

Agreement Synopsis, Context and Review

Sector:	Water
Name of Agreement:	HVAC Payment and Repayment Deed
Type of Agreement:	Deed
Year of Agreement/ Draft:	2009
Principal Author(s) Reviewed by:	Law firm of Mallesons Stephen Jaques Victoria Rigby Delmon, LEGPS, World Bank; Luiz Alcoforado, LEGPS, World Bank
Purpose and Context:	This HVAC Payment and Repayment Deed was developed to be entered into by the State, the Project Co., the Finance Co., the Finance Co. No.2, the HVAC Agent, each of the SFP HVAC Guarantee Beneficiaries, SFP, the Intercreditor Agent, the Security Trustee and the Account bank and sets out the terms and conditions of the Drawdowns under the HVAC Financing Facility Agreement and under the SFP HVAC Financing Facility; the Payment of the State HVAC Payments; the Receipt of Funds by the Project Co.; the Undertakings to Pay by the State; the Conversion of HVAC Facilities; the HVAC Financing Facility, among other payment and repayment obligations among the parties.
Drafted for common law/ civil law jurisdiction:	Common Law
Main Features:	<p>This Payment and Repayment Deed was drafted by the law firm of Mallesons Stephen Jaques to be entered by and between the State (Minister of Waters); the Project Co. (AquaSure Pty Ltd); the Finance Co. (AquaSure Finance Pty Ltd); the Finance Co. No. 2 (AquaSure Finance No.2 Pty Ltd); the HVAC Agent (National Australia Bank Ltd); the SFP HVAC Guarantee Beneficiaries (National Australia Bank Ltd. And Westpac Banking Corp.); SFP (Treasury Corp. of Victoria); the Intercreditor Agent (National Australia Bank Ltd.); the Security Trustee (National Australia Bank Ltd.); and the Account Bank (National Australia Bank Ltd). The Governing Law is that applicable in the State of Victoria.</p> <ul style="list-style-type: none">• Drawdowns under HVAC Financing Facility Agreement (HVAC FFA) (clause 2)<ul style="list-style-type: none">○ Drawdowns under the HVAC Financing Facility Agreement will be applied as directed by Project. Co.○ Project Co. directs HVAC Agent to pay the proceeds of the Drawdown to the Design & Construction (D&C) Contractor in payment of amounts due to it under the D&C Contract in respect of the HVAC¹ Works²• Drawdowns under SFP HVAC Financing Facility (clause 3)

¹ “High Voltage Alternating Current”

² The HVAC Works are the Electricity Transmission and Connection Works as defined in the Project Deed.

- Drawdowns under the SFP HVAC Facility Agreement will be applied by SFP as directed by the Project Co.
- Project Co. directs SFP to pay the proceeds of the Drawdown to the D&C Contractor in payment of amounts due to it under the D&C Contract in respect of the HVAC Works
- **Payment of State HVAC Payments (clause 4)**
 - Prior to a “SFP HVAC Payment Event”³: Project Co. directs the State to pay any State HVAC Payments to the HVAC Agent. These payments shall satisfy and discharge Project Co’s, Fin Co’s and Fin Co No. 2’s repayment obligations
 - From a “SFP HVAC Payment Event”: Project Co. directs the State to pay any State HVAC Payments to SFP. These payments shall satisfy and discharge Project Co’s and Fin Co’s repayment obligations
- **State to pay Electricity Asset Price (clause 6)**
 - Prior to a “SFP HVAC Payment Event”: the State shall pay the Electricity Asset Price less any amount received by the HVAC Agent as repayment under the HVAC FFA
 - From a “SFP HVAC Payment Event”: the State shall pay the Electricity Asset Price less any amount received by SFP as repayment of the funds under the SFP HVAC Financing Facility
- **Conversion of HVAC Facilities (clause 7)**
 - SFP may, at its election and without the need for approval, refinance and repay the HVAC Supported Facility (and, through it, the HVAC Financing Facility) by an amount equal to the Guaranteed Moneys
 - SFP must, if requested by the HVAC Agent prior to the Maturity Date or if a “HVAC Callable Event”⁴ is subsisting, refinance and repay the HVAC Supported Facility (and, through it, the HVAC Financing Facility) by an amount equal to the Guaranteed Moneys
 - SFP must, if requested by Project Co. or the HVAC Agent at any time after the aggregate amount outstanding under the HVAC Financing Facility exceeds an amount which is \$1m less than the Facility Limit, refinance and repay the HVAC Supported Facility (and, through it, the HVAC Financing Facility) by an amount equal to the Guaranteed Moneys
- **HVAC Financing Facility (clause 8)**
 - The HVAC Agent must notify the State and SFP after it becomes aware of: (i) the occurrence of a “Market Disruption Event” or equivalent event; and (ii) any claim for payment in addition to scheduled interest, commitment and agency fees
 - The Obligors agree with SFP that the aggregate of all Drawdowns under the HVAC FFA for payment in respect of HVAC Works under the D&C Contract shall not exceed

³ Which occurs when either (i) an amount equal to the Total Amount Owing under the HVAC Financing Facility Agreement has been paid in full by SFP to the HVAC Agent under the SFP HVAC Guarantee or (ii) the Total Amount Owing under the HVAC Financing Facility Agreement has been paid in full by SFP (where such repayment has been funded by an advance by SFP to Fin. Co. under the SFP HVAC Financing Facility).

⁴ Means one of the following: (a) the occurrence of an Event of Default under any of the Finance Documents as defined in the HVAC FFA; (b) delivery of a notice of termination of the Project Deed; (c) an Insolvency Event; (d) an Enforcement Action is undertaken with respect to any Senior Facility in accordance with the Finance Documents; (e) the SFP HVAC Guarantee becomes invalid, null or void; or (f) the occurrence of an SFP Rating Event.

\$195,754,848 or such greater amount as SFP in its absolute discretion may agree in writing (8.2(a))

- If clause 8.2(a) is breached, SFP HVAC Guarantee Beneficiary will not be entitled to payment under the SFP HVAC Guarantee, and SFP shall not be liable in respect of any demand for the Excess Amount and related costs defined therein.

Possible additional provisions that it might be appropriate to include: N/A

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

Tracking Number: *Ref #: HVAC Payment and Repayment Deed (September, 2009)*