



# ASX Announcement

Thursday, 22 August 2019

## SHELL ENERGY AUSTRALIA PROPOSAL TO ACQUIRE ERM POWER

- **Proposed offer price of \$2.465<sup>1</sup> cash per share**
- **38.4% premium to 1-month VWAP to 21 August 2019**
- **Unanimous Board recommendation<sup>2</sup>**
- **Founding and major shareholder, Trevor St Baker, intends to vote in favour<sup>3</sup>**
- **Acquisition by way of scheme of arrangement**

ERM Power Limited (**ASX:EPW**), ("ERM Power") today announced it has entered into a scheme implementation deed with Shell Energy Australia Pty Ltd ("Shell Energy Australia") under which Shell Energy Australia proposes to acquire 100% of the share capital of ERM Power for a cash price of \$2.465<sup>4</sup> per share, by way of a scheme of arrangement ("Scheme").

### Recommendation

The directors of ERM Power unanimously recommend that ERM Power shareholders vote in favour of the Scheme in the absence of a Superior Proposal<sup>5</sup> and subject to the independent expert concluding in its independent expert's report (and continuing to conclude) that the Scheme is in the best interests of ERM Power shareholders.

Subject to those same qualifications, all directors of ERM Power, who collectively have a relevant interest in approximately 3.2% of the total number of ERM Power shares on issue, intend to vote or procure the vote of those shares in favour of the Scheme.

### Independent board committee

Given the relationship between Mr Trevor St Baker and Mr Philip St Baker, it was considered appropriate for the board of directors of ERM Power ("Board") to form an independent board committee of all the other directors of the Board, to consider the proposal. The independent board committee recommended to the Board that they approve entry by ERM Power into the scheme implementation deed.

### Scheme consideration and dividends

The scheme consideration of \$2.465<sup>6</sup> per share values ERM Power's equity at approximately \$617 million<sup>7</sup> and represents a 38.4% premium to the 1-month volume weighted average price ("VWAP") of an ERM Power share to 21 August 2019 of \$1.78.

The Board has today (with the FY2019 full year results) declared a fully franked ordinary dividend of \$0.045 per share ("Ordinary Dividend"), which will be paid on 9 October 2019.

In addition, the Board currently intends to declare and pay a special dividend of up to \$0.085 per share prior to implementation of the Scheme ("Special Dividend") if the Scheme is approved by ERM Power shareholders and the Court. The Board's final decision in relation to the declaration and payment of the Special Dividend will depend upon a number of factors, including the availability of franking credits, the requirements under the *Corporations Act 2001* (Cth) and ERM Power having received a favourable draft class ruling from the Australian Taxation Office. Further details of the Special Dividend will be set out in ERM Power's scheme booklet relating to the Scheme.

<sup>1</sup> The scheme consideration of \$2.465 per share will be reduced by the cash amount of the Ordinary Dividend and any Special Dividend paid by ERM Power.

<sup>2</sup> In the absence of a Superior Proposal and subject to the independent expert concluding in its independent expert's report (and continuing to conclude) that the Scheme is in the best interests of ERM Power shareholders.

<sup>3</sup> Mr St Baker's full statement of support in favour of the Scheme, including the qualifications, appears below in this announcement.

<sup>4</sup> See footnote 1.

<sup>5</sup> In this announcement, "Superior Proposal" has the same meaning as given in the scheme implementation deed.

<sup>6</sup> See footnote 1.

<sup>7</sup> Based on 250,288,527 fully paid ordinary shares as at 21 August 2019.

The Ordinary Dividend and the Special Dividend (if paid), will reduce the scheme consideration by an equivalent amount. The franking credits attached to these dividends are potentially worth up to approximately \$0.055 per share (for those shareholders who are able to realise the full benefit of franking credits<sup>8</sup>). The scheme consideration will not be reduced by the value of the franking credits.

### Transaction highlights

- **Scheme consideration premium:** the scheme consideration of \$2.465<sup>9</sup> represents an attractive premium of:
  - 43.3% premium to the closing price of an ERM Power share on 21 August 2019 of \$1.72;
  - 38.4% premium to the 1-month VWAP of an ERM Power share to 21 August 2019 of \$1.78; and
  - 32.1% premium to the 3-month VWAP of an ERM Power share to 21 August 2019 of \$1.87.
- **Franking benefit:** there is potential value in the franking credits attached to the Ordinary Dividend and the Special Dividend of up to approximately \$0.055 per share (for those shareholders who are able to realise the full benefit of franking credits).
- **Certainty of value:** the 100% cash consideration provides ERM Power shareholders with certainty of value and the opportunity to realise in full their investment for cash.
- **Limited conditionality:** the Scheme is subject to customary conditions (including shareholder approval, Court approval and the independent expert concluding that the Scheme is in the best interests of ERM Power shareholders) and is not subject to any regulatory or financing conditions or further due diligence.
- **No outstanding regulatory approvals:** Shell Energy Australia has confirmed to ERM Power that it has obtained all necessary regulatory approvals for the Scheme, including confirmations from the Foreign Investment Review Board and the Australian Competition and Consumer Commission.

### ERM Power Board unanimously recommends the Scheme

ERM Power's Chair Julieanne Alroe said:

"The Board believe that the proposed all-cash proposal represents compelling value and provides an attractive opportunity for shareholders to realise certain value at a significant premium to market.

The Board has carefully considered the advantages and disadvantages of the proposed Scheme and believes that the offer price of \$2.465<sup>10</sup> cash per share recognises the strategic value of our business and our success in becoming a leading Australian energy company.

The directors of ERM Power unanimously recommend that ERM Power shareholders vote in favour of the Scheme in the absence of a Superior Proposal and subject to the independent expert concluding in its independent expert's report (and continuing to conclude) that the Scheme is in the best interests of ERM Power shareholders."

ERM Power's Chief Executive Officer Jon Stretch said:

"ERM Power has grown rapidly to become the second largest electricity retailer to commercial and industrial customers in Australia with market-leading customer satisfaction and an enviable culture built by engaged and enabled people.

Our strategy across electricity supply and demand aligns well with Shell's global electrification and energy solutions ambitions. This is a strong demonstration of the success of our strategy, the capability of our people and our ability to grow a generation, retailing and energy solutions business that supports the transition to renewables. Shell's considerable resources and reach would accelerate the opportunity and potential within ERM Power's operations."

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<sup>8</sup> Whether an ERM Power shareholder will be in a position to derive the full benefit of the franking credits will depend on their particular circumstances.

<sup>9</sup> See footnote 1.

<sup>10</sup> See footnote 1.

Shell Australia's Country Chair Zoe Yujnovich, said:

"This acquisition aligns with Shell's global ambition to expand our integrated power business and builds on Shell Energy Australia's existing gas marketing and trading capability.

"ERM will become our core power and energy solutions platform and this acquisition is a significant step forward in growing Shell's integrated power business in Australia. Upon implementation, we look forward to welcoming ERM's staff and customers to Shell."

Mr Trevor St Baker, who currently has a relevant interest in 68,554,916 ERM Power shares (representing approximately 27.39% of the total number of ERM Power shares on issue), has confirmed to the directors of ERM Power that he intends to vote, or procure the vote of, those shares in favour of the scheme of arrangement, in the absence of a superior proposal to acquire all of the ERM Power shares and subject to the independent expert concluding (and continuing to conclude) that the scheme of arrangement is in the best interests of ERM Power shareholders.

### **Scheme implementation deed**

A full copy of the scheme implementation deed is attached to this announcement.

The implementation of the Scheme is conditional on, among other things, the approval of ERM Power shareholders at a Court-convened meeting and Court approval.

Under the scheme implementation deed, ERM Power is bound by customary exclusivity provisions including "no shop", "no talk", "notification of approaches" and "matching rights" obligations. The "no talk" restriction is subject to a customary fiduciary carve-out.

A reimbursement fee of approximately 1% of ERM Power's equity value will be payable under the scheme implementation deed by ERM Power to Shell Energy Australia in certain customary circumstances should the Scheme not proceed.

### **Indicative timetable and next steps**

ERM Power shareholders do not need to take any action at this point in time.

It is currently anticipated that the scheme booklet will be sent to ERM Power shareholders in or around early October 2019 and that ERM Power shareholders will meet to vote on the Scheme in or around early November 2019.

These dates are indicative and subject to change.

### **Advisers**

Luminis Partners is acting as financial adviser and Herbert Smith Freehills is acting as legal adviser to ERM Power in relation to the Scheme.

### **Shareholders can contact the Scheme information hotline:**

Toll-Free: 1300 502 987

Outside Australia: +61 2 8022 7944

#### **Investors:**

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## **EDITORS' NOTES**

### **About ERM Power**

ERM Power is an Australian energy company operating electricity sales, generation and energy solutions businesses. ERM Power has grown to become the second largest electricity provider to commercial businesses and industrials in Australia by load\*. A growing range of energy solutions products and services are being delivered, including lighting and energy efficiency software and data analytics, to the ERM Power's existing and new customer base. ERM operates 662 megawatts of low emission, gas-fired power stations in Western Australia and Queensland.

\*Based on ERM Power's analysis of latest published information.

### **About Shell**

Shell has been a major investor in Australia for 118 years. It is Australia's leading LNG exporter and supplies around 15% of the east coast domestic gas market. Shell Energy Australia was established in 2017 to create an integrated value chain that positions it to grow through Australia's trend towards greater electrification. This follows substantive success in building integrated power/energy businesses in North America and Europe.



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FREEHILLS

Deed

# Scheme implementation deed

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ERM Power Limited

Shell Energy Australia Pty Ltd

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# Contents

## **Attachment 4**

### **Conditions Precedent certificate**

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## Scheme implementation deed

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Date ► 21 August 2019

Between the parties

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ERM	<b>ERM Power Limited</b> ACN 122 259 223 Level 52 111 Eagle Street Brisbane City QLD 4000 <b>(ERM)</b>
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Shell Australia	<b>Shell Energy Australia Pty Ltd</b> ACN 085 757 446 Shell House 562 Wellington Street Perth WA 6000 <b>(Shell Australia)</b>
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Recitals	<ol style="list-style-type: none"><li>1 The parties have agreed that Shell Australia will acquire all of the ordinary shares in ERM by means of a scheme of arrangement under Part 5.1 of the Corporations Act between ERM and the Scheme Shareholders.</li><li>2 The parties have agreed to implement the scheme of arrangement on the terms and conditions of this deed.</li></ol>
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This deed witnesses as follows:

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## 1 Definitions and interpretation

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### 1.1 Definitions

The meanings of the terms used in this deed are set out in Schedule 2.

### 1.2 Interpretation

Schedule 2 contains interpretation rules for this deed.

### 1.3 Deed components

This deed includes any schedule.

## 2 Agreement to proceed with the Transaction

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- (a) ERM agrees to propose the Scheme on and subject to the terms and conditions of this deed.
- (b) Shell Australia agrees to assist ERM to propose the Scheme on and subject to the terms and conditions of this deed.
- (c) ERM and Shell Australia agree to implement the Scheme on and subject to the terms and conditions of this deed.

## 3 Conditions Precedent and pre-implementation steps

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### 3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme are not binding, until each of the following Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 3.

- (a) **Shareholder approval:** ERM Shareholders agree to the Scheme at the Scheme Meeting by the requisite majorities under subparagraph 411(4)(a)(ii) of the Corporations Act;
- (b) **Independent Expert:** the Independent Expert:
  - (1) issues an Independent Expert's Report which concludes that the Scheme is in the best interests of ERM Shareholders before the time when the Scheme Booklet is registered by ASIC; and
  - (2) does not change its conclusion or withdraw its Independent Expert's Report before 8.00am on the Second Court Date;



- (c) **Court approval:** the Court approves the Scheme in accordance with paragraph 411(4)(b) of the Corporations Act;
- (d) **Restraints:** no temporary, preliminary or final restraining order, injunction, decision or decree that would prevent, prohibit or otherwise materially adversely affect the Scheme, which has been made by a court of competent jurisdiction or other Australian Government Agency on the application of an Australian Government Agency, is in effect at 8.00am on the Second Court Date;
- (e) **No ERM Material Adverse Change:** no ERM Material Adverse Change occurs, is announced or becomes known to Shell Australia between (and including) the date of this deed and 8.00am on the Second Court Date;
- (f) **No ERM Prescribed Occurrence:** no ERM Prescribed Occurrence occurs, is announced or becomes known to Shell Australia between (and including) the date of this deed and 8.00am on the Second Court Date;
- (g) **No ERM Regulated Event:** no ERM Regulated Event occurs, is announced or becomes known to Shell Australia between (and including) the date of this deed and 8.00am on the Second Court Date;
- (h) **No breach of ERM Representations and Warranties:** the ERM Representations and Warranties are true and correct in all material respects as at 8.00am on the Second Court Date, except to the extent any such representation or warranty expressly relates to an earlier date; and
- (i) **No breach of Shell Australia Representations and Warranties:** the Shell Australia Representations and Warranties are true and correct in all material respects as at 8.00am on the Second Court Date, except to the extent any such representation or warranty expressly relates to an earlier date.

### 3.2 Satisfaction of Conditions Precedent

- (a) Each party must, to the extent it is within its respective power to do so, use its best endeavours to procure that:
  - (1) each of the Conditions Precedent are satisfied as soon as practicable after the date of this deed and remain satisfied; and
  - (2) there is no occurrence within its control or the control of any of its Subsidiaries that would prevent any of the Conditions Precedent in clause 3.1 being or remaining satisfied.
- (b) ERM will not be in breach of its obligations under clause 3.2(a) to the extent that it takes an action or omits to take an action:
  - (1) as required, contemplated, permitted or permitted not to be done, by this deed; or
  - (2) which has been consented to in writing by Shell Australia (such consent not to be unreasonably withheld or delayed).

### 3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a) (*Shareholder approval*) and 3.1(c) (*Court approval*) cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(e) (*No ERM Material Adverse Change*), 3.1(f) (*No ERM Prescribed Occurrence*), 3.1(g) (*No ERM Regulated Event*) and 3.1(h) (*No breach of ERM Representations and Warranties*) are for the sole benefit of Shell Australia and may only be waived by Shell Australia (in its absolute discretion) in writing.



- (c) The Condition Precedent in clauses 3.1(b) (*Independent Expert*) and 3.1(i) (*No breach of Shell Australia Representations and Warranties*) is for the sole benefit of ERM and may only be waived by ERM (in its absolute discretion) in writing.
- (d) The Condition Precedent in clause 3.1(d) (*Restraints*) is for the benefit of both parties and may only be waived by written agreement between Shell Australia and ERM (in each case in their respective absolute discretion).
- (e) Waiver of a breach or non-satisfaction in respect of one Condition Precedent does not constitute:
  - (1) a waiver of breach or non-satisfaction of any other Condition Precedent resulting from the same event; or
  - (2) a waiver of breach or non-satisfaction of that Condition Precedent resulting from any other event.

### 3.4 Termination on failure of Condition Precedent

- (a) If:
  - (1) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied; or
  - (2) there is an event or occurrence that would, or does, prevent any of the Conditions Precedent being satisfied by the time and date specified in this deed for the satisfaction of that Condition Precedent or such Condition Precedent is otherwise not satisfied by that time and date,then either party may give the other party written notice in accordance with clause 3.5 and the parties must then consult in good faith to:
  - (3) consider and, if agreed, determine, whether the Transaction may proceed by way of alternative means or methods, or whether, in the case of a breach of the Condition Precedent in clauses 3.1(e) (*No ERM Material Adverse Change*), 3.1(f) (*No ERM Prescribed Occurrence*), 3.1(g) (*No ERM Regulated Event*), 3.1(h) (*No breach of ERM Representations and Warranties*) or 3.1(i) (*No breach of Shell Australia Representations and Warranties*), the breach or the effects of the breach are able to be remedied;
  - (4) consider changing and, if agreed, change, the date of the application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing by Shell Australia and ERM (being a date no later than 5 Business Days before the End Date), unless there is no reasonable prospect that the Condition Precedent will be satisfied before the End Date; or
  - (5) consider extending and, if agreed, extend, the relevant date, the End Date, or both,respectively.
- (b) Subject to clauses 3.4(c) and 3.4(d), if the parties are unable to reach agreement under clause 3.4(a):
  - (1) in the case of an event or occurrence contemplated by clause 3.4(a)(1), within 5 Business Days after the date on which the notice under clause 3.5(b) is given;
  - (2) in the case of an event or occurrence, or otherwise in the circumstances, contemplated by clause 3.4(a)(2), by 5 Business Days



before the time and date specified in this deed for the satisfaction of the relevant Condition Precedent; or

- (3) in the case of the circumstances contemplated by clause 3.4(a)(2), by the End Date,

then, unless:

- (4) the relevant Condition Precedent has been waived in accordance with clause 3.3; or
- (5) the party entitled to waive the relevant Condition Precedent in accordance with clause 3.3 confirms in writing to the other party that it will not rely on the event or occurrence that would or does prevent the relevant Condition Precedent from being satisfied,

either party may terminate this deed without any liability to the other party because of that termination. For the avoidance of doubt, nothing in this clause 3.4(b) affects the obligation of ERM to pay the Reimbursement Fee, if it is required to do so under clause 12.

