

Agreement Synopsis, Context and Review

Sector:	Water
Name of Agreement:	Electricity Supply Direct Deed
Type of Agreement:	Deed
Year of Agreement/ Draft:	N/A (unsigned)
Principal Author(s) Reviewed by:	Law firm of Corrs Chambers Westgarth Victoria Rigby Delmon, LEGPS, World Bank; Luiz Alcoforado, LEGPS, World Bank
Purpose and Context:	This Direct Deed sets out the terms on which the Electricity Supply Contractor and the REC & Electricity Supply Guarantor have agreed to grant certain rights to the State in relation to the Electricity Supply Contract and the Electricity Supply Guarantee.
Circumstances where this contract may be appropriate:	Electricity Supply Direct Deed setting out the rights and obligations of the Parties (the State, Project Co., the Electricity Supply Contractor, and the REC & Electricity Supply Guarantor) with respect to the Electricity Supply Contractor's and the REC & Electricity Supply Guarantor's Undertakings; the State's right to cure before termination of the Electricity Supply Contract (ESC); the State's Step-In Rights; State's Option to Novate to State itself or to a third party; State's obligation to continue with the ESC arrangements; Voluntary Termination by the State; Successor Project Deeds; Dispute Resolution, among others; and subject to the laws applicable in the State of Victoria.
Drafted for common law/ civil law jurisdiction:	Common Law
Main Features:	<p>This Electricity Supply Direct Deed was drafted by the law firm of Corrs Chambers Westgarth to be entered by and between the State (Minister for Water of the State of Victoria); the Project Co. (AquaSure Pty Ltd); the Electricity Supply Contractor (AGL Sales Pty Ltd); and the REC & Electricity Supply Guarantor (AGL Energy Ltd). The Governing Law is that applicable in the State of Victoria.</p> <ul style="list-style-type: none">• Electricity Supply Contractor's and the REC & Electricity Supply Guarantor's acknowledge and consent to the following (clause 4.1):<ul style="list-style-type: none">○ Project Co may give a fixed or floating charge in the form of State Security Deed (SSD) in favor of the State over all assets and undertakings of Project Co, including its rights, title and interest under the Electricity Supply Contract and the Electricity Supply Guarantee, or assign Project Co's rights, title and interest under the Electricity Supply Contract and the Electricity Supply Guarantee to the State by way of security○ Nothing in the SSD will cause the State to assume liabilities or

obligations under the Electricity Supply Contract and the Electricity Supply Guarantee

- Project Co. acknowledges that this deed is intended to benefit the Electricity Supply Contractor, the REC & Electricity Supply Guarantor and the State, and does not affect any obligation of Project Co under any Project Document (clause 4.2)
- Project Co, the Electricity Supply Contractor and the REC & Electricity Supply Guarantor acknowledge that the State will have no liability to the Electricity Supply Contractor, the REC & Electricity Supply Guarantor in connection with any reference to the State in the Electricity Supply Contract or the Electricity Supply Guarantee (clause 4.3)
- Each of the Electricity Supply Contractor and the REC & Electricity Supply Guarantor must notify the State of any default event (clause 6.1)
- The Electricity Supply Contractor must, when requested by the State, attend meetings with the State and provide the State with progress reports on the operation of and activities carried out as contemplated by the Electricity Supply Contract (clause 6.2)
- In a Default Event, the State may take steps to cure or remedy that default event; or, if it is not capable of cure or remedy, commence and continue to perform the obligations of Project Co under the Electricity Supply Contract (clause 7.1)
- **Termination/Suspension with cause:**
 - The Electricity Supply Contractor may only exercise a power to terminate, rescind or accept the repudiation by Project Co of its obligations under the Electricity Supply Contract as a result of a Default Event if the Electricity Supply Contractor has given the State prior notice; and the cure or remedy period to the Financiers has expired without a cure or remedy, among other requirements (clause 7.2)
 - The Electricity Supply Contractor may only exercise a power to suspend the performance of its obligations under the Electricity Supply Contract after the conditions in clause 7.2, *mutatis mutandi*, have been met (clause 7.2A)
- **Termination/Suspension without Cause:** Project Co and the Electricity Supply Contractor will not terminate, rescind, accept repudiation of or suspend the performance of their obligations under the Electricity Supply Contract (*ESC*) during the Project Term other than in an Event of Default (clause 7.3)
- **Step-in Right:** The State may, after a Default Event Notice or when permitted to do so, appoint a Receiver over Project Co; itself enter into possession of any or all of Project Co's assets or shares; or take such other action as it is permitted by Law under the Project Documents; or by notice to the Electricity Supply Contractor procure that a company wholly owned by the State assumes jointly and severally with Project Co all of Project Co's rights and obligations under the ESC. (clause 8.1)
- The State may, at any time during a Step-in Period, exercise all or any of Project Co's powers and perform all or any of the obligations of Project Co under or in relation to the Electricity Supply Contract and the Electricity Supply Guarantee, as if it were Project Co., to the exclusion of Project Co. (clause 8.2)
- Project Co must indemnify the State on demand against any Claim, Liability or Loss the State suffer or incur arising out of or in connection with taking any action under clause 8.2 or 8.3 ("Step-in Using Additional Obligor") (clause 8.4)
- The State may, upon early termination of the Project Deed or if the State

exercises a Step-in Right, require a novation of the Electricity Supply Contract to the State or a third party (at the State's option) (clause 9)

- State must continue with Electricity Supply Contractor arrangements if Project Deed is terminated prior to the Expiry Date other than in circumstances where the State has breached any obligation under the Project Deed, among others (clause 10)
- If the Project Deed is terminated before the Expiry Date in accordance with clause 65.6 of the Project Deed and there is no New Owner by the New Contract End Date, the State must pay to the Electricity Supply Contractor an early termination payment calculated in accordance with the formula set out in this deed (clause 12)
- Any disputes arising between the parties in relation to a matter under this deed must be resolved in the same manner that disputes are resolved under the Project Deed (clause 14)
- This deed terminates if the parties agree so in writing or the Project Deed terminates. Termination does not affect the rights of any party which have accrued to that party before the date of termination (clause 16)
- Deed further contains:
 - A standard form Novation Agreement (Schedule 1)
 - A standard Early Termination Payment form (Schedule 2)

Possible additional provisions that it might be appropriate to include:

N/A

Provisions that may not be advisable to replicate/ may need further thought:

Electricity Supply Direct Deed setting out the rights and obligations of the Parties (the State, Project Co., the Electricity Supply Contractor, and the REC & Electricity Supply Guarantor) with respect to the Electricity Supply Contractor's and the REC & Electricity Supply Guarantor's Undertakings; the State's right to cure before termination of the Electricity Supply Contract (ESC); the State's Step-In Rights; State's Option to Novate to State itself or to a third party; State's obligation to continue with the ESC arrangements; Voluntary Termination by the State; Successor Project Deeds; Dispute Resolution, among others; and subject to the laws applicable in the State of Victoria.

Provisions of wider general use:

N/A

Experience Since Coming Into Force (including any amendments)/ if draft form, whether it has been applied:

Tracking Number:

Ref #: Electricity Supply Direct Deed (date unknown)