



Subscription Agreement

Eucalyptus Solar Pty Ltd

ACN 636 539 529

and

Octopus Investments Aust Pty Ltd

ACN 626 662 039

and

Equity Trustees Limited

ACN 004 031 298

AFSL No: 240975

and

The Subscriber named in Schedule 1

2020

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THIS Agreement is made on

2020

BETWEEN:

- (1) **Eucalyptus Solar Pty Ltd** ACN 636 539 529 whose registered office is at Como Centre, Suite 201, Level 2, 644 Chapel Street, South Yarra VIC 3141 (the **Company**);
- (2) **Octopus Investments Aust Pty Ltd** ACN 626 662 039 whose registered office is at Como Centre, 644 Chapel Street, South Yarra, Victoria 3141 (the **Manager**);
- (3) **Equity Trustees Limited** ACN 004 031 298, holder of AFSL No: 240975 whose registered office is at Level 1, 575 Bourke Street, Melbourne VIC 3000 (the **Nominee**); and
- (4) The subscriber named in Schedule 1 (the **Subscriber**).

RECITALS:

- (A) The Subscriber agrees to subscribe for, and the Company has agreed to issue, the Subscription Shares on, and subject to, the terms set out in this Agreement.
- (B) The parties acknowledge and agree that the Nominee will hold legal title to the Subscription Shares for the Subscriber pursuant to the terms of the Nominee Deed.
- (C) The Company and the Nominee have agreed that the Nominee will undertake certain services (including administrative services) in connection with the offer and issue of Shares by the Company.
- (D) The Nominee is a party to this Agreement in its capacity as nominee on the terms of the Nominee Deed, and in respect of the administrative services which it will perform in respect of the offer and issue of Shares by the Company.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

Accession Deed means the accession deed to the Shareholders Deed (in such form as prescribed by the Shareholders Deed).

Act means the *Corporations Act 2001* (Cth).

Additional Shares has the meaning given in clause 3.4(a).

Agreement means this document and includes any schedule to it.

AML/CTF Law means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and related rules and regulations, together with any other applicable anti-

money laundering and counter terrorism laws, regulations, rules and policies which apply to the Company.

Application Shares means the Shares for which the Subscriber has subscribed as set out in Schedule 1.

ATO means the Australian Taxation Office.

AUSTRAC means the Australian Transaction Reports and Analysis Centre.

Authorisation means the following and includes any renewal or amendment of them:

- (a) an approval, authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne, Victoria, and Perth, Western Australia.

Common Reporting Standard means the OECD Common Reporting Standard.

Confidential Information means all information that:

- (a) relates to the business, assets or affairs of the Company or any of its related bodies corporate (including without limitation the Information Memorandum and all Transaction Documents);
- (b) is made available by or on behalf of Company to the Subscriber, or is otherwise obtained by or on behalf of the Subscriber; and
- (c) is by its nature confidential or the Subscriber knows, or ought to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this Agreement.

Constitution means the constitution of the Company.

Custodian Account means the bank account specified in Schedule 2.

Encumbrance means:

- (a) a PPS Security Interest;
- (b) any other mortgage, pledge, lien or charge; or
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation or which gives a creditor priority over unsecured creditors in relation to any property,

but does not include any arrangements arising pursuant to the Nominee Deed.

FATCA means the US Foreign Account Tax Compliance Act.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Information Memorandum means the information memorandum relating to the Company dated 4 October 2019 (and any supplements thereto).

Instruction has the meaning given to it in the Nominee Deed.

Interest has the meaning given in clause 3.4(a).

Law means any law (including subordinate or delegated legislation or statutory instruments of any kind) of Australia or any State and also any judgment, order, policy, guideline, official directive or request (even if it does not have the force of law) of any Government Agency or regulatory body, including a stock exchange within Australia.

Loss means any fee, tax or penalty of any kind, costs expense, liability, claim, loss or damage.

Nominee Deed means the nominee deed to be entered between the Company, the Nominee and the Subscriber, as amended from time to time.

Option Deed means the put and call option deed to be entered into between the Nominee in its capacity as bare trustee for one or more Appointing Beneficiaries, one or more Shareholders and Octopus Investments Aust Pty Ltd (in its own capacity or as trustee for one or more beneficiaries).

PPS Security Interest means a security interest that is subject to the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Application Form means the form to be completed by the Subscriber in order to comply with the legislation which gives effect to the Common Reporting Standard and FATCA, in the form attached in Annexure A (or such other form as the Nominee may require).

Separate Trust means the bare trust established in accordance with the Nominee Deed.

Separate Trust Property means, in relation to the Separate Trust, the number and class of Shares held by the Nominee for and on behalf of the Subscriber, as shown in the Trusts Register.

