

Water Market Intermediary Obligations and Terms and Conditions

PART 11 - INFORMATION THAT WE MUST PROVIDE TO YOU BEFORE SERVICES ARE PROVIDED

1. Information – Water Markets Intermediary Services

- 1.1 This information is provided in accordance with the requirements under the Water Markets Intermediaries Code, Part 5 of the Water Act 2007 (Cth) and the Australian Consumer Law to ensure transparency and accountability in water markets intermediary services.

2. Water Markets Intermediary Obligations

- 2.1 As a water markets intermediary, Water Exchange Australia Pty Ltd (ABN 86 120 711 104) trading as Wilks Water (“we” or “us”) have obligations to you, our client under:

- a. Part 5 of the Water Act 2007, including under the Water Markets Intermediaries Code (“the Code”)
- b. Schedule 2 of the Competition and Consumer Act 2010 (**Australian Consumer Law**)

3. Our obligations to you under the Code

- 3.1 **(General obligations, Regulation 5.03)** In the course of providing water markets intermediary services to you:
- a. We must place your interests before our interests or the interests of our officers, employees or other related parties;
 - b. We must represent your interests diligently and with due care and skill;
 - c. We must act in accordance with your lawful instructions;
 - d. We must not use or disclose any confidential information obtained from you, or otherwise obtained in the course of our dealings with you in respect of the service, unless the use or disclosure of the information:
 - i. is authorised by you; or
 - ii. if we reasonably believe that the information is relevant to a possible contravention of a provision of the Water Act or a legislative instrument made under the Act—is for the purpose of providing the information to a relevant enforcement agency; or
 - iii. is otherwise required or authorised by law.
- 3.2 **(Other obligations)** In addition, in the course of providing water markets intermediary services to you:
- a. **(Deal in good faith, Regulation 5.04):** We must deal with you in good faith.
 - b. **(Disclose conflicts of interest, Regulation 5.05):** If we have (or a related party of us has) an interest that conflicts with your interest in relation to the provision of the service, or will have such an interest as a consequence of the provision of the service:
 - i. We must disclose the conflicting interest to you in writing, and
 - ii. We must request that you confirm, in writing, that the disclosure has been received.
 - c. **(Material personal interests, Regulation 5.06):** If we have (or a related party of us has) a material personal interest in the relevant eligible water trading right, or will have such an interest as a consequence of the provision of the service, then except in limited circumstances:
 - i. We must not provide the service; and
 - ii. We must notify you, in writing, that the Code prohibits us from providing the service.
 - iii. We must make the notification as soon as practicable after you engage or instruct us to provide the service or, if we are not aware of the interest at that time, after we first become aware of the interest; and
 - iv. If (i) the service involves the live-matched trade or transfer of the relevant eligible tradeable water right; and (ii) you are a related party of us; and (iii) a related party of us has, or will have, a material personal interest in the relevant eligible tradeable water right; and (iv) we do not, or will not, have a material personal interest in the relevant eligible tradeable water right, then we must ensure that the related party that has, or will have, a material personal interest in the relevant eligible tradeable water right does not improperly use its status, power or authority to gain, or to seek to gain, an advantage for itself or for us in respect of the provision of the service. However, this obligation does not apply if we do not know, and cannot reasonably be expected to know, that the related party is improperly using its status, power or authority to gain, or to seek to gain, an advantage for itself or for us in respect of the provision of the service.
 - d. **(General information about services and obligations, Regulation 5.07):** We must provide you with specific information, in writing, about the services and our obligations (which we are doing via this Water Trading Form).
 - e. **(Additional information about particular services, Regulation 5.08):** We must provide you with additional information, in writing, about particular services.
 - f. **(Deal with complaints, Regulation 5.09):** If we receive a complaint from you in the course of our dealings with you in respect of the service:
 - g. We must act in good faith in dealing with the complaint;
 - i. We must make a genuine attempt to resolve the complaint within 20 business days;
 - ii. We must make a written record of the complaint if the complaint is not received in writing;
 - iii. We must, within 2 business days of receiving the complaint, give you:
 - 1) Written confirmation that the complaint has been received; and
 - 2) A copy of the record of the complaint that we have made (if applicable); and
 - 3) Information about the process we will follow in dealing with the complaint;
 - iv. We must, within 10 business days of receiving the complaint, give you a written response to the complaint that specifies the actions we propose in seeking to resolve the complaint; and
 - v. We must, within 5 business days of completing the process for dealing with the complaint, give you written notice of the outcome of that process.

