

APPENDIX 1 YPO AGREEMENT – FINAL DRAFT - COMMENTARY

CLAUSE	COMMENTARY
<p>1. OBJECTIVES AND PURPOSE OF YPO</p> <p>(1) YPO shall be a procurement organisation, maintaining effective, efficient and economical arrangements for the supply of goods, materials and services, by providing excellent quality, service and competitive prices, whilst optimising the profits available for distribution to its members and customers</p> <p>(2) YPO shall (unless agreed otherwise by 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</p> <p>(3) In conducting its business, YPO shall:</p> <p>(i) Provide all the general supplies and services required by local government and other public/third sector bodies, as permitted under legislation</p> <p>(ii) Optimise profitability by delivering cost effective services that contribute to customers' efficiency</p> <p>(iii) Ensure through periodic reviews that the effectiveness, efficiency and profitability of YPO is at least comparable with that of other similar organisations</p> <p>(iv) Utilise profits to support business investment, to reward membership and to incentivise usage</p> <p>(v) Be informed by, and be consistent with, the innovation and efficiency plans of The Founder Member Authorities and those of regional bodies</p> <p>(vi) Play a constructive role in helping to shape, and benefit from, developments in the national procurement agenda</p>	<p>From the original Agreement and the Strategic Review presented to Members in September 2009, with the inclusion of the words 'competitive prices' to reflect the outcome of member/officer debate</p> <p>From the Strategic Review, but reflecting the requirement of Members in September 2009 to keep under review all options, including YPO status as an entirely public service body</p> <p>From the Strategic Review, but generalised to allow for future changes in the type of supply, as required at Management Committee 25 September 2009</p> <p>From the Strategic Review</p> <p>From the Strategic Review</p> <p>Resolution of the Management Committee – 25 September 2009</p> <p>Resolution of the Management Committee – 25 September 2009</p>

2. POWER TO TRADE AND LIMITATIONS

Technical language

3. MEMBERSHIP OF YPO

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| <p>(1) There shall be three types of YPO membership – a Founder Member Authority; an Associate Member Authority and an Ordinary Member</p> <p>(2) The 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</p> <p>(3) No further 'Founder Member Authorities' shall be permitted under this Agreement</p> <p>(4) Each Founder Member Authority shall appoint annually two of its Members as Members of YPO and each Founder Member Authority shall also be entitled to appoint two substitute Members who 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 Founder Member Authorities to arrange such a substitution.</p> <p>(5) Each Founder Member Authority shall have one vote at Committee meetings of YPO, and these votes shall be of equal standing</p> <p>(6) The Founder Member Authorities shall select by majority vote in the Management Committee one of their number to act as <u>Lead Authority</u>, with the role and functions specified in SECTION 4 of this agreement</p> <p>(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 Founder Member Authorities, setting out their reasons for requesting a vote to take place</p> <p>(8) With the agreement of two thirds of The Founder Member Authorities, and after a resolution of the Management Committee, YPO may grant Associate Membership, in accordance with SECTION 8 of this agreement</p> <p>(9) All individual customer account holders shall be Ordinary Members of YPO, in accordance with SECTION 9 of this Agreement</p> | <p>New provision with three new designations of membership created</p> <p>New provision - with a designation of 'Founder Members' to distinguish 'owning' Members from other types of Membership. Authorities are called Founder Members irrespective of whether they were Members in 1974 when YPO was 'founded'</p> <p>New provision</p> <p>From the original Agreement, but placing the responsibility on the Member Authority to arrange any substitution and reflecting the introduction of Sub-Committees</p> <p>Adapted from the original Agreement</p> <p>New provision, allowing the Lead Authority to be chosen by a majority vote in Management Committee</p> <p>New provision setting out the conditions under which the Lead Authority can be changed.</p> <p>New provision allowing for Associate membership, which is desirable if the Organisation is to develop as envisaged in the Strategic Review</p> <p>New provision to incentivise all customers to feel some 'ownership' of YPO</p> |
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4. ROLE OF THE LEAD AUTHORITY

The Lead Authority for the time being is Wakefield Council, and shall have the following functions:

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| (1) Provide the Joint Committee with appropriately qualified staff to carry out the roles of Section 151 Officer and Monitoring Officer | New provision |
| (2) Act as employer for all staff of the Joint Committee, and to provide such Human Resources input as is considered necessary for the effective discharge of this responsibility | New provision giving the Lead Authority the right to determine the level of professional support necessary to protect its position as an employer |
| (3) Provide an effective internal audit service at a level agreed between the Section 151 Officer and the Audit Sub-Committee, including such attendance by Auditors at the Audit Sub-Committee as is necessary to properly discharge this responsibility | New provision |
| (4) Provide effective 'Committee Administration' services to the Management Committee and appropriate Sub-Committees, at a level considered necessary by the Monitoring Officer | New provision |
| (5) Provide effective banking and resource management services on behalf of YPO | New provision |
| (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 | New provision |
| (7) Chair the Strategic Officers Liaison Meeting | Agreed by Management Committee 25 September 2009 |
| (8) Assist the Management Committee to monitor the performance of the Managing Director | New provision |
| (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 Executive Sub-Committee of YPO | New provision – this allows the Lead Authority to defer any proposal by the Board of Directors until a report to Executive Committee has been considered – this will allow a special meeting of the 'Strategic Officers Liaison Meeting' to be held if necessary |
| AND Recharge the cost of such services to the Joint Committee | New provision |
| AND Strategic Officers Liaison Meeting to annually review the Lead Authority and formally review it every 5 year | New provision |

5. PROCEDURE RULES AND SCHEMES OF DELEGATION

- (1) The Joint 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
 - (ii) The agreement of at least two thirds of the total membership of the Joint Committee

Adapted from original Agreement

New provision – specifying the period of consultation

Current practice – but not in original Agreement

New provision requiring at least 9 Founder Member Authorities to agree to any change in these documents, rather than a simple majority of Authorities present at a Management Committee meeting

6. COMMITTEE ARRANGEMENTS

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| (1) The democratic management of YPO shall be vested in the Joint Committee, which shall be known as the Management Committee of YPO. | From Original Agreement |
| (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 | Agreed by Management Committee 25 September 2009, but allows the Chair to call other meetings if required |
| (3) Quorum and substitution arrangements for the Management Committee shall be as set out in approved Standing Orders of YPO | New provision |
| (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 | The original Agreement includes the entire remit of the Management Committee. This allows each AGM to amend the remit by majority vote of those present |
| (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 | New provision |
| (6) The Management Committee shall make arrangements to appoint non-voting co-opted members to the Executive Sub-Committee and the Audit Sub-Committee, based on advice from the Managing Director | New provision - agreed by Management Committee 25 September |
| (7) Prior to each Management Committee, the Lead Authority shall convene a meeting of officers drawn from Founder Member Authorities, to be known as a 'Strategic Officers Advisory Meeting', 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 status to attend such meetings | New provision – agreed by Management Committee 25 September and includes a suggested remit for the Advisory Meeting, and a responsibility on Member Authorities to supply an officer of required seniority |

<p>7. CODE OF CORPORATE GOVERNANCE</p> <p>(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.</p> <p>(2) YPO managers shall agree to attend on request the scrutiny committees of Founder Member Authorities to assist in their assessment of the effectiveness of YPO operations and assurance procedures</p>	<p>New provision</p> <p>New provision</p>
<p>8. ASSOCIATE MEMBERSHIP</p> <p>(1) At the time of this Agreement, Associate Membership is granted to Leeds City Council and Bury City Council, and their rights shall be protected under this agreement</p> <p>(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 by the Management Committee</p> <p>(3) Associate Members shall not receive a vote, or be entitled to attend 'in confidence' parts of Management Committee meetings</p> <p>(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</p>	<p>Leeds and Bury are 'Associate Members'.</p> <p>New provision – this allows the payment of a dividend only on <u>extra</u> YPO usage after membership has been attained. i.e. a 'base' level will need to be established for each new member</p> <p>New provision</p> <p>New provision</p>

9. ORDINARY MEMBERSHIP

(1) All individual customer account holders shall be Ordinary Members of YPO

New provision

(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 by the Management Committee

New provision

(3) Ordinary Members shall not receive a vote, or be entitled to attend 'in confidence' parts of Management Committee meetings

