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AN XPANSIV MARKET

Membership Rules: Definitions

(Version 2.0)

1. Definitions and Interpretation

1.1 In these Rules the following defined terms apply:

Allocation has the meaning given to “water allocation” under section 4 of the *Water Act 2007* (Cth) being the specific volume of water allocated to a Water Access Entitlement in a given Water Year or allocated as specified within a water resource plan.

Allocation Account means an account in a Registry in which Allocations are held.

Anti Money Laundering (AML) Policy means the AML policy formulated by H2OX, as amended from time to time and published on the Exchange Site.

Applicable Water Laws means:

- (i) any statute, rule, regulation, proclamation, order in council, ordinance, order or by-law whether Commonwealth, State, Territorial or local;
- (ii) any notice, order or direction received from, or given by, any Government Agency; or
- (iii) any contract, affecting Water Rights, and includes:
 - (iv) the *Water Act 2007* (Cth);
 - (v) if the Relevant State is:
 - (a) New South Wales, the *Water Management Act 2000*(NSW);
 - (b) Victoria, the *Water Act 1989*(Vic);
 - (c) Queensland, the *Water Act 2000*(Qld);
 - (d) South Australia, the *Natural Resources Management Act 2004*(SA);
 - (vi) any water sharing rules, water sharing plan, water resource plan or resource operations plan;
 - (vii) any available water determination made by a Water Authority;
 - (viii) if the Water Authority is an Irrigation Infrastructure Operator, the Water Authority’s procedures for the Transformation of Irrigation Rights (including procedures for applying for Transformation);
 - (ix) any contract between the Water Authority and the selling Broker Client Member in relation to the sale Water Rights; and
 - (x) any document issued by the Water Authority evidencing title to the selling Broker Client Member’s Water Rights.

Authorisation includes:

- (i) any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency; and
- (ii) in relation to any thing which may be prescribed or restricted in whole or in part by law or otherwise if a Government Agency intervenes or acts in any way within a specified period after lodgement, registration or other notification of any thing, the expiration of that period without the intervention or action by that Government Agency.

Authorisation Form means the form published on the Exchange Site, as amended from time to time, by which a Broker Member appoints and authorises a Broker Client Member to effect Water Trades on its own behalf.

Authorised Representative means a Broker Client Member authorised by a Broker Member in accordance with clause 5, with or without limitation or in the context of an ITM, a nominated individual.

Bank Account means the account nominated by the Broker Member or Broker Client Member for deposit of funds on the Completion Date.

Beneficial Owner means any person, whether or not they are named on the Water Right, who has a proprietary interest in the Water Right.

Broker Client Member means a Member who holds a Water Right, who has nominated and authorised a Broker Member to access the H2OX Trading Platform on its behalf and where instructed, to effect Water Trades on behalf of that Broker Client Member.

Broker Client Member Criteria means the criteria to be eligible to become a Broker Client Member published on the Exchange Site from time to time.

Broker Member means a person licensed by H2OX to access the H2OX Trading Platform, and where authorised and instructed to do so by a Broker Client Member, to effect Water Trades on their behalf.

Broker Member Agreement means an agreement between H2OX and a Broker Member authorising and enabling a Broker Member to access the H2OX Trading Platform to effect Water Trades on behalf of Broker Client Members.

Broker Member Criteria means the criteria set out in the Broker Member Agreement or otherwise published on the Exchange Site from time to time.

Brokerage Fee means the service fee payable to a Broker Member for brokering a Water Trade as agreed between a Broker Member and Broker Client Member and entered in the H2OX Trading Platform (when placing a Purchase Order or Sales Listing) as a percentage of the Price.

Business Day means a day which is not:

- (i) a Saturday or Sunday or Public Holiday in Sydney, New South Wales; or
- (ii) 27, 28, 29, 30 or 31 December.

Cancellation Fee means an amount payable in accordance with Schedule 2.

Code of Conduct means the professional code of conduct formulated by H2OX, as amended from time to time and published on the Exchange Site.

Completion means the completion of a Water Trade, being the transfer by H2OX to the selling Broker

Client Member of the Price (less the H2OX Transaction Fee, the Brokerage Fee, applicable Water Authority Fees and amounts in respect of GST where GST is not included in the relevant Fee) after receiving notification of registration of a Water Trade by a Registrar or Water Authority.