- (c) A party may not terminate this deed pursuant to clause 3.4(b) if:
- (1) the relevant occurrence or event, the failure of the Condition Precedent to be satisfied, or the failure of the Scheme to become Effective, arises out of a breach of clauses 3.2 or 3.5 by that party, although in such circumstances the other party may still terminate this deed; or
- (2) the relevant Condition Precedent is stated in clause 3.3 to be for the sole benefit of the other party.
- (d) If the Condition Precedent in clause 3.1(a) (*Shareholder approval*) is not satisfied only because of a failure to obtain the majority required by sub-subparagraph 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice to the other within 3 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that sub-subparagraph, provided the party has, in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable. If approval is given, the Condition Precedent in clause 3.1(a) (*Shareholder approval*) is deemed to be satisfied for all purposes.

### 3.5 Certain notices relating to Conditions Precedent

If a party becomes aware of:

- (a) the satisfaction of a Condition Precedent or of any material progress towards such satisfaction; or
- (b) the happening of an event or occurrence that will, or would reasonably be likely to, prevent a Condition Precedent being satisfied before the time and date specified for its satisfaction (or being satisfied, if no such time and date is specified),

it must notify the other party in writing, as soon as possible.



## 4 Transaction steps

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### 4.1 Scheme

ERM must propose the Scheme to ERM Shareholders.

### 4.2 No amendment to the Scheme without consent

ERM must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of Shell Australia.

### 4.3 Scheme Consideration

- (a) The parties acknowledge that each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder in accordance with the terms and conditions of this deed and the Scheme.
- (b) Shell Australia undertakes and warrants to ERM (in its own right and separately as trustee on behalf of the Scheme Shareholders) that, in consideration of the transfer to Shell Australia of each ERM Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date Shell Australia will provide to each Scheme Shareholder the Scheme Consideration for each Scheme Share in accordance with the terms and conditions of this deed and the Scheme.

### 4.4 Provision of ERM Share information

- (a) In order to facilitate the provision of the Scheme Consideration, ERM must provide, or procure the provision of, to Shell Australia or a nominee of Shell Australia a complete copy of the ERM Share Register as at the Scheme Record Date (which must include the name, Registered Address and registered holding of each Scheme Shareholder as at the Scheme Record Date), within one Business Day after the Scheme Record Date.
- (b) The details and information to be provided under clause 4.4(a) must be provided in such form as Shell Australia or its nominee may reasonably require.

### 4.5 Performance Rights and ERM Equity Incentives

- (a) **Performance Rights:** ERM confirms and Shell Australia acknowledges that at the date of this deed, there are 5,333,828 performance rights on issue.
- (b) **Vesting of Performance Rights:** ERM confirms and Shell Australia acknowledges that:
  - (1) 281,612 of the Performance Rights will vest in the ordinary course and in accordance with their terms on or about 7 September 2019 in exchange for a cash payment;
  - (2) 280,114 of the Performance Rights will vest in the ordinary course and in accordance with their terms on or about 30 September 2019 in exchange for a cash payment; and
  - (3) subject to the Scheme becoming Effective, ERM will take such action as is necessary to ensure that, prior to the Scheme Record Date, the



remaining 4,772,102 Performance Rights will vest in accordance with their terms, which action will include:

- (A) the ERM Board accelerating the vesting of, or waiving any vesting conditions or vesting periods applying to, any or all Performance Rights (subject to the proper exercise of the ERM Board's discretion);
  - (B) ERM making all necessary applications for waivers under the ASX Listing Rules (if required); and
  - (C) ERM making payments in cash to the holders of these remaining Performance Rights in an amount of \$2.465 (less the amount of the ERM Permitted Dividend per ERM Share) per Performance Right.
- (c) **ERM Equity Incentives:** ERM confirms and Shell Australia acknowledges that subject to the Scheme becoming Effective, ERM will take such action as necessary to ensure that with effect from the Effective Date:
- (1) all ERM Equity Incentives vest in full in accordance with their terms and the relevant unitholders become beneficially entitled to the relevant ERM Shares; and
  - (2) all cash proceeds in respect of the ERM Equity Incentives received by the trustee are distributed to the relevant unitholders who have become beneficially entitled to the ERM Shares.
- (d) **ASX waiver:**
- (1) As soon as reasonably practicable after the date of this deed, ERM must use its reasonable endeavours to procure that ASX grants a waiver from rule 6.23 of the Listing Rules (to the extent required) in connection with any actions to be undertaken by ERM under this clause 4.5.
  - (2) If the waiver referred to in clause 4.5(d)(1) is not obtained before the First Court Date, ERM agrees to seek any approvals that are required from the ERM Shareholders under rule 6.23 of the Listing Rules in connection with any actions to be undertaken by ERM under this clause 4.5.

## 5 Dividends

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### 5.1 ERM Permitted Dividend

- (a) Notwithstanding any other provision of this deed, ERM may (in its absolute discretion) declare and pay to ERM Shareholders a dividend of an amount up to \$0.045 per ERM Share to ERM Shareholders, which may be declared and paid by ERM in the ordinary course in respect of the financial year ending on 30 June 2019 (**ERM Permitted Dividend**).
- (b) The record date for the ERM Permitted Dividend must be on or before the Scheme Record Date.

### 5.2 ERM Special Dividend

- (a) Notwithstanding any other provision of this deed, subject to:



- (1) the Scheme becoming Effective;
- (2) ERM having received a favourable draft class ruling from the Australian Taxation Office; and
- (3) ERM complying with the requirements of section 254T of the Corporations Act,

ERM may (in its absolute discretion) declare and pay a special dividend of an amount up to \$0.085 per ERM Share, which will be fully franked subject to the availability of franking credits and which, to the extent franked, will be no greater than the maximum amount for the dividend to be fully franked by reference to the franking account balance of ERM as at 30 June 2019 *plus* or *minus* any franking credits or franking debits after 30 June 2019 attributable to tax payments or tax refunds attributable to financial years ending on or before 30 June 2019 and will not result in the franking account of the ERM being in deficit after the special dividend is paid (**ERM Special Dividend**) to ERM Shareholders provided that:

- (4) the record date for the ERM Special Dividend must be on or before the Scheme Record Date; and
  - (5) the payment date for the ERM Special Dividend will be determined by ERM (in its absolute discretion), provided that the payment date occurs on or before the Implementation Date.
- (b) To the extent that the payment for the ERM Special Dividend requires approval of the ERM Shareholders, ERM agrees to provide Shell Australia with a copy of the relevant notice of meeting at least 5 Business Days before despatch to ERM Shareholders.

### 5.3 Scheme Consideration reduced by amount of any dividends paid

The Scheme Consideration will be reduced by the cash amount of any dividends that are declared and paid to ERM Shareholders on or before the Implementation Date (including the ERM Permitted Dividend and ERM Special Dividend).

## 6 Implementation

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### 6.1 Timetable

- (a) Subject to clause 6.1(b), each party must use its best endeavours to:
  - (1) comply with their respective obligations under this clause 6; and
  - (2) take all necessary steps and exercise all rights necessary to implement the Transaction,in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 6.1(a) to the extent that such failure is due to circumstances and matters outside the party's control.
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.



- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

## 6.2 ERM's obligations

ERM must take all necessary steps to implement the Scheme as soon as is reasonably practicable and, without limiting the foregoing, (i) use its reasonable endeavours to ensure that each step in the Timetable is met by the relevant date set out beside that step (and must consult with Shell Australia on a regular basis about its progress in that regard), (ii) do any acts it is authorised and able to do on behalf of ERM Shareholders, and (iii) do each of the following:

- (a) **preparation of Scheme Booklet:** subject to clauses 6.3(a) and 6.3(b), prepare the Scheme Booklet in accordance with all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60, applicable Takeovers Panel guidance notes and the Listing Rules;
- (b) **ERM Board recommendation:** include in the Scheme Booklet a statement by the ERM Board:
- (1) unanimously recommending that ERM Shareholders vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of ERM Shareholders; and
  - (2) that each ERM Board Member will (subject to the same qualifications as set out in clause 6.2(b)(1)) vote, or procure the voting of, any ERM Shares held by him or her at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting,
- unless there has been a change of recommendation permitted by clause 6.7;
- (c) **paragraph 411(17)(b) statement:** apply to ASIC for the production of:
- (1) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
  - (2) a statement under paragraph 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (d) **Court direction:** apply to the Court for orders pursuant to subsection 411(1) of the Corporations Act directing ERM to convene the Scheme Meeting;
- (e) **Scheme Meeting:** convene the Scheme Meeting to seek ERM Shareholders' agreement to the Scheme and despatch the Scheme Booklet to ERM Shareholders as soon as practicable after the Court orders in accordance with the orders made by the Court pursuant to subsection 411(1) of the Corporations Act;
- (f) **proxy information:** upon request by Shell Australia made prior to commencement of the Scheme Meeting, inform Shell Australia of the total number of proxy votes received by ERM:
- (1) to vote in favour of the Scheme;
  - (2) to vote against the Scheme;
  - (3) to abstain from voting on the Scheme; and
  - (4) where the proxy may vote at the proxy's discretion;



- (g) **Court documents:** consult with Shell Australia in relation to the content of the documents required for the purpose of each of the Court hearings held for the purpose of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, comments from Shell Australia and its Related Persons on those documents;
- (h) **Court approval:** if the Scheme is approved by ERM Shareholders under subparagraph 411(4)(a)(ii) of the Corporations Act and it can reasonably be expected that all of the Conditions Precedent (other than the Condition Precedent in clause 3.1(c) (*Court approval*)) will be satisfied or waived in accordance with this deed before 8.00am on the Second Court Date, apply to the Court for orders approving the Scheme as agreed to by the ERM Shareholders at the Scheme Meeting;
- (i) **certificate:** at the hearing on the Second Court Date provide to the Court:
- (1) a certificate (signed for and on behalf of ERM) in the form of a deed (substantially in the form set out in Attachment 4) confirming whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(c) (*Court approval*)) have been satisfied or waived in accordance with this deed, a draft of which certificate must be provided by ERM to Shell Australia by 4.00pm on the date that is 2 Business Days prior to the Second Court Date; and
  - (2) any certificate provided to it by Shell Australia pursuant to clause 6.3(i);
- (j) **lodge copy of Court order:** lodge with ASIC an office copy of the Court order in accordance with subsection 411(10) of the Corporations Act approving the Scheme by no later than the Business Day after the date on which the Court order was made (or such later date as agreed in writing by Shell Australia);
- (k) **Scheme Consideration:** if the Scheme becomes Effective, finalise and close the ERM Share Register as at the Scheme Record Date, and determine entitlements to the Scheme Consideration, in accordance with the Scheme and the Deed Poll;
- (l) **transfer and registration:** if the Scheme becomes Effective and subject to Shell Australia having paid the Scheme Consideration in accordance with the Scheme and Deed Poll:
- (1) execute, on behalf of Scheme Shareholders, instruments of transfer of the Scheme Shares to Shell Australia; and
  - (2) register all transfers of the Scheme Shares to Shell Australia on, or as soon as practicable after, the Implementation Date;
- (m) **consultation with Shell Australia in relation to Scheme Booklet:** consult with Shell Australia as to the content and presentation of the Scheme Booklet including:
- (1) providing to Shell Australia drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling Shell Australia to review and comment on those draft documents. In relation to the Independent Expert's Report, Shell Australia's review is to be limited to a factual accuracy review of those parts that include information relating to Shell Australia;
  - (2) taking any reasonable comments made by Shell Australia into account in good faith when producing a revised draft of the Scheme Booklet;



- (3) providing to Shell Australia a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised in order to enable Shell Australia to review the Regulator's Draft before the date of its submission; and
- (4) obtaining written consent from Shell Australia prior to submitting the Regulator's Draft for the form and content in which the Shell Australia Information appears in the Scheme Booklet;
- (n) **lodgement of Regulator's Draft:** as soon as practical, but by no later than 14 days before the First Court Date, provide the Regulator's Draft to ASIC for its review for the purposes of subsection 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Shell Australia as soon as practicable thereafter;
- (o) **ASIC review of the Scheme Booklet:** keep Shell Australia informed of any matters raised by ASIC in relation to the Scheme Booklet or the Transaction, and take into consideration any comments made by Shell Australia in relation to any such matters raised by ASIC;
- (p) **registration of Scheme Booklet:** take all reasonable measures within its control to cause ASIC to register the Scheme Booklet under subsection 412(6) of the Corporations Act;
- (q) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (r) **Independent Expert:** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by the Independent Expert for inclusion in the Scheme Booklet (including any updates thereto);
- (s) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;
- (t) **listing:** subject to clause 6.2(v), not do anything to cause ERM Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Transaction unless Shell Australia has agreed in writing;
- (u) **update Scheme Booklet:** until the date of the Scheme Meeting, promptly update or supplement the Scheme Booklet with, or where appropriate otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement, and seek the Court's approval for the despatch of any updated or supplementary Scheme Booklet. ERM must consult with Shell Australia as to the content and presentation of the updated or supplementary Scheme Booklet, or the market announcement, in the manner contemplated by clause 6.2(m); and
- (v) **suspension of trading:** apply to ASX to suspend trading in ERM Shares with effect from the close of trading on the Effective Date.



### 6.3 Shell Australia's obligations

Shell Australia must take all necessary steps to implement the Scheme as soon as is reasonably practicable and, without limiting the foregoing, must (i) use all reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and must consult with ERM on a regular basis about its progress in that regard), and (ii) do each of the following:

- (a) **Shell Australia Information:** prepare and promptly provide to ERM the Shell Australia Information for inclusion in the Scheme Booklet, including all information regarding the Shell Australia Group required by all applicable laws (including the Corporations Act and the Corporations Regulations), RG 60, applicable Takeovers Panel guidance notes and the Listing Rules, and consent to the inclusion of that information in the Scheme Booklet;
- (b) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by ERM and provide comments promptly on those drafts in good faith;
- (c) **Independent Expert's Report:** provide any assistance or information reasonably requested by ERM or by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Scheme Booklet (including any updates to such report) and any other materials to be prepared by the Independent Expert for inclusion in the Scheme Booklet (including any updates thereto);
- (d) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of subsection 411(1) and paragraph 411(4)(b) of the Corporations Act;
- (e) **Deed Poll:** by no later than the Business Day prior to the First Court Date, execute and deliver to ERM the Deed Poll;
- (f) **accuracy of Shell Australia Information:** before a draft of the Scheme Booklet is lodged with ASIC, and again before the Scheme Booklet is despatched to ERM Shareholders, confirm in writing to ERM that the Shell Australia Information in the Scheme Booklet is accurate and complete, including that it does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (g) **share transfer:** if the Scheme becomes Effective:
  - (1) accept a transfer of the Scheme Shares as contemplated by clause 4.3(b); and
  - (2) execute instruments of transfer in respect of the Scheme Shares;
- (h) **Scheme Consideration:** if the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme and the Deed Poll;
- (i) **certificate:** before the commencement of the hearing on the Second Court Date provide to ERM for provision to the Court at that hearing a certificate (signed for and on behalf of Shell Australia) in the form of a deed (substantially in the form set out in Attachment 4) confirming whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(c) (*Court approval*)) have been satisfied or waived in accordance with this deed, a draft of which certificate must be provided by Shell Australia to ERM by 4.00 pm on the date that is 2 Business Days prior to the Second Court Date;
- (j) **update Shell Australia Information:** until the date of the Scheme Meeting, promptly provide to ERM any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Shell Australia



Information contained in the Scheme Booklet is accurate and complete, including to ensure it does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement; and

- (k) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations.

