

Agreement Synopsis, Context and Review

Sector:	Water
Name of Agreement:	REC ¹ 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 REC Contractor and the REC & Electricity Supply Guarantor have agreed to grant to the State certain rights in relation to the REC Contract and the REC Guarantee.
Drafted for common law/ civil law jurisdiction:	Common Law
Main Features:	<p>This 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 REC Contractor (HP1, AGL HP2 and AGL HP3); 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">• REC Contractor's and REC & Electricity Supply Guarantor's acknowledge, among others, that: (clause 4.1)<ul style="list-style-type: none">○ Project Co may give a charge in the form of State Security Deed (<i>SSD</i>) in favor of the State over all assets and undertakings of Project Co, including its right, title and interest under either or both of the REC Contract and the REC Guarantee○ Nothing in the SSD will cause the State to assume any liabilities under the REC Contract or the REC Guarantee• Project Co acknowledges that this deed is intended to benefit the REC Contractor, the REC & Electricity Supply Guarantor and the State, and does not in any way affect any obligation of the project co under any project document (clause 4.2)• Project Co, the REC Contractor and the REC & Electricity Supply Guarantor acknowledge that the State will have no liability to the REC Contractor, the REC & Electricity Supply Guarantor in connection with any reference to the State in the REC Contract and REC Guarantee (clause 4.3)• The REC Contractor and the REC & Electricity Supply Guarantor must notify the State of any default event (clause 6.1)

¹ Renewable Energy Certificate.

- The REC 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 REC 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 REC Contract (clause 7.1)
- **Termination/Suspension with cause:**
 - The REC Contractor may only exercise a power to terminate, rescind or accept the repudiation by Project Co of its obligations under the REC Contract as a result of a default event if the REC 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 REC Contractor may only exercise a power to suspend the performance of its obligations under the REC Contract if the conditions in clause 7.2 have been satisfied and further conditions in this clause are met (clause 7.2A)
- **Termination/Suspension without Cause:** Project Co and REC Contractor will not terminate, rescind, accept repudiation of or suspend the performance of their obligations under the REC Contract during the Project Term, other than in the case of an Event of Default or pursuant to an express right in this deed (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 (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 REC Contract and the REC 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 it exercises a Step-in Right, require a novation of the REC Contract to the State or a third party (at the State's option); or will procure such novation if the Plant continues to operate after the Project Deed is terminated (clause 9)
- State must continue with REC 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)
- Voluntary Termination by State provisions (clause 11)
- If the State wishes to sell some or all of the Banked RECs it will notify Project co, and Project Co will notify the REC Contractor, and the REC Contractor may notify Project co that it wishes to purchase some or all of those Banked RECs and the unit price it is willing to pay per REC (the "REC Offer") (clause 14)

- 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 15)
- 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 17)
- This Deed further contains:
 - A standard form Novation Agreement (Schedule 1)
 - A standard form Early Termination Payment (Schedule 2)

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 #: REC Direct Deed (date unknown)*