



11 October 2021

Z Energy Board unanimously recommends Scheme of Arrangement with Ampol

Z Energy Limited (NZX/ASX: ZEL) ("Z") has entered into a binding Scheme Implementation Agreement with Ampol Limited (ASX: ALD) ("Ampol") under which it is proposed that Ampol acquire all the shares of Z by means of a Scheme of Arrangement ("the Scheme").

Highlights

- Under the Scheme, Z shareholders would receive a cash offer price of NZ\$3.78 per share and will also receive the first NZ\$0.05 per share of the interim FY22 dividend without adjusting the cash offer price, resulting in overall value to Z shareholders of NZ\$3.83 per share.
- If the Scheme has not been implemented by 31 March 2022, the final cash consideration will be progressively increased to reflect FY23 performance, up to a limit of NZ\$0.10 per share.
- The Z Board unanimously recommends that shareholders vote in favour of the Scheme, subject to the Scheme consideration being within or above the valuation range specified by the independent advisor and in the absence of a Superior Proposal being made for Z (as defined in the transaction agreement).
- The Scheme is subject to a number of conditions including regulatory approvals from the New Zealand Commerce Commission (NZCC) and New Zealand Overseas Investment Office (OIO).

Background

On 23 August 2021, Z announced that it had received a proposal from Ampol to acquire all the shares of Z at an offer price of \$3.78 per share (subject to adjustment for any dividends paid and a mechanism to increase the Cash Consideration progressively up to a maximum of NZ\$0.10 per share if completion occurs after 31 March 2022).

The proposal from Ampol followed earlier unsolicited, confidential and non-binding indicative proposals in the form of letters or verbal communications to Z for \$3.35, \$3.50 and \$3.60 per share.

The Z Board considered that the earlier proposals did not value Z's business sufficiently to justify the requested exclusivity or confirmatory due diligence access. However, the Board's assessment of the last proposal was that it would be in the best interests of the company and shareholders to grant Ampol a four-week period of exclusivity (subject to the usual exceptions) to undertake due diligence, to further develop their proposal,

and for the parties to negotiate transaction documentation. On 27 September 2021 Z announced that the exclusivity period had been extended to 11 October 2021 to allow both parties to agree transaction documentation. Z and Ampol have now concluded those negotiations and have entered into a binding scheme implementation agreement ("SIA").

Details of the Scheme

Under the Scheme, Z shareholders will be entitled to receive NZ\$3.78 in cash consideration per share (subject to the adjustments set out below) ("Cash Consideration"). Z and Ampol have agreed that Z will be entitled to pay dividends in respect of the full or part FY22 financial year reflecting Z's financial performance during the period up to implementation of the Scheme.

The Scheme terms provide that the first NZ\$0.05 per share of the interim FY22 dividend would not be deducted from the final Cash Consideration, which represents additional value for Z shareholders. Any other dividends paid by Z in respect of any full or part FY22 period would be deducted from the final Cash Consideration payable by Ampol.

If the Scheme has not been implemented by 31 March 2022, the final Cash Consideration (after the adjustments mentioned above) will be increased by a rate of NZ\$0.00055 per share per day for each day that implementation extends beyond 31 March 2022, up to a limit of NZ\$0.10 per share.

Assuming an interim distribution for FY22 of at least NZ\$0.05 per share is made in November 2021, the total value derived by Z shareholders under the Scheme will be NZ\$3.83 per share before accounting for any increase in cash consideration post 31 March 2022, which represents:

- a 37.8% premium to the one month volume weighted average price ("VWAP") up to 28 July 2021² (being Z's Investor Day) of NZ\$2.78 per share; and
- an increase of NZ\$0.48 per share (approximately 14.3%) to Ampol's initial offer of \$3.35 per share.

The Scheme is subject to customary conditions, a condition relating to the transition of the Marsden Point refinery to an import-only terminal, regulatory approvals from NZCC clearance and OIO approval, shareholder approval and ultimately approval by the High Court of New Zealand.

