



Nominee Deed

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

and

The Appointing Beneficiary listed in Schedule 1

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THIS DEED 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, whose registered office is at Level 1, 575 Bourke Street, Melbourne VIC 3000 (the **Nominee**); and
- (4) The person listed in Schedule 1 (the **Appointing Beneficiary**).

RECITALS:

- (A) At the request of the Company, the Appointing Beneficiary agrees to appoint the Nominee as its nominee to hold its Shares for it by way of separate bare trust, and the Nominee agrees to act as nominee for the Appointing Beneficiary in respect of its Shares on the terms and conditions set out in this Deed.
- (B) In consideration for the Nominee providing those nominee services, the Company has agreed to indemnify the Nominee and to pay its fees and expenses on the terms and conditions set out in this Deed.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this Deed.

Accretions means, in respect of the Separate Trust, all accretions, rights and benefits attaching to the Separate Trust Property (including all rights to receive dividends and any other distributions and to receive or subscribe for shares but excluding amounts or other property that are paid or delivered by the Company directly to the Appointing Beneficiary under this Deed or the Shareholders Deed).

Appropriately Licensed Nominee means a person who holds an Australian financial services licence authorising it, among other things, to provide the custodial or depository services provided in each Nominee Deed.

Authorised Person means any other person nominated by the Appointing Beneficiary in writing to the Nominee, as authorised to make any written communication or take any other action on behalf of the Appointing Beneficiary under this Deed.

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.

Company Appointing Beneficiary means each person or persons inscribed on the Trusts Register as the holder (or holders) of a beneficial interest in separate trust property held by the Nominee under a Company Separate Trust (including the Appointing Beneficiary).

Company Separate Trust means each bare trust established pursuant to a Nominee Deed (including the Separate Trust).

Constitution means the constitution of the Company from time to time.

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

Effective Date means, in relation to the Separate Trust, the date and time at which the Nominee first becomes the registered holder of any Shares on trust for the Appointing Beneficiary by being entered by the Company:

- (a) as the registered holder of the Shares in the register of the Company; and
- (b) as the trustee of the Shares in the Trusts Register.

GST has the meaning given to that term in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Instruction means a written instruction to the Nominee in respect of or in connection with the Separate Trust Property which is signed by the Appointing Beneficiary, or an Authorised Person on behalf of the Appointing Beneficiary, and which also satisfies each of the following matters (provided that the Nominee is entitled to treat any such instruction as an Instruction even if it does not satisfy one or more of these matters):

- (a) the instruction states that it is an 'Instruction' for the purposes of this Deed; and
- (b) where the instruction includes a requirement for the Nominee to execute a document, it includes appropriate details of the terms and purpose of the relevant document.

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

Management Agreement means the management agreement between the Company and the Manager dated on or about the date of hereof and as amended from time to time.

Manager means the party identified in (2) of the parties section of this deed, or (as applicable) any replacement manager appointed pursuant to the terms of the Management Agreement.

Nominee means the party identified in (3) of the parties section of this deed, or (as applicable) any duly appointment replacement nominee.

Nominee Deeds means:

- (a) this Deed; and
- (b) each other nominee deed entered into between the Nominee, the Company and a Shareholder pursuant to which the Shareholder appoints the Nominee to hold its Shares for it by way of a separate bare trust,

and **Nominee Deed** means any one of them (as the context requires).

Nominee Shares means the Shares held by the Nominee as bare trustee for the Appointing Beneficiary.

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).

Separate Trust means the bare trust established in accordance with clause 2.2.

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

Share means a share in the capital of the Company.

Shareholder means:

- (a) the holder of at least one Share, for the period of time that it holds at least one Share; and
- (b) each Company Appointing Beneficiary from time to time.

Shareholders Deed means the shareholders deed in respect of the Company between the Company, the Manager and the Shareholders dated on or about the date hereof and as amended from time to time.

Trusts Register means the register of Separate Trusts established and maintained by the Company in accordance with clause 4.