Our process for dealing with complaints can be found at the end of this Form or at: wilkswater.com.au/resources/complaints
 - h. **(Authority to trade or transfer eligible tradeable water rights, Regulation 5.10):** We must not make an application to a water market authority to approve, allow or register the trade or transfer of an eligible tradeable water right unless we hold written authority to make the application from each person who holds a legal or equitable interest in the relevant eligible tradeable water right. This Water Trading Form records your written authority
 - i. **(Authority to act as agent, Regulation 5.11):** We must not act as your agent unless we hold a written authority from you to do so. This Water Trading Form records your written authority
 - j. **(Broking water accounts, Regulation 5.12):** We must maintain one or more broking water accounts for the purpose of holding eligible tradeable water rights on your behalf, and deal with such accounts in accordance with regulation 5.12)
 - k. **(Statements about broking water accounts, Regulation 5.13):** We must prepare a statement in relation to each broking water account for each financial year where eligible tradeable water rights have been held on your behalf.
 - l. **(Professional indemnity insurance, Regulation 5.14):** We must hold a Professional Indemnity Insurance Policy that covers the provision of the service for an insured amount:
 - i. of at least \$5 million for any one claim and \$10 million in the annual aggregate; or
 - ii. both:
 - 1) of at least \$5 million for any one claim and in the annual aggregate; and
 - 2) that includes an automatic right of reinstatement of the annual aggregate.
 - m. **(Record-keeping, Regulation 5.15):** We must keep the following records for 6 years:
 - i. the statements about water broking accounts that are required to be prepared in accordance with regulation 5.13; and
 - ii. the certificates of currency and insurance policies for the professional indemnity insurance that is required to be held under regulation 5.14;
 - iii. the trust account statements and trust account audit reports that are required to be prepared in accordance with section 100V of the Act.
 - n. **(Holding client records, Regulation 5.16):** We must retain various records in relation to you for a period of six (6) years;
 - o. **(Trust account records and ledgers, Regulation 5.17 and 5.18):** If we receive money on behalf of another person in the course of providing water markets intermediary services:
 - i. We must maintain one or more trust accounts;
 - ii. We must keep specified records; and
 - iii. We must maintain a ledger in respect of money held in the trust account on your behalf.
 - p. **(Client ledgers for broking water accounts, Regulation 5.19):** We must maintain and keep a ledger in respect of the water rights held in the broking water account on your behalf and give you a statement from the ledger within 5 business days of receiving a request by you for the statement.

4. Obligations under Part 5 of the Act

- 4.1 We must not contravene the Code (section 100M).
- 4.2 We must not attempt to contravene a provision of the Code that is not a civil penalty provision (section 100N(1)(a)).