Completion is expected to occur, after regulatory approvals have been obtained, in the first half of 2022. In respect of its New Zealand Commerce Commission clearance application, Ampol has committed to the full divestment of its New Zealand business "Gull", subject to acquiring Z Energy. Ampol is also committed to delivering appropriate benefits to New Zealand to support the approval of the transaction by the OIO. The Z Board and management will support Ampol through the necessary regulatory stages with the NZCC and OIO.

Under the SIA, Z is bound by customary exclusivity provisions, subject to the fiduciary obligations of the Z directors and 'notification' obligations as well as 'matching' rights in

favour of Ampol. A break fee of \$20m will be payable by each party in certain circumstances and a regulatory approval break fee of \$20m will be payable by Ampol where key regulatory consents are not met within 12 months and the Scheme is terminated.

Ampol has also indicated that it expects to apply for a secondary listing to the NZX Main Board following implementation of the Scheme.

Z Board unanimous recommendation and voting intentions

Z's Board of Directors unanimously recommend that shareholders vote in favour of the Scheme and intend to vote shares controlled by them in favour of the proposed transaction. The Z Board of Directors' recommendation and voting intention is subject to the scheme consideration being within or above the Independent Adviser's value range, and no superior proposal being received by the company.

Z Energy Chair Abby Foote said, "The Z Board is unanimous in recommending this offer to Z shareholders. The Board has been focussed on the best interest of Z shareholders and has engaged constructively with Ampol over several months to secure additional value beyond the initial approach in June. The Board took the opportunity to obtain feedback from shareholders on the proposal and that has played an important role in finalising the terms of the deal.

The Z Board believes that the scheme represents fair value for Z shareholders. The Board is also satisfied that Ampol will continue to invest in New Zealand's energy transition towards a low carbon future and its scale will deliver advantages for the fuel industry in New Zealand."

Mike Bennetts, CEO for Z added, "Z and Ampol share a focus on safe and reliable operations and delivering for our customers. Z will be able to tap into Ampol's significant supply chain, including trading and shipping operations, that will deliver scale benefits to Z. Ampol's focus on a low carbon energy future will add expertise to Z's already well-developed work in this area. In the meantime, Z will stay focused on running the business and delivering on the relevant strategic objectives that we discussed at Z's Investor Day in July."

Proposed timetable and next steps

A scheme booklet, which will contain important information relating to the Scheme and the shareholder meeting to vote on the Scheme, including the reasons for the Z Director recommendation, and the Independent Adviser's Report from Calibre Partners (previously KordaMentha NZ), is being prepared to be sent to Z shareholders. The shareholder meeting to vote on the Scheme is expected to be held early in 2022. Given the need for key regulatory consents to be obtained Ampol is targeting implementation of the Scheme in the first half of 2022.

Z is being advised by Goldman Sachs and Chapman Tripp. Z will continue to keep the market informed in relation to the scheme in line with its continuous disclosure obligations.

At this time Z shareholders do not need to take any action.

Z Energy will be hosting an investor briefing at 11.00am (NZDT) today, Monday 11 October. To ask questions you can pre-register and dial in to the briefing by clicking here: <https://s1.c-conf.com/diamondpass/10017206-7ms5he.html>. A listen only audio webcast will also be available here <https://edge.media-server.com/mmc/p/cea3rq72>

A replay of the briefing will be made available on Z's investor centre at <https://investors.z.co.nz/announcements/webcasts-presentations>

A joint media conference hosted by Ampol CEO Matt Halliday and Z Energy CEO Mike Bennetts is scheduled for 12.00pm (NZDT) today, Monday 11 October. To ask questions media will need to pre-register and then dial in to the briefing by clicking here: <https://s1.c-conf.com/diamondpass/10017155-elyopk.html>

ENDS

For queries in relation to this announcement please contact:

Matt Hardwick

Corporate Affairs Manager

Mob +64 (0)27 787 4688

matt.hardwick@z.co.nz

Z Energy

(NZX/ASX: ZEL)



11 October 2021

Scheme of Arrangement with Ampol

<https://investors.z.co.nz/>

Disclaimer



Please read this page before the rest of the presentation

Please do not read this presentation in isolation

This presentation is made in advance of our half year results being released to the market in November and is in no way a form of guidance for those results. This presentation and other supporting material should be read subject to and in conjunction with all other material which we have released to NZX and ASX. This material is available on our website, <https://investors.z.co.nz/>. All references in \$ are to New Zealand dollars unless otherwise stated.