Share means a share in the capital of the Company.

Shareholder means any person that holds Shares in the Company.

Shareholders Deed means the shareholders deed relating to the Company between the Company, the Manager and each Shareholder, as amended from time to time.

Subscription Documents means:

- (a) this document;

- (b) the Shareholders Deed; and
- (c) the Nominee Deed.

Subscription Date has the meaning given in clause 3.1(a).

Subscription Price means the aggregate subscription price for the Application Shares payable by the Subscriber as set out in Schedule 1, plus the amount of any Interest applied as subscription price for Additional Shares.

Subscription Shares means the Application Shares and any Additional Shares issued to the Subscriber pursuant to clause 3.4(a).

Transaction Documents has the meaning given to it in the Shareholders Deed.

Trusts Register has the meaning given in the Nominee Deed.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) The expression **this document** includes the agreement, arrangement, understanding or transaction recorded in this document
- (h) The expressions **related body corporate** and **subsidiary** have the same meaning as in the Corporations Act.

1.3 **Non Business Days**

If the day on or by which a person must do something under this document is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.4 **The rule about "contra proferentem"**

This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

1.5 **Requirement on a person not a party**

If a provision of this document requires a person that is not a party to do, or not to do, a thing, each party must use its reasonable efforts to ensure that the person does, or does not, do that thing.

2. **ISSUE AND SUBSCRIPTION**

2.1 **Issue and subscription**

- (a) The Subscriber irrevocably subscribes for the Subscription Shares, and the Company agrees to allot and issue the Subscription Shares:
 - (i) free of all Encumbrances;
 - (ii) for the Subscription Price; and
 - (iii) on, and subject to, the terms and conditions of this Agreement.
- (b) The Subscription Shares will be issued by the Company to the Nominee, and the Nominee will hold legal title to the Subscription Shares on a separate bare trust for the Subscriber pursuant to the terms of the Nominee Deed.
- (c) The Company must use the Subscription Price in accordance with, and as permitted by, the terms of the Shareholders Deed.
- (d) Each of the parties agrees to be bound by the terms of the Constitution, the Nominee Deed and the other Transaction Documents to which it is a party.

2.2 **Application**

This Agreement serves as an application by the Subscriber, and by the Nominee as bare trustee for the Subscriber, for the issue of the Subscription Shares and accordingly it will not be necessary for the Subscriber or the Nominee to provide a separate application for the Subscription Shares. For clarity, the Subscriber must, in addition to entering into this Agreement, comply with the obligations under clause 3.2 and clause 3.3 of this Agreement.

2.3 **Refusal of Subscription**

- (a) The Manager may at any time prior to the issue of the Subscription Shares, in its absolute discretion, refuse the subscription for the Subscription Shares (in whole

or part) and thereafter give notice in writing to the Subscriber confirming that its application for Subscription Shares has been refused (in whole or part), without giving a reason.

- (b) If the Manager exercises its right under clause 2.3(a) the Manager must procure that any relevant amounts that have been paid by the Subscriber pursuant to this Agreement (plus any Interest on such amounts) are promptly returned to the Subscriber.

3. **SUBSCRIPTION DATE**

3.1 **Subscription Date**

- (a) The subscription date will be the date determined by the Manager in its absolute discretion and notified to each other party (**Subscription Date**).
- (b) Each party acknowledges and agrees that the Subscription Date may be a different date from the subscription date determined by the Manager for the subscription for Shares made by one or more other Shareholders.

3.2 **Subscriber's obligations prior to the Subscription Date**

Within 5 Business Days of the date of this Agreement (or on such other date as notified by the Manager to the Subscriber) the Subscriber must:

- (a) provide to the Nominee a completed Application Form; and
- (b) provide to the Manager (on an irrevocable basis):
 - (i) an original copy of the Accession Deed duly executed by the Subscriber; and
 - (ii) an original counterpart of the Nominee Deed duly executed by the Subscriber,

and the Subscriber acknowledges and agrees that the Manager may accept and release such copy and counterpart at any time on or following the Subscription Date, and that following such release the Subscriber will be bound by the terms of the Constitution, the Shareholders Deed and the Nominee Deed.

3.3 **Payment of Subscription Price**

Within 10 Business Days of the Manager providing a written notice requesting payment of the Subscription Price, the Subscriber must pay the Subscription Price in immediately available funds to the Custodian Account (or to such alternative account as may be nominated by the Manager and notified in writing to the Subscriber).

