



Registration of a Charge

Company Name: **ESP WATER LIMITED**

Company Number: **13495621**



XAAHIZKH

Received for filing in Electronic Format on the: **09/08/2021**

Details of Charge

Date of creation: **30/07/2021**

Charge code: **1349 5621 0001**

Persons entitled: **BNY MELLON CORPORATE TRUSTEE SERVICES LIMITED (AND ITS SUCCESSORS IN TITLE AND PERMITTED TRANSFEREES)**

Brief description:

Contains fixed charge(s).

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **LINKLATERS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 13495621

Charge code: 1349 5621 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th July 2021 and created by ESP WATER LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 9th August 2021 .

Given at Companies House, Cardiff on 10th August 2021

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

FIXED AND FLOATING SECURITY AGREEMENT

dated 30 July 2021

created by

ESP WATER LIMITED

as the Chargor

in favour of

BNY MELLON CORPORATE TRUSTEE SERVICES LIMITED
acting as Security Trustee

Linklaters

Ref: L-261432

Linklaters LLP

Certified that, save for material redacted pursuant to section 859G of the Companies Act 2006, this copy instrument is a correct copy of the original instrument.

Linklaters LLP

9 August 2021

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THIS DEED is dated 30 July 2021 and made between:

- (1) ESP Water Limited, registration number 13495621, as chargor (the "**Chargor**"); and
- (2) BNY Mellon Corporate Trustee Services Limited as security trustee for the Secured Creditors (the "**Security Trustee**").

Background

- (A) The board of directors of the Chargor is satisfied that entering into this Deed would be most likely to promote the success of the Chargor for the benefit of its members as a whole and to the further benefit and advantage of the Chargor.
- (B) The Security Trustee and the Chargor intend this document to take effect as a deed (even though the Security Trustee only executes it under hand).
- (C) The Security Trustee holds the benefit of this Deed for the Secured Creditors on the terms of the Finance Documents.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

"Accounts" means, in relation to the Chargor, all its rights, titles and interests from time to time in and to all current, deposit or other accounts with any bank or financial institution, all balances from time to time standing to the credit of or accrued or accruing on those accounts and all Related Rights.

"Administrator" means an administrator appointed under Schedule B1 to the Insolvency Act.

"Agreements" means, in relation to the Chargor, all its rights, titles and interests from time to time in and to the agreements to which it is a party described in Schedule 2 (*Agreements*) and all Related Rights.

"Common Terms Agreement" means the common terms agreement dated 3 October 2017 between (among others) the Original Guarantors (as defined therein) and the Security Trustee.

"Delegate" means a delegate or sub-delegate, agent, attorney, co-trustee or nominee appointed by the Security Trustee or a Receiver in accordance with this Deed.

"Insolvency Act" means the Insolvency Act 1986.

"Law of Property Act" means the Law of Property Act 1925.

"Master Definitions Agreement" means the master definitions agreement dated 3 October 2017 between (among others) the Original Guarantors (as defined therein) and the Security Trustee.

"Party" means a party to this Deed.

"Quasi Security" means a transaction under which the Chargor will:

- (a) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or another member of the Security Group;
- (b) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (c) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

"Receiver" means a receiver and manager or other receiver appointed in respect of all or any part of the Security Assets and shall, if allowed by law, include an administrative receiver.

"Related Rights" means, in relation to a Security Asset:

- (a) any proceeds of sale, transfer or other disposal, lease, licence, sub-licence, or agreement for sale, transfer or other disposal, lease, licence or sub-licence, of that Security Asset;
- (b) any moneys or proceeds paid or payable deriving from that Security Asset;
- (c) any rights, claims, guarantees, indemnities, Security or covenants for title in relation to that Security Asset;
- (d) any awards or judgments in favour of the Chargor in relation to that Security Asset; and
- (e) any other assets deriving from, or relating to, that Security Asset.

"Secured Creditor" has the meaning given to it in the Master Definitions Agreement.

"Secured Liabilities" has the meaning given to it in the Master Definitions Agreement.

"Security Assets" means the assets which from time to time are, or expressed to be, the subject of the Security Interests or any part of those assets.

"Security Interests" means all or any of the Security created or expressed to be created in favour of the Security Trustee by or pursuant to this Deed.

"Security Trust and Intercreditor Deed" means the security trust and intercreditor deed dated 3 October 2017 between, amongst others, the Original Guarantors (as defined therein) and the Security Trustee.

"Shares" means all present and future shares held by the Chargor in any other Obligor, including:

- (a) warrants, options and other rights to subscribe for, purchase or otherwise acquire any such shares; and
- (b) any other securities or investments deriving from any such shares or any rights attaching or relating to any such shares,

in each case including any rights against any custodian, nominee, clearing system or other similar person holding any such right, title or interest on its behalf, and all dividends and other Related Rights.