Forward looking statements are inherently fallible

This presentation contains forward-looking statements and projections. These reflect our current expectations, based on what we think are reasonable assumptions. For any number of reasons, the future could be different – potentially materially different. For example, assumptions may be wrong, risks may crystallise, unexpected things may happen. We give no warranty or representation as to our future financial performance or any future matter. Consistent with the NZX and ASX listing rules we will communicate with the market if there is a material change, however we will not update this presentation.

Understand our non-GAAP information

Some of the financial information in this presentation has not been prepared in accordance with generally accepted accounting practice (“GAAP”). In particular, we show results calculated on the basis of “replacement cost accounting” a widely used and understood Industry measure. It is very important that you understand how this non-GAAP information relates to our GAAP results. So please read the explanation in the appendices.

There is no offer or investment advice in this presentation

This presentation is for information purposes only. It is not an offer of securities, or a proposal or invitation to make any such offer. It is not investment advice or a securities recommendation, and does not take into account any person’s individual circumstances or objectives. Every investor should make an independent assessment of Z Energy on the basis of expert financial advice.

Please observe any applicable legal restrictions on distribution

Distribution of this presentation (including electronically) may be restricted by law. You should observe all such restrictions which may apply in your jurisdiction.

Disclaimer

To the maximum extent permitted by law, we will not be liable (whether in tort (including negligence) or otherwise) to you or any other person in relation to this presentation, including any error in it.

Presenters



Mike Bennetts
Chief Executive



Matt Hardwick
Corporate Affairs Manager

Scheme of Arrangement

Key details



Price & Dividend

- Under the Scheme Z shareholders would receive overall value of at least NZ\$3.83 per share, made up of cash consideration of NZ\$3.78 per share and the first NZ\$0.05 per share of the interim FY22 dividend
- Z will be entitled to pay additional dividends for FY22 up to implementation of the Scheme which would be deducted from the final cash consideration
- If the Scheme has not been implemented by 31 March 2022, the final cash consideration will be progressively increased to reflect FY23 performance, up to a limit of NZ\$0.10 per share

Board approval

- The Z Board unanimously recommends that shareholders vote in favour of the Scheme
- Independent valuer (Calibre Partners) has been appointed and will report to shareholders
- Z Board is bound by customary exclusivity provisions, and matching rights in favour of Ampol, subject to fiduciary exceptions for the Z Directors
- Break fee of NZ\$20m payable by each party in certain circumstances
- Regulatory approval break fee of NZ\$20m payable by Ampol if key regulatory consents not achieved

Conditions

- The Scheme is subject to customary conditions, a condition relating to the delay or reversal of the Marsden Point refinery to an import-only terminal, regulatory approvals from NZCC clearance and OIO approval, shareholder approval and ultimately approval by the High Court of New Zealand
- Completion, following regulatory approvals, is expected in the first half of calendar 2022. As part of its NZCC clearance application, Ampol has committed to the full divestment of the New Zealand “Gull” business; the Z Board and management will support Ampol through the necessary regulatory stages with the NZCC and OIO

Key Benefits of the transaction

Size and scale and security of supply



Scale Benefits

- Ampol has significant scale supplying the largest branded petrol and convenience network In Australia
- Ampol operations include refining, importing and marketing fuels and lubricants; Ampol supplies fuel to around 80,000 commercial customers and their retail network serves more than three million customers every week
- Ampol manages an extensive supply chain which includes 16 terminals, 6 major pipelines and the Lytton Refinery in Queensland
- Ampol employs over 8,000 people across Australia and in its international trading and shipping operations which will benefit Z as we exit the crude supply chain

