

Agreement Synopsis, Context and Review

Sector:	Water
Name of Agreement:	O&M Direct Deed
Type of Agreement:	Deed
Year of Agreement/ Draft:	2009
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 O&M Contractor and the O&M Guarantor grant certain rights to the State in relation to the O&M Contract and the O&M Guarantee.
Drafted for common law/ civil law jurisdiction:	Common Law
Main Features:	<p>This O&M 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 O&M Contractor (Thiess Pty Ltd and Degremont Pty Ltd); the O&M Guarantor (Leighton Holdings Ltd and Suez Environment S.A.S.); and the Independent Reviewer & Environmental Auditor (Davis Langdon Australia Pty Ltd). The Governing Law is that applicable in the State of Victoria.</p> <ul style="list-style-type: none">• O&M Contractor's and the O&M 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 O&M Contract and the O&M Guarantee); or assign Project Co's rights, title and interest under the O&M Contract and the O&M Guarantee to the State by way of security○ Nothing in the SSD will cause the State to assume liabilities or obligations under the O&M Contract and the O&M Guarantee• Project Co. acknowledges that this deed is intended to benefit the O&M Contractor, the O&M Guarantor and the State, and does not affect any obligation of Project Co under any Project Document (clause 4.2)• Project Co, the O&M Contractor and the O&M Guarantor acknowledge that the State will have no liability to the O&M Contractor in connection with any reference to the State in the O&M Contract or the O&M Guarantee (clause 4.3)• Each of the O&M Contractor and the O&M Guarantor undertake to notify the State of any default event (clause 6.1)• The O&M 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 O&M 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 O&M Contract (clause 7.1)
- **Termination/Suspension with cause:** The O&M Contractor may only exercise a power to terminate, rescind or accept the repudiation by Project Co of its obligations under the O&M Contract as a result of a Default Event if the O&M Contract 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)
- **Termination/Suspension without Cause:** If there is no Default Event, the O&M Contractor may only terminate, rescind, accept repudiation of or suspend the performance of its obligations under the O&M Contract if it is entitled to do so under the O&M Contract; or if the State consents (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; and take such other action as it is permitted by Law under the Project Documents (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 O&M Contract and the O&M 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 (and by notice to the O&M Contractor, the O&M Guarantor and the IR&EA), require a novation of the O&M Contract, the O&M Guarantee and the Subordinate IR&EA Deed of Appointment to the State or a third party (clause 9)
- 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 10)
- 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 12)
- Deed further contains a standard form Novation Agreement (Schedule 1)

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 #: O&M Direct Deed (August, 2009)*