1.2 **Rules for interpreting this Deed**

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

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this Deed) or agreement, or a provision of a document (including this Deed) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this Deed or to any other document or agreement includes a successor in title, 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 recital, schedule, annexure or a description of the parties form a part of this Deed.
- (d) A word which suggests one gender includes the other genders.
- (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (f) 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.
- (g) The expression **this Deed** includes the agreement, arrangement, understanding or transaction recorded in this deed.

- (h) The word **dividend** includes a bonus or other distribution in cash or kind.
- (i) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten.
- (j) Words defined in the GST Act have the same meaning in clauses concerning GST.
- (k) If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable to pay and input tax credits to which the representative member is entitled.

1.3 **Non Business Days**

If the day on or by which a person must do something under this Deed 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 **Multiple parties**

If a party to this Deed is made up of more than one person, or a term is used in this Deed to refer to more than one party, then unless otherwise specified in this Deed:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking relates to each of them separately.

1.5 **The rule about "contra proferentem"**

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

1.6 **Trust deed binding**

This Deed binds the Nominee, the Company and in the case of the Separate Trust, the Appointing Beneficiary.

1.7 **Requirement on a person not a party to this Deed**

If a provision of this Deed requires a person that is not a party to this Deed 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. **DECLARATION OF TRUST**

2.1 **Appointment of the Nominee**

The Appointing Beneficiary appoints the Nominee, and the Nominee agrees to act, as bare trustee of the Separate Trust on the terms and conditions of this Deed. The Nominee represents and warrants to the Company and to the Appointing Beneficiary that it holds an

Australian financial services licence authorising it, among other things, to provide the custodial or depository services provided in this Deed for the Separate Trust.

2.2 Declaration of Separate Trust

The Nominee declares that it holds all of the right, title and interest in the Separate Trust Property and any Accretions on a separate bare trust for the Appointing Beneficiary absolutely. For the avoidance of doubt, the Appointing Beneficiary is absolutely entitled to any income of the Separate Trust.

2.3 Separate Trust Property in each Separate Trust to be treated separately

- (a) The parties acknowledge and agree that, as contemplated by the Shareholders Deed, the Company and Nominee may enter into Nominee Deeds with other Company Appointing Beneficiaries, pursuant to which each Company Appointing Beneficiary will appoint the Nominee as its nominee to hold Shares for it by way of separate bare trust.
- (b) The Nominee shall at all times treat the Separate Trust Property of the Separate Trust separately from the separate trust property of each other Company Separate Trust and, in particular:
 - (i) the Shares included in the separate trust property of each Company Separate Trust (including the Separate Trust) will be identified and recorded in the Trusts Register; and
 - (ii) none of the assets of a Company Separate Trust (including the Separate Trust) will be co-mingled at any time with the assets of any other Company Separate Trust.

2.4 Nominee's obligations

The Nominee must, on the Instruction of the Appointing Beneficiary and at the cost of the Company:

- (a) transfer to the Appointing Beneficiary or otherwise deal with the Nominee's legal right, title and interest in any or all of the Separate Trust Property and any Accretions as the Appointing Beneficiary (or its Authorised Person) may from time to time direct; and
- (b) take all steps, execute all documents and do all things necessary to vest the Nominee's legal right, title and interest in any or all of the Appointing Beneficiary's Separate Trust Property and any Accretions in the Appointing Beneficiary as the Appointing Beneficiary (or its Authorised Person) may from time to time direct,

provided that:

- (c) the Nominee will not be held liable for any failure to comply with these obligations to the extent that such failure is due to any act, refusal to act or omission by the Appointing Beneficiary, its Authorised Person or any other person (including any failure to provide any information that is properly required by the Nominee or any competent authority) or is due to any restrictions in the Shareholders Deed or Constitution or to the operation of law; and
- (d) where the Separate Trust Property or any Accretions (as applicable) consists of shares in the Company or in another corporation, the Appointing Beneficiary has provided the Nominee its written consent to become a shareholder of the Company or corporation.

2.5 **Appointing Beneficiary's reservation of rights**

- (a) Nothing in this Deed entitles the Nominee to beneficial ownership of any Separate Trust Property and any Accretions, or operates to deprive the Appointing Beneficiary of the rights of beneficial ownership (including the right of possession) of the Appointing Beneficiary's Separate Trust Property or any Accretions.
- (b) The Nominee declares that it has no beneficial interest whatsoever in the Separate Trust Property of the Appointing Beneficiary or in any Accretions.