Low Carbon Future

- Similar attitude and approach to Z towards a low carbon energy future
- Targeting net zero operating emissions by 2040 with clear interim targets
- Ampol developing customer centric energy solutions in electricity, hydrogen, gas, biofuels and carbon mitigation technologies
- Ampol has created partnerships with Tesla to create a virtual power plant trial in Adelaide and Fusion Fuel Green to develop a green hydrogen production plant at Lytton
- Ampol is a founding member of the Australian Climate Leaders Coalition

Q&A



Thank you



Scheme Implementation Agreement

in relation to Z Energy Limited

Ampol Limited (Ampol)

Z Energy Limited (Z Energy)



CONTENTS

1	DEFINITIONS AND CONSTRUCTION	1
2	PROPOSAL AND IMPLEMENTATION OF SCHEME	16
3	CONDITIONS PRECEDENT	18
4	SCHEME BOOKLET	22
5	SCHEME IMPLEMENTATION STEPS	26
6	Z ENERGY'S OTHER IMPLEMENTATION OBLIGATIONS	29
7	COURT PROCEEDINGS	32
8	RECOMMENDATION AND VOTING INTENTIONS	33
9	ACCESS, INFORMATION AND CONDUCT OF BUSINESS	34
10	REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS	44
11	RELEASES	45
12	EXCLUSIVITY	47
13	BREAK FEES AND REVERSE BREAK FEE	52
14	TERMINATION	58
15	ANNOUNCEMENTS	60
16	PAYMENTS	61
17	GST	62
18	NOTICES	63
19	GENERAL	64
20	GOVERNING LAW AND JURISDICTION	65
	EXECUTION PAGE	67
	SCHEDULE 1 – PRESCRIBED OCCURRENCES	68
	SCHEDULE 2 – Z ENERGY WARRANTIES AND UNDERTAKINGS	70
	SCHEDULE 3 – AMPOL WARRANTIES AND UNDERTAKINGS	73
	SCHEDULE 4 – CAPITAL STRUCTURE	75
	SCHEDULE 5 - STANDARD OIO CONDITIONS	76



SCHEDULE 6 – SUMMARY TIMETABLE	78
ANNEXURE 1 - SCHEME PLAN	79
ANNEXURE 2 - DEED POLL	88



SCHEME IMPLEMENTATION AGREEMENT

Date: 10 October 2021

PARTIES

Ampol Limited (ACN 004 201 307) a duly incorporated company having its registered office at 29-33 Bourke Road Alexandria NSW 2015, Australia (*Ampol*)

Z Energy Limited (Company No. 12046) a duly incorporated company having its registered office at 3 Queens Wharf, Wellington Central, Wellington 6011, New Zealand (*Z Energy*)

BACKGROUND

- A Ampol and Z Energy have agreed that Ampol will acquire all of the Scheme Shares by means of the Scheme.
- B This agreement is entered into to record and give effect to the terms and conditions on which Ampol and Z Energy propose to implement the Scheme.

THE PARTIES AGREE as follows:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this agreement, unless the context requires otherwise:

Adjusting Permitted Dividend means a fully imputed cash dividend or dividends for the financial year to 31 March 2022 of an aggregate amount of up to NZ\$0.18 per Share declared by Z Energy in connection with the announcement of Z Energy's half-year results or full-year results which is consistent with Z Energy's dividend policy and past practice (but which will not, for clarity, include the amount of the Non-Adjusting Permitted Dividend);

Anticipated Transition Impact means the amount of one-off reduction in EBITDAF of the Z Energy Group attributable to the Marsden Point Transition that Z Energy reasonably expects to occur, as disclosed to Ampol prior to the date of this agreement;

Ampol Group means Ampol and its Related Entities (but excluding members of the Z Energy Group);

Ampol Indemnified Person means each member of the Ampol Group and each of their respective directors, officers and employees;

Ampol Information means:

- (a) all information given by Ampol to Z Energy in writing for inclusion in the Scheme Booklet concerning Ampol, Ampol Nominee (if applicable), their Related Entities, business and interests and dealings in Shares; and



- (b) any other information which the parties agree (acting reasonably) is Ampol Information and that is identified in the Scheme Booklet as such;