1.2 **Incorporation of defined terms**

Unless a contrary indication appears, terms defined in the Master Definitions Agreement have the same meaning in this Deed.

1.3 **Construction**

- (a) Any reference in this Deed to a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced and includes any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under that Finance Document or other agreement or instrument.
- (b) The provisions contained in Part 2 (*Construction*) of Schedule 1 (*Common Definitions*) of the Master Definitions Agreement apply to this Deed as though set out in full in this Deed.

1.4 **Third Party Rights**

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.

1.5 **Common Terms Agreement**

The terms of the Common Terms Agreement apply to this Deed, where applicable, and if, there is a conflict between the Common Terms Agreement and this Deed, the provisions of the Common Terms Agreement will prevail.

1.6 **Security Trust and Intercreditor Deed**

This Deed is entered into subject to the Security Trust and Intercreditor Deed and, to the extent that any provision of this Deed (including terms that apply pursuant to Clause 1.5 (*Common Terms Agreement*)) is inconsistent with the Security Trust and Intercreditor Deed, the Security Trust and Intercreditor Deed will prevail. Without limitation, the provisions of Clause 27 (*Activities of the Security Trustee*) and Clause 28 (*Remuneration and Indemnification of the Security Trustee*) of the Security Trust and Intercreditor Deed shall apply to this Deed.

1.7 **Disposition**

The terms of the other Finance Documents and of any other agreement or instrument between the Parties are incorporated into each Finance Document to the extent required for any disposition or purported disposition of any relevant Security Asset contained in any Finance Document to be a valid disposition in accordance with section 2(1) of the Law of Property (*Miscellaneous Provisions*) Act 1989.

2. **EFFECTIVENESS**

The Security created or expressed to be created by the Chargor by or pursuant to this Deed shall become effective on and from the date of this Deed.

3. **SECURITY INTERESTS**

3.1 **Creation of Security Interests**

(a) The Chargor with full title guarantee and as security for the payment of all Secured Liabilities, charges in favour of the Security Trustee (as trustee for the Secured Creditors):

- (i) by way of first fixed charge, all its Accounts;
- (ii) by way of first mortgage, all its Shares; and
- (iii) by way of first floating charge, all its Accounts, Agreements and Shares (including assets expressed to be mortgaged, charged or assigned under this Clause 3.1).

(b) The Chargor, with full title guarantee and as security for the payment of all Secured Liabilities, assigns to the Security Trustee by way of security all its Agreements including all moneys payable to the Chargor, and any claims, awards and judgements in favour of the Chargor, under or in connection with the Agreements.

3.2 **Qualifying Floating Charge**

(a) The floating charge created by the Chargor under Clause 3.1 (*Creation of Security Interests*) is a "qualifying floating charge" for the purposes of paragraph 14.2(a) of Schedule B1 to the Insolvency Act.

(b) Paragraph 14 of Schedule B1 to the Insolvency Act shall apply to this Deed and the Security Trustee may appoint an Administrator of the Chargor pursuant to that paragraph.

3.3 **Ranking**

The floating charge created by the Chargor under Clause 3.1 (*Creation of Security Interests*) ranks:

- (a) behind all the mortgages, fixed charges and assignments created by the Chargor; but
- (b) in priority to any other Security over the Security Assets of the Chargor except for Security ranking in priority in accordance with paragraph (g) of Schedule 1 (*Rights of Receivers*).

3.4 **Conversion by notice**

The Security Trustee may convert the floating charge over all or any of the Security Assets into a fixed charge by notice to the Chargor specifying the relevant Security Assets (either generally or specifically):

- (a) if it considers it desirable to do so in order to protect or preserve the Security Interests over those Security Assets and/or the priority of those Security Interests; and/or
- (b) while an Event of Default is continuing.

3.5 **Automatic conversion**

If:

- (a) the Chargor takes any step to create any Security or Quasi Security in breach of Clause 4.1 (*Negative pledge*) over any Security Asset subject to the floating charge; or
- (b) any person takes any step to effect any expropriation, attachment, sequestration, distress or execution against any such Security Asset,

the floating charge over the relevant Security Assets shall automatically and immediately be converted into a fixed charge.

3.6 **Moratorium**

- (a) Subject to paragraph (b) below, obtaining a moratorium or doing anything with a view to obtaining a moratorium pursuant to Part A1 of the Insolvency Act (including any preliminary decision or investigation) shall not:
 - (i) cause the floating charge over all or any of the Security Assets to crystallise until the date upon which it is permitted to crystallise in accordance with section A22 of the Insolvency Act; or
 - (ii) be a ground for the appointment of a Receiver of all or any part of the Security Assets.
- (b) Paragraph (a) above does not apply in respect of any floating charge referred to in subsection (4) of section A52 of Part A1 of the Insolvency Act.