Completion Date means the date of Completion of a Water Trade.

Corporations Act means the Corporations Act 2001 (Cth) as amended from time to time.

Cost means any cost, charge, expense, outgoing, payment or other expenditure of any nature and where appropriate includes fees and disbursements payable to contractors, consultants and lawyers.

Default Event has the meaning given by clause of these Rules.

Defaulting Party means a Broker Member or Broker Client Member who is liable for the Default Event.

Deposit means an amount equal to 10% of the Water Trade Consideration for a Permanent Water Trade.

DEWNR means the South Australian Department of Environment, Water and Natural Resources.

Designated Broker Member means the Broker Member identified in Membership Application of a Broker Client Member.

Direct Debit means a facility authorising H2OX to debit funds from the Broker Member or Broker Client Member's Bank Account.

DNRM means the Queensland Department of Natural Resources and Mines.

Electronic Link means a secured connection with the Exchange Site.

Encumbrance means in relation to any property:

- (i) a mortgage, charge, encumbrance, pledge, lien or other security over the property;
- (ii) a lease, licence, term transfer or transfer for a period of any right, title or interest in respect of the property;
- (iii) any administrative advice stating that a distribution operations licence granted under Division 3 of Part 4 of Chapter 2 of the Water Act 2000 (Qld) applies;
- (iv) a caveat, garnishee order, writ of execution, right of set off, assignment of income or monetary claim affecting the property;
- (v) a preferential interest, trust, title retention, or other estate, interest, claim or arrangement affecting the property;
- (vi) a contract of sale or option to purchase or acquire the property; or
- (vii) an agreement to grant, create, allow or register any of these,
- (viii) including Encumbrances which are registered or unregistered, statutory, legal or equitable.

Exchange Site means <http://www.H2OX.com>

Fees means, as the context requires:

- (a) one or more of the H2OX Fees;
- (b) a Brokerage Fee; and/or
- (c) one or more of the Water Authority Fees.

Force Majeure means an event or circumstance that:

- (a) was unforeseeable as at the date of these Rules;
- (b) is unavoidable; and
- (c) cannot reasonably be overcome by H2OX or the Member affected by it, and includes fire, flood, earthquake, epidemic, war, riot and martial law.

Government Agency means any government and any governmental body, whether:

- (i) legislative, judicial or administrative;
- (ii) a department, commission, authority, instrumentality, tribunal, agency or entity; or
- (iii) Commonwealth, State, Territorial or local.

GST means GST as defined in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

H2OX means H2OX Pty Ltd ((ACN 601 768 423)) of Level 8, 33 York Street, Sydney, New South Wales, 2000.

H2OX Escrow Account means a cash account in an approved clearing bank in the name of H2OX but used for the purposes of receiving, holding and transferring money for and on behalf of Members to facilitate money transfers associated with the use of the H2OX Trading Platform and associated with the clearing and Settlement and Completion of Water Trades executed on the H2OX Trading Platform.

H2OX Fees means the fees set out in Schedule 1, as amended from time to time and published on the Exchange Site which are payable by Members in order to access and use the H2OX Trading Platform.

H2OX Licence means the licence granted by H2OX, to a Broker Member or ITM to access and use the H2OX Trading Platform, as a result of the Broker Member entering into the Broker Member Agreement or ITM entering into an ITM Member Agreement.

H2OX Order Book means the document in which all Sales Listings and Purchase Orders are listed for each H2OX Water Product.

H2OX Trading Platform means the electronic trading platform operated and maintained by H2OX (including any information and materials therein and any software that H2OX makes available that allows a Member access to the Exchange Site from a mobile device) allowing Members to execute Water Trades.

H2OX Trading Zone Matrix means the matrix provided in the H2OX Trading Platform providing a provisional indication of whether a Water Trade is permissible under Applicable Water Laws.

H2OX Transaction Fee means the service fee payable to H2OX for processing a Water Trade.

H2OX Water Product means a Water Product that is on the list of Water Products that can be traded on the H2OX Trading Platform (which is formulated by H2OX, amended from time to time and published on the Exchange Site).

H2OX Water Rights Trade Agreement means the standard contract for a Permanent Water Trade.