3.4 **Additional Shares**

- (a) The parties acknowledge and agree that the Manager, in its sole discretion, may determine that some or all of the interest which accrues on the Subscription Price during the period that the Subscription Price is held in the Custodian Account (**Interest**) is applied as the subscription price for additional Shares (**Additional Shares**) to be issued by the Company to the Subscriber on the same terms (including as to issue price) as the Application Shares and pursuant to clause 3.5.
- (b) If the Manager determines not to apply all of the Interest as described in clause 3.4(a), it will procure that an amount equal to the unused Interest is promptly

returned to the Subscriber following the Subscription Date (provided that the Manager may round amounts of Interest to the nearest dollar for the purposes of determining the number of Additional Shares to be issued).

3.5 **Company's obligations on the Subscription Date**

On the Subscription Date, subject to the Subscriber having satisfied its obligations in clauses 3.2 and 3.3, and subject to clause 2.3, the Company will:

- (a) allot and issue the Subscription Shares to the Nominee on behalf of the Subscriber subject to the terms of this Agreement and the Nominee Deed;
- (b) enter the Nominee in the register of members of the Company as the holder of the Subscription Shares;
- (c) enter the Nominee and Shareholder in the Trusts Register in accordance with the Nominee Deed; and
- (d) provide to the Nominee a duly executed share certificate showing the Nominee as the holder of the Subscription Shares on bare trust for the Subscriber.

4. **REPRESENTATIONS AND WARRANTIES**

4.1 **Company Warranties**

The Company represents and warrants to each other party that each of the matters set out in Part A of Schedule 3 (each a **Company Warranty**) is true and correct at the date of this Agreement and will be so at all times before and including the Subscription Date (unless a Company Warranty refers to a specific timing in which case the Company represents and warrants that such matter is true and correct as at that time or date).

4.2 **By the Subscriber**

- (a) The Subscriber represents and warrants to each other party that each of the matters set out in Part B of Schedule 3 (each a **Subscriber Warranty**) is true and correct at the date of this Agreement and will be so at all times before and including the Subscription Date.
- (b) If at any time the Subscriber Warranties cease to be true and correct the Subscriber must promptly notify the Manager and the Company in writing.

4.3 **By the Nominee**

- (a) The Nominee represents and warrants to each other party that each of the matters set out in Part C of Schedule 3 (each a **Nominee Warranty**) is true and correct at the date of this Agreement and will be so at all times before and including the Subscription Date.
- (b) If at any time the Nominee Warranties cease to be true and correct the Nominee must promptly notify the Manager and the Company in writing.

4.4 **Cap on Claims**

The maximum liability of the Company for any claims for breach of warranties given by the Company is limited to an aggregate amount equal to the Subscription Price that has been paid by the Subscriber pursuant to clause 3.3.

4.5 **Time limitation**

The Company has no liability relating to or arising out of a breach of a Company Warranty unless it has received written notice of the claim relating to or arising out of the breach to the Company within 6 months after the Subscription Date.

4.6 **Survival of representations and warranties**

All representations and warranties in this Agreement survive the execution and delivery of this Agreement and the completion of the transactions contemplated by it.

5. **SUBSCRIBER CONFIRMATIONS AND ACKNOWLEDGEMENTS**

5.1 **Confirmations and acknowledgements**

- (a) The Subscriber confirms that:
 - (i) its subscription for the Subscription Shares is made solely on the basis of the information contained in the Information Memorandum and the Transaction Documents, and not in reliance on any other information, representations or warranties, whether oral or written whatsoever; and
 - (ii) it has been given the opportunity to ask questions of, and receive answers with respect to the business to be conducted by the Company, the financial condition and the capital of the Company and the Manager, the terms and conditions on which Shares may be acquired and other matters pertaining to investment in the Company, and has been given the opportunity to obtain such additional information as is necessary to verify the accuracy of the information that was provided in order for it to evaluate the merits and risks of investment in the Company and make an investment decision in relation thereto.
- (b) The Subscriber understands and has independently evaluated the merits and risks connected with a subscription for Shares and in connection therewith it confirms that:
 - (i) it has such knowledge and experience in financial and business matters as to be capable of evaluating the merits of an investment in Shares and it has the financial ability to bear the economic risk of such investment, and has adequate means for providing for its current needs and possible contingencies and have no need for liquidity with respect to such investments;
 - (ii) it is aware that an investment in the Shares involves substantial risks and have determined that the Shares are a suitable investment for it and that, at this time, it could bear a complete loss of our investment therein;
 - (iii) it has received such tax, legal and other advice from its own professional advisers as it considers necessary in relation to its prospective investment in the Subscription Shares, and has neither relied on nor has it received any such advice from the Company or the Manager or their advisers in connection therewith and based on such advice it believes that an

investment in the Subscription Shares is suitable and appropriate for it; and

- (iv) it understands that under the Shareholders Deed, Shareholders cannot withdraw from the Company and that the Shares are subject to substantial restrictions on transfer as set out in the Shareholders Deed and consequently, it acknowledges and it are aware that it may have to bear the economic risk of its investment in the Company until such time as the Exit Event occurs in accordance with the Shareholders Deed.