2.6 **Limitations on the Nominee**

The Nominee shall have no powers, duties, discretions or liabilities under the Separate Trust except those expressly set out in this Deed.

2.7 **Nominee may appoint attorneys**

The Nominee may appoint any one or more persons as its attorney (jointly, or severally if more than one) with the power to execute documents on behalf of the Nominee for the day-to-day administration of the Separate Trust.

3. **INSTRUCTIONS TO THE NOMINEE**

3.1 **No obligation to verify**

The Nominee has no obligation to verify the purpose, merits or propriety of an Instruction or any document the subject of an Instruction and it is entitled to rely solely on the Appointing Beneficiary or its Authorised Person in respect of all matters relating to an Instruction and any transaction the subject of an Instruction.

3.2 **Requests for further details**

The Nominee is entitled to request further details from the Appointing Beneficiary or its Authorised Person in respect of any Instruction, and is entitled to a reasonable period to consider any matter related to or arising from an Instruction, but this does not impose any obligation on the Nominee to do so, and does not otherwise limit the effect of this clause 3.

3.3 **Notification of failure to act on Instruction**

- (a) If the Nominee, acting reasonably, considers that it is unable to wholly or partially act on an Instruction of the Appointing Beneficiary or its Authorised Person, it must promptly (and in any event, within two (2) Business Days) notify the Appointing Beneficiary or its Authorised Person (as applicable) of that position.
- (b) Upon receipt of such notice, the Appointing Beneficiary or its Authorised Person (as applicable) may either:
 - (i) withdraw the specific Instruction with which the Nominee is unable to comply in accordance with this clause; or
 - (ii) re-issue or clarify the Instruction, in which case the Instruction will not operate until it has been re-issued or clarified and until then will be withdrawn.

4. **REGISTER OF SEPARATE TRUSTS**

4.1 **Register of Company Appointing Beneficiaries**

- (a) The Company shall, at its sole cost and expense, establish and maintain a Trusts Register.

- (b) The following details shall be entered into the Trusts Register in respect of each Separate Trust:
 - (i) the name, address and description of:
 - (A) the Nominee in its capacity as trustee in respect of each Company Separate Trust;
 - (B) the Company Appointing Beneficiary for that Company Separate Trust (or the Company Appointing Beneficiary's nominee or custodian (if any));
 - (ii) the number and class of Shares that are held on trust for the Company Appointing Beneficiary by the Nominee;
 - (iii) the date at which the names of the Nominee and the Company Appointing Beneficiary was noted in the Trusts Register in respect of the separate trust property held on trust for that Company Appointing Beneficiary; and
 - (iv) any other details considered necessary by the Nominee or the Company.
- (c) The Company must alter and update the Trusts Register to reflect:
 - (i) any changes which are necessary to reflect information provided to the Company under clause 4.6 (or the equivalent provisions of another Nominee Deed); and
 - (ii) any transfer of the legal or beneficial interest in separate trust property effected in accordance with clauses 2.4, 9.1 or 9.2 of this Deed (or the equivalent provisions of another Nominee Deed).

4.2 **Nominee to be provided with a copy of the Trusts Register**

The Company must provide, or must procure that its registrar provides, a copy of the Trusts Register to the Nominee:

- (a) on, or as soon as practicable, after the date of this Deed;
- (b) as and when any information in the Trusts Register is updated; and
- (c) within two (2) Business Days of being requested to do so by the Nominee.

4.3 **Nominee reliance on the Trusts Register**

Unless contrary information is provided to the Nominee under clause 4.6, the Nominee is entitled to assume without inquiry that the information in the Trusts Register is correct and the Nominee has no liability to the Appointing Beneficiary for any loss, damage, cost or expense which arises from the maintenance of the Trusts Register.

