

Agreement Synopsis, Context and Review

Sector:	Water
Name of Agreement:	SFP HVAC ¹ Guarantee and Indemnity
Type of Agreement:	Guarantee and Indemnity Agreement
Year of Agreement/ Draft:	N/A (not signed)
Principal Author(s) Reviewed by:	N/A (unknown) Victoria Rigby Delmon, LEGPS, World Bank; Luiz Alcoforado, LEGPS, World Bank
Purpose and Context:	This SFP HVAC Guarantee and Indemnity Agreement was developed to be entered into by the Project Co., the Borrower, the Finance Co., the Guarantor and each of the HVAC Guarantee Beneficiaries and sets out the terms on which the Guarantor undertakes to pay to and indemnify each HVAC Guarantee Beneficiary the Guaranteed Moneys in the event of an “HVAC Callable Event” ² .
Drafted for common law/ civil law jurisdiction:	Common Law
Main Features:	<p>This SFP HVAC Guarantee and Indemnity was drafted by [drafter unknown] to be entered by and between the Borrower (AquaSure Finance No. 2 Pty Ltd); the Finance Co. (AquaSure Finance Pty Ltd); the Project Co. (AquaSure Pty Ltd); the Guarantor (Treasury Corporation of Victoria); and each Initial HVAC Guarantee Beneficiary (Westpac Banking Corporation and National Australia Bank Ltd). The Governing Law is that applicable in the State of Victoria.</p> <ul style="list-style-type: none">• Guarantor undertakes to pay to each HVAC Guarantee Beneficiary if a HVAC Callable Event occurs, unless such Event has been remedied or waived to the satisfaction of the HVAC Beneficiaries (clause 2)<ul style="list-style-type: none">○ The HVAC Guarantee Beneficiaries must not make a demand if the State has made a payment in full (as referred to in the definition of “State HVAC Payment”)○ The HVAC Guarantee Beneficiaries may make a demand on the Guarantor from time to time, whether or not demand has been made by the HVAC Guarantee Beneficiaries on the Borrower and whether or not the Borrower has defaulted in the punctual payment of any of the Guaranteed Moneys.• Guarantor to indemnify each HVAC Guarantee Beneficiary on the occurrence of a HVAC Callable Event against any and all demands,

¹ HVAC stands for “High Voltage Alternating Current”.

² A HVAC Callable Event is defined in the Agreement as one of the following events: (a) an Event of Default; (b) the delivery of a notice of termination of the Project Deed; (c) an Insolvency Event; (d) Enforcement Action undertaken with respect to any Senior Facility under the Finance Documents; (e) this document becoming invalid, null or void in whole or in part; or (f) the occurrence of an SFP Rating Event. (clause 1.1, definitions).

claims, suits, actions, damages and costs which may be made or brought against or suffered or incurred by a HVAC Guarantee Beneficiary for reasons listed therein (clause 2.3)

- Guarantor’s obligation to pay the Guaranteed Money is primary obligation, not subject to a Beneficiary proceeding against any other person before making a demand for payment (clause 3)
- Guarantor’s obligation (as guarantor or indemnifier) and the HVAC Guarantee Beneficiaries’ rights not to be affected by anything which might abrogate, prejudice or limit them or the effectiveness of this document (clause 3.3)
- Guarantor waives any right to be subrogated to, or otherwise have the benefit of, this document until the Guaranteed Moneys have been satisfied in full (clause 3.5)
- If the rating on the Guarantor’s long term unsecured and unsubordinated debt falls to AA- or AA3 or below, the Project Co., the Borrower, the HVAC Guarantee Beneficiaries and the Guarantor will negotiate revised terms and conditions to the HVAC Financing Facility. If no agreement is reached during a 60-day period, an SFP Rating Event will occur (clause 6)
- Other clauses:
 - Assignment prohibited (clause 7.1)
 - Payment, currency and manner (7.2)
 - Certificates (7.3)
 - Withholding tax (7.4)
 - Interest (7.5)
 - Remedies cumulative (7.6)
 - Discretion in exercising rights (7.7)
- This Agreement further contains:
 - A standard form “Drawdown Notice” (Schedule 2)
 - A standard form “Substitution Deed” (for substitution of the Financier) (Schedule 3)

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 #: *SFP HVAC Guarantee and Indemnity (date unknown)*