5.2 Provision of information

- (a) The Subscriber represents, warrants and, where relevant undertakes that it will provide the Company, the Manager, the Nominee or any other administrator appointed by the Company with such information as it may reasonably request from time to time with respect to its citizenship, residency, identity, status, ownership or control (both direct and indirect) so as to permit the Company, the Manager, the Nominee or such other administrator to evaluate and comply with any legal, regulatory and tax requirements applicable to the Company including, without limitation, such information as may be required to comply with:
 - (i) the AML/CTF Law;
 - (ii) FATCA; and
 - (iii) the Common Reporting Standard.
- (b) The Subscriber acknowledges and agrees that:
 - (i) it must provide the Company, the Manager, the Nominee or any other administrator appointed by the Company with any information that the Company, the Manager, the Nominee or such other administrator reasonably requires in connection with this Agreement in order for the Company to satisfy its obligations under any legal, regulatory and tax requirements applicable to the Company including, without limitation, such information as may be required to comply with the AML/CTF Law, FATCA and the Common Reporting Standard with respect to the proposed issuance of the Subscription Shares that is contemplated by this Agreement and the Nominee Deed, including completing such documents, forms or any other procedures notified to the Subscriber by the Company, the Manager, the Nominee or such other administrator that relate thereto and that are reasonably required by the Company, and in the event of delay or failure by the Subscriber to produce this information, the Company, the Manager and the Nominee may refuse to accept an application, issue the Subscription Shares or otherwise deal with the Subscriber's investments in the Company;
 - (ii) the Company, the Manager, the Nominee or any other administrator appointed by the Company (acting reasonably) each reserves the right to request such information as is reasonably necessary to meet the requirements referred to in clause 5.2(b)(i) above and that in some circumstances, the Company may be required to re-verify this information or obtain additional information to the extent that such re-verification or additional information is reasonably required;
 - (iii) the Company or the Manager may (acting reasonably) decide to delay or refuse any request or transaction (including by suspending the issue of

Subscription Shares or withholding a dividend or distribution), if it is concerned that the request or transaction may breach any obligation of, or cause the Company to commit or participate in an offence under, any legal, regulatory or tax requirements applicable to the Company including, without limitation the AML/CTF Law, FATCA and the Common Reporting Standard and the Company will incur no liability to the Subscriber if it does so;

- (iv) neither the Company, the Manager, the Nominee nor any of their agents or delegates will be liable to the Subscriber for any loss suffered by the Subscriber as a result of the rejection or delay of any subscription or any other delay in dealing with the Subscriber's investments in the Company, nor with any loss or liability suffered by the Subscriber as a result of the Company, the Manager nor any of their agents or delegates complying with any legal, regulatory and tax requirements applicable to the Company including, without limitation their obligations under the AML/CTF Laws, FATCA and the Common Reporting Standard;
 - (v) in certain circumstances the Company may be obliged to freeze or block a bank account where it is used in connection with illegal activities or suspected illegal activities, including any freeze or block which may arise as a result of the account monitoring that is required by AML/CTF Laws, FATCA and the Common Reporting Standard, and the Company will not be liable to the Subscriber for any consequences arising from, or losses suffered as a result of, the freezing or blocking of the Subscriber's bank account;
 - (vi) where required by applicable law or regulation, the Manager or the Nominee may disclose the information gathered from the Subscriber to regulatory or law enforcement agencies, including AUSTRAC and the ATO; and
 - (vii) the ATO shares the information provided with the competent authorities of other jurisdictions and the Company, the Manager and the Nominee will not be liable to the Subscriber for any consequences arising from, or losses suffered as a result of providing the relevant information to the relevant regulatory or law enforcement agencies, including AUSTRAC and the ATO.
- (c) The Subscriber authorises the Company, the Manager, the Nominee or any other administrator appointed by the Company or any of their respective advisers to disclose such information as may be required by any governmental, regulatory, taxation or court authority relating to the Subscriber, the Company, the Manager, or any vehicle into which or through which the Company invests. Should any such authority require any further information, the Subscriber will on request provide such information to the Company, the Manager, the Nominee or any other administrator appointed by the Company and authorise the disclosure of such information to such authority.
- (d) The Subscriber acknowledges and understands that the information that it provides in connection with this Agreement and in any other documents that it provides in relation to its application for Shares or subsequently by whatever means (**personal data**) will be held and processed by the Company, the Manager, the Nominee or any other administrator appointed by the Company in compliance with the relevant data protection legislation and regulatory requirements of Australia. Such information will be held and processed by the Company, the