## 6.4 Conduct of business

- (a) Subject to clause 6.4(b), from the date of this deed up to the date this deed is terminated, ERM must:
- (1) conduct its businesses, operations and trading practices, and must cause each other ERM Group Member to conduct its respective business and operations, in the ordinary and usual course (including substantially consistent with the ERM Policies) and the manner in which each such business, operations and trading practices have been conducted immediately prior to the date of this deed;
  - (2) not enter into any line of business or other activities in which the ERM Group is not engaged as of the date of this deed;
  - (3) ensure that no ERM Regulated Event and no ERM Prescribed Occurrence occurs; and
  - (4) make all reasonable efforts, and procure that each other ERM Group Member makes all reasonable efforts, to maintain and preserve their relationships with Government Agencies, customers, suppliers and others having business dealings with any ERM Group Member.
- (b) Nothing in clause 6.4(a) restricts the ability of ERM, or any ERM Group Member, to take any action:
- (1) which is required, contemplated or permitted by this deed (including, for the avoidance of doubt, clause 8.3(b)) or the Scheme;
  - (2) which has been agreed to in writing by Shell Australia (which agreement must not be unreasonably withheld or delayed) or requested by Shell Australia;
  - (3) which is required by any applicable law, regulation, contract (provided that the contract was entered into prior to the date of this deed and provided also, in the case of clauses 6.4(a)(2), 6.4(a)(3) and 6.4(a)(4), that the contract was Fairly Disclosed in the Disclosure Materials), or by a Government Agency; or
  - (4) which has been Fairly Disclosed in:
    - (A) the Disclosure Materials as being an action that the ERM Group may carry out between (and including) the date of this deed and the Implementation Date; or
    - (B) an announcement made by ERM to ASX, or a publicly available document lodged by ERM or a Subsidiary of ERM with ASIC, in each case prior to the date of this deed, or which would be disclosed in a search of ASIC records or ASX announcements in relation to ERM or a Subsidiary of ERM (as relevant), prior to the date of this deed.



- (c) From the date of this deed until the Second Court Date, ERM will promptly notify Shell Australia orally and in writing of anything of which ERM becomes aware that:
  - (1) makes any of the ERM Representation and Warranties false, inaccurate, misleading or deceptive in any material respect; or
  - (2) would constitute or would reasonably be likely to constitute an ERM Prescribed Occurrences, ERM Regulated Event, ERM Material Adverse Change or breach of this clause 6.4.

## 6.5 Appointment of directors

ERM must, as soon as practicable on the Implementation Date, after the Scheme Consideration has been despatched to Scheme Shareholders in accordance with the terms of the Scheme, take all actions necessary to:

- (a) cause the appointment of the nominees of Shell Australia to the ERM Board (subject to the receipt by ERM of signed consents to act);
- (b) ensure that all directors on the ERM Board, other than the Shell Australia nominees (subject to the receipt by ERM of signed consents to act from each Shell Australia nominee) resign from the ERM Board; and
- (c) ensure that all directors on the boards of ERM's Subsidiaries resign and cause the appointment of nominees of Shell Australia to those boards (subject to the receipt by ERM of signed consents to act from each of those nominees).

## 6.6 Change of control provisions

As soon as reasonably practicable after the date of this deed, ERM must seek to identify any change of control or unilateral termination rights in any material contract to which a member of the ERM Group is a party which would, or would reasonably be likely to, be triggered by or exercised in response to the implementation of the Transaction. In respect of the material contracts:

- (a) ERM must propose to and agree with Shell Australia (each party acting reasonably) a course of action (which, among other things, will have due regard to applicable legal restrictions) and then ERM will initiate contact, including having joint discussions if required, with the relevant counterparties and request that they provide any consents required (but, for the avoidance of doubt, no Shell Australia Group Member or any Related Person of any ERM Group Member may contact any counterparties without ERM or without ERM's prior written consent);
- (b) ERM must use reasonable endeavours to obtain such consents as expeditiously as possible, including by promptly providing any information reasonably required by the counterparties; and
- (c) Shell Australia must use reasonable endeavours to provide information reasonably requested by counterparties to support ERM in gaining the consents referred to in clause 6.6(b),



provided that if ERM has used all reasonable endeavours, a failure by an ERM Group Member to obtain any consent from a counterparty, or the exercise of a termination right by a counterparty, will not constitute a breach of this deed (including this clause 6.6) by ERM and will, together with any resulting consequences, be disregarded when assessing the operation of any other provision of this deed (including for the purposes of assessing where there has been a Material Adverse Change).

## 6.7 ERM Board recommendation

- (a) ERM must use its best endeavours to procure that, subject to clause 6.7(b), the ERM Board Members unanimously recommend that ERM Shareholders vote in favour of the Scheme at the Scheme Meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of ERM Shareholders, and that the Scheme Booklet include a statement by the ERM Board to that effect.
- (b) ERM must use its best endeavours to procure that the ERM Board collectively, and the ERM Board Members individually, do not adversely change or withdraw its, his or her recommendation to vote in favour of the Scheme (subject to the qualifications contemplated by clause 6.7(a)) unless:
- (1) the Independent Expert provides a report to ERM (including either the Independent Expert's Report or any update of, or any revision, amendment or supplement to, that report) that concludes that the Scheme is not in the best interests of ERM Shareholders;
  - (2) ERM has received a Superior Proposal and ERM has complied with its obligations under clause 11;
  - (3) the change or withdrawal occurs because of a requirement or request by a court or Government Agency that one or more ERM Board Members abstain or withdraw from making a recommendation that ERM Shareholders vote in favour of the Scheme after the date of this deed; or
  - (4) the ERM Board has determined, after receiving written legal advice from its external legal advisers, that the ERM Board collectively, and the ERM Board Members individually, by virtue of the directors' duties of the directors of ERM, is or are required to change or withdraw its of their recommendation.
- (c) For the purposes of clause 6.7(b), customary qualifications and explanations contained in the Scheme Booklet in relation to a recommendation to vote in favour of the Scheme to the effect that the recommendation is made:
- (1) in the absence of a Superior Proposal; and
  - (2) subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of ERM Shareholders,
- will not be regarded as a failure to make, or a change or withdrawal of, a recommendation in favour of the Scheme.
- (d) Despite anything to the contrary in this clause 6.7, a statement made by ERM or the ERM Board to the effect that no action should be taken by ERM Shareholders pending the assessment of a Competing Proposal by the ERM Board and its advisers shall not contravene this clause 6.7.
- (e) Nothing in this clause 6.7 limits ERM's obligations in clause 12.2.



## **6.8 Conduct of Court proceedings**

- (a) ERM and Shell Australia are entitled to separate representation at all Court proceedings affecting the Transaction.
- (b) This deed does not give ERM or Shell Australia any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.
- (c) ERM and Shell Australia must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this deed.

## **6.9 Scheme Booklet content and responsibility statements**

- (a) The Scheme Booklet will contain a responsibility statement to the effect that:
  - (1) Shell Australia is responsible for the Shell Australia Information contained in the Scheme Booklet; and
  - (2) ERM is responsible for the ERM Information contained in the Scheme Booklet.
- (b) If the parties disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet.
- (c) If after a reasonable period of consultation under clause 6.9(b), ERM and Shell Australia are unable to agree on the form or content of the Scheme Booklet:
  - (1) where the determination relates to Shell Australia Information, Shell Australia will make the final determination as to the form and content of the Shell Australia Information; and
  - (2) in any other case, ERM will make the final determination as to the form and content of the Scheme Booklet.

# **7 Representations and warranties**

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## **7.1 Shell Australia's representations and warranties**

Shell Australia represents and warrants to ERM (in its own right and separately as trustee or nominee for each of the other ERM Indemnified Parties) each of the Shell Australia Representations and Warranties.

## **7.2 Shell Australia's indemnity**

- (a) Shell Australia agrees with ERM (in its own right and separately as trustee or nominee for each of the other ERM Indemnified Parties) to indemnify ERM and each of the ERM Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that ERM or any of the other ERM Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Shell Australia Representations and Warranties.
- (b) ERM receives and holds the benefit of clause 7.2(a) to the extent it relates to each ERM Indemnified Party as trustee for each of them.



### **7.3 ERM's representations and warranties**

ERM represents and warrants to Shell Australia each of the ERM Representations and Warranties.

### **7.4 ERM's indemnity**

- (a) ERM agrees with Shell Australia (in its own right and separately as trustee or nominee for each Shell Australia Indemnified Party) to indemnify Shell Australia and each of the Shell Australia Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Shell Australia or any of the other Shell Australia Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the ERM Representations and Warranties.
- (b) Shell Australia receives and holds the benefit of clause 7.4(a) to the extent it relates to each Shell Australia Indemnified Party as trustee for each of them.

### **7.5 Qualifications on ERM's representations, warranties and indemnities**

- (a) The ERM Representations and Warranties made or given in clause 7.3 and the indemnity in clause 7.4, are each subject to matters that:
  - (1) have been Fairly Disclosed in the Disclosure Materials;
  - (2) disclosed in an announcement by ERM to ASX, or a publicly available document lodged by ERM or a Subsidiary of ERM with ASIC, in each case prior to the date of this deed, or which would be disclosed in a search of ASIC records or ASX announcements in relation to ERM or a Subsidiary of ERM (as relevant), in each case, 2 Business Days prior to the date of this deed; or
  - (3) are required, contemplated or permitted by this deed or the Scheme.
- (b) Where an ERM Representation and Warranty is given 'so far as ERM is aware' or with a similar qualification as to ERM's awareness or knowledge, ERM's awareness is limited to and deemed only to include those facts, matters or circumstances only of which a Specified ERM Individual is actually aware as at the date of this deed.

### **7.6 Survival of representations and warranties**

Each representation and warranty in clauses 7.1 and 7.3:

- (a) is severable;
- (b) survives the termination of this deed; and
- (c) is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this deed.

### **7.7 Survival of indemnities**

Each indemnity in this deed (including those in clauses 7.2 and 7.4):

- (a) is severable;
- (b) is a continuing obligation;



- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survives the termination of this deed.

## **7.8 Timing of representations and warranties**

Each representation and warranty made or given under clauses 7.1 or 7.3 is given:

- (a) at the date of this deed; and
- (b) at the date the Scheme Booklet is despatched to ERM Shareholders; and
- (c) at 8.00am on the Second Court Date,

unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.

## **7.9 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

# **8 Releases**

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## **8.1 ERM and ERM directors and officers**

- (a) Shell Australia agrees with ERM (in its own right and separately as trustee or nominee for each of the other ERM Indemnified Parties) that it:
  - (1) releases its rights; and
  - (2) will not make, and that after the Implementation Date it will procure that each ERM Group Member does not make, any claim, against any ERM Indemnified Party (other than ERM and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
    - (3) any breach of any representations, covenants and warranties of ERM or any other member of the ERM Group in this deed;
    - (4) any disclosures containing any statement which is false or misleading whether in content or by omission; or
    - (5) any failure to provide information, whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the ERM Indemnified Party has engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of



doubt, nothing in this clause 8.1(a) limits Shell Australia's rights to terminate this deed under clause 13.

- (b) Clause 8.1(a) is subject to any Corporations Act restriction and will be read down accordingly.
- (c) ERM receives and holds the benefit of this clause 8.1 to the extent it relates to each ERM Indemnified Party as trustee for each of them.

## 8.2 Shell Australia and Shell Australia directors and officers

- (a) ERM agrees with Shell Australia (in its own right and separately as trustee or nominee for each of the other Shell Indemnified Parties) that it:
  - (1) releases its rights; and
  - (2) will not make any claim,against any Shell Australia Indemnified Party (other than Shell Australia and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:
  - (3) any breach of any representations, covenants and warranties of Shell Australia or any other member of the Shell Australia Group in this deed;
  - (4) any disclosure containing any statement which is false or misleading whether in content or by omission; or
  - (5) any failure to provide information,whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Shell Australia Indemnified Party has engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this clause 8.2(a) limits ERM's rights to terminate this deed under clause 13.
- (b) Clause 8.2(a) is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Shell Australia receives and holds the benefit of this clause 8.2 to the extent it relates to each Shell Australia Indemnified Party as trustee for each of them.

## 8.3 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and the Transaction completing, Shell Australia undertakes in favour of ERM and each other ERM Indemnified Party that it will:
  - (1) for a period of seven years from the Implementation Date, ensure that the constitutions of ERM and each other ERM Group Member continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a ERM Group Member; and
  - (2) procure that ERM and each other ERM Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and, without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for such directors and officers is maintained for a



period of seven years from the retirement date of each director and officer (and ERM may, at its election, pay any amounts necessary to ensure such maintenance upfront prior to the implementation of the Scheme).

- (b) Shell Australia acknowledges that notwithstanding any other provision of this deed, ERM may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to such seven year period referred to in 8.3(a)(2), and that any actions to facilitate that insurance or in connection with such insurance will not be an ERM Regulated Event or a breach of any provision of this deed and will be disregarded when assessing the operation of any other provision of this deed, provided that:
- (1) the scope of coverage of the policy will be on the same or substantially the same terms as the existing insurance policies in place for directors or officers of the ERM Group at the date of this deed (other than with respect to the run-off period); and
  - (2) ERM will use reasonable endeavours to obtain the most attractive commercial terms (including in relation to costs) for the policy from a reputable insurer.
- (c) The undertakings contained in clause 8.3(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (d) ERM receives and holds the benefit of clause 8.3(a), to the extent it relates to the other ERM Indemnified Parties, as trustee for each of them.

## 9 Public announcement

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### 9.1 Announcement of the Transaction

Immediately after the execution of this deed:

- (a) ERM must issue a public announcement; and
  - (b) Shell Australia may issue a public announcement,
- in each case, in a form agreed in writing between the parties.

### 9.2 Public announcements

Subject to clauses 9.1 and 9.3, no public announcement or public disclosure of the Transaction or any other transaction the subject of this deed or the Scheme may be made other than in a form approved by each party in writing (acting reasonably), but each party must use all reasonable endeavours to provide such approval as soon as practicable. For the avoidance of doubt, this clause 9.2 does not apply to any announcement or disclosure relating to a Competing Proposal.

### 9.3 Required disclosure

Where a party is required by applicable law or the Listing Rules to make any announcement or to make any disclosure in connection with the Transaction or any other transaction the subject of this deed or the Scheme, it may do so despite clause 9.2 but must use reasonable endeavours, to the extent practicable and lawful, to consult with the other party prior to making the relevant disclosure.



## 10 Confidentiality

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- (a) ERM and Shell Australia acknowledge and agree that the Confidentiality Deed and the Clean Team Confidentiality Deed:
  - (1) continue to operate after the date of this deed; and
  - (2) survive termination of this deed.
- (b) Shell Australia undertakes in favour of ERM to comply with the obligations imposed on Shell Energy Holdings Australia Limited in the Confidentiality Deed.

## 11 Exclusivity

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### 11.1 No shop and no talk

During the Exclusivity Period, ERM must not, and must ensure that each of its Related Persons and Related Bodies Corporate and the Related Persons of those Related Bodies Corporate do not, directly or indirectly:

- (a) **(no shop)** solicit, invite, encourage or initiate (including by the provision of non-public information to any Competing Bidder) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 11.1(a); or
- (b) **(no talk)** subject to clause 11.2:
  - (1) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal;
  - (2) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;
  - (3) disclose or otherwise provide or make available any material non-public information about the business or affairs of the ERM Group to a Competing Bidder (other than a Government Agency that has the right to obtain that information and has sought it) in connection with, with a view to obtaining, or which would reasonably be expected to encourage or lead to the formulation, receipt or announcement of, an actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the ERM Group) by that Competing Bidder; or
  - (4) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 11.1(b),

but nothing in this clause 11.1 prevents ERM from making normal presentations to brokers, portfolio investors and analysts in the ordinary course of business or promoting the merits of the Transaction.



## 11.2 Fiduciary exception

Clause 11.1(b) does not prohibit any action or inaction by ERM, any of its Related Bodies Corporate or any of their respective Related Persons, and does not require any action by ERM, in relation to an actual, proposed or potential bona fide Competing Proposal if it is determined, in the opinion of the ERM Board, formed in good faith after receiving written legal advice from its external legal advisers:

- (a) to be a Superior Proposal (or could reasonably be expected to result in a Superior Proposal); and
- (b) the failure to take or not take such action would constitute, or would be reasonably likely to constitute, a breach of any of the fiduciary or statutory duties of the directors of ERM,

provided that the actual, proposed or potential Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 11.1(a).

## 11.3 Notification of approaches

- (a) During the Exclusivity Period, ERM must notify Shell Australia in writing within 1 Business Day if it, any of its Related Bodies Corporate or any of their respective Related Persons, becomes aware of any offer or proposal (whether written or otherwise) made to ERM, any of its Related Bodies Corporate or any of their respective Related Persons in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal, whether unsolicited or otherwise.
- (b) A notification given under clause 11.3(a) must include material details of the actual, proposed or potential Competing Proposal (to the extent known by ERM).