4.4 **Nominee to be provided with executed Subscription Documents**

- (a) The Company must provide, or must procure that its registrar provides to the Nominee, a scan of each subscription document for Shares in the Company as soon as it is executed by the parties to it; and
- (b) At the request of the Nominee, the Company must enable the Nominee to audit and verify by personal inspection in the offices of the Company the originals of any such previously executed subscription document.

4.5 **No certificate**

No certificates will be issued to the Appointing Beneficiary in respect of the number of Shares held under Separate Trust for the Appointing Beneficiary.

4.6 **Cessation of notation as the Appointing Beneficiary**

Upon termination of the Separate Trust in respect of the Appointing Beneficiary:

- (a) the Nominee shall cease to be noted in the Trusts Register as the trustee of the Shares held under the Separate Trust; and
- (b) the Appointing Beneficiary shall cease to be noted in the Trusts Register as the beneficiary of the Shares held under the Separate Trust.

4.7 **Changes**

- (a) The Appointing Beneficiary must promptly notify the Company and the Nominee of any change to the particulars listed in clause 4.1(b).
- (b) Notwithstanding any other provision of this Deed, the Appointing Beneficiary agrees to comply with requests from the Company for such information as is required by the Company to establish, maintain and update the Trusts Register.

5. **AUTHORISATIONS AND INSTRUCTIONS**

5.1 **Option Deed**

If the Manager requests that the Nominee as holder of the Shares enters into the Option Deed, the Appointing Beneficiary hereby irrevocably:

- (a) authorises and directs the Nominee by way of Instruction to enter into the Option Deed;
- (b) undertakes, upon request from the Nominee or the Manager, to take all actions, and give all Instructions to the Nominee, necessary to ensure that:
 - (i) the Nominee carries out its obligations under the Option Deed; and
 - (ii) the Option Deed is effective pursuant to its terms;
- (c) undertakes not to knowingly take any action or omit to take any action which would prevent the Nominee from carrying out its obligations under the Option Deed or cause the Nominee to breach its obligations under the Option Deed; and
- (d) undertakes that if it instructs the Nominee to transfer the Nominee's legal right, title and interest in any Shares held by the Nominee on bare trust for the Appointing Beneficiary, that it will promptly notify the Manager of such instruction, and take such actions and will enter into such documentation as the Manager may reasonably require to ensure that the provisions of the Option Deed continue to apply to the Shares.

5.2 **Power of Attorney**

If the Manager requests that the Nominee as holder of the Shares provides a power of attorney in respect of the Shares in favour of the Manager on the terms of the power of

attorney in clause 6 of the Shareholders Deed (or substantially similar terms) (**Power of Attorney**), the Appointing Beneficiary hereby irrevocably:

- (a) authorises and directs the Nominee by way of Instruction to provide the Power of Attorney;
- (b) agrees to ratify and confirm any vote, consent or approval made by the Manager pursuant to the Power of Attorney;
- (c) agrees that:
 - (i) any liability arising under or in connection with the Power of Attorney is limited to and can be enforced against the Nominee only to the extent that to which the Nominee actually receives proceeds under the indemnity in clause 5.2(d); and
 - (ii) no person may sue the Nominee in any capacity, or seek the appointment of a receiver, a liquidator, an administrator or any similar person to the Nominee or prove in any liquidation, administration or arrangement affecting the Nominee, in each case in connection with the Power of Attorney; and
- (d) indemnifies the Manager and the Nominee against all claims, demands, costs, charges, expenses, outgoings, losses and liabilities arising in any way in connection with the lawful exercise of all or any of the Manager's powers and authorities under the Power of Attorney.

6. **UNDERTAKING BY THE COMPANY**

The Company undertakes to the Nominee that it will:

- (a) promptly provide the Nominee with all necessary information and assistance as the Nominee may reasonably require to enable the Nominee to comply with its obligations under this Deed, including by providing a copy of the Shareholders Deed and the Constitution upon request by the Nominee;
- (b) without limitation to clause 6(a), provide the Nominee with written notice of any of the following events (as soon as practicable, but in any case no later than five (5) Business Days after becoming aware of any such events):
 - (i) any event that may result in a change in the beneficial ownership of a Share; and
 - (ii) any transfer of the beneficial interest in a Share to the Appointing Beneficiary in accordance with the Shareholders Deed and this Deed,

and, on request, provide the Nominee with any information reasonably required by the Nominee in relation to any such event or events.