3.7 **Consents**

If the consent of any party to a document is required to create fixed security over, or an assignment of, the rights of the Chargor under that document:

- (a) the Chargor shall promptly notify the Security Trustee;
- (b) until the consent of the relevant party has been obtained, this Deed shall secure all amounts which the Chargor may receive, or has received, under that document but exclude any fixed security over, or any assignment of, those rights;
- (c) unless the Security Trustee requires otherwise, the Chargor shall use reasonable endeavours to obtain the consent of the relevant party to the creation of fixed security over or, as the case may be, an assignment of, those rights under this Deed as soon as reasonably practicable; and
- (d) on the date on which the consent of the relevant party is obtained, the fixed security over or, in respect of an asset expressed to be subject to an assignment, the assignment of, those rights under this Deed shall attach to those rights.

4. **RESTRICTIONS ON DEALING WITH SECURITY ASSETS**

4.1 **Negative pledge**

The Chargor shall not create or permit to subsist any Security or Quasi Security over any Security Asset, except as permitted by the Common Terms Agreement.

4.2 **Disposals**

The Chargor shall not (nor agree to) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, license, sub-license,

transfer or otherwise dispose of any Security Asset, except as permitted by the Common Terms Agreement.

5. FURTHER ASSURANCE

- (a) The Chargor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require in favour of the Security Trustee or its nominee(s)):
 - (i) to perfect the Security created or intended to be created under or evidenced by this Deed (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Security Interests) or for the exercise of any rights, powers and remedies of the Security Trustee or the Secured Creditors provided by or pursuant to the Finance Documents or by law; and/or
 - (ii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security Interests.
- (b) The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Trustee or the Secured Creditors by or pursuant to this Deed.

6. ACCOUNTS

6.1 Restriction on Accounts

Except as permitted by the Finance Documents, the Chargor shall not have any Accounts.

6.2 Withdrawals

- (a) At any time prior to the occurrence of an Event of Default which is continuing, the Chargor may withdraw all or any moneys standing to the credit of any Account provided it is in accordance with the Common Terms Agreement and the Security Trust and Intercreditor Deed.
- (b) At any time after the occurrence of an Event of Default which is continuing, the Chargor shall not make any withdrawal from any Account without the prior written consent of the Security Trustee.
- (c) If an amount is withdrawn from an Account as permitted by this Clause 6.2, that amount shall be automatically released from the fixed charge on that Account on that withdrawal being made. However, if all or part of that amount is paid into another Account which is in credit or becomes in credit as a result, it shall automatically become subject to the fixed charge on that Account.

6.3 Restrictions on dealing with Bank Accounts

Without prejudice and in addition to Clauses 4.1 (*Negative pledge*), 4.2 (*Disposals*) and 5 (*Further assurance*):

- (d) except for the charges, the Chargor shall not create or have outstanding any Security over, nor do anything else prohibited by Paragraph 13 (*Negative pledge*) of Part 3 (*General Covenants*) of Schedule 2 (*Security Group Covenants*) of the Common Terms Agreement in respect of, all or any part of any of its Accounts; and
- (e) except as required by Clause 5 (*Further assurance*) or expressly permitted by the Common Terms Agreement or the Security Trust and Intercreditor Agreement, the Chargor shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to transfer, assign or otherwise dispose of all or any part of any of its Accounts.

6.4 Documents

The Chargor shall promptly execute and/or deliver to the Security Trustee, and the Security Trustee shall be entitled to hold, such documents relating to the Chargor's Accounts as the Security Trustee reasonably requires including any notice to the relevant bank or financial institution of the charges over them.

7. SHARES

The Chargor shall on the date of this Deed and, where Shares are acquired by it after the date of this Deed, on the date of that acquisition:

- 7.1 deliver to the Security Trustee, or as it directs, and the Security Trustee shall be entitled to hold, all certificates and other documents of title or evidence of ownership in relation to its Shares; and
- 7.2 deliver to the Security Trustee, or as it directs, and the Security Trustee shall be entitled to hold, transfers of the Shares, each executed in blank, and other documents relating to the Shares reasonably required by the Security Trustee.

8. AGREEMENTS

8.1 Representations

The Chargor represents to each Secured Creditor that:

- (a) all payments to it by any other party to any of its Agreements are not subject to any right of set-off or similar right, other than those rights expressly contained in the Agreements disclosed to the Security Agent;
- (b) subject to the Legal Reservations, each of its Agreements is its legal, valid, binding and enforceable obligation;
- (c) it is not in default of any of its obligations under any of its Agreements;
- (d) there is no prohibition on assignment in any of its Agreements, other than as expressly contained in the Agreements disclosed to the Security Agent; and
- (e) its entry into and performance of this Deed will not conflict with any term of any of its Agreements.

8.2 Notice of assignment

The Chargor shall on the date of this Deed give notice of the assignment in paragraph (b) of Clause 3.1 (*Creation of Security Interests*) substantially in the form set out in Schedule 3 (*Form*

of notice of assignment of Agreements) (or in such other form as is acceptable to the Security Trustee) and shall use its best endeavours to ensure that each recipient of any notice promptly signs and returns the relevant form of acknowledgement.

