

Customer Agreement



Buy, Sell, Trade.

The Customer warrants that in entering into this Agreement, he or she has obtained, or has been given the opportunity to obtain, professional and/or legal advice as to the terms and effect of this Agreement.

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Background

- a) WEX operates waterexchange.com.au (the Site), which provides an exchange and settlement service for the trading of water products.
 - b) The Customer wishes to register as a Customer of the Site and engage a Broker to use the Site to trade in water products on the Customer's behalf and does so in accordance with the terms of this Agreement.
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1 Definitions and Interpretation

1.1 Definitions

In this Agreement unless the Parties agree otherwise in writing:

Agreement means this WEX Customer Agreement;

Application means an application to the Relevant Authority for the assignment and/or transfer of a Water Product as a result of a Trade;

Broker means the person or company engaged by the Customer to use the Site to trade in Water Products on the Customer's behalf;

Business Day means a day, other than a Saturday or Sunday or public holiday, on which banks are open for business in Sydney, New South Wales;

Buy Order means an offer to buy a Water Product through the Site on the terms specified in the Buy Order;

Buyer means the Customer that has initiated a Buy Order to buy a Water Product through the Site;

Claim means any allegation, debt, cause of action, claim, proceeding, suit or demand of any nature whatsoever, and whether present, unascertained, immediate, future or contingent;

Commence or Commenced means the time a Buy Order or Sell Order is initiated by the Broker or a Customer;

Commission Payment means the commission payable by the Customer to the Broker as identified in the Buyer Order or Sell Order signed by the Customer;

Complete or Completed means in respect of a Trade, when a Buy Order is Matched with a Sell Order, an Application is approved by the Relevant Authority in relation to the Trade, the Water Product has been transferred free of all encumbrances, charges, liens, mortgages and other adverse or third party interests to the Buyer and payment of the Fees in respect of the Trade have been made to WEX and the Seller;

Confidential Information means details of Trades and in relation to WEX means, trade secrets, confidential know how, client lists, prospective client lists, supplier lists, price lists, employee lists, information about products and services in development, financial information about WEX, information about the business or affairs of WEX, the terms of this Agreement, the terms of WEX's agreements with clients, suppliers and employees and computer software owned or used by WEX of which the Customer becomes aware or generates which is not in the public domain;

Customer means the Buyer or Seller whose details appear in the Buy Order / Sell Order form and/or in the account details of the Site's Customer Portal;

Customer ID means the personal identification number or words, or a mixture of numbers and letters, if any, given to the Customer by WEX that when used in conjunction with a Customer PIN gives the Customer access to the Site;

Customer PIN means the personal and private number given by WEX to a Customer to allow the Customer to gain access to the Site;

Customer Portal means the unique online portal allocated to the Customer to store licence details, trade history, load Buy / Sell orders or bid on auctions if enabled to trade independently by their Broker;

Fees means the amount advised by WEX from time to time as payable by the Customer in relation to a Trade and includes the purchase price of the Water Product, the amount charged to WEX by the Relevant Authority to process an Application, the amount due by the Customer to WEX for processing charges, the Commission Payment and any other amounts outstanding in relation to a Trade;

Force Majeure Event means an act, event or occurrence such as an act of God, fire, flood, explosion, riot, war, hurricane, sabotage terrorism, vandalism, accident, emergency animal disease, pandemic, restraint of government, governmental act, injunction and other like events that are beyond the reasonable anticipation and control of the party affected despite such party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which are not attributable to that party's failure to perform their obligations under this Agreement;

GST has the meaning attributed to it by S.195-1 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Intellectual Property means all intellectual property including:

- patents, copyrights, rights in circuit layouts, registered designs, trademarks and the right to have Confidential Information kept confidential;
- such generic information in relation to Trades such as price, volume and date traded but not information that specifically identifies a Customer; and
- any application or right to apply for registration of the rights in paragraph (a);

Match or Matched means the moment in time when a Sell Order and a Buy Order are brought together and become binding on one another;

Parties means WEX, the Broker and the Customer;

Privacy Policy means the privacy policy appearing on the Site as amended from time to time;

