name of Meeting:** CABINET  
**Date:** 3<sup>rd</sup> DECEMBER 2019  
**Title of report:** YPO STRATEGIC INVESTMENT

**Purpose of report:** To provide additional information on the proposed strategic investment by the Yorkshire Purchasing Organisation.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes
Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports?)</a>	Yes
The Decision - Is it eligible for call in by Scrutiny?	Yes
Date signed off by Strategic Director & name	Jacqui Gedman - 25/11/19
Is it also signed off by the Service Director for Finance?	Eamonn Croston - 25/11/19
Is it also signed off by the Service Director for Legal Governance and Commissioning Support?	Julie Muscroft - 25/11/19
Cabinet member <a href="#">portfolio</a>	Cllr G Turner

**Electoral wards affected:** All

**Ward councillors consulted:** None

**Public or private:** Public with a private report & private appendix

Appendices 2-6 to this report are recommended for consideration in private because the information contained in them is exempt information within part 1 of Schedule 12A of the Local Government Act 1972 namely that the report contains information relating to the financial or business affairs of any particular person (including the authority holding that information). The public interest in maintaining the exemption outweighs the public interest in disclosing the information and providing greater openness in the Council's decision making.

**Have you considered GDPR?** Yes

## 1. Summary

1.1 The Council is one of the 13 founder member authorities ("FMAs") of the Yorkshire Purchasing Organisation ("YPO"). YPO is governed by a

Management Committee, whose members decide on matters by simple majority. YPO operates under a Management Agreement which deals with the governance of YPO, which each of the 13 FMAs is a party to, which can be amended by the FMAs, provided two thirds of them agree to do so. The amendments dictate whether the same need agreeing by Cabinet and/or Council.

- 1.2 Wakefield Council (WMDC), as Lead Authority, has prepared a set of common documents for use by all 13 FMAs to assist with this decision. However, it is appropriate for each FMA to consider its own separate advice, which is provided in an additional private report (Appendix 2). This public report needs to be read in conjunction with the following appendices:

Appendix 1	WMDC Report (not exempt)
Appendix 2	Kirklees Council Report (exempt)
Appendix 3	Business Case (exempt)
Appendix 4	Risk Profiling (exempt)
Appendix 5	Finance Model (exempt)
Appendix 6	Draft Supplemental Agreement (exempt)
Appendix 7	Existing Management Agreement (not exempt)

## **2. Information required to take a decision**

Appendix 1 to this report prepared by WMDC sets out public information that will assist with the decision.

## **3. Implications for the Council**

- 3.1 Working with People – None directly.
- 3.2 Working with Partners – YPO is a partnership of 13 local authorities. However the nature of joint working is commercial rather than strategic.
- 3.3 Place Based Working – None directly
- 3.4 Improving outcomes for children – The bulk of YPO stock sales, many other sales and a large proportion of the sales of the target relate to school supplies. Having an effective and low cost supplier is in the interests of schools.
- 3.5 Other (e.g. Legal/Financial or Human Resources) – as noted this is a commercial transaction, and the risk is that the expanded YPO operation does not achieve the Business Plan objectives, and is thus unable to sustain the costs associated with the strategic investment, and ultimately results in a loss or, albeit very unlikely, a complete failure of the operation.

## **4. Consultees and their opinions**

- 4.1 The Service Directors for Legal, Governance & Commissioning, and Finance, and the Heads of Accountancy, Procurement and Commissioning Support and Risk and Internal Audit and Legal – Head of Corporate have all been involved in this analysis.

## **5. Next steps and timelines**

- 5.1 To consider the information, and determine the Council's position (and advise Cllr Turner about how he should vote at the YPO Management Committee (currently on 13th December 2019)). This is subject to the due diligence assessment.

## **6. Officer recommendations and reasons**

- 6.1 The Council's Officers on balance believe that there is sufficient merit in the proposals that they should be supported, but Members of Cabinet must be aware that there are risks. There are though different risks if the proposal is not progressed.

- 6.2 That Members of Cabinet:

- (a) note the transaction proposed by the YPO as outlined in this report and the appendices and indicate the Council's view on the proposal to inform a vote at the YPO Management Committee.
- (b) confirm its financial backing for the transaction by agreeing to underwrite the loan through entering into a Supplemental Agreement and delegate authority to the Chief Executive to approve the Supplemental Agreement, a draft of which is set out at Appendix 6 subject to:
  - i) at least 10 of the 13 FMAs remaining as FMAs 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.