Manager, the Nominee or any other administrator appointed by the Company, for the following purposes:

- (i) verifying the Subscriber's identity for the purpose of preventing fraud or other financial crime and complying with AML/CTF Law;
 - (ii) administering the Subscriber's investment in the Company including maintaining the register of members of the Company and the Trusts Register;
 - (iii) meeting the legal, regulatory, reporting and/or financial obligations of the Company; and
 - (iv) disclosing personal data to other functionaries of the Company for the purpose of operating the Company.
- (e) Each Subscriber acknowledges and understands that where appropriate it may be necessary for the Company, the Manager, the Nominee or any other administrator appointed by the Company, or any other functionary of the Company, to disclose personal data to governmental, regulatory, taxation authorities, third party service providers or agents appointed by the Company, the Manager or the

Nominee to provide services to Shareholders pursuant to their investment in the Company.

6. **PAYMENT**

Any money payable under this Agreement must be paid by the relevant party to the relevant account without set-off, counterclaim or any other deduction (unless required by law) in Australian dollars.

7. **CONFIDENTIALITY AND PUBLICITY**

7.1 **Confidentiality**

Subject to clause 7.2, the Subscriber must not (and must use its reasonable endeavours to ensure that none of its directors, officers, employees, auditors or agents does not):

- (a) disclose any Confidential Information directly or indirectly in any form to any other person; or
- (b) use any Confidential Information in any manner which may cause or be calculated to cause loss to the Company, the Manager, the Nominee or any related bodies corporate; or
- (c) make any public announcement or issue any press release regarding this Agreement or any transactions contemplated by this Agreement.

7.2 **Permitted disclosures**

The Subscriber may disclose any Confidential Information:

- (a) to the extent specifically contemplated and permitted by this Agreement, the Shareholders Deed or the Nominee Deed;
- (b) to the extent the Confidential Information is in the public domain (other than because the Subscriber has disclosed it);
- (c) to the extent required by Law or order or rule of any court, regulatory body, Government Agency or stock exchange, provided that, to the extent permitted by Law, prior to disclosure of the Confidential Information pursuant to this clause 7.2(c), the Subscriber promptly notifies the Company of such requirement with a view to providing the Company with the opportunity to agree the timing and content of such disclosure;
- (d) to the extent required by its financiers or intended financiers in relation to the provision of finance for completion of the transactions contemplated by this Agreement;
- (e) to its related bodies corporate and directors, officers and employees of it and its related bodies corporate on a need to know basis and on terms that such parties

undertake to comply with the provisions of this clause 7 as if they were a party to this Agreement;

- (f) to the extent required to instruct its professional advisers in relation to this Agreement or to enforce its rights in relation to this Agreement;
- (g) under corresponding obligations of confidence as imposed by this clause 7, to bona fide potential purchasers of its Shares, if the Subscriber wishing to sell its Shares first gives written notice of the disclosure to the Company; or
- (h) with the prior written consent of the Company.

7.3 **Continuing obligation**

This clause 7 continues to bind the Subscriber after the Subscriber's other obligations under this Agreement terminate.

8. **LIMITATION OF LIABILITY AND INDEMNITY**

8.1 **Limited liability**

- (a) A liability arising under or in connection with this Agreement is limited to and can be enforced against the Nominee only to the extent to which the Nominee actually receives proceeds under its indemnities in accordance with clause 8.2(a). This limitation of the Nominee's liability applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Nominee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- (b) No person may sue the Nominee in any capacity other than as Nominee of a Separate Trust and no person may seek the appointment of a receiver (except in relation to the Separate Trust Property), a liquidator, an administrator or any similar person to the Nominee or prove in any liquidation, administration or arrangement of or affecting the Nominee (except in relation to the Separate Trust Property).
- (c) The provisions of this clause 8.1 (except this clause 8.1(c)) shall not apply to any liability or obligation of the Nominee to the extent that it is not satisfied because under this Agreement or by operation of law there is a reduction in the extent of the Nominee's indemnification out of the assets of the Separate Trust or pursuant to clause 8.2(a), as a result of the Nominee's fraud, negligence or wilful default.
- (d) It is acknowledged that the Company is responsible under the Nominee Deed for performing a variety of obligations relating to the Separate Trust. No act or omission of the Nominee (including any related failure to satisfy its obligations or breach of representation or warranty under the Nominee Deed) will be considered fraud, negligence or wilful default of the Nominee for the purpose of clauses 8.1(c) or 8.2(a) to the extent to which the act or omission was caused or contributed to by failure by the Company or any other person to fulfil its obligations relating to the Separate Trust or by any other act or omission of the Company or any other person.