Relevant Authority means, in respect of a Water Product, the relevant public or statutory authority which under law is responsible for the administration of the Water Product or its transfer pursuant to the Relevant Legislation;

Relevant Legislation means, in respect of a Water Product, relevant state and Australian legislation that provides for the establishment, administration or transfer of the Water Product;

Temporary Allocation means the right to access a volume of water for use or trade in the water year (1 July to 30 June);
Sell Order means an offer to sell a Water Product through the Site on the terms specified in the Sell Order;

Seller means the Customer that has initiated a Sell Order to sell a Water Product through the Site;

Service means the provision and operation of a clearing and settlement exchange for the trading of Water Products via the Site in accordance with this Agreement;

Trade or Trading means the sale or purchase of a Water Product made using the Site;

Water Product means any product sold on the Site including but not limited to Temporary Allocation, forward allocation, call options, carryover capacity and permanent entitlements;

WEX means WEX Water Pty Ltd (ACN 615 100 206); and

WEX Processing Fee means the amount charged by WEX to the Customer for processing and settlement of a Trade of a Water Product as specified in the Schedule to this Agreement.

1.2 Interpretation

In this Agreement:

- a) a reference to a person includes any other entity recognised by law and vice versa;
- b) words importing the singular number include the plural number and vice versa;
- c) words importing one gender include every gender;
- d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- e) any reference to any of the Parties by their defined terms includes that party's executors, administrators or permitted assigns, or being a company, its successors or permitted assigns;
- f) a covenant or agreement on the part of two or more persons is given by and binds them jointly and severally;
- g) clause headings are for reference purposes only;
- h) dollars and \$ mean the lawful currency of Australia unless otherwise specified;
- i) reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

2 Formation and term of agreement

This Agreement is effective from, and shall commence on, the date that the Customer agrees to be bound by this Agreement and will continue until terminated in accordance with this Agreement.

3 Access to the Site

3.1 Customer Access

In consideration of the payment of the WEX Processing Fees by the Customer, WEX agrees that the Customer may have access to the Site on the terms and conditions of this Agreement.

3.2 Security of the Site

- a) WEX may issue a Customer ID and Customer PIN to the Customer to enable the Customer to access the Customer Portal on the Site.
- b) The Customer is solely responsible for the security and confidentiality of the Customer ID and Customer PIN.
- c) The Customer must immediately notify WEX of any use of the Customer ID or Customer PIN that was not authorised by the Customer.
- d) The Customer is liable to WEX for any losses, costs or expenses suffered or incurred by any person in connection with the unauthorised use of the Customer ID or Customer PIN and the Customer must indemnify WEX against any direct or indirect losses, costs (including legal costs on a full indemnity basis), expenses, Claims, demands or any other actions which may be brought against WEX or suffered or incurred by WEX directly or indirectly as a result of the unauthorised use of the Customer ID or Customer PIN.
- e) WEX may terminate this Agreement immediately if the Customer ID or Customer PIN (or the ID or PIN) are used for any reason other than for the purpose of loading Buy / Sell Orders or Completing a Trade. This termination right is in addition to any other right WEX may have to terminate this Agreement.

3.3 Authority to Act

- a) The Customer acknowledges and agrees that by signing or otherwise authorising a Buy Order or Sell Order it is authorising the Broker to act on its behalf to load Buy or Sell Order(s) into the WEX market(s) and to bind the Customer in relation to the trading of Water Products.
- b) The Customer acknowledges and agrees that by authorising a Buy / Sell Order or using the Customer Portal to load a Buy or Sell Order independently:
 - i) by placing a Sell Order in relation to a Water Product on the Site, the Customer agrees to sell and transfer the Water Product to the Buyer free of all encumbrances, charges, liens, mortgages and other adverse or third-party interests; and
 - ii) by placing a Buy Order in relation to a Water Product on the Site, the Customer agrees to purchase and accept a transfer of the Water Product from the Seller free of all encumbrances, charges, liens, mortgages and other adverse or third-party interests.

4 WEX Trade Process – Temporary Allocation

4.1 Matched Order

The Customer acknowledges and agrees that once a Buy or Sell Order for Temporary Allocation is Matched on the Site it creates a binding agreement on the Buyer and Seller to complete the Trade.