### **OR**

That Members of Cabinet resolve to withdraw as a FMA of the YPO with effect from 31<sup>st</sup> December 2019 should the YPO Management Committee resolve to enter into the transaction proposed.

## **7. Cabinet portfolio holder's recommendations**

- 7.1 That the Cabinet discuss the proposal.

## **8. Contact officers**

James Anderson, Head of Accountancy;  
Jane Lockwood, Head of Procurement and Commissioning Support;  
Karl Larrad, Legal – Head of Corporate; and  
Martin Dearnley, Head of Risk & Internal Audit (01484 221133 x73672).


## **9. Background Papers and History of Decisions**

Appendix 1 WMDC Report (not exempt)  
Appendix 2 Kirklees Council Report (exempt)  
Appendix 3 Business Case (exempt)  
Appendix 4 Risk Profiling (exempt)

- Appendix 5 Finance Model (exempt)
- Appendix 6 Draft Supplemental Agreement (exempt)
- Appendix 7 Existing Management Agreement (not exempt)

**10. Service Directors responsible**

Julie Muscroft Service, Director – Legal Governance & Commissioning; and  
Eamonn Croston Service Director – Finance.

	<b>REPORT TO CABINET</b>  <b>TO BE HELD ON</b> <i>(insert date of meeting)</i>	
<b>Not for Publication – The appendices to this report contain exempt or confidential information.</b>	<b>Key Decision</b>	Yes
	<b>Forward Plan Ref No</b>	Ref: 1636G
<b>Council Objectives:</b>  Successful Council Successful Places Successful Businesses	<b>Portfolio</b>	Corporate Services
	<b>Relevant Overview and Scrutiny Committee(s)</b>	Overview and Scrutiny Management Board

**REPORT OF:** Corporate Director Business Change

**KMC REPORT APPENDIX 1**

**WARDS AFFECTED:** All

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**1. SUBJECT: YPO STRATEGIC INVESTMENT**

**2. PURPOSE OF REPORT**

- 2.1 To provide Cabinet 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.
- 2.2 To allow Cabinet 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.

**NOT FOR PUBLICATION – THE APPENDICES TO THE REPORT DEAL WITH EXEMPT INFORMATION AS DESCRIBED IN PARAGRAPH 3 OF PART 1 OF SCHEDULE 12A TO THE LOCAL GOVERNMENT ACT 1972, AS AMENDED.**

### **3. RECOMMENDATION(S)**

- 3.1 That Cabinet considers 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.
- 3.2 That Cabinet 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 Business Change to approve the Supplemental Agreement set out at Appendix 4 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..

### **4. WHAT DOES THIS MEAN FOR THE DISTRICT?**

- 4.1 The proposed strategic investment will 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.

- 4.2 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.

- 4.3 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.

### **5. BACKGROUND INFORMATION**

- 5.1 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.

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.

- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 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.

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 side.

- 5.7 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.

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

- 5.8 It is anticipated that each of the 13 Founder Members will consider this report from 20 November 2019.

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.

## **6. OPTIONS APPRAISAL**

- 6.1 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.

6.2 Option 2 – do not support the proposed transaction and Supplemental Agreement.

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 for 2019. This option is therefore not recommended.

6.3 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.

## **7. STRATEGIC IMPLICATIONS**

7.1 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.

7.2 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.

## **8. ENGAGEMENT**

8.1 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.

## **9. CORPORATE IMPLICATIONS**

### **9.1 Financial Implications**

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.

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.

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.

## 9.2 **Legal Implications**

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.

The business of the YPO primarily relies on the powers under s111 Local Government Act 1972 and the Local Authority (Goods and Services) Act 1970. However where YPO wishes to trade with organisations that are not covered by such legislation it 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. In short, given the trading mix of the target company and commercial scale the more resilient basis of reliance in powers is GPOC and the acquisition of the shares in the existing target company satisfies the requirement that such powers be exercised through a company.

Additional reliance can be placed on 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. To adhere to the requirements under this legislation the 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 1 satisfies the requirements of the Local Government Power to Trade Order for Wakefield as the Lead Authority holding the assets in Trust.

Once acquired, YPO can reorganise the business of the target to achieve the most cost effective delivery of service which will allow trading with designated public bodies to be done other than through the Company.