8.2 **Indemnity**

- (a) In addition to any indemnity under any law, the Company fully indemnifies the Nominee against any Loss that may be incurred by the Nominee and each of its

related bodies corporate, officers and employees (the **Indemnified Persons**), in respect of any Loss arising out of any matter relating to, or connected with:

- (i) its role as nominee and administrator under this Agreement, except to the extent that any such Loss arises as a result of the Nominee's negligence, fraud or wilful default; or
 - (ii) the Nominee acting in connection with this Agreement, except to the extent that the Loss arises as a direct result of the fraud, negligence or breach of trust of an Indemnified Person.
- (b) The Nominee must not make a claim for any indemnity from the assets of the Separate Trust under any law to the extent that it is satisfied by the indemnity provided in clause 8.2(a).

8.3 **The Nominee not to incur liability**

Despite any other provision of this Agreement, the Nominee is not required to do anything under or in connection with this Agreement (including enter into any contract or commitment) which involves it incurring any liability (actual or contingent) unless its liability is limited in a manner set out in clause 8.1.

8.4 **Counsel's opinion**

Without limiting the right of the Nominee to apply for advice to a court, the Nominee may act upon the opinion of any solicitor or counsel practising in any jurisdiction in Australia in relation to the interpretation of this Agreement or of any document (including the Nominee Deed) or statute or as to the administration services to be performed under this

Agreement without being liable to any Subscriber or the Company for any act done or left undone by the Nominee in accordance with that opinion.

9. **NOTICES**

9.1 A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing and written in English.

9.2 In addition to any other method of service provided by Law, the Notice may be:

- (a) sent by prepaid post;
- (b) sent by email; or
- (c) delivered in person,

to the address of the addressee set out in this Agreement or as subsequently notified by the intended addressee.

9.3 If the Notice is sent or delivered in a manner provided by clause 9.2, it must be treated as given to and received by the party to which it is addressed:

- (a) if sent by post, three Business Days (at the address to which it is posted) after posting;
- (b) if sent by email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; and
- (c) if otherwise delivered in person before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

9.4 A person's addresses are those set out below, or as the person notifies the sender:

The Company

Address: Como Centre, Suite 201
Level 2, 644 Chapel Street
South Yarra VIC 3141

Attention: Harry Manisty

Email: Hello.Aus@octopusinvestments.com

The Manager

Address: Como Centre
644 Chapel Street
South Yarra, Victoria 3141

Attention: Sam Reynolds

Email: Hello.Aus@octopusinvestments.com

The Nominee

Address: Equity Trustees Limited
Level 1, 575 Bourke Street, Melbourne VIC 3000

Attention: Russell Beasley

Email: RBeasley@eqt.com.au, copy to: ssilavecky@eqt.com.au

The Subscriber

As set out in Schedule 1.

10. COSTS

10.1 Preparation of Agreement

Each party must pay its own costs for the preparation and negotiation of this Agreement.

10.2 Nominee legal costs

The Company will reimburse the Nominee for any legal fees reasonably incurred by the Nominee in relation to advice sought by the Nominee pursuant to clause 8.4, provided that such advice was reasonably required by the Nominee for it to carry out its obligations and duties under this Agreement.

11. MISCELLANEOUS

11.1 Amendment

This Agreement can only be amended or replaced by another document executed by the parties.

11.2 Assignment

A party may not assign or otherwise deal with this Agreement except with the prior written consent of each other party.

11.3 Giving effect to this Agreement

Each party must do anything (including execute any document) required to give full effect to this Agreement.

11.4 Variation of rights

The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this Agreement. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this Agreement.

11.5 Operation of this Agreement

- (a) This Agreement, the Shareholders Deed and the Nominee Deed contain the entire agreement between the parties in relation to its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject

matter is replaced by this Agreement, the Shareholders Deed and the Nominee Deed and has no further effect.

- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

11.6 **No merger**

No provision of this Agreement merges in or by virtue of the subscription for Shares by the Subscriber.

11.7 **Counterparts**

This Agreement may be executed in a number of counterparts and if so executed, the counterparts taken together constitute one agreement.

11.8 **Governing law and jurisdiction**

- (a) This Agreement is governed by and must be construed in accordance with the laws of Victoria, Australia.
- (b) Each party submits to the exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them, in respect of any proceedings arising out of or in connection with the subject matter of this Agreement.