## 11.4 Matching right

- (a) Without limiting clause 11.1, during the Exclusivity Period:
  - (1) ERM must not, and must procure that each of its Related Bodies Corporate do not, enter into any legally binding agreement or arrangement pursuant to which ERM or any Related Body Corporate of ERM proposes or proposes to undertake or give effect to an actual, proposed or potential Competing Proposal; and
  - (2) ERM must use its best endeavours to procure that none of its directors change their recommendation in favour of the Scheme to publicly recommend an actual, proposed or potential Competing Proposal (provided that a statement made by ERM or the ERM Board to the effect that no action should be taken by ERM Shareholders pending the assessment of a Competing Proposal by the ERM Board and its advisers shall not contravene this clause),unless:
  - (3) the ERM Board acting in good faith and in order to satisfy what the ERM Board Members consider to be the statutory or fiduciary duties of the directors of ERM (having received written legal advice from its external legal advisers) determines that the Competing Proposal is or would be reasonably likely to be an actual, proposed or potential Superior Proposal;



- (4) ERM has provided Shell Australia with the material details of the actual, proposed or potential Competing Proposal, including price and the identity of the Competing Bidder making the actual, proposed or potential Competing Proposal;
  - (5) ERM has given Shell Australia at least 5 Business Days after the date of the provision of the information referred to in clause 11.4(a)(4) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and
  - (6) Shell Australia has not provided a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal by the expiry of the 5 Business Day period in clause 11.4(a)(5).
- (b) If Shell Australia provides amendments to the Scheme or a new proposal that constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal (**Shell Australia Counterproposal**) by the expiry of the 5 Business Day period in clause 11.4(a)(5), ERM must procure that the ERM Board considers the Shell Australia Counterproposal and if the ERM Board, acting reasonably and in good faith, determines that the Shell Australia Counterproposal would provide an equivalent or superior outcome for ERM Shareholders as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Shell Australia Counterproposal, then ERM and Shell Australia must use their best endeavours to agree the amendments to this deed, the Scheme and the Deed Poll (as applicable) that are reasonably necessary to reflect the Shell Australia Counterproposal and to implement the Shell Australia Counterproposal, in each case as soon as reasonably practicable, and ERM must use its best endeavours to procure that each ERM Board Member continues to recommend the Transaction (as modified by the Shell Australia Counterproposal) to ERM Shareholders.

## 11.5 No existing discussions

ERM represents and warrants to Shell Australia that, as at the date of this deed, it is not in discussions or negotiations with any Third Party regarding any Competing Proposal.

## 11.6 Compliance with law

- (a) If it is finally determined by a court, or the Takeovers Panel, that the agreement by the parties under this clause or any part of it:
  - (1) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the directors of ERM;
  - (2) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
  - (3) was, or is, or would be, unlawful for any other reason,then, to that extent (and only to that extent) ERM will not be obliged to comply with that provision of clause 11.
- (b) The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 11.6.
- (c) Despite any other provision in this deed, where ERM is complying with this clause 11 and takes an action or omits to take an action in connection with assessing and/or negotiating a Competing Proposal, it will not be taken to be in



breach of clauses 3.2(a) (to the extent it relates to the Condition Precedents in clauses 3.1(a) (*Shareholder approval*), 3.1(b) (*Independent Expert*), 3.1(c) (*Court approval*) and 3.1(d) (*Restraints*)), 6.1(a) or 6.4(a)(1).

## 12 Reimbursement Fee

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### 12.1 Background to Reimbursement Fee

- (a) Shell Australia and ERM acknowledge that, if they enter into this deed and the Transaction is subsequently not implemented, Shell Australia will incur significant costs, including those set out in clause 12.4.
- (b) In the circumstances referred to in clause 12.1(a), Shell Australia has requested that provision be made for the payments outlined in clause 12.2, without which Shell Australia would not have entered into this deed or the Transaction.
- (c) ERM confirms that the ERM Board has acknowledged, having taken advice from its external legal advisers, that it believes the implementation of the Transaction will provide benefits to ERM and ERM Shareholders, such that it is appropriate for ERM to agree to the payments referred to in clause 12.2 in order to secure Shell Australia's participation in the Transaction.

### 12.2 Reimbursement Fee triggers

Subject to the remaining provisions of this clause 12, ERM must pay the Reimbursement Fee to Shell Australia if:

- (a) during the period from the date of this deed until the earlier of 8.00am on the Second Court Date and the End Date, any ERM Board Member:
  - (1) fails to recommend the Scheme;
  - (2) withdraws or adversely changes his or her support of the Scheme or his or her recommendation that ERM Shareholders vote in favour of the Scheme or fails to recommend that ERM Shareholders vote in favour of the Scheme in the manner described in clause 6.7(a); or
  - (3) recommends that ERM Shareholders accept or vote in favour of, or otherwise supports, promotes or endorses, a Competing Proposal of any kind that is announced (whether or not such proposal is stated to be subject to any pre-conditions) during the Exclusivity Period,

in each case, unless:

- (4) the failure to recommend, or the change to or withdrawal of a recommendation to vote in favour of the Scheme occurs because the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or supplement to, that report) that the Scheme is not in the best interests of ERM Shareholders (except where that conclusion is due wholly or partly to the existence, announcement or publication of a Competing Proposal);
- (5) the failure to recommend, or the change to or withdrawal of a recommendation to vote in favour of the Scheme occurs because of a requirement or request by a court or Government Agency that one or more ERM Board Members abstain or withdraw from making a recommendation that ERM Shareholders vote in favour of the Scheme after the date of this deed; or



- (6) ERM has terminated this deed pursuant to clause 13.1(a) or 13.2(b), provided that, for the avoidance of doubt, a statement made by ERM or the ERM Board to the effect that no action should be taken by ERM Shareholders pending the assessment of a Competing Proposal by the ERM Board and its advisers will not require ERM to pay the Reimbursement Fee to Shell Australia;
- (b) a Competing Proposal of any kind is announced prior to 8.00am on the Second Court Date (whether or not such proposal is stated to be subject to any pre-conditions) and, within 9 months of the date of such announcement, the Competing Bidder or any Associate of that Competing Bidder completes a Competing Proposal of a kind referred to in any of paragraphs 2, 3 or 4 of the definition of Competing Proposal; or
- (c) Shell Australia has terminated this deed pursuant to clause 13.1(a)(1) or 13.2(a) and the Transaction does not complete.

### 12.3 Payment of Reimbursement Fee

- (a) A demand by Shell Australia for payment of the Reimbursement Fee under clause 12.2 must:
- (1) be in writing;
  - (2) be made after the occurrence of the event in that clause giving rise to the right to payment and termination of this deed;
  - (3) state the circumstances which give rise to the demand; and
  - (4) nominate an account in the name of Shell Australia into which ERM is to pay the Reimbursement Fee.
- (b) ERM must pay the Reimbursement Fee into the account nominated by Shell Australia, without set-off or withholding, within 10 Business Days after receiving a demand for payment where Shell Australia is entitled under clause 12.2 to the Reimbursement Fee.

### 12.4 Basis of Reimbursement Fee

The Reimbursement Fee has been calculated to reimburse Shell Australia for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Transaction; and
- (d) out of pocket expenses incurred by Shell Australia and Shell Australia's employees, advisers and agents in planning and implementing the Transaction,

and the parties agree that:

- (e) the costs actually incurred by Shell Australia will be of such a nature that they cannot all be accurately ascertained; and
- (f) the Reimbursement Fee is a genuine and reasonable pre-estimate of those costs.



## 12.5 Trigger Disputes

- (a) If there is a Trigger Dispute between the parties which is not resolved within 2 Business Days of one party notifying the other of such Trigger Dispute, the Trigger Dispute must be referred to the Expert.
- (b) The parties must instruct the Expert to resolve the Trigger Dispute, and determine whether the relevant event in clause 12.2 has occurred which triggers payment of the Reimbursement Fee, within 10 Business Days.
- (c) In resolving the dispute and determining whether the relevant event in clause 12.2 has occurred which triggers payment of the Reimbursement Fee, the Expert must act as an expert and not an arbitrator.
- (d) The determination of the Expert will, in the absence of manifest error, be final and binding on the parties.
- (e) The Expert's fees will be borne equally by the parties.

## 12.6 Expert

- (a) An **Expert** is a person that holds the qualifications set out in clause 12.6(b):
  - (1) selected by the parties within 4 Business Days after a Trigger Dispute is notified by a party under clause 12.5(a); or
  - (2) if the parties fail to select the Expert under clause 12.6(a)(1), the person nominated by the President for the time being of the Law Society of NSW.
- (b) The Expert selected or nominated under clause 12.6(a) must:
  - (1) hold suitable and relevant qualifications;
  - (2) be independent of each party; and
  - (3) have no interest or duty which conflicts or may conflict with the Expert's function as an expert.

## 12.7 Compliance with law

- (a) This clause 12 does not impose an obligation on ERM to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Reimbursement Fee:
  - (1) is finally determined by the Takeovers Panel to constitute 'unacceptable circumstances'; or
  - (2) is finally determined to be unenforceable or unlawful (including by virtue of it being a breach of the fiduciary or statutory duties of the directors of ERM) by a court,and Shell Australia will refund to ERM within 10 Business Days any amount in excess of its obligation under this clause that ERM has already paid to Shell Australia when that final determination is made (unless otherwise required by the Takeovers Panel or a court). For the avoidance of doubt, any part of the Reimbursement Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by ERM.
- (b) Shell Australia and ERM must not make or cause or permit to be made, any application to the Takeovers Panel, arbitral tribunal or a court for or in relation to a declaration or determination referred to in clause 12.7(a).



## 12.8 Reimbursement Fee payable only once

Where the Reimbursement Fee becomes payable to Shell Australia under clause 12.2 and is actually paid to Shell Australia, Shell Australia cannot make any claim against ERM for payment of any subsequent Reimbursement Fee.

## 12.9 Other Claims

The maximum aggregate amount which ERM is required to pay in relation to this deed (including any breach of this deed by ERM or any other Claim) is the Reimbursement Fee and in no event will the aggregate liability of ERM under or in connection with this deed or any Claim exceed the Reimbursement Fee.

## 12.10 No Reimbursement Fee if Scheme Effective

Despite anything to the contrary in this deed, the Reimbursement Fee will not be payable to Shell Australia if the Scheme becomes Effective, notwithstanding the occurrence of any event in clause 12.2 and, if the Reimbursement Fee has already been paid it must be refunded by Shell Australia with 5 Business Days after the Scheme becomes Effective.

# 13 Termination

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## 13.1 Termination

- (a) Either party may terminate this deed by written notice to the other party:
- (1) other than in respect of a breach of either a Shell Australia Representation and Warranty or an ERM Representation and Warranty (which are dealt with in clause 13.2), at any time before 8.00am on the Second Court Date, if the other party has materially breached this deed, the party entitled to terminate has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed, and the other party has failed to remedy the breach within 5 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Scheme Meeting or, if the Scheme Meeting has been held, the Second Court Date) after the date on which the notice is given;
  - (2) in the circumstances set out in, and in accordance with, clause 3.4;
  - (3) if ERM Shareholders have not agreed to the Scheme at the Scheme Meeting by the requisite majorities and notice has not been received or sent under clause 3.4(d); or
  - (4) if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date.
- (b) Shell Australia may terminate this deed by written notice to ERM at any time before 8.00am on the Second Court Date if any ERM Board Member:
- (1) fails to recommend the Scheme;
  - (2) withdraws or adversely changes his or her support of the Scheme or his or her recommendation that ERM Shareholders vote in favour of the Scheme; or



- (3) makes a public statement indicating that he or she no longer recommends the Transaction or recommends, supports or endorses a Competing Proposal (but excluding a statement that no action should be taken by ERM Shareholders pending assessment of a Competing Proposal by the ERM Board),
- other than where any ERM Board Member is required or requested by a court or Government Agency to abstain or withdraw from making a recommendation that ERM Shareholders vote in favour of the Scheme after the date of this deed.
- (c) Shell Australia may terminate this deed by written notice to ERM at any time before 8.00am on the Second Court Date if each of the following are satisfied:
- (1) during the period commencing on the date of this deed and ending at 8.00am on the Second Court Date, a Competing Proposal is announced (whether or not such proposal is stated to be subject to any pre-conditions);
- (2) the ERM Board has not:
- (A) publicly re-confirmed its recommendation in favour of the Transaction; or
- (B) recommended that ERM Shareholders accept or vote in favour of, or otherwise supported, promoted or endorsed, such Competing Proposal; and
- (3) it is no longer reasonably possible for the condition in clause 3.1(c) (*Court approval*) to be satisfied on or before 20 December 2019.
- (d) ERM may terminate this deed by written notice to Shell Australia at any time before 8.00am on the Second Court Date if the ERM Board has changed, withdrawn or modified its recommendation as permitted under clause 6.7.

## 13.2 Termination for breach of representations and warranties

- (a) Shell Australia may, at any time prior to 8.00am on the Second Court Date, terminate this deed for breach of an ERM Representation and Warranty only if:
- (1) Shell Australia has given written notice to ERM setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
- (2) the relevant breach continues to exist 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 13.2(a)(1); and
- (3) the relevant breach is material in the context of the Scheme taken as a whole.
- (b) ERM may, at any time before 8.00am on the Second Court Date, terminate this deed for breach of a Shell Australia Representation and Warranty only if:
- (1) ERM has given written notice to Shell Australia setting out the relevant circumstances and stating an intention to terminate or to allow the Scheme to lapse;
- (2) the relevant breach continues to exist 10 Business Days (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) after the date on which the notice is given under clause 13.2(b)(1); and



- (3) the relevant breach is material in the context of the Scheme taken as a whole.
- (c) This deed is terminable if agreed to in writing by Shell Australia and ERM.

### **13.3 Effect of termination**

If this deed is terminated by either party under clauses 3.4, 13.1 or 13.2:

- (a) each party will be released from its obligations under this deed, except that this clause 13.3, and clauses 1, 7.5 to 7.9, 8.1, 8.2, 10, 12, 14, 15, 16 and 17 (except clause 17.9), will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this deed; and
- (c) in all other respects, all future obligations of the parties under this deed will immediately terminate and be of no further force and effect including any further obligations in respect of the Scheme.

### **13.4 Termination**

Where a party has a right to terminate this deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this deed and the provision under which it is terminating this deed.

### **13.5 No other termination**

Neither party may terminate or rescind this deed except as permitted under clauses 3.4, 13.1 or 13.2.

### **13.6 Remedies**

The parties acknowledge that damages may not be a sufficient remedy for breach of this deed. Specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this deed by any party, notwithstanding the ability of any party to terminate this deed or seek damages for such a breach or threatened breach or, in the case of Shell Australia, to demand payment of the Reimbursement Fee.

## **14 Duty, costs and expenses**

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### **14.1 Stamp duty**

Shell Australia:

- (a) must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme; and
- (b) indemnifies ERM against any liability arising from its failure to comply with clause 14.1(a).



## 14.2 Costs and expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution, delivery and performance of this deed and the proposed, attempted or actual implementation of this deed and the Transaction.

## 15 GST

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- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 15(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 Law.
- (c) The Additional Amount payable under clause 15(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. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including 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 15(b):
  - (1) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as applicable;
  - (2) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
  - (3) the Supplier must notify the Recipient of the refund, credit or further amount within 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 seven days after receiving such notification, as applicable. 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 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.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.



## 16 Notices

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### 16.1 Form of Notice

A notice or other communication to a party under this deed (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
- (b) addressed to that party in accordance with the details nominated in Schedule 1 (or any alternative details nominated to the sending party by Notice).

### 16.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By express post to the nominated address	At 9.00am (addressee's time) on the fifth Business Day after the date of posting
By email to the nominated email address	The earlier of: <ol style="list-style-type: none"> <li>1 when the recipient's email server generates a message to the sender confirming that the email has been delivered to that server ("delivery receipt"), or at the time that the recipient "read" the email as stated in an automated message received by the sender ("read receipt"); and</li> <li>2 four hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.</li> </ol>

### 16.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than email as permitted in clause 16.2).



## 17 General

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### 17.1 Governing law and jurisdiction

- (a) This deed is governed by the law in force in New South Wales, Australia.
- (b) Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### 17.2 Service of process

Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of Notices under clause 16.

### 17.3 No merger

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

### 17.4 Invalidity and enforceability

- (a) If any provision of this deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 17.4(a) does not apply where enforcement of the provision of this deed in accordance with clause 17.4(a) would materially affect the nature or effect of the parties' obligations under this deed.

### 17.5 Waiver

No party to this deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this clause 17.5 are set out below.

<b>Term</b>	<b>Meaning</b>
<b>conduct</b>	includes delay in the exercise of a right.
<b>right</b>	any right arising under or in connection with this deed and includes the right to rely on this clause.



**waiver** includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

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## **17.6 Variation**

A variation of any term of this deed must be in writing and signed by the parties.

## **17.7 Assignment of rights**

- (a) A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this deed without the prior written consent of the other party or as expressly provided in this deed.
- (b) A breach of clause 17.7(a) by a party shall be deemed to be a material breach for the purposes of clause 13.1(a)(1).
- (c) Clause 17.7(b) does not affect the construction of any other part of this deed.