4.2 Payment by Buyer

The Buyer acknowledges and agrees that:

- a) the Buyer must have sufficient funds available at the time a

- Trade is Matched, to meet the Fees in relation to that Trade;
- b) the Fees (as invoiced and including the Commission Payment, WEX Processing Fee and Water Authority processing fees) are payable by the Buyer to WEX within 2 Business Days of a Trade being Matched;
 - c) if the Fees in respect of a Trade are not paid within 5 Business Days, the Buyer acknowledges they will be liable for additional interest charges calculated at the rate specified in clause 6.
 - d) if the Fees in respect of a Trade are not paid within 10 Business Days, the Seller or WEX (at their complete discretion) may elect to cancel the trade and the Buyer is liable to WEX for all costs associated with the cancellation of that Trade including without limitation, interest, WEX processing fees, the Commission Payment and any shortfall between what the Seller would have received from the Trade to which the Buyer was a party and what the Seller receives as a result of entering into a further Trade with another Buyer in respect of that Temporary Allocation. This amount will be invoiced via WEX to the Buyer for immediate payment.

4.3 Application to Water Authority

- a) Once a Trade is Matched and the Fees are paid by the Buyer, WEX will promptly apply to the Relevant Authority to obtain the approval of the Relevant Authority to the transfer of the Temporary Allocation to the Buyer.
- b) If an Application is not approved by the Relevant Authority for reasons of incorrect licence details provided by the Seller or Buyer, the relevant Customer must immediately provide correct details to WEX and the Trade will be re lodged for approval with the Relevant Authority.
- c) If an Application is not approved by the Relevant Authority for reasons of intervalley trade restrictions, changes to trading rules or other hydrological reasons assessed by the Relevant Authority then the Trade will be cancelled, and the Fees returned to the Buyer less any application fee charged by the Relevant Authority.
- d) If an Application is not approved by the Relevant Authority for reasons of the Seller not having a sufficient Temporary Allocation volume to satisfy the Trade the Seller must immediately rectify and provide details to WEX to lodge an additional Trade to supply the full volume to the Buyer. The Seller is liable to WEX to pay for any additional processing fees associated with any additional Trades.
- e) If the Seller fails to provide details to WEX to rectify within 5 Business Days of being notified, the Buyer may elect to cancel the Trade in which case the Seller will be liable to the Buyer for any increase between what the Buyer would have paid in relation to the Trade to which the Seller was a party and what the Buyer ultimately pays as a result of entering into a further Trade for an equivalent volume of Temporary Allocation that was to be sold by the Seller.

4.4 Settlements to Sellers by WEX

- a) WEX will pay the amount due to a Seller in respect of a Trade, on the date which is 2 Business Days after the Relevant Authority has notified WEX that it has approved the Application and transferred the Temporary Allocation in respect of the Trade to the Buyer free of all encumbrances, charges, liens, mortgages and other adverse or third-party interests.

- b) The Seller agrees that Fees payable in respect of a Trade to WEX (including the Commission Payment and any arrears payable to the Relevant Authority) will be deducted from the amount due to the Seller in respect of a Trade.

5 WEX Trade Process - Other Water Products

5.1 Matched Order

- a) The Customer acknowledges and agrees that once a Buy or Sell Order for other Water Products is Matched on the Site it creates a binding agreement on the Buyer and Seller to complete the Trade. Matching may occur by Customers notifying their Broker to match a corresponding order on their behalf or by the Customer using a Customer Portal to "Buy it Now" or participate in an online auction.
- b) For online auctions conducted on the Site:
 - i) the Buyer acknowledges that upon receiving notification from WEX that it is the highest bidder and its bid has been accepted by the Seller, it will execute a further agreement for the Water Product and make payment for the required deposit; and
 - ii) the Seller acknowledges that if the Buyer bids a price equal to or higher than the nominated reserve price, the Water Product is deemed to be sold and they will execute a further agreement for sale and transfer of the Water Product to the Buyer.

5.2 Further Agreement

The Parties acknowledge and agree that for the purchase and sale of Water Products (other than Temporary Allocation), the Parties are required to enter into a further agreement to govern the terms of the purchase and sale of such Water Products. A copy of the relevant further agreement will be made available to the Customer prior to authorising or loading a Buy / Sell Order upon request.