SCHEDULE 1

Subscriber details

| | |
|---------------------------------|---|
| Name of Subscriber | [insert] |
| Application Shares | [insert] |
| Issue Price | \$1.00 per Share |
| Subscription Price | Either: \$[insert] (where all of the Subscription Documents are executed by the Subscriber and received prior to 31 December 2019); or \$[insert] (where all of the Subscription Documents are executed by the Subscriber and received after to 31 December 2019, (as applicable). |
| Subscriber contact details | Address: [insert] Contact: [insert] Email: [insert] |
| Subscriber bank account details | [insert] |

SCHEDULE 2

Custodian Account

| | |
|----------------------------|---|
| Account name: | Equity Trustees Limited |
| Account designator: | as Custodian for Eucalyptus Solar Pty Ltd |
| BSB: | 083-054 |
| Account number: | 15-422-6256 |

SCHEDULE 3

Representations and Warranties

PART A - Company Warranties

The Company and the Shares

1. The Company is a company limited by shares under the Act.
2. There is no restriction on the ability of the Company to issue the Subscription Shares.
3. As at the date of this Agreement the issued capital of the Company is set out in Schedule 4.
4. The Company has not traded since its incorporation and has not incurred any liabilities.
5. Upon the issue of the Subscription Shares on the Subscription Date:
 - (a) the Nominee will receive the full legal ownership of the Subscription Shares free and clear of all Encumbrances; and
 - (b) the Subscriber will receive the full beneficial ownership of the Subscription Shares free and clear of all Encumbrances,in each case subject to the terms and conditions of this Agreement, the Shareholders Deed and the Nominee Deed.
6. On their allotment and issue on the Subscription Date, the Subscription Shares will rank on an equal footing in all respects with the then existing issued shares of the same class in the capital of the Company.

Authority of Company

1. The Company and the directors of the Company have taken all necessary action to authorise the signing, delivery and performance of this Agreement and the documents required under this Agreement in accordance with their respective terms.
2. The Company has power to enter into this Agreement and perform its obligations under it and can do so without the consent of any other person and free of any pre-emptive rights or rights of first refusal.
3. The Company's obligations under this Agreement are valid and binding and enforceable against it in accordance with their terms.
4. Neither the Company's execution of this Agreement nor the carrying out by it of the transactions that this Agreement contemplates, does or will:
 - (a) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (b) contravene any Authorisation;
 - (c) contravene any agreement binding on it or any of its property;
 - (d) contravene its Constitution; or
 - (e) require it to make any payment or delivery in respect of any financial accommodation before it would otherwise be obliged to do so.

5. The Company is not insolvent and no controller (as defined in the Act) has been appointed over any part of its assets and no such appointment has been threatened.
6. The Company is not in liquidation or administration and no proceedings have been brought or threatened or procedure commenced for the purpose of winding it up or placing it under administration.
7. The Company is not engaged in any litigation, arbitration or alternative dispute resolution proceedings.

PART B - Subscriber Warranties

Authorisation

1. If the Subscriber is a natural person, it is not bankrupt, of unsound mind or incapable of managing its own affairs.
2. If the Subscriber is a corporation, it is a company limited by shares under the Act, and it is duly incorporated and validly existing under the laws of the place of its incorporation.
3. The Subscriber has the power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement.
4. The Subscriber has taken all necessary action to authorise execution of this Agreement and has taken all necessary action to authorise the performance of, and to carry out the transactions contemplated by, this Agreement.
5. This Agreement has been duly executed by the Subscriber, and is a legal valid and binding agreement on it, enforceable in accordance with its terms, subject only to any necessary stamping or registration.
6. The execution and performance by the Subscriber of this Agreement and each transaction contemplated under this Agreement did not and will not violate in any material respect any provision of any judgment binding on it, its constituent documents, any law or any

document, agreement or other arrangement binding on it or its assets, in its home jurisdiction.

7. Except as expressly stated, the Subscriber is not entering into this Agreement in its capacity as trustee of any trust.
8. If the Subscriber is expressly stated to be entering into this Agreement in its capacity as trustee of a trust:
 - (a) the trust has been validly created under the applicable laws and is in existence;
 - (b) it has power under the constituent documents for the trust to enter into, perform and comply with all its obligations under this Agreement, the Constitution and the other Transaction Documents to which it is a party;
 - (c) it has been validly appointed as trustee of the trust and is the sole trustee of the trust;
 - (d) it does not propose to retire as trustee of the trust and to its knowledge no action has been taken or is proposed to remove it as sole trustee or to appoint another trustee;
 - (e) the trust has not been terminated or its assets vested;
 - (f) its entry into this Agreement is for the benefit of, and in the interests of, the trusts' members; and
 - (g) it is entitled to be fully indemnified out of the assets of the trust, and will not knowingly do or omit to do anything that may reduce its entitlement to such indemnity.
9. The payment of the Subscription Price made by the Subscriber in relation to the issue of Subscription Shares:
 - (a) is from legitimate sources in connection with regular business activities;
 - (b) will not constitute the proceeds of crime as contemplated by the *Proceeds of Crime Act 1987* or *2002* (Cth);
 - (c) would not constitute a breach of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth); and
 - (d) will not breach any applicable laws in any jurisdiction relating to anti-money laundering or foreign exchange control restrictions.
10. The Subscriber has received a copy of the Information Memorandum, the Constitution, the Shareholders Deed and the Nominee Deed (and any other Transaction Documents that it