8.3 **Chargor still liable**

The Chargor shall remain liable to perform all its obligations under each Agreement. Neither the Security Trustee, any Receiver nor any Delegate shall be under any obligation or liability to the Chargor or any other person under or in respect of any Agreement.

9. **NO OTHER PREJUDICIAL CONDUCT**

The Chargor undertakes that it shall not do, or permit to be done, anything which could prejudice the Security Interests ("**Prejudicial Conduct**"), excluding any such Prejudicial Conduct which is expressly permitted under the Finance Documents.

10. **CONFORMITY WITH THE LICENCE**

Notwithstanding any other provision of this Deed, the security created under or pursuant to this Deed will not include any assets, property and rights to the extent, and for so long as, the taking of such security is prohibited under and would result in the breach of the terms of any Regulated Entity's Licence and requirements thereunder or any other law or regulation agreed by the Regulator or applicable to the activities of a Regulated Entity, or the taking of such security is only permitted with the consent or non-objection of the Regulator unless such consent is obtained.

11. **PEOPLE WITH SIGNIFICANT CONTROL REGIME**

The Chargor shall:

- (a) within the relevant timeframe, comply with any notice it receives pursuant to Part 21A of the Companies Act 2006 from any company incorporated in the United Kingdom whose shares are the subject of the Security; and
- (b) promptly provide the Security Trustee with a copy of that notice.

12. **ENFORCEMENT OF SECURITY INTERESTS**

12.1 **When enforceable**

The Security Interests shall be immediately enforceable on and at any time after the occurrence of an Event of Default which is continuing.

12.2 **Enforcement action**

At any time after the Security Interests have become enforceable, the Security Trustee may in its absolute discretion enforce all or any part of the Security Interests in any manner it sees fit or as directed by any Secured Creditor.

12.3 **Law of Property Act powers**

At any time after the Security Interests have become enforceable, the powers, authorities and discretions conferred by the Law of Property Act on mortgagees, including the power of sale and other powers conferred by section 101 (*Powers incident to estate or interest of mortgagee*) of the Law of Property Act, as varied and extended by this Deed, shall be immediately exercisable.

13. LAW OF PROPERTY ACT

13.1 Section 101

The power of sale and other powers conferred by section 101 (*Powers incident to estate or interest of mortgagee*) of the Law of Property Act on mortgagees, as varied and extended by this Deed, shall arise (and the Secured Liabilities shall be deemed due and payable for that purpose) on the date of this Deed and shall be exercisable in accordance with Clause 12.3 (*Law of Property Act powers*).

13.2 Section 103

Section 103 (*Regulation of exercise of power of sale*) of the Law of Property Act shall not apply to this Deed.

13.3 Section 93

Section 93 (*Restriction on consolidation of mortgages*) of the Law of Property Act shall not apply to this Deed.

14. APPOINTMENT OF RECEIVERS AND ADMINISTRATORS

14.1 Appointment of Receivers

If:

- (c) requested by the Chargor; or
- (d) the Security Interests have become enforceable,

without any notice or further notice, the Security Trustee may, by deed or otherwise in writing signed by the Security Trustee or any person authorised for this purpose by the Security Trustee, appoint one or more persons to be a Receiver of all or any part of the Security Assets. The Security Trustee may similarly remove any Receiver and appoint any person instead of any Receiver. If the Security Trustee appoints more than one person as Receiver, the Security Trustee may give those persons power to act either jointly or severally.

14.2 Appointment of Administrators

Paragraph 14 of Schedule B1 to the Insolvency Act applies to this Deed and the Security Trustee may appoint an Administrator of the Chargor pursuant to that paragraph.

14.3 Agent of Chargor

Any Receiver shall be the agent of the Chargor for all purposes. The Chargor alone shall be responsible for the Receiver's contracts, engagements, acts, omissions and defaults.

14.4 Remuneration of Receivers

The Security Trustee may determine the remuneration of any Receiver and the maximum rate specified in section 109(6) (*Appointment, powers, remuneration and duties of receiver*) of the Law of Property Act shall not apply. The Security Trustee may direct payment of that remuneration out of moneys it receives as Receiver. The Chargor alone shall be liable for the remuneration and all other costs, losses, liabilities and expenses of the Receiver.

15. RIGHTS AND LIABILITIES OF SECURITY TRUSTEE AND RECEIVERS

15.1 Rights of Receivers

Any Receiver appointed pursuant to Clause 14 (*Appointment of Receivers and Administrators*) shall have:

- (a) the rights set out in Schedule 1 (*Rights of Receivers*); and
- (b) the rights, powers, privileges and immunities conferred by law, including:
 - (i) in the case of an administrative receiver, the rights, powers, privileges and immunities conferred by the Insolvency Act on administrative receivers duly appointed under the Insolvency Act; and
 - (ii) in all other cases, the rights, powers, privileges and immunities conferred by the Law of Property Act and the Insolvency Act on receivers or receivers and managers.