## **17.8 No third party beneficiary**

This deed shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this deed is intended to or shall confer on any other person, other than the Shell Australia Indemnified Parties and the ERM Indemnified Parties, in each case to the extent set forth in clause 7 and clause 8, any third party beneficiary rights.

## **17.9 Further action to be taken at each party's own expense**

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

## **17.10 Entire agreement**

This deed (including the documents in the attachments to it), the Confidentiality Deed and the Clean Team Confidentiality Deed state all the express terms agreed by the parties in respect of their subject matter. They supersede all prior discussions, negotiations, understandings and agreements in respect of their subject matter.

## **17.11 Counterparts**

This deed may be executed in any number of counterparts.

## **17.12 Relationship of the parties**

- (a) Nothing in this deed gives a party authority to bind any other party in any way.
- (b) Nothing in this deed imposes any fiduciary duties on a party in relation to any other party.



### **17.13 Remedies cumulative**

Except as provided in this deed and permitted by law, the rights, powers and remedies provided in this deed are cumulative with, and not exclusive of, the rights, powers and remedies provided by law independently of this deed.

### **17.14 Exercise of rights**

- (a) Unless expressly required by the terms of this deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.



## Schedules

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## Schedule 1

### Notice details

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<b>Name</b>	<b>Attention</b>	<b>Address</b>	<b>Email</b>
ERM	Phil Davis, Group General Counsel and Company Secretary	Level 52 111 Eagle Street Brisbane City QLD 4000	<a href="mailto:pdavis@ermpower.com.au">pdavis@ermpower.com.au</a>
with a copy to: Herbert Smith Freehills	Andrew Rich William Chew	Level 33, ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000	<a href="mailto:andrew.rich@hsf.com">andrew.rich@hsf.com</a> <a href="mailto:william.chew@hsf.com">william.chew@hsf.com</a>
Shell Australia	Peter Lorbeer, Associate Counsel	Shell House, 562 Wellington Street, Perth WA 6000	<a href="mailto:Peter.Lorbeer@shell.com">Peter.Lorbeer@shell.com</a>
with a copy to: Ashurst	Lynda Tully John Brewster	181 William Street, Melbourne, Victoria 3000	<a href="mailto:lynda.tully@ashurst.com">lynda.tully@ashurst.com</a> <a href="mailto:john.brewster@ashurst.com">john.brewster@ashurst.com</a>

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### Definitions and interpretation

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#### 1.1 Definitions

Term	Meaning
<b>28 June 2019 Mark to Market Position</b>	<ol style="list-style-type: none"> <li>1 the amount specified as "Daily MtM Unrealised" as set out in the Black Trade row of the Trade Book Summary of ERM's Daily Risk Report dated 28 June 2019,</li> </ol> <p><i>less:</i></p> <ol style="list-style-type: none"> <li>2 the amounts included in the MtM column of the table "Black Trade Book Daily Movements Breakdown" (from ERM's Daily Risk Report dated 28 June 2019) relating to FY22, FY23 and Beyond.</li> </ol>
<b>ACCC</b>	the Australian Competition and Consumer Commission.
<b>Additional Amount</b>	is defined in clause 15(b).
<b>Adjustment Event</b>	has the same meaning as in the GST Act.
<b>Amount Incurred</b>	is defined in clause 15(e).
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>Associate</b>	has the meaning set out in section 12 of the Corporations Act, as if subsection 12(1) of the Corporations Act included a reference to this deed and ERM was the designated body.
<b>ASX</b>	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
<b>Australian Government Agency</b>	any Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other Australian federal, state, provincial, or local government.



<b>Term</b>	<b>Meaning</b>
<b>Business Day</b>	a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, Australia.
<b>Claim</b>	<p>any claim, demand, legal proceedings or cause of action (including any claim, demand, legal proceedings or cause of action:</p> <ol style="list-style-type: none"><li>1 based in contract, including breach of warranty;</li><li>2 based in tort, including misrepresentation or negligence;</li><li>3 under common law or equity; or</li><li>4 under statute, including the Australian Consumer Law (being Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) (<b>CCA</b>)) or Part VI of the CCA, or like provision in any state or territory legislation),</li></ol> <p>in any way relating to this deed or the Transaction, and includes a claim, demand, legal proceedings or cause of action arising under an indemnity in this deed.</p>
<b>Clean Team Confidentiality Deed</b>	means the clean team confidentiality deed dated 29 July 2019 between Shell Energy Holdings Australia Limited and ERM.
<b>Competing Bidder</b>	<p>a person other than:</p> <ol style="list-style-type: none"><li>1 Shell Australia and its Related Bodies Corporate; or</li><li>2 an Associate of Shell Australia or its Related Bodies Corporate</li></ol>
<b>Competing Proposal</b>	<p>any proposal, agreement, arrangement or transaction, which, if entered into or completed in accordance with its terms, would result in a Competing Bidder (either alone or together with any Associate):</p> <ol style="list-style-type: none"><li>1 directly or indirectly acquiring or becoming the holder of a Relevant Interest in, or acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of the ERM Shares;</li><li>2 acquiring Control of ERM;</li><li>3 directly or indirectly having or acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part of ERM's business or assets or the business or assets of the ERM Group; or</li><li>4 otherwise directly or indirectly acquiring or merging with ERM or a material Subsidiary of ERM,</li></ol> <p>whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed</p>



<b>Term</b>	<b>Meaning</b>
	<p>of company arrangement, any debt for equity arrangement or other transaction or arrangement.</p> <p>For the avoidance of doubt, each successive material modification or variation of any proposal, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.</p>
<b>Condition Precedent</b>	each of the conditions set out in clause 3.1.
<b>Confidentiality Deed</b>	means the confidentiality deed dated 29 July 2019 between Shell Energy Holdings Australia Limited and ERM.
<b>Consideration</b>	is defined in clause 15(a).
<b>Control</b>	has the meaning given in section 50AA of the Corporations Act.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth), as modified or varied by ASIC.
<b>Corporations Regulations</b>	the <i>Corporations Regulations 2001</i> (Cth).
<b>Court</b>	any court of competent jurisdiction under the Corporations Act agreed to in writing by Shell Australia and ERM.
<b>Creditable Acquisition</b>	has the same meaning as in the GST Act.
<b>Current Mark to Market Position</b>	<p>1 the amount specified as “Unrealised MtM + Total Realised since 30/6/19” as set out in the Black Trade row of the Trade Book Summary of ERM’s Daily Risk Report on any day after the date of this deed (<b>Relevant Mark to Market Date</b>),</p> <p><i>less:</i></p> <p>2 the amounts included in the MtM column of the table “Black Trade Book Daily Movements Breakdown” (from ERM’s Daily Risk Report on the Relevant Mark to Market Date) relating to FY22, FY23 and Beyond.</p>
<b>Data Room</b>	the electronic data room, and ERM’s Diligent Board Portal, made available to Shell Australia in connection with the Transaction.



<b>Term</b>	<b>Meaning</b>
<b>Decreasing Adjustment</b>	has the same meaning as in the GST Act.
<b>Deed Poll</b>	a deed poll in the form of Attachment 3 under which Shell Australia covenants in favour of the Scheme Shareholders to perform the obligations attributed to Shell Australia under the Scheme.
<b>Disclosure Materials</b>	<ol style="list-style-type: none"><li>1 the documents and information contained in the Data Room on or prior to execution of this deed, the index of which has been initialled by the parties' lawyers for the purposes of identification before the execution of this deed; and</li><li>2 written responses from ERM and its Related Persons to requests for further information made by Shell Australia and its Related Persons, a copy of which is contained in the Data Room.</li></ol>
<b>EBITDAF</b>	earnings before interest, tax, depreciation, amortisation, impairment and net fair value gains or losses on financial instruments designated at fair value through profit, excluding any profit or loss from any Associate of ERM.
<b>Effective</b>	when used in relation to the Scheme, the coming into effect, under subsection 411(10) of the Corporations Act, of the order of the Court made under paragraph 411(4)(b) of the Corporations Act in relation to the Scheme.
<b>Effective Date</b>	the date on which the Scheme becomes Effective.
<b>End Date</b>	<ol style="list-style-type: none"><li>1 31 March 2020; or</li><li>2 such other date as agreed in writing by the parties.</li></ol>
<b>ERM Board</b>	the board of directors of ERM and an <b>ERM Board Member</b> means any director of ERM comprising part of the ERM Board.
<b>ERM Equity Incentives</b>	ERM Share entitlements made available to employees of a member of the ERM Group under the employee share trust.
<b>ERM Group</b>	ERM and each of its Subsidiaries, and a reference to an <b>ERM Group Member</b> or a <b>member of the ERM Group</b> is to ERM or any of its Subsidiaries.



<b>Term</b>	<b>Meaning</b>
<b>ERM Indemnified Parties</b>	ERM, its Subsidiaries and their respective directors, officers and employees.
<b>ERM Information</b>	<p>information regarding the ERM Group prepared by ERM for inclusion in the Scheme Booklet that explains the effect of the Scheme and sets out the information prescribed by the Corporations Act and the Corporations Regulations, and any other information that is material to the making of a decision by ERM Shareholders whether or not to vote in favour of the Scheme, being information that is within the knowledge of each of the ERM Board Members, which for the avoidance of doubt does not include:</p> <ol style="list-style-type: none"><li>1 the Shell Australia Information;</li><li>2 the Independent Expert's Report; or</li><li>3 any description of the taxation effect of the Transaction on Scheme Shareholders prepared by an external adviser to ERM.</li></ol>
<b>ERM Material Adverse Change</b>	<p>an event, change, condition, matter, circumstance or thing occurring after the date of this deed (each a <b>Specified Event</b>) which, whether individually or when aggregated with all such events, changes, conditions, matters, circumstances or things of a like kind that have occurred or are reasonably likely to occur, has had or would be considered reasonably likely to have the effect of:</p> <ol style="list-style-type: none"><li>1 a diminution in the EBITDAF of the ERM Group, taken as a whole, by at least \$20,000,000 in each of the financial years ending 30 June 2020 and 30 June 2021;</li><li>2 a diminution in the amount of the Current Mark To Market Position compared to the 28 June 2019 Mark To Market Position by at least \$30,000,000;</li><li>3 a diminution in the value of the Net Tangible Assets by at least \$75,000,000;</li><li>4 either:<ol style="list-style-type: none"><li>a. a termination event; or</li><li>b. an event of default which has not been remedied by the earlier of:<ol style="list-style-type: none"><li>i. 90 days after the date on which such event of default occurred; or</li><li>ii. 8.00am on the Second Court Date,</li></ol>has occurred under a Specified Contract; or</li></ol></li><li>5 a ROLR Event occurs to a member of the ERM Group,</li></ol> <p>other than those events, changes, conditions, matters, circumstances or things:</p> <ol style="list-style-type: none"><li>6 arising out of the announcement or pendency of the Transaction or the Scheme (including any loss of or adverse change in the relationship of ERM and its Subsidiaries with their respective employees, customers, partners (including joint</li></ol>



<b>Term</b>	<b>Meaning</b>
	<p>venture partners), creditors or suppliers as at the date of this deed, including the loss of any contract);</p> <p>7 required to be done or procured by the ERM Group under, or permitted by, this deed, the Scheme or the transactions contemplated by either, and including any consequences reasonably foreseeable as a result of such matters;</p> <p>8 that were Fairly Disclosed in the Disclosure Materials;</p> <p>9 agreed to in writing, or requested, by Shell Australia, including any consequences reasonably foreseeable as a result of such matters;</p> <p>10 arising as a result of any generally applicable change in law, regulation, accounting standards or principles or governmental policy, or the interpretation of any of them;</p> <p>11 arising from changes in economic, business, industry or political conditions that impact on ERM and its competitors in a similar manner (including interest rates, general economic, political or business conditions, including material adverse changes or major disruptions to, or fluctuations in, domestic or international financial markets);</p> <p>12 arising from any act of terrorism, outbreak or escalation of war (whether or not declared) or major hostilities; or</p> <p>13 that ERM Fairly Disclosed in an announcement made by ERM to ASX, or a publicly available document lodged by ERM or a Subsidiary of ERM with ASIC, in each case prior to the date of this deed, or which would be disclosed in a search of ASIC records or ASX announcements in relation to ERM or a Subsidiary of ERM (as relevant), prior to the date of this deed.</p>
<b>ERM Permitted Dividend</b>	is defined in clause 5.1.
<b>ERM Policies</b>	the document entitled 'ERM Business Energy Risk & Trading Policies June 2019', a copy of which was disclosed to Shell Australia in the Disclosure Materials as Data Room document 01.27.
<b>ERM Prescribed Occurrence</b>	<p>other than as:</p> <p>1 required or permitted by this deed (including clause 6.4(b)), the Scheme or the transactions contemplated by either;</p> <p>2 Fairly Disclosed in the Disclosure Materials;</p> <p>3 agreed to in writing, or requested, by Shell Australia; or</p> <p>4 Fairly Disclosed by ERM in an announcement made by ERM to ASX, or a publicly available document lodged by ERM or any Subsidiary of ERM with ASIC, in each case prior to the date of this deed, or which would be disclosed in a search of ASIC records or ASX announcement in relation to ERM or a</p>



<b>Term</b>	<b>Meaning</b>
	<p>Subsidiary of ERM (as relevant), prior to the date of this deed, the occurrence of any of the following:</p> <ol style="list-style-type: none"><li>1 ERM converting all or any of its shares into a larger or smaller number of shares;</li><li>2 ERM resolving to reduce its share capital;</li><li>3 a member of the ERM Group:<ul style="list-style-type: none"><li>• entering into a buy-back agreement; or</li><li>• resolving to approve the terms of a buy-back agreement under the Corporations Act;</li></ul></li><li>4 a member of the ERM Group issuing shares, or granting a performance right or an option over its shares, or agreeing to make such an issue or grant such a right or an option, other than:<ul style="list-style-type: none"><li>• to a directly or indirectly wholly-owned Subsidiary of ERM; or</li><li>• on vesting or exercise of, or in respect of, a Performance Right or an ERM Equity Incentive existing as at the date of this deed;</li></ul></li><li>5 a member of the ERM Group issuing or agreeing to issue securities convertible into shares;</li><li>6 a member of the ERM Group disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;</li><li>7 a member of the ERM Group granting a Security Interest, or agreeing to grant a Security Interest, in the whole, or a substantial part, of its business or property; or</li><li>8 an Insolvency Event occurs in relation to a member of the ERM Group.</li></ol>
<b>ERM Regulated Event</b>	<p>other than as:</p> <ol style="list-style-type: none"><li>1 required or permitted by this deed (including clause 6.4(b)), the Scheme or the transactions contemplated by either;</li><li>2 Fairly Disclosed in the Disclosure Materials;</li><li>3 agreed to in writing, or requested, by Shell Australia; or</li><li>4 Fairly Disclosed by ERM in an announcement made by ERM to ASX, or a publicly available document lodged by ERM or any Subsidiary of ERM with ASIC, in each case prior to the date of this deed, or which would be disclosed in a search of ASIC records or ASX announcement in relation to ERM or a Subsidiary of ERM (as relevant), prior to the date of this deed,<p>the occurrence of any of the following:</p><ol style="list-style-type: none"><li>1 an ERM Group Member reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;</li><li>2 other than the ERM Permitted Dividend and the ERM Special</li></ol></li></ol>



Term	Meaning
	Dividend, ERM announcing, making, declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members (whether in cash or in specie);
3	a member of the ERM Group: <ul style="list-style-type: none"><li>entering into, varying, renewing, assigning or terminating any contract or commitment (including in respect of Financial Indebtedness) requiring payments to or by the ERM Group in excess of \$5,000,000 (individually or in aggregate) other than any payment required by law; or</li><li>without limiting the foregoing agreeing to incur or incurring capital expenditure of more than \$5,000,000 (individually or in aggregate);</li></ul>
4	a member of the ERM Group providing financial accommodation other than to members of the ERM Group (irrespective of what form of Financial Indebtedness that accommodation takes) in excess of \$5,000,000 (individually or in aggregate);
5	a member of the ERM Group: <ul style="list-style-type: none"><li>acquiring, leasing or disposing of;</li><li>agreeing to acquire, lease or dispose of; or</li><li>offering, proposing announcing a bid or tendering for, any business, assets, entity or undertaking, the value of which exceeds \$5,000,000 (individually or in aggregate), but excluding the assignment of the lease of Suite 8.03, 15 Castlereagh Street, Sydney NSW;</li></ul>
6	a member of the ERM Group issuing or agreeing to issue securities or other instruments convertible into debt securities;
7	entering into a contract or commitment materially restraining a member of the ERM Group from competing with any person or conducting activities in any market;
8	entering into or resolving to enter into a material transaction with any related party of ERM (other than a related party which is a wholly owned member of the ERM Group) pursuant to section 228 of the Corporations Act, other than transactions occurring under contracts entered into prior to the date of this deed in the form disclosed in the Disclosure Materials;
9	ERM making any change to its constitution;
10	ERM changing any accounting policy applied by it to report its financial position other than any change in policy required by a change in applicable accounting standards or law;
11	a member of the ERM Group doing anything that would result in a change in the membership of the ERM consolidated tax group, that would be detrimental to Shell Australia;
12	varying or agreeing to vary the employment arrangements or remuneration of any director or employee of any member of the ERM Group whose total base annual salary (excluding bonuses) is at least \$300,000 other than in the ordinary course