6 Interest

Any amount due to a Party pursuant to this Agreement and remaining unpaid after the date when payment was due shall bear interest from the date such payment was due until paid at a rate of 17% per annum.

7 WEX Services

7.1 Services

- a) WEX agrees to provide the Services and the Water Products to the Customer in accordance with the terms of this Agreement.
- b) The Customer acknowledges and agrees that:
 - i) WEX will provide the Services with reasonable skill and care, however, the Site may not always operate without error;

- ii) WEX in no way warrants or guarantees that a Customer will be able to Match a Trade;
- iii) WEX at its complete discretion may cancel a Matched Trade when it is satisfied that the Match occurred because of a data imputing or keyboard error by WEX, the Broker or Customer. Should WEX cancel a Trade the obligations of Buyer and Seller in respect of the Trade are rescinded. Any request by a Broker or Customer for WEX to consider cancelling a Trade under this clause must be made to WEX within 1 hour of the Trade Matching.
- iv) information on the Site and/or in relation to WEX is not advice generally or specifically in relation to Water Products, Trades or any other matter and that the Customer must seek their own professional advice in relation to their activities in connection with the Site and the Trades;
- v) WEX is not at any time and in any event, the party, principal or authority consenting to or authorising transfer of, any Water Product from Seller to Buyer under this Agreement and WEX is not required to use or advance its own funds or otherwise incur financial liability on its own part in performance of its duties or the exercise of its rights under this Agreement;
- vi) WEX accepts no liability for any damage that may result from the transmission of any viruses via the Site and/or electronic files which are available for Customers to download from the Site and/or provided by WEX; and
- vii) WEX has no duties and/or obligations as a party to this Agreement except those duties and obligations which are expressly set out in this Agreement and, in its capacity as a party to this Agreement, must not be taken to owe any fiduciary duty to the Buyer or the Seller.

7.2 WEX as Agent

By entering into this Agreement, the Customer appoints WEX as its agent to sign any Application which is to be lodged with a Relevant Authority in relation to a Trade where the Customer is the Buyer or the Seller.

7.3 WEX Processing Fees

The WEX Processing Fee charged by WEX to the Customer for processing a Matched Trade of a Water Product is detailed on the Buy / Sell Order Form or within the Customer Portal when loading a Buy/Sell Order onto the Site. WEX may amend this fee from time to time at its sole discretion.

7.4 Fees held on trust

The Parties acknowledge and agree that until they are disbursed by WEX in accordance with this Agreement, moneys paid by the Customer as Fees are held by WEX on Trust for the Customer and:

- a) remain beneficially owned by the Customer;
- b) constitute a fund separate from the assets of WEX;
- c) shall be held by WEX in a separate bank account which does not contain moneys owned beneficially by WEX;

7.5 Indemnity for WEX

The Customer must indemnify WEX against any direct or indirect losses, costs (including legal costs on a full indemnity basis), expenses, Claims, demands or any other action which may be brought against WEX or suffered or incurred by WEX directly or indirectly as a result of the Customer's activities (or the activities of any authorised person of the Customer) in connection with this Agreement or in connection with the use of the Site including, for the avoidance of doubt, as a result of or in connection with, the execution by WEX on behalf of the Customer of any Application or document relating to an Application or the Customer's failure to make a payment in relation to a Trade in accordance with the terms of this Agreement.

7.6 Limitation of Liability

- a) To the extent permitted by law and subject to clause 7.6(b), the liability of WEX to the Customer for any loss or damage arising out of or in connection with the supply of Services or products under this Agreement or any breach by WEX of this Agreement however arising (whether for breach of the terms of this Agreement, tort, statute, equity otherwise at common law or on any other basis) is limited to:
 - i) in the case of the supply of Services, the re-supply of the services by WEX to the Customer; and
 - ii) in the case of the supply of products, the re-supply of the products by WEX to the Customer.
- b) Clause 7.6(a) is not intended to have the effect of excluding, restricting or modifying:
 - i) the application of all or any of the provisions of Part 5-4 of Schedule 2 to the *Competition and Consumer Act 2010* (the ACL); or
 - ii) the exercise of a right conferred by such a provision; or
 - iii) any liability of the supplier in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.