15.2 Rights of Security Trustee

At any time after the Security Interests have become enforceable, to the fullest extent permitted by law, any rights conferred by any Finance Document or by law upon a Receiver may be exercised by the Security Trustee, whether or not the Security Trustee shall have appointed a Receiver of all or any part of the Security Assets.

15.3 Delegation

- (a) The Security Trustee may delegate in any manner to any person any rights exercisable by the Security Trustee under any Finance Document. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Security Trustee thinks fit and the Security Trustee may pass confidential information to any such delegate.
- (b) Provided that the Security Trustee has exercised due care in the selection of such delegate, it shall not in any way or to any extent be responsible for any loss, liability, expense, demand, cost or claim incurred by reason of the misconduct, omission or default on the part of such delegate or sub-delegate.

15.4 Financial collateral arrangement

- (a) To the extent that this Deed constitutes a "financial collateral arrangement" (as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (the "**Financial Collateral Regulations**")) the Security Trustee shall have the right at any time after the Security Interests have become enforceable, to appropriate any Security Asset which constitutes "financial collateral" (as defined in the Financial Collateral Regulations ("**Financial Collateral**")) in such manner as it sees fit in or towards satisfaction of the Secured Liabilities in accordance with the Financial Collateral Regulations.
- (b) If the Security Trustee is required to value any Financial Collateral for the purpose of paragraph (a) above, the value shall be:
 - (i) in the case of cash, its face value at the time of appropriation; and
 - (ii) in the case of financial instruments or other Financial Collateral, their market value at the time of appropriation as determined (after appropriation) by the Security Trustee by

reference to a public index or other applicable generally recognised source or such other process as the Security Trustee may select, including a valuation carried out by an independent investment bank, firm of accountants or other valuers appointed by the Security Trustee,

as converted, where necessary, into the currency in which the Secured Liabilities are denominated at a market rate of exchange prevailing at the time of appropriation selected by the Security Trustee. The Parties agree that the methods of valuation set out in this paragraph (b) are commercially reasonable for the purpose of the Financial Collateral Regulations.

15.5 Possession

If the Security Trustee, any Receiver or any Delegate takes possession of the Security Assets, it may at any time relinquish possession. Neither the Security Trustee, any Receiver nor any Delegate shall be liable, by reason of viewing or repairing any of the present or future assets of the Chargor, as a mortgagee in possession.

15.6 Security Trustee's liability

Neither the Security Trustee, any Receiver nor any Delegate shall, either by reason of taking possession of the Security Assets or for any other reason and whether as mortgagee in possession or otherwise, be liable for:

- (a) any costs, losses, liabilities or expenses relating to the realisation of any Security Assets; or
- (b) any act or omission of the Security Trustee, any Receiver, any Delegate or their respective officers, employees or agents in relation to the Security Assets or in connection with the Finance Documents, unless directly caused by its gross negligence or wilful misconduct.

16. ORDER OF APPLICATION

All amounts received or recovered by the Security Trustee or any Receiver pursuant to the terms of this Deed or in connection with the realisation or enforcement of all or any part of the Security Interests shall be held by the Security Trustee on trust to apply them at any time, subject to the rights of any creditors having priority, in the order provided in Clause 24 (*Post Enforcement Priority of Payments*) and Schedule 3 (*Post Enforcement Priority of Payments*) of the Security Trust and Intercreditor Deed.

17. POWER OF ATTORNEY

17.1 Appointment

The Chargor by way of security irrevocably appoints the Security Trustee, each Receiver and each Delegate severally to be its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:

- (a) to do anything which the Chargor is obliged to do under any Finance Document to which it is party but has failed to do (including to do all such acts or execute all such documents, assignments, transfers, mortgages, charges, notices, instructions, filings and registrations as the Security Trustee may reasonably specify (and in such form as

the Security Trustee may reasonably require in favour of the Security Trustee or its nominee(s)); and

- (b) to exercise any of the rights conferred on the Security Trustee, any Receiver or any Delegate in relation to the Security Assets or under any Finance Document or under any law.

17.2 Ratification

The Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 17.1 (*Appointment*).

18. PROTECTION OF THIRD PARTIES

No purchaser or other person dealing with the Security Trustee, any Receiver or its agents shall be concerned to enquire:

- (a) whether the powers conferred on the Security Trustee, any Receiver or its agents have arisen;
- (b) whether the powers conferred on the Security Trustee, any Receiver or its agents have become exercisable;
- (c) whether any consents, regulations, restrictions or directions relating to such powers have been obtained or complied with;
- (d) whether the Security Trustee, any Receiver or its agents is acting within such powers;
- (e) whether any money remains due under the Finance Documents and the receipt in writing of the Security Trustee, any Receiver or its agents shall be sufficient discharge to that purchaser or other person;
- (f) as to the propriety or validity of acts purporting or intended to be in exercise of any such powers; or
- (g) as to the application of any money paid to the Security Trustee, any Receiver or its agents.