<b>Term</b>	<b>Meaning</b>
	<p>of business;</p> <p>13 amending the terms of an employee share scheme or any other plan or scheme operated for the benefit of directors or employees of any one or more members of the ERM Group except as contemplated by clause 4.5;</p> <p>14 paying or agreeing to pay any bonus, termination or retention payment to any director or employee of any member of the ERM Group except as disclosed to Shell Australia prior to the date of this deed or in accordance with the terms of the contract in place with such person as at the date of this deed or in the ordinary course of business;</p> <p>15 employing or agreeing to employ any person the value of whose total base annual salary (excluding bonuses) will be at least \$300,000; or</p> <p>16 acquiring or disposing of an interest by a member of the ERM Group in any joint venture.</p>
<b>ERM Representations and Warranties</b>	the representations and warranties of ERM set out in Schedule 4, as each is qualified by clause 7.5.
<b>ERM Share</b>	a fully paid ordinary share in the capital of ERM.
<b>ERM Shareholder</b>	each person who is registered as the holder of a ERM Share in the ERM Share Register.
<b>ERM Share Register</b>	the register of members of ERM maintained in accordance with the Corporations Act.
<b>ERM Special Dividend</b>	is defined in clause 5.2.
<b>Exclusivity Period</b>	the period commencing on the date of this deed and ending on the earlier of: <ol style="list-style-type: none"><li>1 the date of termination of this deed;</li><li>2 the End Date; and</li><li>3 the Effective Date.</li></ol>
<b>Expert</b>	is defined in clause 12.6.
<b>Fairly Disclosed</b>	a reference to 'Fairly Disclosed' means disclosed to Shell Australia or any of its Related Persons, to a sufficient extent, and in sufficient detail, so as to enable a reasonable bidder (or one of its Related



<b>Term</b>	<b>Meaning</b>
	Persons) experienced in transactions similar to the Transaction and experienced in a business similar to any business conducted by the ERM Group, to identify the nature and scope of the relevant matter, event or circumstance (including, in each case, that the potential financial effect of the relevant matter, event or circumstance was reasonably ascertainable from the information disclosed).
<b>Financial Adviser</b>	any financial adviser retained by a party in relation to the Transaction from time to time.
<b>Financial Indebtedness</b>	any debt or other monetary liability (whether actual or contingent) in respect of monies borrowed or raised or any financial accommodation including under or in respect of any: <ol style="list-style-type: none"><li>1 bill, bond, debenture, note or similar instrument;</li><li>2 acceptance, endorsement or discounting arrangement;</li><li>3 guarantee;</li><li>4 finance or capital lease;</li><li>5 agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service; or</li><li>6 obligation to deliver goods or provide services paid for in advance by any financier.</li></ol>
<b>FIRB</b>	the Australian Foreign Investment Review Board.
<b>First Court Date</b>	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.
<b>GST</b>	goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.
<b>GST Act</b>	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>GST Group</b>	has the same meaning as in the GST Act.
<b>GST Law</b>	has the same meaning as in the GST Act.



<b>Term</b>	<b>Meaning</b>
<b>Government Agency</b>	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.
<b>Implementation Date</b>	the third Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as the parties agree in writing.
<b>Increasing Adjustment</b>	has the same meaning as in the GST Act.
<b>Independent Expert</b>	the independent expert in respect of the Scheme appointed by ERM.
<b>Independent Expert's Report</b>	the report to be issued by the Independent Expert in connection with the Scheme, setting out the Independent Expert's opinion as to whether or not the Transaction is in the best interests of ERM Shareholders and the reasons for holding that opinion.
<b>Input Tax Credit</b>	has the same meaning as in the GST Act.
<b>Insolvency Event</b>	in relation to an entity: <ol style="list-style-type: none"><li>1 the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity (other than where the order is set aside within 14 days);</li><li>2 a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;</li><li>3 the entity executing a deed of company arrangement;</li><li>4 the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;</li><li>5 the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation); or</li><li>6 the entity being deregistered as a company or otherwise dissolved.</li></ol>



<b>Term</b>	<b>Meaning</b>
<b>Listing Rules</b>	the official listing rules of ASX.
<b>Net Tangible Assets</b>	<p>1 at any time, the consolidated total at that time of all assets of the ERM Group, taken as a whole, which in accordance with applicable accounting principles would be included in the consolidated statement of financial position of the ERM Group at that time (including, for the avoidance of doubt, any cash deposits provided by an ERM Group Member to a third party as security, including cash held in broker accounts) but excluding:</p> <ul style="list-style-type: none"><li>a. any financial instrument assets; and</li><li>b. any deferred tax assets associated with financial instruments,</li></ul> <p><i>less:</i></p> <p>2 at any time, the consolidated total of all liabilities of the ERM Group, taken as a whole, in respect of which in accordance with applicable accounting principles would be included in the consolidated statement of financial position of the ERM Group at that time but excluding:</p> <ul style="list-style-type: none"><li>c. any financial instrument liabilities; and</li><li>d. any deferred tax liabilities associated with financial instruments.</li></ul>
<b>Operating Rules</b>	the official operating rules of ASX.
<b>Performance Rights</b>	the performance rights referred to in Schedule 5.
<b>Recipient</b>	is defined in clause 15(b).
<b>Registered Address</b>	in relation to a ERM Shareholder, the address shown in the ERM Share Register as at the Scheme Record Date.
<b>Regulator's Draft</b>	the draft of the Scheme Booklet in a form which is provided to ASIC for approval pursuant to subsection 411(2) of the Corporations Act.
<b>Reimbursement Fee</b>	\$6,055,000.
<b>Related Bodies Corporate</b>	has the meaning set out in section 50 of the Corporations Act.



<b>Term</b>	<b>Meaning</b>
<b>Related Person</b>	<ol style="list-style-type: none"><li>1 in respect of a party or its Related Bodies Corporate, each director, officer, employee, adviser, agent or representative of that party or Related Body Corporate; and</li><li>2 in respect of a Financial Adviser, each director, officer or employee of that Financial Adviser.</li></ol>
<b>Relevant Interest</b>	has the meaning given in sections 608 and 609 of the Corporations Act.
<b>Representative Member</b>	has the same meaning as in the GST Act.
<b>RG 60</b>	Regulatory Guide 60 issued by ASIC in September 2011.
<b>ROLR Event</b>	a Retailer of Last Resort event as that term is defined under section 122 of the National Energy Retail Law (Queensland).
<b>Scheme</b>	the scheme of arrangement under Part 5.1 of the Corporations Act between ERM and the Scheme Shareholders, the form of which is attached as Attachment 2, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Shell Australia and ERM.
<b>Scheme Booklet</b>	<p>the scheme booklet to be prepared by ERM in respect of the Transaction in accordance with the terms of this deed (including clause 6.2(a)) to be despatched to the ERM Shareholders and which must include or be accompanied by:</p> <ol style="list-style-type: none"><li>1 a copy of the Scheme;</li><li>2 an explanatory statement complying with the requirements of the Corporations Act, the Corporations Regulations and RG 60;</li><li>3 the Independent Expert's Report;</li><li>4 a copy or summary of this deed;</li><li>5 a copy of the executed Deed Poll;</li><li>6 notice(s) of meeting; and</li><li>7 proxy form(s).</li></ol>
<b>Scheme Consideration</b>	the consideration to be provided by Shell Australia to each Scheme Shareholder for the transfer to Shell Australia of each Scheme Share, being for each ERM Share held by a Scheme Shareholder as at the Scheme Record Date, an amount of \$2.465, subject to,



<b>Term</b>	<b>Meaning</b>
	and as adjusted in accordance with, clause 5.3 (if applicable).
<b>Scheme Meeting</b>	the meeting of ERM Shareholders ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.
<b>Scheme Record Date</b>	7.00pm on the sixth Business Day after the Effective Date or such other time and date as the parties agree in writing.
<b>Scheme Shares</b>	all ERM Shares held by the Scheme Shareholders as at the Scheme Record Date.
<b>Scheme Shareholder</b>	a holder of ERM Shares recorded in the ERM Share Register as at the Scheme Record Date.
<b>Second Court Date</b>	the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard.
<b>Security Interest</b>	has the meaning given in section 51A of the Corporations Act.
<b>Shell Australia Counterproposal</b>	is defined in clause 11.4(b).
<b>Shell Australia Group</b>	Shell Australia and each of its Related Bodies Corporate, and a reference to a <b>Shell Australia Group Member</b> or a <b>member of the Shell Australia Group</b> is to Shell Australia or any of its Related Bodies Corporate.
<b>Shell Australia Indemnified Parties</b>	Shell Australia, its Related Bodies Corporate and their respective directors, officers and employees.
<b>Shell Australia Information</b>	information regarding the Shell Australia Group provided by Shell Australia to ERM in writing for inclusion in the Scheme Booklet including: <ol style="list-style-type: none"><li>1 information about Shell Australia, other Shell Australia Group Members, the businesses of the Shell Australia Group, Shell</li></ol>



<b>Term</b>	<b>Meaning</b>
	<p>Australia's interests and dealings in ERM Shares, Shell Australia's intentions for ERM and ERM's employees, and funding for the Scheme; and</p> <p>2 any other information required under the Corporations Act, Corporations Regulations or RG 60 to enable the Scheme Booklet to be prepared that the parties agree is 'Shell Australia Information' and that is identified in the Scheme Booklet as such.</p> <p>For the avoidance of doubt, the Shell Australia Information excludes the ERM Information, the Independent Expert's Report and any description of the taxation effect of the Transaction on Scheme Shareholders prepared by an external adviser to ERM.</p>
<b>Shell Australia Representations and Warranties</b>	the representations and warranties of Shell Australia set out in Schedule 3.
<b>Specified Contract</b>	the Fixed Forward Commodity Contract between Sunset Power International Pty Ltd and ERM Power Retail Limited dated 19 November 2015 as amended pursuant to an amendment agreement dated 29 April 2016.
<b>Specified ERM Individual</b>	Julieanne Alroe, Albert Goller, Georganne Hodges, Antonino Mario (Tony) Iannello, Jon Stretch, Philip St Baker, Phil Davis, James Spence, Gregg Buskey, David Guiver, Megan Houghton, Derek McKay, Stephen Rogers, Michelle Barry and Scott Savage.
<b>Subsidiary</b>	has the meaning given in Division 6 of Part 1.2 of the Corporations Act.
<b>Superior Proposal</b>	<p>a bona fide Competing Proposal:</p> <ol style="list-style-type: none"><li>1 submitted by a Competing Bidder in writing;</li><li>2 of the kind referred to in any of paragraphs 2, 3 or 4 of the definition of Competing Proposal; and</li><li>3 not resulting from a breach by ERM of any of its obligations under clause 11 of this deed (it being understood that any actions by the Related Persons of ERM not permitted by clause 11 will be deemed to be a breach by ERM for the purposes hereof),</li></ol> <p>that the ERM Board, acting in good faith, and after receiving written legal advice from its external legal advisers and written financial advice from its external financial advisers, determines:</p> <ol style="list-style-type: none"><li>4 is reasonably capable of being valued and completed; and</li><li>5 would, if completed substantially in accordance with its terms, be reasonably likely to be more favourable to ERM</li></ol>



<b>Term</b>	<b>Meaning</b>
	<p>Shareholders as a whole than the Transaction, in each case taking into account all terms and conditions and other aspects of the Competing Proposal and the Transaction, including:</p> <ol style="list-style-type: none"><li>6 any timing considerations;</li><li>7 any conditions precedent or other conditionality;</li><li>8 the identity of the proponent;</li><li>9 the value and type of the consideration payable to ERM Shareholders under the Competing Proposal;</li><li>10 that the value of the consideration payable to ERM Shareholders under the Transaction (when compared to the value of the consideration payable to ERM Shareholders under the Competing Proposal) is, as at the date of this deed, an amount of \$2.42 for each ERM Share;</li><li>11 the capacity of the Competing Bidder advancing the Competing Proposal to fund the Competing Proposal; and</li><li>12 other matters affecting the probability of the Competing Proposal being completed.</li></ol>
<b>Supplier</b>	is defined in clause 15(b).
<b>Supply</b>	has the same meaning as in the GST Act.
<b>Takeovers Panel</b>	the Takeovers Panel of Australia.
<b>Tax Invoice</b>	has the same meaning as in the GST Act.
<b>Third Party</b>	a person other than Shell Australia, its Related Bodies Corporate and its other Associates.
<b>Timetable</b>	the indicative timetable for the implementation of the Transaction set out in Attachment 1.
<b>Transaction</b>	the acquisition of the Scheme Shares by Shell Australia through implementation of the Scheme in accordance with the terms of this deed.
<b>Trigger Dispute</b>	means any dispute between the parties as to whether an event in clause 12.2 has occurred which triggers payment of the Reimbursement Fee.



## 2 Interpretation

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### 2.1 Interpretation

In this deed:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to this deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney, Australia;
- (k) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1 of this Schedule 2, has the same meaning when used in this deed;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (p) a reference to a body (including an institute, association or authority), other than a party to this deed, whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;



- (q) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (r) a reference to liquidation or insolvency includes appointment of an administrator, a reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, bankruptcy, or a scheme, compromise or arrangement with creditors (other than solely with holders of securities or derivatives), or any similar procedure or, where applicable, changes in the constitution of any partnership or Third Party, or death;
- (s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (t) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (u) if an act prescribed under this deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (v) a reference to the Listing Rules and the Operating Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party; and
- (w) a reference to something being “reasonably likely” (or to a similar expression ) is a reference to that thing being more likely than not to occur when assessed objectively.

## **2.2 Interpretation of inclusive expressions**

Specifying anything in this deed after the words ‘include’ or ‘for example’ or similar expressions does not limit what else is included.

## **2.3 Business Day**

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.



## Schedule 3

### Shell Australia Representations and Warranties

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Shell Australia represents and warrants to ERM (in its own right and separately as trustee or nominee for each of the other ERM Indemnified Parties) that:

- (a) **Shell Australia Information:** the Shell Australia Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to ERM Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of Shell Australia Information:** the Shell Australia Information:
  - (1) will be provided to ERM in good faith and on the understanding that ERM and each other ERM Indemnified Party will rely on that information for the purposes of preparing the Scheme Booklet; and
  - (2) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,

and all information provided by Shell Australia to the Independent Expert will, as at the date that information is provided, be provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;

- (c) **ACCC:** Shell Australia has received informal merger clearance in respect of the Transaction subject to customary conditions, by notice in writing from the ACCC stating, or stating to the effect, that the ACCC does not propose to intervene or seek to prevent the acquisition of ERM Shares by Shell Australia;
- (d) **FIRB approval:** Shell Australia Group has received written notice under the *Foreign Acquisitions and Takeovers Act 1975* (Cth), by or on behalf of the Treasurer of the Commonwealth of Australia, advising that the Commonwealth Government has no objections to the Transaction unconditionally;
- (e) **new information:** it will, as a continuing obligation, provide to ERM all further or new information which arises after the Scheme Booklet has been despatched to ERM Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Shell Australia Information is not misleading or deceptive (including by way of omission);
- (f) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (g) **authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of Shell Australia;
- (h) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (i) **no default:** this deed does not conflict with or result in the breach of or a default under:



- (1) any provision of Shell Australia's Constitution or Articles of Association; or
  - (2) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other Shell Australia Group Member is bound.
- (j) **deed binding:** this deed is a valid and binding obligation of Shell Australia, enforceable in accordance with its terms;
- (k) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or another Shell Australia Group Member, nor has any regulatory action of any nature been taken that would reasonably be likely to prevent or restrict its ability to fulfil its obligations under this deed, under the Deed Poll or under the Scheme;
- (l) **Scheme Consideration:** it will, by the Implementation Date, have available to it sufficient cash amounts to satisfy its obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;
- (m) **no shareholder approval:** it does not require approval from any of its securityholders, or from any securityholders of any other Shell Australia Group Member, to execute, deliver or perform this deed;
- (n) **no interest in securities:** as at the date of this deed, neither it, nor any of its Related Bodies Corporate or Associates:
- (1) has a relevant interest in, or a right to acquire, any securities of ERM (whether issued or not or held by Shell Australia or not); or
  - (2) has entered into any agreement or arrangement that confers rights the economic effect of which is equivalent or substantially equivalent to holding, acquiring or disposing of securities in ERM or any of its Related Bodies Corporate or of any assets of ERM or any of its Related Bodies Corporate (including cash-settled derivative contracts, contracts for difference or other derivative contracts).