7. **CORPORATE ACTIONS**

7.1 **Dividends and distributions**

- (a) The Appointing Beneficiary directs the Company to pay all dividends and any other distributions in respect of its Nominee Shares directly to the Appointing Beneficiary.
- (b) The Company undertakes to the Nominee and the Appointing Beneficiary that it will procure that a dividend or distribution that would otherwise be paid to the Nominee as Shareholder will be paid to the Appointing Beneficiary in place of the Nominee at

the same time as it pays or makes any dividend or distribution of any kind whatsoever to Shareholders.

7.2 **Proceeds from the sale of Nominee Shares**

The Company will procure that the proceeds from the sale or disposal of any Shares comprised in the Separate Trust Property of the Appointing Beneficiary that would otherwise be paid to the Nominee as Shareholder will be paid to the Appointing Beneficiary in place of the Nominee at the same time as the Company remits any proceeds from the sale or disposal of those Shares.

7.3 **Notices of meetings**

The Company agrees that it will send to the Appointing Beneficiary and the Nominee a copy of:

- (a) a notice of any meeting of members at which the Appointing Beneficiary is entitled to vote; or
- (b) a notice for Shareholder approval or consent on which the Appointing Beneficiary is entitled to vote,

or in either case, to which it is otherwise entitled pursuant to the Act, the Constitution or the Shareholders Deed, at the same time as it sends such notice to Shareholders.

7.4 **Shareholder communications**

The Company agrees that it will send to the Appointing Beneficiary and the Nominee all other notices, documents, communications or information provided to Shareholders under the Shareholders Deed or the Constitution at the same time as it sends such notice to Shareholders.

7.5 **Shareholders meetings and voting rights**

- (a) The Nominee hereby:
 - (i) acknowledges that the Appointing Beneficiary has, pursuant to the Shareholders Deed, irrevocably appointed the Manager as its attorney to provide on its behalf any vote, consent or approval that is required from, or may be given by, the Appointing Beneficiary in its capacity as a Shareholder under the Corporations Act, the Shareholders Deed or the Constitution, subject to certain prescribed exceptions (such power of attorney together with any equivalent power of attorney that may be given by the Nominee as holder of the Nominee Shares the **Power of Attorney**); and
 - (ii) appoints the Appointing Beneficiary as its attorney to exercise any vote, consent or approval attached to the Nominee Shares, in each case with the exception of the of those votes, consents and approvals which are subject to the Power of Attorney. Each attorney may appoint a sub-attorney in writing in accordance with the Constitution.
- (b) Each party acknowledges that the right to exercise any vote, consent or approval attached to the Shares is subject to any power of attorney granted by the Shareholders pursuant to the Shareholders Deed.
- (c) Subject to the Shareholders Deed (including the Power of Attorney), the appointment of the Appointing Beneficiary as the Nominee's attorney as referred to in this clause 7 shall extend to entitle the Appointing Beneficiary or its proxies (as the case may be) to attend, speak and vote, and to demand a poll or join in demanding a poll, at

the relevant Shareholders meeting and to consent to any resolution to be considered at a meeting.

- (d) The Nominee may but is not required to attend at any Shareholder meetings and shall not, and the Appointing Beneficiary directs the Nominee not to, cast a vote on any resolution in respect of the Company, except through its attorneys appointed under this clause 7.
- (e) The Company's decision as to the validity of an appointment of an attorney referred to in this clause 7 will be final and binding.
- (f) The Nominee has no responsibility or liability for any act or omission of any person that it appoints as an attorney under this clause 7, or for any sub-attorney.
- (g) The Nominee is not, for any reason, liable to the Company, the Appointing Beneficiary or any other person for any Loss arising out of or in connection with any meeting or proposed meeting of Shareholders, requisition, execution of any documents, any voting or abstention, including if the meeting of the shareholders of the Company is not quorate or properly formed.