Insolvency Event means the happening of any of these events:

- (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$10,000 upon any of the Defaulting Party's property and is not satisfied, set aside or withdrawn within 7 calendar days of its issue;
- (b) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Defaulting Party which is not satisfied within 7 calendar days;
- (c) the Defaulting Party suspends payment of its debts;
- (d) where the Defaulting Party is a body corporate:
 - (i) the Defaulting Party becomes an externally-administered body corporate under the Corporations Act;
 - (ii) steps are taken by any person towards making the Defaulting Party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 calendar days);
 - (iii) a controller (as defined in section 9 of the Corporations Act) is appointed of any of the property of the Defaulting Party or any steps are taken for the appointment of such a person (but not where the steps taken are reversed or abandoned within 14 calendar days);
 - (iv) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act; or
 - (v) a resolution is passed for the reduction of capital of the Defaulting Party or notice of intention to propose such a resolution is given, without the prior written consent of the other Party;
- (e) where the Defaulting Party is a natural person:
 - (i) the Defaulting Party authorises a registered trustee or solicitor to call a meeting of his or her creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of his or her creditors;
 - (ii) a person holding a security interest in assets of the Defaulting Party enters into possession of or takes control of any of those assets or, takes any steps to enter into possession of or take control of any of those assets; or
 - (iii) the Defaulting Party commits an act of bankruptcy; or
- (f) an event happens analogous to an event specified in paragraphs (a) to (e) to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the law of Australia applied;

Irrigation Infrastructure Operator has the meaning given to that term in section 7(4) of the *Water Act*

2007 (Cth).

ITM means Independent Trading Member and is a person licensed by H2OX to access the H2OX Trading Platform to effect Water Trades on their own behalf.

ITM Agreement means an agreement between H2OX and an ITM authorising and enabling an ITM to access the H2OX Trading Platform to effect Water Trades on its own behalf.

ITM Member Criteria means the criteria set out in the ITM Agreement or otherwise published on the Exchange Site from time to time.

Irrigation Right has the meaning given to that term in the *Water Act 2007* (Cth).

Licence Administration Fee has the meaning given to that term in the Broker Member Agreement and ITM Agreement.

Licence Application has the meaning given to that term in the Broker Member Agreement and ITM Agreement.

Licence Application Fee has the meaning given to that term in the Broker Member Agreement and ITM Agreement.

Login Details means the unique login username and password issued to an ITM, a Broker Member, each of their respective Relevant Personnel or an Authorised Representative to enable access to the H2OX Trading Platform.

Loss includes any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any claim), including penalties, fines and interest and including any that are prospective or contingent and any amounts which for the time being are not ascertained or ascertainable.

Matched means the electronic matching of a Purchase Order and a Sales Listing on the H2OX Trading Platform with the intention to effect a Water Trade.

Member means an ITM, Broker Member and/or Broker Client Member admitted to participate on the H2OX Trading Platform in accordance with the Rules and whose admission has not been terminated or whose resignation has not taken effect.

Membership Administration Fee means the component of the Membership Application Fee retained by H2OX for considering a Membership Application that is rejected.

Membership Application means an application to become a Broker Client Member.

Membership Application Fee means the Fee payable to H2OX for considering a Membership Application.

Nominated Broker Member means the Broker Member nominated by a Broker Client Member to effect

Water Trades on its behalf.

Nomination Form means the form published on the Exchange Site, as amended from time to time, by which a Broker Client Member nominates and authorises a Broker Member to effect Water Trades on its behalf.

NOW means the New South Wales Office of Water.

Party means a Broker Client Member or ITM that is named in a H2OX Water Rights Trade Agreement.

Pending Water Trade means the status of a Water Trade for the period between the date the relevant Sales Listing and Purchase Order were Matched and the Completion Date, during which time the relevant Broker Client Members and or ITMs covenant that the H2OX Water Product the subject of the Pending Water Trade cannot be otherwise dealt with.

Permanent Water Trade means a Water Trade involving Water Rights as distinct from an Allocation.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, being the meaning given to that term in the Privacy Act 1988 (Cth).

Price means the value of the H2OX Water Product at which a Sales Listing and Purchase Order are Matched.

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Policy means the privacy policy formulated by H2OX, as amended from time to time and published on the Exchange Site.