Ampol Nominee has the meaning given to that term in clause 2.7(a);

Ampol Regulatory Approval Break Fee means NZ\$20,000,000 plus GST, if any;

Ampol Undertakings means the undertakings set out in Part 2 of Schedule 3;

Ampol Warranties means the warranties set out in Part 1 of Schedule 3;

Associates has the meaning given to it in the Takeovers Code;

ASX means ASX Limited or the Australian Securities Exchange, as the context requires;

ASX Listing Rules means the official listing rules of the ASX;

Authorisation means any permit, licence, consent, approval, registration, accreditation, certification or other authorisation given or issued by any Government Agency;

Average Net Assets means a simple average of the Net Assets as at each month end for the 12 month period preceding the Specified Event or Specified Events;

Board means the board of directors of Z Energy;

BP means BP Oil New Zealand Limited;

Break Fee means NZ\$20,000,000 plus GST, if any;

Business Day means any day other than a Saturday, Sunday, a statutory public holiday in Auckland or Wellington, New Zealand or Sydney, Australia, and excluding any day between 25 December 2021 and 4 January 2022 (both dates inclusive);

COLL means Coastal Oil Logistics Limited, jointly owned by Z Energy, Mobil and BP;

Companies Act means the Companies Act 1993;

Competing Proposal means any proposed:

- (a) takeover bid (whether full or partial under the Takeovers Code) for Z Energy;
- (b) scheme of arrangement in respect of Z Energy;
- (c) sale of material assets by Z Energy;
- (d) reverse takeover, sale of securities, strategic alliance, joint venture, partnership, economic or synthetic merger or combination or other transaction or arrangement which, if completed, would result in a Third Party:
 - (i) directly or indirectly acquiring or being entitled to acquire a Relevant Interest or any other direct or indirect legal, beneficial or economic



interest in, or control over, more than 20% of the shares of Z Energy or more than 20% of the shares in any other member or members of the Z Energy Group that, individually or collectively, contribute 20% or more of the consolidated EBITDAF of the Z Energy Group or whose assets represent 20% or more of the total consolidated assets of the Z Energy Group; or

- (ii) directly or indirectly acquiring or being entitled to acquire the whole or substantially all of the business or assets of the Z Energy Group or any part of the business or assets of the Z Energy Group that, individually or collectively, contributes 20% or more of the consolidated EBITDAF of the Z Energy Group or that represents 20% or more of the total consolidated assets of the Z Energy Group; or
- (iii) acquiring Control of Z Energy or merging or amalgamating with Z Energy or with any other member or members of the Z Energy Group that, individually or collectively, contribute 20% or more of the consolidated EBITDAF of the Z Energy Group or whose assets represent 20% or more of the total consolidated assets of the Z Energy Group,

or which would otherwise require Z Energy to abandon, or otherwise fail to proceed with, the implementation of the Scheme. For the purposes of this definition of Competing Proposal:

- (e) any such proposal may be an expression of interest, indicative, conditional or otherwise non-binding;
- (f) paragraphs (a) to (d) above include any agreement (within the meaning of section 6 of the FMCA) whereby such a transaction is effected through a series of linked or related transactions which if conducted as a single transaction would constitute a Competing Proposal within the meaning of any of paragraphs (a) to (d) above;
- (g) each successive material modification to or variation of a Competing Proposal will constitute a new Competing Proposal; and
- (h) references to a Third Party include all Associates of the Third Party;

Conditions mean the conditions precedent set out in the first column of the table in clause 3.1;

Confidentiality Agreement means the confidentiality agreement between Ampol and Z Energy, dated 5 August 2021 and amended on 20 August 2021;

Consideration means, in respect of each Scheme Share held by a Scheme Shareholder, NZ\$3.78 per Scheme Share:

- (a) plus an amount of NZ\$0.00055 per Scheme Share, per calendar day, for each day that the Implementation Date is after 31 March 2022 up to a maximum amount of NZ\$0.10 per Scheme Share, payable in cash; and
- (b) less the aggregate per Share amount of all Adjusting Permitted Dividends the record date for payment of which is prior to the Record Date;