7.7 Legal Proceedings

The Customer and the Broker must pursue any legal proceeding issued in connection with any Dispute between them without joining WEX as a party, unless the Dispute is based upon the fraud, negligence or wilful misconduct of WEX or a breach of this Agreement by WEX.

8 Customer Obligations and Warranties

8.1 Acknowledgements and obligations

The Customer acknowledges and agrees that:

- a) it is only permitted to Trade independently on the Site if the Broker has authorised the Customer to do so;
- b) before taking steps to Commence a Trade or to authorise the Broker to Commence a Trade, it must have funds to meet the amount required to purchase the Water Product;
- c) once a Trade is Matched, there is a contract between the Seller under the Sell Order and the Buyer under the Buy Order

and that each party to the Trade is legally obliged to complete the Trade subject only to the Relevant Authority approving and effecting the transfer of the Water Product the subject of the Trade;

- d) WEX may provide all information required by a Relevant Authority to process any Application in relation to a Trade where the Customer is the Buyer or the Seller;
- e) WEX is independent of any Relevant Authority;
- f) WEX is in no way liable if a Relevant Authority does not approve an Application;
- g) WEX is bound by the Privacy Policy and that it is a condition of using the Site and engaging in Trades that the Customer is subject to the Privacy Policy;
- h) it must do all things to ensure that any authorised person of the Customer adheres to the terms of this Agreement;
- i) contact, which the Customer has with WEX, may be recorded;
- j) it must not do or omit to do anything which could adversely affect the reputation of WEX and/or the Site.

8.2 Warranties

The Customer warrants to WEX and the Broker that:

- a) where the Customer is an individual, the Customer is 18 years or older and has the legal capacity to enter into this Agreement and be bound by the provisions of this Agreement;
- b) all the information provided in the Buy Order or Sell Order forms, and otherwise provided by the Customer to Broker is true, complete and accurate;
- c) entering into this Agreement will not constitute a breach by the Customer of any law, regulation or order and, without limitation, this Agreement constitutes (or will when executed constitute) valid, legal and binding obligations of the Customer and is enforceable against the Customer in accordance with its terms;
- d) the Customer holds all permits and licenses required to allow it to fulfil its obligations in accordance with this Agreement; and
- e) the Customer is able to pay its debts as and when they fall due and has no reason to believe that it will not continue to be able to pay its debts as and when they fall due.

8.3 Warranties for the benefit of other customers

- a) In relation to the Water Product described in a Sell Order or loaded onto the Site via a Customer Portal, the Customer warrants to the Buyer that:
 - i) the Customer is the legal and beneficial owner of the Water Product and when the Trade of the Water Product is Completed the Water Product shall be free of all encumbrances, charges, liens, mortgages and other adverse third-party interests;
 - ii) the Customer has the power to contract with the Buyer to transfer the Water Product to the Buyer; and
- b) In relation to the Water Product described in a Buy Order or loaded into the market via a Customer Portal, the Customer warrants to the Seller that:
 - i) the Customer has the power to enter into a contract with the Seller and to accept the transfer of the Water Product; and
 - ii) the Customer is aware that the Water Product is subject to the relevant regulations and laws applicable to the Water Product and any conditions disclosed by the Seller to the Customer.

8.4 Customer Data

WEX may reasonably use Customer's data relating to any Trade (Customer Data) for the following purposes:

- a) to enable WEX to provide the Services in accordance with the terms of this Agreement, including, without limitation, retaining the Customer Data on WEX's systems and accessing the Customer Data to contact the Broker in the first instance and then the Customer, if there is an issue with any Trade by that Customer;
- b) to store such Customer Data for such period as is considered appropriate by WEX for the provision of the Service and to deal with any issues that may arise in relation to this Agreement and/or any Trades to which a Customer may be a party; and
- c) to the extent permitted at law, to use Customer Data for the purposes of creating or generating reports relating to trades, volumes, trends and prices of Water Products.