- 4.3 If we receive money on behalf of another person in the course of providing water markets intermediary services, we must maintain one or more trust accounts (section 100R(1)).
- 4.4 We have various other trust account-related obligations, which are set out in Part 5 of the Act.
- 5. Obligations under the Australian Consumer Law**
- 5.1 We owe obligations to you under the Australian Consumer Law. These obligations include:
- Not engage in misleading or deceptive conduct (section 18);
 - Not engage in unconscionable conduct (section 21);
 - Not make false or misleading representations (section 29);
 - Not accept payment if we cannot or do not intend to provide the services (section 36); and
 - Not use physical force, or undue harassment or coercion in the provision of services (section 50).
- 5.2 If you are a consumer as described under the Australian Consumer Law, we also have the obligation to:
- Provide services with due care and skill (section 60).
 - Ensure the services are fit for their intended purpose (section 61).
 - Ensure that the provision of services is completed in a reasonable time if no time frame is specified (section 62).
- 6. Client Instructions**
- 6.1 To enable us to fulfil our obligations to you, we require that you provide the following information to us (via this form):
- the kind of water markets intermediary service to be provided;
 - if the service is to investigate the trading possibilities for eligible tradeable water rights:
 - the eligible tradeable water rights in respect of which the service is to be provided; and
 - whether the service is in respect of offers to buy or sell eligible tradeable water rights; and
 - the volume, in megalitres, of the eligible tradeable water rights to be traded and whether that volume may be split; and
 - your desired price per megalitre, or the range of the price, of each such volume.
 - details of when or how your instructions to provide the service expire or are rescinded; and
 - details of any other conditions applying to the service, including whether the provision of the service is exclusive or non-exclusive.
- 7. What is Authorised**
- 7.1 By authorising us to act on your behalf, you authorise us to:
- make applications to a water authority to approve, allow or register the trade or transfer of the tradeable water right as set out in this Water Brokerage Services Form;
 - sign documents on your behalf as required for the transaction(s); and
 - authorise any financial settlement involved in the transaction(s);
 - liaise with financial institutions, rural agencies and any others agencies which may arise in the course of normal trading; and
 - do anything else necessary to complete the transaction(s).
- 7.2 You acknowledge that you are bound by any documents required in connection with a transaction that we sign on your behalf in accordance with this Form.
- 7.3 You authorise us to disburse the proceeds of the transaction at settlement in accordance with Part 3 of this Form and /or your Sale and Purchase documentation.
- 8. Revocation or revision of Authority**
- 8.1 You may revoke or revise the authorisations given under this Water Brokerage Services Form by giving notice in writing to us that you wish to do so.
- 9. Water Markets Intermediary Services Provided**
- 9.1 We provide the following water markets intermediary services to clients:
- trading of eligible tradeable water rights on behalf of another person in exchange for a commission or fee:
 - Temporary (Allocation) Trades - the transfer of allocation for the current irrigation season, whereby the allocation is transferred from one eligible licence/account holder to another;
 - Carryover Space Agreements - allows General Security Entitlement Holders to take their unused water allocation into the following season. Entitlement Holders can also sell the Carryover Space on their licence to another party who has unused entitlements of their own;
 - Forward Water Agreements - is the transfer of eligible tradeable water rights (allocation) in the following water season;
 - Deferred Water Agreements - is the transfer of eligible tradeable water rights (allocation) within the current water season;
 - Leases - is the leasing of a licence holders' permanent entitlement for an agreed period of time, where the lessee is entitled to all allocations granted by the Water Authority for the leased licence category;
 - Permanent Entitlement Trades - similar to the sale of property, a permanent entitlement transfer allows the purchaser the ongoing benefit of the allocation granted each season;
 - New Water Access Licences, Allocation Bank Accounts or Customer Only Accounts - is the application for new licences or accounts for clients in the desired water source;
 - New/Amended/Removal of Works Approvals - a works approval is a Water Access Licence Holder approval to extract water through their pump. These approvals must be attached to a Water Access Licence in order to comply with the conditions of the licence;
 - investigating eligible tradeable water rights trading possibilities on behalf of a water market participant or a potential water market participant in exchange for a commission or fee;
 - preparing documents that are necessary for the trade or transfer of eligible tradeable water rights on behalf of a water market participant or a potential water market participant in exchange for a commission or fee;
 - giving advice (whether or not for payment of any kind) in the course of providing services of a kind mentioned in paragraph (a), (b), (c) or (d) to a water market participant or a potential water market participant about trading in eligible tradeable water rights, other than advice that is of a general nature and not provided to address the specific circumstances of a water market participant or a potential water market participant; and
 - making a representation that an eligible tradeable water right is available for sale or purchase, if the person will facilitate the trade or transfer of the eligible tradeable water right in exchange for a commission or fee.
- 9.2 The particular services that we will provide to you are those described in Part 4 and Part 5 of this form.
- 10. Intervalley Trade Opening Transfers**
- 10.1 For trades requiring an intervalley trade opening, we will process transfers chronologically based on:
- The time and date of full trade documentation submission; and
 - Compliance with any basin-specific trade rules or caps.
- 10.2 Where limited capacity is available; trades are submitted in order of receipt unless otherwise directed by regulatory guidance.
- 10.3 Should the transfer not be approved by the Water Authority the allocation will remain on the licence or water broking account where it was initially held prior to the application to the Water Authority.
- 10.4 All IVT parked water clients will be advised of the outcome of their IVT application upon notification by the Water Authority.
- 11. Applications to approve, allow or register the trade or transfer of an eligible tradeable water right**
- 11.1 If you engage us to submit an application to a water market authority to approve, allow or register the trade or transfer of an eligible tradeable water right, we will inform you of:
- the outcome of the application; and
 - if the water market authority rejects, or delays the consideration of, the application - the reason for the rejection or delay.
- 12. Dealing with Non-Transferrable Water Rights in a Broking Water Account**
- 12.1 If eligible tradeable water rights cannot be transferred due to regulatory restrictions or recipient ineligibility:
- we will notify you immediately;
 - the water rights will be held in trust within the broking account until alternative instructions are received;
 - we may assist in reassigning or re-trading the water rights as instructed by you; and
 - no trade will be completed without the lawful entitlement of the recipient being verified.