Purchase Order means an offer to buy a H2OX Water Product.

Registered Interest Holder means any person with a registered interest in a Water Right.

Registered Interest Holder Authority means an Authorisation in the form approved by the Registered Interest Holder and or relevant Government Agency or Water Authority, that allows H2OX and the Broker Member to correspond directly with Registered Interest Holders on behalf of the relevant Broker Client Member or ITM.

Registrar means:

- (i) if the Relevant State is New South Wales:
 - (a) and if the Water Authority is an Irrigation Infrastructure Operator and the Commonwealth has elected not to Transform, the Water Authority; or
 - (b) in all other circumstances, the New South Wales Land and Property Information;

- (ii) if the Relevant State is Victoria, the “Registrar” as defined under the *Water Act 1989* (Vic);
- (iii) if the Relevant State is Queensland, the “registrar” as defined under the *Water Act 2000* (Qld);
- (iv) if the Relevant State is South Australia, DEWNR;
- (v) or each of their successor Government Agencies.

Registry means a registry for Water Rights and Allocations administered by a Registrar or Water Authority.

Release means a document required to remove any Encumbrance in respect of a Water Right, including:

- (i) if the Relevant State is New South Wales:
 - (a) if the Water Authority is NOW, a “Discharge of Mortgage (Security Interest)” and a written consent on letterhead from the holder of the Encumbrance; and
 - (b) if the Water Authority is an Irrigation Infrastructure Operator, a document reasonably required by the Water Authority, including, if required, any certificate evidencing the selling Broker Client Member's Water Rights;
- (ii) if the Relevant State is Victoria, a “Discharge of Mortgage of Water Share”,
- (iii) if the Relevant State is Queensland:
 - (a) a “Form 3 – Release of Mortgage”; and
 - (b) a “Form W2F079 – Notice to chief executive satisfaction of obligation to distribution operations licence holder”, but does not include any cheque in favour of the Water Authority in respect of any fee for the removal of any Encumbrance.

Relevant Personnel means any person employed by, or associated with, the ITM or Broker Member who will have access to the Exchange Site on behalf of the ITM or Broker Member as the case may be; and includes any person employed or associated with the Broker Member who will work on a Water Trade, Sales Listing or Purchase Order in any capacity.

Relevant State means the State in which the H2OX Water Product is located as identified by the H2OX Trading Zone Matrix.

Rules means these rules as amended from time to time and published on the Exchange Site.

Sales Listing means an offer to sell a H2OX Water Product.

Settlement means the settlement of a Water Trade, being the receipt by H2OX of the remainder of the Water Trade Consideration from the purchasing Party to enable the Transfer Documents to be lodged with the Registrar or Water Authority.

Settlement Date means the:

- (i) the date specified for Settlement in the Settlement Statement; or
- (ii) any other date for Settlement agreed by the selling Party and purchasing Party.

Settlement Directions means the selling ITM's, Broker Client Member's, or Registered Interest Holder's instructions to H2OX regarding payment of the net proceeds on the Completion Date.

Settlement Statement means the statement prepared by H2OX advising the Parties of the amounts due and payable in order to complete the Water Trade.

Stamp Duty means duty imposed under the Duties Act 1997 (NSW), the Duties Act 2000 (Vic), the Duties Act 2001 (Qld), the Stamp Duties Act 1923 (SA) or any other similar legislation of a State or Territory of Australia.

Suspension Event means an event listed in clause of these Rules

Temporary Water Trade means a Water Trade involving an Allocation.

Trading Account means an account on the H2OX Trading Platform that represents the H2OX Water Products held in that account.

Transfer means the transfer of a H2OX Water Product from the selling Party to the purchasing Party by one of the following methods:

- (i) the transfer of Water Access Entitlements;
- (ii) the transfer of Irrigation Rights; or
- (iii) the Transformation of Irrigation Rights held by the selling Party into Water Access Entitlements held by the purchasing Party.

Transfer Application means all documents necessary for the Water Authority to approve a Water Trade and includes:

- (i) a Transfer Application Form;
- (ii) all documents specified in the Transfer Application Form; and
- (iii) all documents required under the Applicable Water Laws,
- (iv) in each case, completed in proper form and duly executed.