19. SAVING PROVISIONS

19.1 Continuing Security

Subject to Clause 20 (*Discharge of Security*), the Security Interests are continuing Security and will extend to the ultimate balance of the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

19.2 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of the Chargor or any security for those obligations or otherwise) is made by a Secured Creditor in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation or otherwise, without limitation, then the liability of the Chargor and the Security Interests will continue or be reinstated as if the discharge, release or arrangement had not occurred.

19.3 Waiver of defences

Neither the obligations of the Chargor under this Deed nor the Security Interests will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under any Finance Document or any of the Security Interests (without limitation and whether or not known to it or any Secured Creditor) including:

- (a) any time, waiver or consent granted to, or composition with, the Chargor, any other Obligor or any other person;
- (b) the release of the Chargor, any other Obligor or any other person under the terms of any composition or arrangement with any creditor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Chargor, any other Obligor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor, any other Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

19.4 Chargor intent

Without prejudice to the generality of Clause 19.3 (*Waiver of defences*), the Chargor expressly confirms that it intends that the Security Interests shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

19.5 Immediate recourse

The Chargor waives any right it may have of first requiring any Secured Creditor (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

19.6 Appropriations

Until all amounts which may be or become payable by the other Obligor or the Chargor under or in connection with the Finance Documents have been irrevocably paid in full and all facilities which might give rise to Secured Liabilities have terminated, each Secured Creditor (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Creditor (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Deed.

19.7 Deferral of Chargor's rights

Until all amounts which may be or become payable by the other Obligor or the Chargor under or in connection with the Finance Documents have been irrevocably paid in full and all facilities which might give rise to Secured Liabilities have terminated and unless the Security Trustee otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under the Finance Documents:

- (a) to be indemnified by any Obligor;
- (b) to claim any contribution from any other provider of Security for or guarantor of any Obligor's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Creditors under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Creditor;
- (d) to bring legal or other proceedings for an order requiring the other Obligor to make any payment, or perform any obligation, in respect of which such Obligor had given a guarantee, undertaking or indemnity;
- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of the other Obligor in competition with any Secured Creditor.

If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Creditors by any other Obligor or the Chargor under or in connection with the Finance Documents to be repaid in full on trust for the Secured Creditors and shall promptly pay or transfer the same to the Security Trustee or as the Security Trustee may direct for application in accordance with Clause 16 (*Order of application*).

19.8 Additional security

The Security Interests are in addition to and are not in any way prejudiced by any other guarantee or security now or subsequently held by any Secured Creditor.

19.9 Tacking

Each Secured Creditor shall comply with its obligations under the Finance Documents (including any obligation to make further advances).

20. DISCHARGE OF SECURITY

20.1 Final redemption

Subject to Clause 20.2 (*Retention of security*), if the Security Trustee is satisfied that all amounts which may be or become payable by the other Obligors or the Chargor under or in connection with the Finance Documents have been irrevocably paid in full and that all facilities which might give rise to Secured Liabilities have terminated, the Security Trustee shall at the request and cost of the Chargor release, reassign or discharge (as appropriate) the Security Assets from the Security Interests, without recourse to, or any representation or warranty by, the Security Trustee or any of its nominees.

20.2 Retention of security

If the Security Trustee reasonably considers that any amount paid or credited to any Secured Creditors under any Finance Document is capable of being avoided or otherwise set aside, that amount shall not be considered to have been paid for the purposes of determining whether all the Secured Liabilities have been irrevocably paid.

21. COSTS AND EXPENSES

21.1 Expenses

The Chargor shall, within five Business Days of demand, pay to the Security Trustee the amount of all costs, losses, liabilities and expenses (including legal fees) incurred by the Security Trustee or any Delegate or Receiver in relation to this Deed (including the administration, protection, realisation, enforcement or preservation of any rights under or in connection with this Deed, or any consideration by the Security Trustee as to whether to realise or enforce the same, and/or any amendment, waiver, consent or release of any Finance Document and/or any other document referred to in this Deed).

21.2 VAT

Clause 13 (*VAT*) of the Common Terms Agreement shall apply as if it were set out in full in this Deed, save that references in that clause to "Finance Party" shall be treated in this Deed as being to "Secured Creditor, Receiver or Delegate".

22. INDEMNITY

The Chargor shall, within five Business Days of demand, indemnify the Security Trustee and any Delegate or Receiver against any cost, loss, liability or expense incurred by it or them as a result of:

- (a) any breach by the Chargor of this Deed; or

- (b) the exercise or purported exercise of any of the rights, powers, discretions, authorities and remedies conferred on it or them by this Deed or otherwise relating to the Security Assets.