The above representation does not apply to:

- (3) a related body corporate of Shell Australia whose principal business is to act as a trustee of a pension fund;
- (4) any pension fund or scheme maintained by any related body corporate of Shell Australia or employees of any related body corporate of Shell Australia;
- (5) the Shell Foundation charitable organisation;
- (6) any related body corporate of Shell Australia whose principal business is insurance; or
- (7) Shell Asset Management Company B.V. acting on behalf of any of the entities referred to in (3) to (6) above,

(each of the entities referred to in (3) to (7) above being a **Relevant Person**), provided that the Relevant Person is not an Associate of Shell Australia (or an Associate of a related body corporate of Shell Australia) by virtue of paragraph 12(2)(b) or paragraph 12(2)(c) of the Corporations Act; and

- (o) **position since 31 December 2018:** since 31 December 2018:
- (1) there has been no adverse change in the financial position of Shell Australia which is material; and



- (2) no material change has occurred in the assets and liabilities shown in the special purpose financial statements of Shell Australia for the year ended 31 December 2018 (a copy of which was provided to ERM prior to the date of this deed).

## Schedule 4

### ERM Representations and Warranties

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ERM represents and warrants to Shell Australia that:

- (a) **ERM Information:** the ERM Information contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to ERM Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
- (b) **basis of ERM Information:** the ERM Information will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules;
- (c) **Independent Expert:** and all information provided by ERM to the Independent Expert will, as at the date that information is provided, be provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
- (d) **new information:** it will, as a continuing obligation (but in respect of the Shell Australia Information, only to the extent that Shell Australia provides ERM with updates to the Shell Australia Information), ensure that the Scheme Booklet is updated or supplemented to include all further or new information which arises after the Scheme Booklet has been despatched to ERM Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive (including by way of omission);
- (e) **validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (f) **authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of ERM;
- (g) **power:** it has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
- (h) **no default:** this deed does not conflict with or result in the breach of or a default under:
  - (1) any provision of ERM's constitution; or
  - (2) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other ERM Group Member is bound;
- (i) **deed binding:** this deed is a valid and binding obligation of ERM, enforceable in accordance with its terms;
- (j) **continuous disclosure:** as at the date of this deed, ERM is in compliance in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, except for this Transaction (as it relates to Shell Australia's proposal to acquire ERM) and as Fairly Disclosed in the Disclosure Materials, ERM is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;



- (k) **capital structure:** its capital structure, including all issued securities as at the date of this deed, is as set out in Schedule 5 and it has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into ERM Shares other than as set out in Schedule 5 and it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any ERM Shares, options, warrants, performance rights or other securities or instruments in ERM;
- (l) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or another ERM Group Member, nor has any regulatory action of any nature of which it is aware been taken that would reasonably be likely to prevent or materially restrict its ability to fulfil its obligations under this deed or under the Scheme;
- (m) **compliance with applicable laws:** so far as ERM is aware, each member of the ERM Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Government Agencies having jurisdiction over them and have all material licences, authorisations and permits necessary for them to conduct the business of the ERM Group as presently being conducted;
- (n) **Disclosure Materials:** it has collated and made available all of the Disclosure Materials to Shell Australia and its Related Persons in good faith for the purposes of a due diligence process and in this context, as far as ERM is aware, the Disclosure Materials have been collated with all reasonable care and skill and are accurate in all material respects and not materially misleading (including by omission), provided however that no representation or warranty is made in respect of any of the commentary or notes provided by ERM in the data room response list emailed by Herbert Smith Freehills to Ashurst at around 10.17pm on 28 July 2019;
- (o) **financing arrangements:** it has Fairly Disclosed key terms of its material financing arrangements and nothing has occurred in relation to those financing arrangements before the date of this deed which would result in any acceleration of repayment of those financing arrangements;
- (p) **compliance:** so far as ERM is aware, since 1 January 2017, each member of the ERM Group has complied in all material respects with:
  - (1) all licences and authorisations issued; and
  - (2) the ERM Policies and the anti-bribery policy, the anti-corruption policy, the code of business conduct, the whistleblower policy and the securities trading policy, in each case, maintained by ERM;
- (q) **no litigation:** no litigation, arbitration, mediation, conciliation, investigation or administrative proceedings are taking place, or to its knowledge, pending or threatened which, if adversely decided, would reasonably be expected to constitute an ERM Material Adverse Change;
- (r) **no material breach:** so far as ERM is aware, neither ERM nor any of its Subsidiaries is in material breach under any contract to which it is a party and which contract is material in the context of the ERM Group taken as a whole (**Relevant Material Contract**), nor has anything occurred (other than the entry into this deed and/or any transactions contemplated by or under this deed) which is or would, with the giving of notice or lapse of time or both, constitute an event of default, prepayment event or similar event under any such Relevant Material Contract.



- (s) **anti-bribery and corruption:** so far as ERM is aware, since 1 January 2017, each member of the ERM Group:
  - (1) has not violated any provision of Division 70 of the *Criminal Code Act 1995* (Cth), the United States *Foreign Corrupt Practices Act of 1977*, the UK *Bribery Act 2010* or any other local or international anti-corruption or anti-bribery law applicable to the ERM Group; and
  - (2) whether directly or indirectly, has not made, offered, authorised, or accepted and will not make, offer, authorise, or accept any payment, gift, promise, or other advantage, to or for the use or benefit of any government official or any other person where that payment, gift, promise, or other advantage would comprise a facilitation payment;
- (t) **no political donations:** so far as ERM is aware, since 1 January 2017, no ERM Group Member nor any senior manager of any ERM Group Member has, directly or indirectly, in connection with the business of the ERM Group, requested, received, made, offered or promised to make or offer any unlawful payment, loan or transfer of anything of value or advantage to or for the benefit of or from any person, including any government official, candidate for public office, political party or political campaign; and
- (u) **no ERM Material Adverse Change:** so far as ERM is aware, immediately prior entry into this deed, no ERM Material Adverse Change has occurred.



## Schedule 5

### Capital structure

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<b>Security</b>	<b>Total number on issue as at the date of this deed</b>
ERM Shares	250,288,527.
Performance Rights	5,333,828 performance rights. Upon vesting, under their terms, each performance right converts into either cash or one new ERM Share per performance right.

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In relation to the 250,288,527 ERM Shares referred to above, 2,433,169 of these are ERM Equity Incentives which are the subject of unvested entitlements under an employee share trust, and 65,184 are unallocated shares held by the trustee under an employee share trust.



## Signing page

Executed as a deed

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### ERM

Signed sealed and delivered by  
**ERM Power Limited ACN 122  
259 223**  
by

sign here ▶   
\_\_\_\_\_  
Company Secretary/Director

sign here ▶   
\_\_\_\_\_  
Director

print name PHILIP ANDREW DAVIS

print name JONATHAN HUGH STRETCH



**Shell Australia**

Signed sealed and delivered by  
**Shell Energy Australia Pty Ltd**  
**ACN 085 757 446**  
by

sign here ▶

Company Secretary/Director

print name

DEAN HONDER

sign here ▶

Director

print name

GREG JONER



## Attachment 1

### Indicative Timetable

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<b>Event</b>	<b>Date</b>
Announcement and signing of scheme implementation deed	22 August 2019
Scheme Booklet provided to ASIC in draft	19 September 2019
First Court hearing	2 October 2019
Scheme Meeting	8 November 2019
Second Court Date	14 November 2019
Effective Date	14 November 2019
ERM Special Dividend record date	20 November 2019
ERM Special Dividend payment date	21 November 2019
Scheme Record Date	22 November 2019
Implementation Date	27 November 2019



## Attachment 2

### Scheme of arrangement

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[Attached]



HERBERT  
SMITH  
FREEHILLS

# Scheme of arrangement – share scheme

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ERM Power Limited

Scheme Shareholders



# Scheme of arrangement – share scheme

This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth)

Between the parties

ERM Power Limited (**ERM**) ACN 122 259 223 of Level 52, 111 Eagle Street, Brisbane QLD 4000

The Scheme Shareholders

## 1 Definitions, interpretation and scheme components

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### 1.1 Definitions

Schedule 1 contains definitions used in this Scheme.

### 1.2 Interpretation

Schedule 1 contains interpretation rules for this Scheme.

### 1.3 Scheme components

This Scheme includes any schedule to it.

## 2 Preliminary matters

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- (a) ERM is a public company limited by shares, registered in Victoria, Australia, and has been admitted to the official list of the ASX. ERM Shares are quoted for trading on the ASX.
- (b) As at the date of the Implementation Deed:
  - (1) 250,288,527 ERM Shares; and
  - (2) 5,333,828 performance rights,were on issue.
- (c) Shell Australia is a proprietary company limited by shares registered in Victoria, Australia.
- (d) If this Scheme becomes Effective:



- (1) Shell Australia must provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the terms of this Scheme and the Deed Poll; and
- (2) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, must be transferred to Shell Australia and ERM will enter the name of Shell Australia in the ERM Share Register in respect of the Scheme Shares.
- (e) ERM and Shell Australia have agreed, by executing the Implementation Deed, to implement this Scheme.
- (f) This Scheme attributes actions to Shell Australia but does not itself impose an obligation on them to perform those actions. Shell Australia have agreed, by executing the Deed Poll, to perform the actions attributed to them under this Scheme, including the provision or procuring the provision of the Scheme Consideration to the Scheme Shareholders.

## 3 Conditions

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### 3.1 Conditions precedent

This Scheme is conditional on and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) all the conditions in clause 3 of the Implementation Deed (other than the condition in the Implementation Deed relating to Court approval of this Scheme) having been satisfied or waived in accordance with the terms of the Implementation Deed by 8.00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) approval of this Scheme by the Court under paragraph 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by Shell Australia and ERM;
- (d) such other conditions made or required by the Court under subsection 411(6) of the Corporations Act in relation to this Scheme and agreed to by Shell Australia and ERM having been satisfied or waived; and
- (e) the orders of the Court made under paragraph 411(4)(b) (and, if applicable, subsection 411(6)) of the Corporations Act approving this Scheme coming into effect, pursuant to subsection 411(10) of the Corporations Act on or before the End Date (or any later date ERM and Shell Australia agree in writing).

### 3.2 Certificate

- (a) ERM and Shell Australia will provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent were satisfied, waived or taken to be waived.

### 3.3 End Date

This Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Implementation Deed or the Deed Poll is terminated in accordance with its terms,

unless ERM and Shell Australia otherwise agree in writing.

## 4 Implementation of this Scheme

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### 4.1 Lodgement of Court orders with ASIC

ERM must lodge with ASIC, in accordance with subsection 411(10) of the Corporations Act, an office copy of the Court order approving this Scheme as soon as possible after the Court approves this Scheme and in any event by 5.00pm on the first Business Day after the day on which the Court approves this Scheme.

### 4.2 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clauses 5.1(b) and 5.1(c), the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to Shell Australia, without the need for any further act by any Scheme Shareholder (other than acts performed by ERM as attorney and agent for Scheme Shareholders under clause 8.5), by:
  - (1) ERM delivering to Shell Australia a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by ERM, for registration; and
  - (2) Shell Australia duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to ERM for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a)(2), but subject to the stamping of the Scheme Transfer (if required), ERM must enter, or procure the entry of, the name of Shell Australia in the ERM Share Register as the holder of all the Scheme Shares transferred to Shell Australia in accordance with this Scheme.

## 5 Scheme Consideration

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### 5.1 Provision of Scheme Consideration

- (a) Shell Australia must, and ERM must use its best endeavours to procure that Shell Australia does, by no later than the Business Day before the Implementation Date, deposit, or procure the deposit, in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders, into an Australian dollar denominated trust account



operated by ERM as trustee for the Scheme Shareholders, (provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Shell Australia's account).

- (b) On the Implementation Date, subject to funds having been deposited in accordance with clause 5.1(a), ERM must pay or procure the payment of the Scheme Consideration to each Scheme Shareholder from the trust account referred to in clause 5.1(a).
- (c) The obligations of ERM under clause 5.1(b) will be satisfied by ERM (in its absolute discretion, and despite any election referred to in clause 5.1(c)(1) or authority referred to in clause 5.1(c)(2) made or given by the Scheme Shareholder):
  - (1) if a Scheme Shareholder has, before the Scheme Record Date, made a valid election in accordance with the requirements of the ERM Registry to receive dividend payments from ERM by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
  - (2) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Shareholder by an appropriate authority from the Scheme Shareholder to ERM; or
  - (3) dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Scheme Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.2).
- (d) To the extent that, following satisfaction of ERM's obligations under clause 5.1(b), there is a surplus in the amount held by ERM as trustee for the Scheme Shareholders in the trust account referred to in that clause, that surplus may be paid by ERM to Shell Australia.

## 5.2 Joint holders

In the case of Scheme Shares held in joint names:

- (a) subject to clause 5.1(c), the Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of ERM, the holder whose name appears first in the ERM Share Register as at the Scheme Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of ERM, the holder whose name appears first in the ERM Share Register as at the Scheme Record Date or to the joint holders.

## 5.3 Fractional entitlements and splitting

Where the calculation of the Scheme Consideration to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded down to the nearest whole cent.



## 5.4 Unclaimed monies

- (a) ERM may cancel a cheque issued under this clause 5 if the cheque:
  - (1) is returned to ERM; or
  - (2) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to ERM (or the ERM Registry) (which request may not be made until the date which is 30 Business Days after the Implementation Date), ERM must reissue a cheque that was previously cancelled under this clause 5.4.
- (c) The *Public Trustee Act 1978* (QLD) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section s98, s100 and s102 of the *Public Trustee Act 1978* (QLD)).

## 5.5 Orders of a court or Government Agency

If written notice is given to ERM (or the ERM Registry) or Shell Australia of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by ERM in accordance with clause 5.1 then ERM shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
- (b) prevents ERM from providing consideration to any particular Scheme Shareholder in accordance with clause 5.1, or the payment or issuance of such consideration is otherwise prohibited by applicable law, ERM shall be entitled to retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration until such time as provision of the Scheme Consideration in accordance with clause 5.1 is permitted by that (or another) order or direction or otherwise by law.

# 6 Dealings in ERM Shares

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## 6.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in ERM Shares or other alterations to the ERM Share Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the ERM Share Register as the holder of the relevant ERM Shares before the Scheme Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received before the Scheme Record Date at the place where the ERM Share Register is kept,



and ERM must not accept for registration, nor recognise for any purpose (except a transfer to Shell Australia pursuant to this Scheme and any subsequent transfer by Shell Australia or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

## 6.2 Register

- (a) ERM must register registrable transmission applications or transfers of the Scheme Shares that are received in accordance with clause 6.1(b) before the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires ERM to register a transfer that would result in a ERM Shareholder holding a parcel of ERM Shares that is less than a 'marketable parcel' (for the purposes of this clause 6.2(a) 'marketable parcel' has the meaning given in the Operating Rules).
- (b) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them on or after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and ERM shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, ERM must maintain the ERM Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The ERM Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for ERM Shares (other than statements of holding in favour of Shell Australia) will cease to have effect after the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the ERM Share Register (other than entries on the ERM Share Register in respect of Shell Australia) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the ERM Shares relating to that entry.
- (e) As soon as possible on or after the Scheme Record Date, and in any event by 5.00pm on the first Business Day after the Scheme Record Date, ERM will ensure that details of the names, Registered Addresses and holdings of ERM Shares for each Scheme Shareholder as shown in the ERM Share Register are available to Shell Australia in the form Shell Australia reasonably requires.

## 7 Quotation of ERM Shares

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- (a) ERM must apply to ASX to suspend trading on the ASX in ERM Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by Shell Australia, ERM must apply:
  - (1) for termination of the official quotation of ERM Shares on the ASX; and
  - (2) to have itself removed from the official list of the ASX.

## 8 General Scheme provisions

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### 8.1 Consent to amendments to this Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions:

- (a) ERM may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which Shell Australia has consented; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which ERM has consented to.