9 Suspension and Termination

9.1 Termination by WEX

WEX may terminate this Agreement:

- a) by notice to the Broker effective immediately:
 - i) if the Customer breaches this Agreement and, where the breach is capable of being remedied, the Customer does not remedy that breach within 7 Business Days of WEX notifying the Broker in writing of the breach and requiring rectification;
 - ii) if the Customer stops paying its debts when they become due or is declared or taken under any applicable law to be insolvent or is likely to become insolvent or any other step is taken by the Customer or any other person which leads or may lead to the Customer being unable to deal with its assets as it may decide;
 - iii) if the Customer ID or Customer PIN (or the ID or PIN) are used for any reason other than for the purpose of Completing a Trade as per clause 3.2(e); or
 - iv) if in WEX's opinion, the Customer's activities are damaging, or likely to damage, the reputation and/or goodwill of WEX and/or the Site, or
- b) by giving the Customer 5 Business Days' notice in writing and the effective date of termination of the agreement will be upon expiration of that 5 Business Days.

9.2 Termination by the Customer

- a) Provided that no Trades have been Matched or Commenced, the Customer may terminate this Agreement at any time by completing, executing and providing to WEX, a notice of termination in the form required by WEX.
- b) If the Customer terminates this Agreement as contemplated by clause 9.2(a), termination is effective upon WEX receiving and accepting a notice of termination in writing.

9.3 Actions on Termination

- a) The Parties agree that termination of this Agreement does not affect any rights that have accrued to the Parties prior to the

- termination of this Agreement.
- b) For the avoidance of doubt, the Customer must adhere to the terms of this Agreement from the date of receipt of a notice of termination of this Agreement until the effective date of termination of this Agreement.
- c) On the effective date of termination of this Agreement the Customer must:
- i) Pay all Fees due by it to WEX and all other amounts payable by the Customer in relation to any Trades in which the Customer was involved prior to termination; and
 - ii) provide to WEX any documentation in relation to the Site given to the Customer by WEX.

10 Dispute Resolution

- a) In this clause "Dispute" means any dispute between two or more Parties that is in any way connected with this Agreement.
- b) No party may commence any court proceedings (except proceedings seeking interlocutory relief) against the other Parties in respect of any Dispute unless it has first complied with this clause.
- c) Any party claiming that a Dispute has arisen must notify the other Parties in writing.
- d) Within 7 Business Days after such notice is given, each Party must nominate in writing to the other parties an employee who is authorised to settle the Dispute on its behalf.
- e) During the 20 Business Day period after the nomination of employees authorised to settle the Dispute has been made (or if the parties agree on a longer period, that longer period) each Party's nominee must use his or her best efforts to resolve the Dispute.
- f) If the Dispute is not resolved within that time, the Dispute must be referred:
- i) for mediation in Sydney, New South Wales in accordance with the Australian Commercial Disputes Centre (ACDC) Mediation Guidelines; and
 - ii) to a mediator agreed by the Parties, or if the Parties do not agree on a mediator, a mediator nominated by the then current Chief Executive Officer of ACDC or that person's nominee (or if no such person is available or willing to nominate a mediator, by the then President of the Law Society or equivalent body in Sydney, New South Wales.
- g) If the Dispute is not resolved by mediation, any party may commence court proceedings.

11 Intellectual Property

11.1 Informing WEX of certain matters

The Customer must promptly inform WEX of any matter in connection with this Agreement or the Site which comes to their notice and that they reasonably regard as material and relevant to WEX insofar as it may affect the reputation of WEX and/or the Site and/or may relate to the activities of any Customer or any other person in relation to the operation of the Site.

11.2 Ownership of Intellectual Property

The Customer acknowledges and agrees that:

- a) the Intellectual Property of WEX at all times remains the property of WEX and that the Customer has does not have any right, title or interest in the Intellectual Property of WEX;
- b) unless authorised in writing by WEX, the Customer may not use or copy any material on the Site or provided as part of the Service except for the purpose of Trading a Water Product;
- c) all Intellectual Property which has been or in future is created or developed by the Customer (whether alone or with any other person or entity) in connection with this Agreement which:
 - i) incorporates or is derived from Confidential Information or the Intellectual Property of WEX; or
 - ii) has been or will in the future be created or developed by the Customer in connection with this Agreement, belongs solely to WEX and the Customer must immediately upon creation of those Intellectual Property disclose the subject matter of that Intellectual Property to WEX.