PART 12 - OTHER BUSINESS TERMS

1. Our obligation to provide the Services

- 1.1 By signing this [Water Brokerage Services Form] we (Water Exchange Australia Pty Ltd ABN 86 120 711 104 trading as Wilks Water) agree to the services detailed in Parts [4 and 5] of this Form (the **Services**), on the terms set out in this Form
- 1.2 We will provide the Services diligently and with due care and skill.
- 1.3 In performing the Services, we will comply with all applicable laws, including the Water Act 2007 (Cth), the Water Markets Intermediaries Code and the Australian Consumer Law.

2. Your obligation to pay for the Services

- 2.1 You agree to pay for the Services in accordance with our Schedule of Fees and Charges.
- 2.2 We will invoice you upon agreed trade terms detailed in this form for all temporary (allocation) transfers, IVT parking or transfer of allocation to related entity licences. This invoice is to be paid immediately upon receipt due to the changes in the temporary water market and for all IVT Transfers will ensure timely processing of your transfer through the IVT or to a Water Broking Account awaiting IVT opening announcement.
- 2.3 All deposits for permanent entitlement transfers must be paid immediately upon signing of the Contract, with the balance of funds due two (2) weeks from Water Authority approval, as stipulated in the exchanged contract.
- 2.4 All deposits for leases, forward water, deferred trades and carryover space must be paid immediately upon receipt of the Deposit Invoice and in accordance with the relevant signed agreement. We will provide the final invoice detailing the balance of funds which are due two (2) weeks prior to the delivery date.
- 2.5 You must pay the invoiced amount within the timeframes in Part 12 clause 2.2, 2.3 and 2.4 unless you dispute the invoiced amount.
- 2.6 If you dispute the invoiced amount, you must, within 2 days after you receive the invoice, advise us in writing of the amount that you consider is due and the reason for the difference. We will review the agreed negotiated trade and provide a response within 24 hours of your advice.

3. Your obligation to provide us with adequate instructions and information.

- 3.1 To enable us to provide the Services, we require that you provide us with adequate instructions and information.
- 3.2 We may request such instructions and information via this Water Trading Form or subsequently.
- 3.3 You must use all reasonable endeavours to respond to such requests promptly and adequately.

4. Our liability in connection with the Services

- 4.1 If our services fail to comply with this instruction or any amendment to this instruction as agreed in writing, our liability will be limited to performing the services again or paying the cost of having the services performed again. We will not be liable for any related loss or damage.

5. Use of Website and Limitation of Liability

- 5.1 Your use of our website is undertaken at your own risk.
- 5.2 To the extent permitted under the Trade Practices Act 1974 and other relevant legislation, our website and all information, content, materials, products and services included or otherwise made available are provided on an 'as is' basis, unless otherwise specified. We make no representations or warranties of any kind, express or implied, as to the accuracy of information on this website.
- 5.3 By continued use of our website, you agree that we will not be held liable for any damages of any kind arising from the use of this website or from any information, content, materials, products or services therein, unless otherwise specified in writing.

6. Termination

- 6.1 You may terminate this instruction at any time for your convenience and for any reason by giving written notice to us.
- 6.2 Termination may only take place prior to Water Authority approval of the transfer of the eligible tradeable water rights detailed in this form or prior to exchange on permanent entitlement transfers, leases, forward water, deferred water and carryover space trades.
- 6.3 If you terminate this instruction, you must:
- pay us for the Services carried out prior to termination; and
 - reimburse us for any costs that we have incurred or will incur in connection with the Services or the anticipated supply of Services, to the extent such costs are not covered by the amount paid under paragraph a.
- 6.4 We may terminate this instruction by giving written notice to you if you fail to pay an amount due under the instruction, you fail to provide us with adequate instructions following a request from us to do so, or you otherwise are in substantial breach of this instruction. We will have no liability to you arising from such termination.