### 8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
  - (1) agrees to the transfer of their ERM Shares together with all rights and entitlements attaching to those ERM Shares in accordance with this Scheme;
  - (2) agrees to the variation, cancellation or modification of the rights attached to their ERM Shares constituted by or resulting from this Scheme;
  - (3) agrees to, on the direction of Shell Australia, destroy any holding statements or share certificates relating to their ERM Shares;
  - (4) who holds their ERM Shares in a CHESS Holding agrees to the conversion of those ERM Shares to an Issuer Sponsored Holding and irrevocably authorises ERM to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion; and
  - (5) acknowledges and agrees that this Scheme binds ERM and all Scheme Shareholders (including those who do not attend the Scheme Meeting and those who do not vote, or vote against this Scheme, at the Scheme Meeting).
- (b) Each Scheme Shareholder is taken to have warranted to ERM and Shell Australia on the Implementation Date, and appointed and authorised ERM as its attorney and agent to warrant to Shell Australia on the Implementation Date, that:
  - (1) all their ERM Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their ERM Shares to Shell Australia together with any rights and entitlements attaching to those shares. ERM undertakes that it will provide such warranty to Shell Australia as agent and attorney of each Scheme Shareholder; and
  - (2) other than any Performance Rights, it has no existing right to be issued any other ERM Shares or any other form of ERM securities. ERM undertakes that it will provide each warranty to Shell Australia as agent and attorney of each Scheme Shareholder.

### 8.3 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Shell Australia will, at the time of transfer of them to Shell Australia vest in Shell Australia free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise and free from any restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clauses 5.1(b) and 5.1(c), Shell Australia will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by ERM of Shell Australia in the ERM Share Register as the holder of the Scheme Shares.

### 8.4 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clauses 5.1(b) and 5.1(c) and until ERM registers Shell Australia as the holder of all Scheme Shares in the ERM Share Register, each Scheme Shareholder:

- (a) is deemed to have appointed Shell Australia as attorney and agent (and directed Shell Australia in each such capacity) to appoint any director, officer, secretary or agent nominated by Shell Australia as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution or document;
- (b) must not attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Shell Australia reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.4(a), Shell Australia and any director, officer, secretary or agent nominated by Shell Australia under clause 8.4(a) may act in the best interests of Shell Australia as the intended registered holder of the Scheme Shares.

### 8.5 Authority given to ERM

Each Scheme Shareholder, without the need for any further act:

- (a) on the Effective Date, irrevocably appoints ERM and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Deed Poll against Shell Australia, and ERM undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Shell Australia on behalf of and as agent and attorney for each Scheme Shareholder; and
- (b) on the Implementation Date, irrevocably appoints ERM and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to this Scheme and the



transactions contemplated by it, including (without limitation) executing the Scheme Transfer,

and ERM accepts each such appointment. ERM as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

## 8.6 Binding effect of Scheme

This Scheme binds ERM and all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting, or voted against this Scheme at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of ERM.

# 9 General

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## 9.1 Stamp duty

Shell Australia will:

- (a) pay all stamp duty and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under or in connection with this Scheme and the Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

## 9.2 Consent

Each of the Scheme Shareholders consents to ERM doing all things necessary or incidental to, or to give effect to, the implementation of this Scheme, whether on behalf of the Scheme Shareholders, ERM or otherwise.

## 9.3 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to ERM, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at ERM's registered office or at the office of the ERM Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a ERM Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

## 9.4 Governing law

- (a) This Scheme is governed by the laws in force in New South Wales, Australia.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this



Scheme. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### **9.5 Further action**

ERM must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.

### **9.6 No liability when acting in good faith**

Each Scheme Shareholder agrees that neither ERM, Shell Australia nor any director, officer, secretary or employee of ERM, Shell Australia shall be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

# Schedule 1

## Definitions and interpretation

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### 1 Definitions

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The meanings of the terms used in this Scheme are set out below.

<b>Term</b>	<b>Meaning</b>
<b>ASIC</b>	the Australian Securities and Investments Commission.
<b>ASX</b>	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
<b>Business Day</b>	a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, Australia.
<b>CHESS</b>	the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.
<b>CHESS Holding</b>	has the meaning given in the Settlement Rules.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth), as modified or varied by ASIC.
<b>Court</b>	any court of competent jurisdiction under the Corporations Act agreed to in writing by Shell Australia and ERM.
<b>Deed Poll</b>	a deed poll in the form of Attachment 1 under which Shell Australia covenants in favour of the Scheme Shareholders to perform the obligations attributed to Shell Australia under this Scheme.
<b>Effective</b>	when used in relation to this Scheme, the coming into effect, under subsection 411(10) of the Corporations Act, of the order of the Court made under paragraph 411(4)(b) of the Corporations Act in relation to this Scheme.



<b>Term</b>	<b>Meaning</b>
<b>Effective Date</b>	the date on which this Scheme becomes Effective.
<b>End Date</b>	1 31 March 2020; or 2 such other date as agreed in writing by the parties.
<b>ERM</b>	ERM Power Limited ACN 122 259 223.
<b>ERM Registry</b>	Link Market Services Limited ACN 083 214 537.
<b>ERM Share</b>	a fully paid ordinary share in the capital of ERM.
<b>ERM Shareholder</b>	each person who is registered as the holder of a ERM Share in the ERM Share Register.
<b>ERM Share Register</b>	the register of members of ERM maintained in accordance with the Corporations Act.
<b>Government Agency</b>	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity (including any stock or other securities exchange), or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian.
<b>Implementation Date</b>	the third Business Day after the Scheme Record Date, or such other date after the Scheme Record Date as the parties agree in writing.
<b>Implementation Deed</b>	the scheme implementation deed dated on or about 21 August 2019 between ERM and Shell Australia relating to the implementation of this Scheme.
<b>Issuer Sponsored Holding</b>	has the meaning given in the Settlement Rules.
<b>Performance Rights</b>	the performance rights referred to in clause 2(b)(2).
<b>Registered Address</b>	in relation to a ERM Shareholder, the address shown in the ERM



<b>Term</b>	<b>Meaning</b>
	Share Register as at the Scheme Record Date.
<b>Related Bodies Corporate</b>	has the meaning set out in section 50 of the Corporations Act.
<b>Scheme</b>	this scheme of arrangement under Part 5.1 of the Corporations Act between ERM and the Scheme Shareholders subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Shell Australia and ERM.
<b>Scheme Consideration</b>	the consideration to be provided by Shell Australia to each Scheme Shareholder for the transfer to Shell Australia of each Scheme Share, being for each ERM Share held by a Scheme Shareholder as at the Scheme Record Date, an amount of \$2.465, subject to, and as adjusted in accordance with, clause 5 of the Implementation Deed (if applicable).
<b>Scheme Meeting</b>	the meeting of ERM Shareholders ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on this Scheme and includes any meeting convened following any adjournment or postponement of that meeting.
<b>Scheme Record Date</b>	7.00pm on the sixth Business Day after the Effective Date or such other time and date as the parties agree in writing.
<b>Scheme Shares</b>	all ERM Shares held by the Scheme Shareholders as at the Scheme Record Date.
<b>Scheme Shareholder</b>	a holder of ERM Shares recorded in the ERM Share Register as at the Scheme Record Date.
<b>Scheme Transfer</b>	a duly completed and executed proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, in favour of Shell Australia as transferee, which may be a master transfer of all or part of the Scheme Shares.
<b>Second Court Date</b>	the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving this Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application or appeal is heard.



<b>Term</b>	<b>Meaning</b>
<b>Settlement Rules</b>	the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd.
<b>Shell Australia</b>	Shell Energy Australia Pty Ltd ACN 085 757 446.

## 2 Interpretation

In this Scheme:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Scheme;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Scheme;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this Scheme) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (j) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney, Australia.
- (k) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1 of this Schedule 1, has the same meaning when used in this Scheme;
- (l) a reference to a party to a document includes that party's successors and permitted assignees;
- (m) no provision of this Scheme will be construed adversely to a party because that party was responsible for the preparation of this Scheme or that provision;
- (n) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;



- (o) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (p) a reference to a body (including an institute, association or authority), other than a party to this Scheme, whether statutory or not:
  - (1) which ceases to exist; or
  - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (q) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (r) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (s) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later; and
- (t) if an act prescribed under this Scheme to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day.

### 3 Interpretation of inclusive expressions

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Specifying anything in this Scheme after the words 'include' or 'for example' or similar expressions does not limit what else is included.

### 4 Business Day

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Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.



## Attachment 1

### Deed Poll

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## Attachment 3

### Deed poll

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[Attached]



HERBERT  
SMITH  
FREEHILLS

Deed

# Share scheme deed poll

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Shell Energy Australia Pty Ltd



## Share scheme deed poll

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Date ► **2019**

This deed poll is made

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By **Shell Energy Australia Pty Ltd**  
ACN 085 757 446 of Level 30 275 George Street Brisbane Qld 4000  
(Shell Australia)

in favour of each person registered as a holder of fully paid ordinary shares in ERM in the Share Register as at the Scheme Record Date.

Recitals

- 1 ERM and Shell Australia entered into the Implementation Deed.
- 2 In the Implementation Deed, Shell Australia agreed to make this deed poll.
- 3 Shell Australia is making this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to perform their obligations under the Implementation Deed and the Scheme.

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This deed poll provides as follows:

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## 1 Definitions and interpretation

---

### 1.1 Definitions

(a) The meanings of the terms used in this deed poll are set out below.

<b>Term</b>	<b>Meaning</b>
<b>ERM</b>	ERM Power Limited ACN 122 259 223.
<b>First Court Date</b>	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

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<b>Term</b>	<b>Meaning</b>
<b>Implementation Deed</b>	the scheme implementation deed entered into between ERM and Shell Australia dated on or about 21 August 2019.
<b>Scheme</b>	the scheme of arrangement under Part 5.1 of the Corporations Act between ERM and the Scheme Shareholders, the form of which is attached as Attachment 1, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Shell Australia and ERM.

(b) Unless the context otherwise requires, terms defined in the Scheme have the same meaning when used in this deed poll.

## 1.2 Interpretation

Sections 2, 3 and 4 of Schedule 1 of the Scheme apply to the interpretation of this deed poll, except that references to 'this Scheme' are to be read as references to 'this deed poll'.

## 1.3 Nature of deed poll

Shell Australia acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints ERM and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Shell Australia.

## 2 Conditions to obligations

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### 2.1 Conditions

This deed poll and the obligations of Shell Australia under this deed poll (in each case, save for the obligations under clause 3.2) are subject to the Scheme becoming Effective.

### 2.2 Termination

The obligations of Shell Australia under this deed poll to the Scheme Shareholders will automatically terminate and the terms of this deed poll will be of no force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
  - (b) the Scheme is not Effective on or before the End Date,
- unless Shell Australia and ERM otherwise agree in writing.



## 2.3 Consequences of termination

If this deed poll terminates under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Shell Australia is released from its obligations to further perform this deed poll except those obligations under clause 7.1; and
- (b) each Scheme Shareholder retains the rights they have against Shell Australia in respect of any breach of this deed poll which occurred before it was terminated.

## 3 Scheme obligations

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### 3.1 Undertaking to be bound by the Scheme

Subject to clause 2, Shell Australia covenants in favour of each Scheme Shareholder that it will be bound by the terms of the Scheme as if it were a party to the Scheme and undertakes to perform all obligations and actions attributed to it under the Scheme, subject to and in accordance with the Scheme.

### 3.2 Undertaking to be bound by the Implementation Deed

Shell Australia covenants in favour of each Scheme Shareholder to observe and perform all obligations and actions attributed to it under the Implementation Deed subject to and in accordance with the terms of the Implementation Deed.

### 3.3 Undertaking to pay Scheme Consideration

Subject to clause 2, Shell Australia undertakes in favour of each Scheme Shareholder to:

- (a) deposit, or procure the deposit of, in cleared funds, by no later than the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders under the Scheme into an Australian dollar denominated trust account operated by ERM as trustee for the Scheme Shareholders, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to Shell Australia's account; and
- (b) undertake all other actions, and give each acknowledgement, representation and warranty (if any), attributed to it under the Scheme,

subject to and in accordance with the terms of the Scheme.

## 4 Warranties

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Shell Australia represents and warrants in favour of each Scheme Shareholder, in respect of itself, that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;



- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

## 5 Continuing obligations

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This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Shell Australia has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

## 6 Notices

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### 6.1 Form of Notice

A notice or other communication in respect of this deed poll (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
- (b) addressed to Shell Australia in accordance with the details set out below (or any alternative details nominated by Shell Australia by Notice).

<b>Attention</b>	Peter Lorbeer, Associate Counsel
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<b>Address</b>	Shell House, 562 Wellington Street, Perth WA 6000
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<b>Email address</b>	Peter.Lorbeer@shell.com
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### 6.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.



<b>Method of giving Notice</b>	<b>When Notice is regarded as given and received</b>
By hand to the nominated address	When delivered to the nominated address
By pre-paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting
By email to the nominated email address	The earlier of: <ol style="list-style-type: none"><li>1 when the recipient's email server generates a message to the sender confirming that the email has been delivered to that server ("delivery receipt"), or at the time that the recipient "read" the email as stated in an automated message received by the sender ("read receipt"); and</li><li>2 four hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.</li></ol>

### **6.3 Notice must not be given by electronic communication**

A Notice must not be given by electronic means of communication (other than email as permitted in clause 6.2).

## **7 General**

### **7.1 Stamp duty**

Shell Australia:

- (a) will pay all stamp duty and any related fines and penalties in respect of the Scheme and this deed poll, the performance of this deed poll and each transaction effected by or made under or in connection with the Scheme and this deed poll; and
- (b) indemnifies each Scheme Shareholder against any liability arising from failure to comply with clause 7.1(a).

### **7.2 Governing law and jurisdiction**

- (a) This deed poll is governed by the law in force in New South Wales, Australia.
- (b) Shell Australia irrevocably submits to the non exclusive jurisdiction of courts exercising jurisdiction in New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed poll. Shell Australia irrevocably waive any objection to the venue of any legal



process in these courts on the basis that the process has been brought in an inconvenient forum.

### 7.3 Waiver

- (a) Shell Australia may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) No Scheme Shareholder may rely on words or conduct of Shell Australia as a waiver of any right unless the waiver is in writing and signed by the Shell Australia, as appropriate.
- (c) The meanings of the terms used in this clause 7.3 are set out below.

Term	Meaning
<b>conduct</b>	includes delay in the exercise of a right.
<b>right</b>	any right arising under or in connection with this deed poll and includes the right to rely on this clause.
<b>waiver</b>	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

### 7.4 Variation

A provision of this deed poll may not be varied unless:

- (a) if before the First Court Date, the variation is agreed to by ERM; or
- (b) if on or after the First Court Date, the variation is agreed to by ERM and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event Shell Australia will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

### 7.5 Cumulative rights

The rights, powers and remedies of Shell Australia and the Scheme Shareholders under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

### 7.6 Assignment

- (a) The rights created by this deed poll are personal to the Shell Australia and each Scheme Shareholder and must not be dealt with at law or in equity without the prior written consent of Shell Australia.
- (b) Any purported dealing in contravention of clause 7.6(a) is invalid.



## **7.7 Further action**

Shell Australia must, at its own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.



HERBERT  
SMITH  
FREEHILLS

## Attachment 1

### Scheme

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## Signing page

Executed as a deed poll

---

Signed sealed and delivered by  
**Shell Energy Australia Pty Ltd**  
by

*sign here* ►

\_\_\_\_\_  
Company Secretary/Director

*sign here* ►

\_\_\_\_\_  
Director

*print name*

\_\_\_\_\_

*print name*

\_\_\_\_\_



## Attachment 4

### Conditions Precedent certificate

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ERM Power Limited ACN 122 259 223 (**ERM**) and Shell Energy Australia Pty Ltd ACN 085 757 446 (**Shell Australia**) certify, confirm and agree that each of the conditions precedent:

- 1 in clause 3.1 (other than the condition in clause 3.1(c) (relating to Court approval) of the scheme implementation deed dated [●] August 2019 between ERM and Shell Australia (**SID**) has been satisfied or is hereby waived by the relevant party (or parties) to the SID in accordance with the terms of the SID; and
- 2 in clauses [●] of the scheme of arrangement between ERM and the relevant ERM shareholders which appears in Annexure [●] of ERM's scheme booklet dated [●] 2019 has been satisfied.

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Dated: [●] 2019

**Executed as a deed**

#### **ERM**

Signed sealed and delivered by  
**ERM Power Limited ACN 122  
259 223**  
by

*sign here* ► \_\_\_\_\_  
Company Secretary/Director

*sign here* ► \_\_\_\_\_  
Director

*print name* \_\_\_\_\_

*print name* \_\_\_\_\_

#### **Shell Australia**

Signed sealed and delivered by  
**Shell Energy Australia Pty Ltd  
ACN 085 757 446**  
by

*sign here* ► \_\_\_\_\_  
Company Secretary/Director

*sign here* ► \_\_\_\_\_  
Director

*print name* \_\_\_\_\_

*print name* \_\_\_\_\_