Transfer Application Form means a form in relation to the Transfer of a Water Product.

Transfer Documents means all documents, in registrable form, necessary to register the Transfer of the H2OX Water Product from the selling Party and purchasing Party including:

- (i) if the Relevant State is New South Wales:
 - (a) if the Water Authority is NOW, a notification and, unless otherwise agreed by the Buyer and the Seller, any certificate evidencing the Seller's Water Rights; or
 - (b) if the Water Authority is an Irrigation Infrastructure Operator, all documents required by the Water Authority, including, if required, any certificate evidencing the Seller's Water Rights;
- (ii) if the Relevant State is Victoria, a "Transfer of Water Share";
- (iii) if the Relevant State is Queensland:
 - (a) a "Form 1 – Transfer";
 - (b) a "Form 24 – Property Information (Transfer)"; and

- (c) if the Seller's Water Rights are Unsupplemented, the dealing certificate issued by DNRM,

in each case, properly executed and capable (upon payment of the prescribed registration fee) of registration at the office or registry responsible for the registration of that document without further notation or amendment.

Transformation has the meaning given to that term in the Water Market Rules 2009 (Cth).

Water Access Entitlement has the meaning given to that term in the Water Act 2007 (Cth), being a perpetual or ongoing entitlement, by or under a law of a State, to exclusive access to a share of the water resources of a water resource plan area.

Water Authority means a Minister or Government Agency or an Irrigation Infrastructure Operator which processes, administers or determines dealings with Water Products.

Water Authority Fees means any fees (excluding taxes) which are payable to any Registrar, Water Authority or other Government Agency in order to effect the execution, Settlement or Completion of a Water Trade.

Water Entitlement Certificate means a certificate issued by an Irrigation Infrastructure Operator to a customer as evidence of their Irrigation Rights which are held on the Irrigation Infrastructure Operator's Water Right.

Water Product means a Water Right or Allocation that is capable of being dealt with under an Applicable Water Law.

Water Right means a Water Access Entitlement and:

- (i) if the Relevant State is New South Wales:
 - (a) if the Water Authority is NOW, a "water access licence" as defined under the Water Management Act 2000 (NSW); or
 - (b) if the Water Authority is an Irrigation Infrastructure Operator, an Irrigation Right held against that Water Authority;
- (ii) if the Relevant State is Victoria, a "water share" as defined under the *Water Act 1989* (Vic); or
- (iii) if the Relevant State is Queensland, a "water allocation" as defined under the *Water Act 2000* (Qld);
- (iv) if the Relevant State is South Australia:
 - (a) if the Water Authority is DEWNR, a "water licence" under the *Natural Resources Management Act 2004* (SA); or
 - (b) if the Water Authority is an Irrigation Infrastructure Operator, an Irrigation Right held against that Water Authority.

Water Trade means the contract formed between the Members responsible for the entry of a Sales Listing and a Purchase Order that have been Matched on the H2OX Trading Platform.

Water Trade Consideration means the total amount payable by the purchasing Broker Client Member or ITM in relation to a Water Trade which comprises:

- (a) the Price;
- (b) the H2OX Transaction Fee;
- (c) the Brokerage Fee;
- (d) applicable Water Authority Fees; and
- (e) an amount in respect of the GST payable in relation to one or more of the components identified in (a), (b), (c) or (d) above.

Water Year means any period of one year commencing on 1 July and ending on 30 June.

1.2 In these Rules, unless the context requires another meaning:

- (a) a reference:
 - (i) to the singular includes the plural and vice versa;
 - (ii) to a gender includes all genders;
 - (iii) to a document (including these Rules) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;
 - (iv) to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
 - (v) to an Item, clause or Schedule is to an Item, clause or Schedule of or to these Rules;
 - (vi) to a notice means a notice, approval, demand, request, nomination or other communication given under or in connection with these Rules;
 - (vii) to a person includes:
 - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency;
 - (B) the person's successors, permitted assigns, substitutes, executors and administrators; and
 - (viii) to a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
 - (ix) to time is to Sydney time;
 - (x) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
 - (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (c) headings are for convenience only and do not affect interpretation of these Rules.
 - (d) if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.

1.3 These Rules may not be construed adversely to H2OX because H2OX was responsible for preparing them.