7.6 No meetings of Company Appointing Beneficiaries

For the avoidance of doubt, there shall be no meetings of the Company Appointing Beneficiaries of the Company Separate Trusts.

7.7 Other corporate actions

The Company undertakes to the Nominee that it will comply with the provisions in the Shareholders Deed regarding the Nominee, Nominee Shares and Company Appointing Beneficiaries in respect of other corporate actions.

8. AUTHORISED PERSONS

8.1 Authorised Persons

The Appointing Beneficiary may notify the Nominee (with a copy to the Company) of persons who are Authorised Persons for the purposes of the rights and obligations of the Appointing Beneficiary under this Deed (including, but not limited to, the service of an Instruction under clause 2.4).

8.2 Variation of Authorised Person

The Appointing Beneficiary may vary its Authorised Persons by written notice to both the Nominee and the Company.

8.3 Nominee's actions

The Nominee must accept all communications or actions concerning this Deed made by Authorised Persons of the Appointing Beneficiary, provided that those communications or actions are in accordance with this Deed. The Nominee is not obliged to take any action if the communication or action is not made by an Authorised Person, nor to enquire as to the identity of any person if it reasonably believes the person to be an Authorised Person.

8.4 Nominee's reliance on an Instruction

If the Nominee receives an Instruction from the Appointing Beneficiary in accordance with this Deed in circumstances where it is reasonable for the Nominee to assume it was from an Authorised Person of the Appointing Beneficiary, the Nominee is not liable for any properly performed action or omission of the Nominee in reliance on that Instruction.

9. CHANGE OF NOMINEE

9.1 Retirement of the Nominee

- (a) The Nominee may, by giving three months' written notice (or such lesser notice period agreed by the Company) to the Company Appointing Beneficiaries and the Company, retire as the Nominee of all (but not some) of the Company Separate Trusts. If the Nominee retires under this clause 9.1(a), such retirement shall have effect as at the last day of the relevant notice period.
- (b) The Company may, by giving 30 days' written notice (or such lesser notice period agreed by the Nominee) to the Nominee, remove the Nominee as Nominee of all (but not some) of the Company Separate Trusts. If the Company removes the Nominee under this clause 9.1(b), such removal shall have effect as at the last day of the relevant notice period.

9.2 New Nominee

- (a) If the Nominee retires or is removed under clause 9.1, an Appropriately Licensed Nominee nominated by the Company shall be appointed as the replacement Nominee for each relevant Company Separate Trust. If no such person is nominated by the Company by the date of the Nominee's retirement, the Nominee will (acting reasonably) nominate an Appropriately Licensed Nominee as a replacement nominee and the person so nominated shall be appointed as the replacement nominee of each relevant Company Separate Trust.
- (b) In each case the "appointment" of a replacement nominee means the entry by the replacement nominee into a deed under which it agrees to act as bare trustee of each Company Separate Trust, and to provide the nominee and custody services provided in the relevant Nominee Deed for the benefit of the relevant Company Appointing Beneficiary on the terms and conditions of the relevant Nominee Deed in place of the Nominee as outgoing bare trustee. The Company and the Nominee must do all things reasonably necessary to facilitate the appointment of a replacement nominee in this manner.
- (c) Despite anything else in this Deed and the other Nominee Deeds, the retirement or removal of the Nominee and the appointment of a replacement nominee is not complete until the replacement nominee executes one or more deeds in favour of the Company Appointing Beneficiaries by which it covenants to be bound by the Nominee Deeds as if it had originally been a party to them.

9.3 Release of the Nominee

When the Nominee retires or is removed in accordance with clause 9.1, the Nominee is released from all obligations in relation to the Separate Trust arising after the time it retires, except that the Nominee is still obliged to comply with clause 9.2(b) including by delivering all books and records relating to the Separate Trust in its possession at the relevant time to the replacement nominee.

9.4 **Costs of replacing the Nominee**

All reasonable costs incurred by the Nominee and all costs of any replacement nominee and the Company in connection with the retirement or removal and replacement of the Nominee shall be borne by the Company.