The provisions of this Clause 22 shall survive the termination of this Deed or any resignation or removal of the Security Trustee.

23. PAYMENTS

23.1 Demands

A demand for payment made by any Secured Creditor shall be valid and effective even if it contains no statement of the relevant Secured Liabilities or an inaccurate or incomplete statement of them.

23.2 Payments

All payments by the Chargor under this Deed shall be made to such account, with such financial institution and in such other manner as the Security Trustee may direct.

23.3 Continuation of accounts

- (a) At any time after a Secured Creditor has received or is deemed to have received notice of any subsequent Security affecting all or any part of the Security Assets of the Chargor, that Secured Creditor may open a new account in the name of the Chargor (whether or not it permits any existing account to continue).
- (b) If that Secured Creditor does not open such a new account, it shall be treated as if it had done so when the relevant notice was received or deemed to have been received and as from that time all payments made by or on behalf of the Chargor to that Secured Creditor shall be credited or be treated as having been credited to the relevant new account and not as having been applied in reduction of the Secured Liabilities as at the time the relevant notice was received or deemed to have been received.

23.4 Contingencies

If all or any part of the Security Interests are enforced at a time when no amount is due under the Finance Documents but any such amount may or will become due, the Security Trustee or the Receiver may pay the proceeds of any recoveries effected by it into a suspense account.

24. REMEDIES, WAIVERS AND DETERMINATIONS

24.1 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Secured Creditor, Receiver or Delegate, any right or remedy under any Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No waiver or election to affirm any of the Finance Documents on the part of any Secured Creditor, Receiver or Delegate shall be effective unless in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Finance Documents are cumulative and not exclusive of any rights or remedies provided by law, including the right to appoint an Administrator under the Insolvency Act.

24.2 Certificates and Determinations

Any certification or determination by the Security Trustee or any Receiver or any Delegate of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

25. SEPARATE AND INDEPENDENT OBLIGATIONS

The Security created by the Chargor by or in connection with any Finance Document is separate from and independent of the Security created or intended to be created by any other Obligor or any other provider of Security by or in connection with any Finance Document.

26. COUNTERPARTS

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

27. GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

28. ENFORCEMENT

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 28 is for the benefit of the Security Trustee only. As a result, the Security Trustee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Trustee may take concurrent proceedings in any number of jurisdictions.

This Deed has been delivered on the date stated at the beginning of this Deed.

SCHEDULE 1
RIGHTS OF RECEIVERS

Any Receiver appointed pursuant to Clause 14 (*Appointment of Receivers and Administrators*) shall have the right, either in its own name or in the name of the Chargor or otherwise and in such manner and upon such terms and conditions as the Receiver thinks fit, and either alone or jointly with any other person:

(a) **Enter into possession**

to take possession of, get in and collect all or any part of the Security Assets, and to require payment to it or to any Finance Party of any Receivables;

(b) **Accounts**

to apply, transfer or set-off any or all of the credit balances from time to time on any Account in or towards payment or other satisfaction of all or part of the Secured Liabilities;

(c) **Carry on business**

to manage and carry on any business of the Chargor;

(d) **Contracts**

to enter into any contract or arrangement and to perform, repudiate, rescind or vary any contract or arrangement to which the Chargor is a party;

(e) **Deal with Security Assets**

to sell, transfer, assign, exchange, hire out, lend, licence or otherwise dispose of or realise all or any part of the Security Assets to any person either by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments or deferred);

(f) **Hive down**

to form a new company and to subscribe for or acquire (for cash or otherwise) any investment in or of the new company and to sell, transfer, assign, exchange and otherwise dispose of or realise any such investments or any rights attaching thereto;

(g) **Borrow money**

to borrow or raise money either unsecured or on the security of all or any part of the Security Assets (either in priority to the Security Interests or otherwise);

(h) **Lend money**

to lend money or advance credit to any person;

(i) **Covenants and guarantees**

to enter into bonds, covenants, guarantees, indemnities and other commitments and to make all payments needed to effect, maintain or satisfy them;

(j) **Dealings with tenants**

to grant leases, tenancies, licences and rights of user, grant renewals and accept surrenders of leases, tenancies, licences or rights of user, and otherwise to reach agreements and make arrangements with, and to make allowances to, any lessees, tenants or other persons;

(k) **Rights of ownership**

to manage and use all or any part of the Security Assets and to exercise and do all such rights and things as the Receiver would be capable of exercising or doing if it were the absolute beneficial owner of all or any part of the Security Assets;

(l) **Legal actions**

to bring, prosecute, enforce, defend and abandon actions, suits and proceedings relating to all or any part of the Security Assets or any business of the Chargor;

(m) **Claims**

to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or relating to all or any part of the Security Assets or any business of the Chargor;

