



YorkshireWater

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WRC Consultation.  
Retail Market Opening Programme.  
Ofwat.  
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16<sup>th</sup> December 2016

Dear Sir/Madam,

### Consultation on the Wholesale Retail Code

Thank you for providing Yorkshire Water with the opportunity to contribute to the Wholesale Retail Code (WRC) consultation. Our responses to the questions asked in the consultation document can be found appended to this letter.

We are in favour of your proposal to amalgamate the Wholesale Contract into the WRC as we believe that this strengthens the legal structure in relation to all aspects of the Codes and associated documentation.

Yorkshire Water has been involved with the Retail Competition programme for a number of years, from its early development with Open Water to active involvement through the Interim Code Panel. We have also contributed into the working groups and workshops set up by MOSL and Ofwat during the development of the Codes and related documentation. As a result of this involvement we do not believe that currently there are any aspects of the WRC or Contract, that would prevent the Market Opening.

There are a number of areas in the WRC that we believe would benefit from changes to assist in clarity and understanding of the processes. However, as these would not prevent the Market Opening we will progress these through the formal change management route.

If you wish to discuss the content of our response in more detail please contact Janet Bone, Wholesale Services Designer at [Market\\_Design\\_Team@Yorkshirewater.co.uk](mailto:Market_Design_Team@Yorkshirewater.co.uk)

Yours faithfully,

Colin Fraser  
Regulatory Strategy Manager

December 16, 2016

### **Section 3.1 Revised Structure of the WRC**

Yorkshire Water are in support of the revisions made to the structure of the constituent parts of the WRC as we believe that amalgamating the Wholesale Contract into the WRC strengthens the legal structure of the documentation. However, we note that within this revised structure Section 4. Schedule 4 Relevant terms of an approved Derogation, this document is not an approved document on the MOSL website and exist only as a Draft derogations guidance document on the Ofwat website.

### **Section 3.2 Wholesale Retail Code**

The various iterations of the WRC from the Market Blueprint to this latest version of the WRC have followed a robust change control process, Yorkshire Water believe that this process has resulted in a WRC that supports the Market Opening.

There are a number of outstanding change requests and as the Market matures additional changes request will need to be progressed, these will continue to follow the formal change request process via the Interim Code Panel and post April 2017 via the Panel.

### **Section 3.3 Wholesale Contract**

Yorkshire Water have reviewed this recent version of the Contract. We do not see any material issues with this version of the Contract. However we have identified a number of changes that we feel Ofwat may wish to consider to assist with consistency and clarity of the document.

- Page 5, Section A - Rather than defining “the Act” in the Contract document, add the Water Industry Act 1991 to Schedule 1 : Part 1 : Objectives, Principles and Definitions and define as “the Act” in this document. Alternatively do not define as “the Act” in the Contract, always refer to the Water Industry Act 1991 as per the WRC.
- Yorkshire Water would like to request clarity on the following two sections of the Wholesale Contract, whilst we understand that one section relates to the Water Retailer and the other section relates to the Sewerage Retailer, we would expect the remainder of the sections to be the same. We have identified the areas in question in blue:-
  - 9.1.1 with the prior written consent of the Contracting Wholesaler (such consent not to be unreasonably withheld, delayed or caveated), a Contracting Retailer that is a Water Retailer may assign its rights and obligations under this Wholesale Contract to a third party that holds a Water Supply Licence and has, where required pursuant to Section 9.11.4 of the Business Terms, entered into one or more of the [Credit Support arrangements](#) referred to in Section 9.11.4 and set out in [Schedules 2A to 2D and Schedule 3](#) of the Business Terms, substantially in accordance with the terms set out in those Schedules;
  - 9.1.2 with the prior written consent of the Contracting Wholesaler (such consent not to be unreasonably withheld, delayed or caveated), a

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- Contracting Retailer that is a Sewerage Retailer may assign its rights and obligations under this Wholesale Contract to a third party that holds a Sewerage Licence and has, where required pursuant to Section 9.11.2 of the Business Terms, entered into one or more forms of [Eligible Credit Support or Alternative Eligible Credit Support](#) referred to in Section 9.11.4 and set out in [Schedules 2A to 2E](#) and Schedule 3 of the Business Terms, substantially in accordance with the terms of those Schedules;
- We would propose to aid clarity the addition/removal of the text in blue in the sections listed below:-
    - Section 12.3 “The Contracting Wholesaler and the Contracting Retailer may terminate or vary this Wholesale Contract, [acting in accordance with Clauses 2.2 and 6.0 respectively](#), without the need for consent from the Market Operator.”
    - Section 13.2 “Each Party acknowledges that in entering into this Wholesale Contract it does not rely on any representation, warranty, collateral agreement or other assurance of any person (whether a Party to this Wholesale Contract or not) that is not set out in this Wholesale Contract (including, for the avoidance of doubt, the Wholesale-Retail Code)-~~the~~, the Cash Security Account Agreement, the Guarantee, the Letter of Credit, Surety Bond and/or any other [Alternative Eligible Credit Support](#) arrangement entered into in accordance with Schedule 3 of the Business Terms (as applicable). Nothing in this Wholesale Contract shall limit or exclude any liability for fraud or fraudulent misrepresentation.”
    - Section 13.3.3 “the Cash Security Account Agreement, the Guarantee and/or the Letter of Credit (as applicable), [Surety Bond and/or any other Alternative Eligible Credit Support arrangement entered into in accordance with Schedule 3 of the Business Terms \(as applicable\)](#).”
    - Section 14.1 “Termination of this Wholesale Contract for any reason shall not affect any rights or liabilities that have accrued prior to termination or the coming into force of any provision that is expressly or by implication intended to come into force or continue in force on or after termination. Without limitation, the Contracting Wholesaler and the Contracting Retailer intend that the following shall survive termination: Clauses 1, 5, 7, 8, 11 to 16 (inclusive) and 18 [of this Wholesale Contract](#) and Sections 9, 11, 14, 16, 17 to 20 (inclusive) and 26 of the Business Terms.
  - Schedule 2 and Schedule 3, we would request clarity on the statement in Sections 4, “serving notices”. If this is to mean the formal serving of a legal document, we would suggest replacing the “serving process” with “the purpose of serving legal documents and formal legal notices.”

We would welcome further information in relation to the Contract signing process to allow Yorkshire Water’s readiness programme to be reviewed and brought in line with any timelines issued by Ofwat.

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### **Designation Document**

Yorkshire Water do not have any comments at this time to make on the Designation Document but would welcome an opportunity to consult on any subsequent iterations of this document.

### **Housekeeping**

Yorkshire Water would like to bring to your attention a possible administrative error, highlighted in blue below:-

Operational Terms:-

#### **Process F5 – Non-Household Customer complaints (Equivalent to Scottish Operational Code Process 17)**

Purpose and scope of Process F5:

This process sets out the operational requirements to be followed by the Contracting Wholesaler and the Contracting Retailer in the event of it receiving a complaint under Regulation 7 from either the Contracting Retailer or the Non-Household Customer, including payments of amounts under the GSS Regulations in accordance with both Section 2.4 and Schedule ~~3~~ 5 of the Business Terms.