10. **LIMITATION OF LIABILITY AND INDEMNITY**

10.1 **Limited liability**

- (a) A liability arising under or in connection with this Deed 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 10.2(a). This limitation of the Nominee's liability applies despite any other provision of this Deed 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 Deed.
- (b) No person may sue the Nominee in any capacity other than as Nominee of the 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 10.1 (except this clause 10.1(c)) shall not apply to any liability or obligation of the Nominee to the extent that it is not satisfied because under this Deed 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 10.2(a), as a result of the Nominee's fraud, negligence or wilful default.
- (d) It is acknowledged that the Company is responsible under this 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 this Deed) will be considered fraud, negligence or wilful default of the Nominee for the purpose of clauses 10.1(c) or 10.2(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.

10.2 **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 of the Separate Trust, except to the extent that any such Loss arises as a result of the Nominee's fraud, negligence or wilful default; or
 - (ii) the Nominee acting in connection with this Deed, 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 10.2(a).

10.3 **The Nominee not to incur liability**

Despite any other provision of this Deed, the Nominee is not required to do anything under or in connection with this Deed (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 10.1.

10.4 **Counsel's opinion**

Without limiting the right of the Nominee, or the Appointing Beneficiary, 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 Deed or of any document (including the Shareholders Deed and the Constitution) or statute or as to the administration of the Separate Trust without being liable to the Appointing Beneficiary or the Company for any act done or left undone by the Nominee in accordance with that opinion.

10.5 **Reimbursement and indemnity**

- (a) Subject to clause 10.5(b), the Company undertakes to the Appointing Beneficiary and to the Nominee that it will reimburse the Nominee for all reasonable out-of-pocket expenses and any internal costs of the Nominee relating to actions and directions of the Appointing Beneficiary in relation to its Nominee Shares.
- (b) If the Company suffers any Loss or incurs or is liable to the Nominee for any Loss:
 - (i) in relation to any taxes or duties arising in relation to any Nominee Shares or dealings in Nominee Shares;
 - (ii) arising in connection with any action or direction by the Appointing Beneficiary which is in breach of any legal or contractual obligation (including breach of this Deed or the Shareholders Deed);
 - (iii) arising as a result of actions or directions of the Appointing Beneficiary that are unreasonable or otherwise outside of the ordinary course (for example, persistent requests for documents beyond what would reasonably be expected); or
 - (iv) arising as a result of a breach by the Appointing Beneficiary of this Deed,then the Appointing Beneficiary must indemnify the Company against such Loss.

11. **FEES**

- (a) From the Effective Date until the earlier of:
 - (i) the termination of the Separate Trust; and
 - (ii) the date on which the Nominee ceases to be registered on the register of members held by the Company and the Trust Register as the legal owner of all of the Shares and Accretions held in the Separate Trust (including as a result of the retirement or removal of the Nominee pursuant to the terms of this Deed),the Nominee is entitled to, and the Company must pay to the Nominee, the fees which are set out in Schedule 2.
- (b) If the fees are payable in respect of a period and the fees commence or cease to be payable during the period, the fees must be adjusted on a proportionate basis.

12. DURATION OF SEPARATE TRUSTS

12.1 Commencement date

The Separate Trust commences on the Effective Date.

12.2 Termination and termination date

The Separate Trust will terminate on the earlier of:

- (a) the date on which the Appointing Beneficiary is registered on the register of members held by the Company as the legal owner of all of the Shares and Accretions previously held in the Separate Trust (and the Separate Trust is removed from the Trust Register);
- (b) the date on which the Nominee (or any duly appointed replacement nominee) ceases to be registered on the register of members held by the Company and the Trust Register as the legal owner of all of the Shares and Accretions held in the Separate Trust;
- (c) if the Company is wound-up, the date on which that proportion of the proceeds of realisation payable in respect of the Shares held in the Separate Trust is distributed to the Appointing Beneficiary or, if no proceeds of realisation are to be distributed to the Appointing Beneficiary, the date on which the Company is wound-up;
- (d) the date on which the Separate Trust is terminated by the operation of any applicable laws; and
- (e) the date that is eighty (80) years from the day before the date of commencement of the Separate Trust.