New provision

10. PAYMENT OF DIVIDENDS

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| <p>(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)</p> | <p>New provision agreed by Management Committee 25 September 2009
Wording has been added to say s151 officer has to sign off the accounts first before any dividend is paid</p> |
| <p>(2) The overall dividend sum to be distributed (if any) shall be drawn from accumulated reserves, after deducting a sum to ensure as far as possible that YPO remains cash positive during the forthcoming year, and after deducting the cost of any development proposals agreed by the Management Committee</p> | <p>New provision agreed by Management Committee 25 September 2009</p> |
| <p>(3) The distribution formula shall contain the following elements:</p> <ul style="list-style-type: none">(i) A cash sum to be divided equally between 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 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 | <p>New provision agreed by Management Committee 25 September 2009</p> <p>New provision agreed by Management Committee 25 September 2009, but allows a dividend to be paid to Associate Members</p> |
| <p>(4) The weightings attached to 3(i) to 3(iii) above shall be agreed annually by Management Committee</p> | <p>New provision agreed by Management Committee 25 September 2009; refers to a 'credit voucher' rather than a 'credit note' and applies the concept of Ordinary Members</p> <p>New provision agreed by Management Committee 25 September 2009</p> |

<p>11. APPOINTMENT OF STAFF</p> <p>(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</p> <p>(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</p> <p>(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</p> <p>(4) All staff shall be employed by the Lead Authority on behalf of YPO</p> <p>(5) The Board of Directors shall make such arrangements with Trades Unions to facilitate effective employee relations, through a periodic Joint Consultative Committee, and the Lead Authority shall be entitled to attend such a Committee as it sees fit</p>	<p>New provision</p> <p>New provision, based on Management Committee resolution 25 September 2009</p> <p>New provision</p> <p>From original Agreement</p> <p>New provision</p>
<p>12. ASSETS</p> <p>(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</p>	<p>From original Agreement</p>

<p>13. WITHDRAWAL OF MEMBERS</p> <p>(1) Founder Member Authorities wishing to withdraw from membership of YPO shall give to the Lead Authority at least 12 months written notice expiring on the 31 December. Founder Member Authorities withdrawing shall be responsible for an equal share of any deficit that has accrued in the 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 13(1) of this Agreement</p> <p>(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 year in which the withdrawal takes place</p>	<p>Based on original Agreement but refers to 31 December instead of 31 March. Now allows withdrawing members to continue to receive a dividend on <u>usage</u> in the year of withdrawal, but continues to preclude receipt of the equal share of dividend and a share of the assets of YPO</p> <p>New provision</p>
<p>146. TERMINATION</p> <p>(1) Notwithstanding the provisions of SECTION 14(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.</p> <p>(2) The terms of termination shall require:</p> <p>(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</p> <p>(ii) Any accumulated deficit to be borne by Founder Member Authorities equally</p> <p>(iii) Any accumulated surplus, and any value of assets held in trust by the Lead Authority under SECTION 13(1) of this Agreement, to be shared equally between The Founder Member Authorities</p>	<p>Based on original Agreement, but reducing the agreement level from ALL members to two thirds, and changing the date from 31 March to 31 December</p> <p>New provision</p> <p>From original Agreement</p> <p>New provision</p>

<p>15. AMENDMENT</p> <p>(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.</p>	<p>New provision</p>
<p>16. LITIGATION</p> <p>(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 provided under SECTION 12(4) of this Agreement</p> <p>(2) The Lead Authority, or such other Founder Member Authority undertaking the litigation, shall be indemnified by The Founder Member Authorities</p>	<p>From original Agreement</p> <p>New provision</p>
<p>17. INTERPRETATION AND ARBITRATION</p> <p>(1) In applying the terms of this Agreement, all parties shall act reasonably in the best interests of the Joint Committee</p> <p>(2) Where a fraction of Membership is referred to in this Agreement, this should be rounded up to the nearest whole number</p> <p>(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 for the meaning or effect of this Agreement or anything herein contained or the rights or liabilities of any of the Founder Member Authorities the same 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.</p>	<p>New provision</p> <p>New provision</p> <p>From original Agreement</p>