7. Privacy and Client information

- 7.1 You acknowledge that information relating to you that is required to complete or process the transaction(s), including your personal information, may be collected, stored and used by, and disclosed to, stored and used by:
- the water market authority;
 - relevant water registry; and
 - us;
- involved in the completion or processing of the transaction(s), for the purpose of completing and processing the transaction(s) or as required by law, and you consent to such collection, disclosure, storage and use.
- 7.2 You also consent to the collection, storage and use of information relating to you by us and its disclosure to potential purchasers of our business.
- 7.3 For further information about the collection, disclosure, storage and use of your Personal Information, refer to our policy at [Wilks-Water-Privacy-Policy.pdf](#)

8. Direct Marketing / Promotional Material

- 8.1 At times we will contact you via email, telephone or text message with advertising or marketing material. We do not send advertising or marketing information unless we have your express consent in accordance with Australian laws. If you receive direct marketing communications from us which you do not wish to receive, you may remove your name from the database by utilising the unsubscribe link in the email or text message or by contacting us directly via email or phone. Please allow 5 business days for this request to be processed. Direct marketing includes Wilks Water:
- sending communications to you and/or contacting you directly as set out above;
 - personalising the layout of our website to display products and services of interest to you; and
 - providing targeted advertising content to you.
- 8.2 Despite removing your name from the database from receiving future advertising and marketing information, we may send you non-commercial administrative emails. Administrative Emails relate to your account and may include administrative and transaction confirmations, requests and enquiries or information about a particular account.

9. Copyright

- 9.1 Except where expressly provided to the contrary by these terms, you do not have any right, title or interest in or to any proprietary rights relating to our website, documents or forms.
- 9.2 Our website may contain material that is protected by copyright, trade mark, and other laws. Except where expressly provided to the contrary, you may only reproduce and distribute the material on the website for your own personal, non-commercial use. Material published on or sourced from our website must not be used, stored, reproduced, published, altered or transmitted in any form or by any means in whole or in part without our prior written consent, except where such use, reproduction, etc, constitutes Fair Use under the Copyright Act.

PART 13 - COMPLAINTS HANDLING PROCEDURE

This Complaints Handling Procedure has been produced by Water Exchange Australia Pty Ltd trading as Wilks Water.

1. Purpose

- 1.1 This procedure is intended to ensure that we handle complaints:
- Fairly, efficiently and effectively; and
 - In compliance with our obligations as a member of the Australian Water Brokers Association; and
 - In compliance with our obligations under provision 5.09 of the Water Markets Intermediaries Code under Part 5 of the Water Regulations 2008 (Cth) ("Code").
- 1.2 This policy applies to all complaints from any client to whom we provide a service in exchange for a commission or fee.

2. Process of Submitting a Complaint

- 2.1 As a client you have a right to make a complaint if you are dissatisfied with us or one of our staff or the services we have or have agreed to provide to you.
- 2.2 If you have a complaint, you should firstly contact us and advise us of your complaint. You may do this over the phone or in writing, either by email or post.
- 2.3 If your complaint is not received in writing, we will make a written record of the complaint as soon as practicable after the complaint is received.
- 2.4 If you do not feel comfortable dealing directly with your usual contact point at Wilks Water, you can also lodge a complaint with our Complaints Officer, or other appropriate person within the organisation by email to opsmgr@wilkswater.com.au or post to PO Box 5633, Wagga Wagga NSW 2650.

- 2.5. Should you wish for someone to act on your behalf in making a complaint, you can nominate a representative or advocate. Representatives might include financial counsellors, your accountant or legal representatives. For privacy reasons we may need your consent to discuss your circumstances with them.
- 3. What happens after you lodge a complaint?**
- 3.1. We will act in good faith in dealing with the complaint and make a genuine effort to resolve the complaint within 20 business days.
- 3.2. We will acknowledge your complaint in writing within two (2) business days of receiving the complaint and provide you with information about the process we will follow in dealing with the complaint. We may seek further information from you.
- 3.3. If you have made the complaint verbally, we will provide you with a copy of our written record of the complaint. You may correct that record if you do not believe it correctly reflects your complaint.
- 3.4. Within 10 business days of receiving your complaint, we will give you a written response that specifies the actions we propose to take to resolve the complaint.
- 3.5. Within 5 business days of completing the process for dealing with the complaint, we will give you written notice of the outcome of that process.
- 3.6. If you are not satisfied with the outcome, you may seek advice regarding your rights under the Code or the Australian Consumer Law from a legal or other professional. The Australian Competition and Consumer Commission is responsible for enforcing the Code.
- 4. Policy Updates**
- 4.1. This policy may change from time to time and is available on our website.

Contact Details

For further information or to request copies of relevant legislative provisions, visit our website at www.wilkswater.com.au or contact:

Attention: Operations Manager
Water Exchange Australia Pty Ltd trading as Wilks Water
67 Trail Street
WAGGA WAGGA NSW 2650
Phone: 02 6931 8522
opsmgr@wilkswater.com.au
ABN 86 120 711 104