11.3 Acknowledgements

The Customer acknowledges, warrants and agrees that:

- a) any Intellectual Property which the Customer creates or develops will be original and, to the best of the Customer's knowledge, will not infringe the Intellectual Property rights of any other person;
- b) any right given to the Customer (whether by this Agreement or otherwise) to use any of the Confidential Information and the Intellectual Property:
 - i) does not give the Customer any rights in that Confidential Information or Intellectual Property; and
 - ii) is immediately terminated on the termination of this Agreement.

12 Force Majeure

- a) Where a party is not reasonably able to carry out any obligations under this Agreement due to a Force Majeure Event, those obligations will be suspended for the period of the Force Majeure Event.
- b) If a Force Majeure Event occurs, the affected Party must use all reasonable endeavours to overcome the effects of the Force Majeure Event.
- c) If the Force Majeure Event continues for more than 30 Business Days, and the affected Party is unable to perform its obligations under this Agreement, the other Party may give Notice in writing terminating this Agreement with effect from the date the Notice is served or any other future date specified in the Notice.

13 GST

- a) In this clause 13, words and expressions which have a defined meaning in the *A New Tax System Goods and Services Tax Act 1999* (GST Act) have the same meaning as in the GST Act.
- b) All consideration to be provided under this document is

expressed exclusive of GST. If GST is payable by a Seller on any supply made under this agreement the recipient, upon receiving a tax invoice from the Seller, will pay to the Seller an amount equal to the GST payable on the supply. This amount will be paid in addition to, and at the same time that, the consideration for the supply is to be provided.

14 Notices

14.1 Service of Notices

A notice, demand, consent, approval or communication under this Agreement (Notice) must be:

- a) in writing, in English and signed by a person duly authorised by the sender; and
- b) hand delivered or sent by prepaid post or email to the recipient's address for Notices, as varied by any Notice given by the recipient to the sender.

14.2 Effective on receipt

A notice given in accordance with clause 14.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- a) if hand delivered, on delivery;
- b) if sent by prepaid post, the second Business Day after the date of posting (or the seventh Business Day after the date of posting if posted to or from a place outside Australia); and
- c) if sent by email, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the Notice was not received by the recipient, but if the delivery or receipt is not on a Business Day or is after 5:00pm on a Business Day, the Notice is taken to be received at 9:00am on the next Business Day.

15 General

15.1 Amendment

WEX may amend any of the terms contained in this Agreement at any time by posting notice of any variation on the Site. The Customer's continued access to the Site after such notice will constitute acceptance of the amendment.

15.2 Assignment

The Customer must not assign, transfer or novate their rights or obligations under this Agreement without WEX's prior written consent.

15.3 Change of control

For the purpose of this clause, any change in the shareholding of the Customer or the Broker (if a company other than a listed public company) altering the effective control of that party from that existing at the date of commencement of this Agreement

will be deemed an assignment and a breach of this clause if the consent of WEX is not obtained, which can be withheld at the discretion of the other Parties.

15.4 Entire Agreement

This Agreement, including the attached schedules, constitutes the entire agreement between the Parties with respect to the Services and supersedes any prior agreements, undertakings, declarations, representations and understandings, both written and verbal, in respect of the subject matter hereof.

15.5 Legal costs

Except as provided in this Agreement, each party must pay its own legal and other costs and expenses in performing its obligations under this Agreement.

15.6 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

15.7 Waiver

The non-exercise of, or delay in exercising, any power or right of a party under this Agreement does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

15.8 Governing Law

The laws in the State or Territory of New South Wales will apply to this Agreement.

Schedule

Water Product	Fee for Buyer (incl GST)	Fee for Seller (incl GST)
Temporary allocation	\$55.00	\$55.00
Forward allocation	\$220.00	\$220.00
Permanent entitlement sale	\$220.00	\$220.00
Permanent entitlement lease	\$220.00	\$220.00
Carryover capacity	\$220.00	\$220.00