has requested from the Manager, together the **Documents**), and has read and understood each of the Documents.

Litigation, insolvency

1. No litigation, arbitration, tax claim, dispute or administrative or other proceeding is current or pending or, to its knowledge, threatened, which may have a material adverse effect on the Subscriber's ability to perform its obligations under this Agreement.
2. None of the following has occurred, in relation to the Subscriber:
 - (a) the appointment of an administrator;
 - (b) any step being taken (including, an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting) for:
 - (i) its winding-up, dissolution, or administration; or
 - (ii) its entering into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;
 - (c) being (or taken to be under applicable legislation) unable to pay its debts, other than as the result of a failure to pay a debt or claim the subject of a good faith dispute;
 - (d) stopping or suspending, or threatening to stop or suspend, payment of all or a class of its debts;
 - (e) the appointment of a receiver, receiver and manager, administrator or similar officer to any of its assets and undertakings; or
 - (f) anything analogous to or of a similar effect to anything described in clauses (a) to (e) above under the law in any relevant jurisdiction.

Sophisticated investor

1. **(sophisticated or professional investor)** The Subscriber is a sophisticated investor or professional investor for the purposes of section 708 of the Act.
2. **(Wholesale client)** The Subscriber is a wholesale client for the purposes of the Act.

PART C - Nominee Warranties

Authorisation

1. The Nominee is a company limited by shares under the Act, and it is duly incorporated and validly existing under the laws of the place of its incorporation.
2. The Nominee has the power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement.
3. The Nominee has taken all necessary action to authorise execution of this Agreement and has taken all necessary action to authorise the performance of, and to carry out the transactions contemplated by, this Agreement.
4. This Agreement has been duly executed by the Nominee, and is a legal valid and binding agreement on it, enforceable in accordance with its terms, subject only to any necessary stamping or registration.

Litigation, insolvency

1. No litigation, arbitration, tax claim, dispute or administrative or other proceeding is current or pending or, to its knowledge, threatened, which may have a material adverse effect on the Nominee's ability to perform its obligations under this Agreement.
2. None of the following has occurred or to its knowledge, is threatened, in relation to the Nominee:
 - (a) the appointment of an administrator;
 - (b) any step being taken (including, an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting) for:
 - (i) its winding-up, dissolution, or administration; or
 - (ii) its entering into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;
 - (c) being (or taken to be under applicable legislation) unable to pay its debts, other than as the result of a failure to pay a debt or claim the subject of a good faith dispute;
 - (d) stopping or suspending, or threatening to stop or suspend, payment of all or a class of its debts;
 - (e) the appointment of a receiver, receiver and manager, administrator or similar officer to any of its assets and undertakings; or
 - (f) anything analogous to or of a similar effect to anything described in clauses (a) to (e) above under the law in any relevant jurisdiction.

SCHEDULE 4

Capital Structure

| Name of Shareholder | Shareholding |
|----------------------------------|-------------------------------|
| Octopus Investments Aust Pty Ltd | 10 fully paid ordinary shares |

EXECUTED as an Agreement.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

Executed by EUCALYPTUS SOLAR PTY LTD
in accordance with Section 127 of the
Corporations Act 2001 (Cth)

Signature of director

Signature of director/secretary

Name of director

Name of director/secretary

**Executed by OCTOPUS INVESTMENTS AUST
PTY LTD** in accordance with Section 127 of the
Corporations Act 2001 (Cth)

Signature of director

Signature of director/secretary

Name of director

Name of director/secretary

EXECUTED by **EQUITY TRUSTEES LIMITED**)
ACN 004 031 298 by its attorneys under)
Power of Attorney dated 27th May 2016 in the)
presence of:)

)

) Signature of Attorney

)

)

.....

Signature of witness

)

) Name of Attorney & Schedule Number

)

)

.....

(Print name)

)

) Signature of Attorney

)

.....

Name of Attorney & Schedule Number

Executed by **[Insert]** in accordance with
Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/secretary

Name of director

Name of director/secretary

ANNEXURE A
Application Form