(n) **Redemption of Security**

to redeem any Security (whether or not having priority to the Security Interests) over all or any part of the Security Assets and to settle the accounts of any person with an interest in all or any part of the Security Assets;

(o) **Employees**

to appoint, hire and employ officers, employees, contractors, agents, advisors and others and to discharge any such persons and any such persons appointed, hired or employed by the Chargor;

(p) **Delegation**

to delegate in any manner to any person any rights exercisable by the Receiver under any Finance Document, and any such delegation may be made upon such terms and conditions (including power to sub-delegate) as it thinks fit, and to pass confidential information to any such delegate;

(q) **Insolvency Act**

to exercise all powers set out in Schedule 1, Schedule B1 or (in the case of a Scottish Receiver) Schedule 2 to the Insolvency Act as now in force (whether or not in force at the date of exercise and whether or not the Receiver is an administrative receiver) and any powers added to Schedule 1 or Schedule 2, as the case may be, after the date of this Deed;

(r) **Receipts**

to give a valid receipt for any moneys and do anything which may be necessary or desirable for realising all or any part of Security Assets; and

(s) **Other powers**

to do anything else it may think fit for the realisation of all or any part of the Security Assets or incidental to the exercise of any of the rights conferred on the Receiver under or by virtue of any Finance Document to which the Chargor is party, the Law of Property Act or the Insolvency Act.

SCHEDULE 2

AGREEMENTS

Chargor	Agreement
ESP Water Limited	Each document evidencing the terms of any Subordinated Intragroup Liabilities

SCHEDULE 3
FORM OF NOTICE OF ASSIGNMENT OF AGREEMENTS

From: [] (the "Security Trustee") and [] (the "Chargor")

To: [Party to the Agreement]

Address:

Dated:

Dear Sirs

[Chargor] – Security Agreement
dated [] (the "Security Agreement")

1. We refer to the Security Agreement.
2. We give notice that by an assignment contained in the Security Agreement the Chargor assigned to the Security Trustee by way of security all its rights, titles and interests from time to time in and to the Agreements, details of which are set out in the attached schedule (the "Agreements"), including rights or claims in relation to the Agreements.
3. Until you receive written instructions from the Security Trustee to the contrary, all moneys payable by you to the Chargor in respect of the Agreements shall be paid to the [] Account (Account No. []) with [], at [].
4. Despite the assignment referred to above or the making of any payment by you to the Security Trustee under or in connection with it:
 - (a) the Chargor shall remain liable to perform all its obligations under each Agreement; and
 - (b) the Security Trustee and any Delegate shall not at any time be under any obligation or liability to you under or in respect of any Agreement.
5. The Chargor shall remain entitled to exercise its rights, powers and discretions under each Agreement, except that the Chargor shall not and you agree that the Chargor shall not, without the prior written consent of the Security Trustee:
 - (c) amend, supplement, vary or waive (or agree to amend, supplement, vary or waive) any provision of any Agreement;
 - (d) exercise any right to rescind, cancel or terminate any Agreement; or
 - (e) except as provided in the Security Agreement, novate, transfer or assign any of its rights under any Agreement.
6. You are authorised and instructed, without requiring further approval, to provide the Security Trustee with such information relating to the Agreements as it may from time to time request and to send to the Security Trustee and us copies of all notices issued by you.

7. This authority and instruction is irrevocable without the prior written consent of the Security Trustee.
8. This notice of assignment and any non-contractual obligations arising out of or in connection with it are governed by English law. The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this notice of assignment (including a dispute relating to the existence, validity or termination of this or any non-contractual obligation arising out of or in connection with this notice of assignment).
9. Please acknowledge receipt of this notice of assignment and confirm that:
- (a) you will pay all moneys in respect of each Agreement as directed by or pursuant to this notice of assignment;
 - (b) you have not received any other notice of any assignment of an Agreement;
 - (c) you will not claim or exercise any set-off or counterclaim in respect of any Agreement; and
 - (d) you will comply with the other provisions of this notice of assignment,

by signing the acknowledgement on the attached copy of this notice of assignment and returning that copy to the Security Trustee at [____], marked for the attention of [____].

[Security Trustee][Chargor]

By: By:

[On duplicate]

We acknowledge receipt of the notice of assignment of which this is a copy and confirm each of the matters referred to in paragraphs (a) – (d) of paragraph 9 of the notice of assignment.

[Party to the Agreement]

By:

Dated:

THE SCHEDULE
Agreements assigned

[Note: Details for the intercompany loan agreements to be provided.]

Chargor

EXECUTED as a **DEED** by **ESP WATER LIMITED**

acting by **PAUL MILES**, a director

)
)
)
) Director

and **VICTORIA SPIERS**

)
)
) Director

Security Trustee

EXECUTED as a **DEED** by **BNY Mellon Corporate Trustee Services Limited** acting by two directors:

Directo  JUSTEN BERSIN

Director  Marco Thuo