### 9.3 **Equality Implications**

None

### 9.4 **Information Governance Implications**

None

### 9.5 **Other Implications**

None

## 10. **RECOMMENDATION(S)**

10.1 That Cabinet 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 That Cabinet 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 Business Change to approve the Supplemental Agreement set out at Appendix 4 subject to

- iv) at least 10 of the 13 Founder Members remaining as Founder members and agreeing to enter into the Supplemental Agreement,
- v) the satisfactory completion of legal and financial due diligence on the proposal giving confidence to proceed and
- vi) a resolution of the YPO Management Committee to enter into the transaction proposed..

Or

That Cabinet resolve to withdraw from Founder Membership of YPO with effect from 31 December 2019 should YPO Management Committee resolve to enter into the transaction proposed

**11. REASON(S) FOR RECOMMENDATIONS(S)**

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

**Service Director:** (*Name, Service Area and Directorate*)

**Contact Officer:** (*Full Name, Job title and Location*)  
(*Full postal Address*)

Telephone No:

E-mail address:

**Appendices**

Business Case - exempt

Risk Profiling - exempt

Finance Model - exempt

Draft supplemental agreement – exempt

Existing Management Agreement – not exempt

**Background Papers:**

*Details should be given here of all publicly accessible (non private) background papers applicable to the report which can be viewed by contacting the Contact Officer named above.*

Appendix A – 2018 Founder Member Dividend Distribution Vs 2017.

Total Dividend (£'s)			
Members	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
<b>Members Total</b>	<b>5,530,070</b>	<b>5,774,456</b>	<b>244,386</b>

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 <sup>SDF</sup> ~~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

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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 of 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: )

*Stefan he*  
*Authorised Signatory*

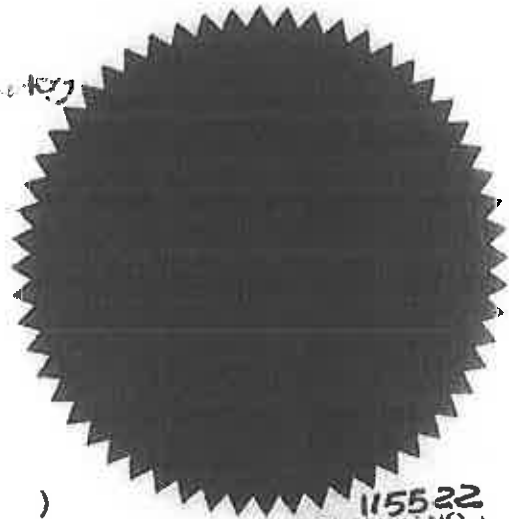
THE COMMON SEAL OF THE BOROUGH  
 COUNCIL OF BOLTON

was hereunto affixed in the presence of:

*A.R. S.M.*  
 AUTHORIZED OFFICER

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

*S. Charnock*  
 CITY SOLICITOR



115522  
 SEALING NO.



*94044*

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

*[Signature]*  
**IAN R HUGHES**

**HEAD OF DEMOCRATIC AND  
PARTNERSHIP SERVICES**

SEAL NO.  
236 037



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

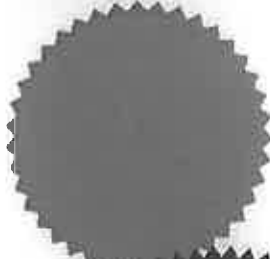
*[Signature]*

*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: )

*[Signature]*  
Authorised Signature

No. 003057



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

*[Signature]*

AUTHORISED SIGNATURE

SEAL NO: 21106

AUTHORITY: CY COLLEGE RE  
REGISTRATION.

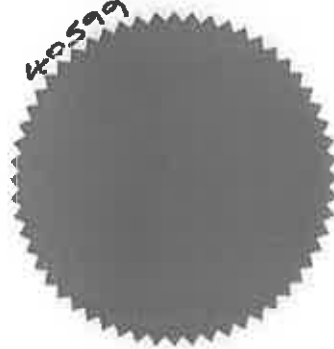


THE COMMON SEAL OF NORTH YORKSHIRE )  
COUNTY COUNCIL )  
was hereunto affixed in the presence of: )

*[Signature]*

AUTHORISED  
SIGNATURE

40599



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

*[Handwritten Signature]*

3116

DULY AUTHORISED  
OFFICER

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

*[Handwritten Signature]*  
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

*[Handwritten Signature]*

No: 668493

526/11

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

*[Handwritten Signature]*  
HEAD OF SERVICE - LEGAL & POLICE

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

*[Handwritten Signature]*

Colin McCusker LL.B.  
Clerk

6915

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