13. GST

- (a) Any consideration or amount payable under this Deed, including any non-monetary consideration (as reduced in accordance with clause 12(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a supply made under or in connection with this Deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the supply (**Recipient**) equal to the amount of GST payable on that supply as calculated by the party making the supply (**Supplier**) in accordance with the GST Act.
- (c) The Additional Amount payable under clause 12(b) is payable at the same time and in the same manner as the Consideration for the supply, and the Supplier must provide the Recipient with a tax invoice within the same month where reasonably practicable and, in any event, no later than fourteen (14) days after the time of payment of the Additional Amount.
- (d) If for any reason (including, without limitation, the occurrence of an adjustment event) the amount of GST payable on a supply (taking into account any decreasing or increasing adjustments in relation to the supply) varies from the Additional Amount payable by the Recipient under clause 12(b):
 - (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Act; and

- (iii) the Supplier must notify the Recipient of the refund, credit or further amount within the same month where reasonably practicable and, in any event, no later than fourteen (14) days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an adjustment event in relation to the supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an adjustment note within the same month where reasonably practicable and, in any event, no later than fourteen (14) days after becoming aware of the occurrence of the adjustment event.
- (e) Despite any other provision in this Deed, if an amount payable under or in connection with this Deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any input tax credit to which that party is entitled in respect of that Amount Incurred before the Additional Amount is calculated.

14. NOTICES

14.1 Notices

- (a) A notice, demand, consent or communication under this Deed (**Notice**) must be:
 - (i) in writing, in English and signed by a person duly authorised by the sender; and
 - (ii) hand delivered or sent by prepaid post or email to the recipient's address for Notices specified in this clause, as varied by any Notice given by the recipient to the sender.
- (b) A notice, consent or other communication that complies with this clause takes effect when received (or at a later time specified in it), and is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, on the third Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
 - (iii) if sent by email, when sent by the sender unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee,

but if the delivery by hand or transmission by email does not take place on a Business Day or takes place after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

- (c) A person's addresses are those set out below, or as the person notifies the sender:

The Company and the Appointing Beneficiary

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: Level 1, 575 Bourke St, Melbourne VIC 3000

Attention: Russell Beasley

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

15. AMENDMENT AND ASSIGNMENT

15.1 Amendment

This Deed can only be amended or replaced with the written approval of the Nominee and the Company, and no amendment or replacement is effective to the extent that:

- (a) it results in the Separate Trust created under this Deed ceasing to be a bare trust or the Appointing Beneficiary ceasing to be absolutely entitled to the Separate Trust Property; or
- (b) it affects any of the rights, title or interest of the Appointing Beneficiary in any of the property held in the Appointing Beneficiary's Separate Trust (including, without limitation, any effect on any of the voting, income or capital rights of the Appointing Beneficiary relating to its Nominee Shares).

15.2 Assignment

A party may assign, encumber or otherwise deal with its rights under this Deed with the written consent of the other parties.

16. GENERAL

16.1 Governing law

- (a) This Deed is governed by the law in force in the State of Victoria.
- (b) Each party submits to the jurisdiction of the courts of the State of Victoria and of any court that may hear appeals therefrom for any proceedings in connection with this Deed.

16.2 Liability for expenses

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this Deed.

16.3 Giving effect to documents

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Deed.

16.4 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 Deed. 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 Deed.

16.5 Operation of this Deed

- (a) Subject to clause 16.5(b), this Deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Deed and has no further effect.
- (b) Any right that a person may have under this Deed is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Deed enforceable, unless this would materially change the intended effect of this Deed.

16.6 Counterparts

This Deed may be executed in counterparts. All executed counterparts constitute one document.

SCHEDULE 1

Appointing Beneficiary

Name of Shareholder	Contact details	Shareholding
[Name]	[Address]	[insert]

SCHEDULE 2

Nominee Fees

The Company agrees to pay to the Nominee the following aggregate fee for providing the services described in the Nominee Deeds (including this Deed):

\$1,250 (+GST) per quarter, paid in advance.

EXECUTED as a deed.

Each person who executes this Deed 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.

Each person who signs this Deed confirms that the page on which he or she signs is in a full copy of the document (including annexures).

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