Constitution means the constitution of Z Energy;

Control means, in relation to a person (the “*relevant person*”) and one or more other persons, where those one or more persons, directly or indirectly, whether by the legal or beneficial ownership of shares, securities or other equity, the possession of voting power, by contract, trust, or otherwise:

- (a) has the power to appoint or remove the majority of the members of the governing body of the relevant person; or
- (b) controls or has the power to control the affairs or policies of the relevant person; or
- (c) is in a position to derive more than 50% of the economic benefit of the existence or activities of the relevant person;

Core ITS Services has the meaning given to it in Refining NZ’s “Marsden Point Conversion Proposal” explanatory memorandum and independent appraisal report dated 5 July 2021;

Counter Proposal has the meaning given in clause 12.8(b);

Court means the High Court of New Zealand, Wellington Registry;

D&O Run-off Policy has the meaning given in clause 11.3;

Data Room Index means the index of the Due Diligence Material contained in the electronic data room hosted by ansarada, in a form agreed between the parties in writing on or prior to the date of this agreement;

Deed Poll means the deed poll to be entered into by Ampol and the Ampol Nominee (if applicable) in favour of the Scheme Shareholders in the form attached as Annexure 2 or in such other form as the parties agree in writing;

Designated Persons means Mike Bennetts, Lindis Jones, Debra Blackett, Mandy Simpson, Andy Baird, Nicolas Williams, David Binnie, Nicola Law and Patricia Green;

Due Diligence Material means:

- (a) the written information and documents made available to Ampol or its Representatives (including the written answers or written confirmations together with any documents attached to those written answers or confirmations provided to Ampol or its Representatives) on or before 5.00pm on 9 October 2021, in the electronic data room hosted by ansarada and assembled by Z Energy, listed in the Data Room Index;
- (b) Z Energy’s NZX announcements made through the NZX market announcements platform on or after 31 March 2021 and at least two Business Days’ prior to the date of this agreement; and
- (c) the Z Energy Disclosure Letter;



Duty means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and any penalty, fine, interest or additional charge payable in relation to any such duty or charge;

EBITDAF means the consolidated earnings, including (for the avoidance of doubt) those from associated companies, before interest, tax, depreciation (including gains and (losses) on sale of fixed assets), amortisation, impairment, fair value movements in interest-rate derivatives and movements in decommissioning and restoration provision of the Z Energy Group for the relevant period, as would be disclosed in the consolidated financial statements of the Z Energy Group if they were prepared in accordance with Z Energy's reporting of its replacement costs EBITDAF calculated by applying the accounting policies and methodologies applicable to the Z Energy Group at the date of this agreement as disclosed in the Z Energy Group's consolidated audited financial statements for the financial year ended 31 March 2021;

Effective means, when used in relation to the Scheme, the coming into effect under section 236(3) of the Companies Act of the order of the Court made under section 236(1) of the Companies Act in relation to the Scheme and all of the conditions to the implementation of the Scheme having been satisfied or waived (where capable of waiver) in accordance with this agreement and the Scheme;

Encumbrance means any security interest (within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and any option, right to acquire, right of pre-emption, assignment by way of security or trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business), and any agreement to create any of the foregoing;

End Date means the date that is 12 months from the date of this agreement, or such later date as may be set in accordance with clause 7.4(b)(iii), or any other date agreed in writing by the parties;

Excluded Shares means any Shares nominated in writing by Ampol to Z Energy not less than two Business Days prior to the Record Date which are held or controlled by Ampol or any of its Associates at 7.00pm on the Record Date;

Exclusivity Period means the period starting on the date of this agreement and ending on the first to occur of:

- (a) termination of this agreement;
- (b) the Implementation Date; and
- (c) the End Date;

Expert means, upon the application by either party, an expert appointed by the President, or their nominee, of the New Zealand Law Society, who must be:

- (a) a Queens Counsel with appropriate experience in New Zealand commercial disputes; and



- (b) genuinely independent from any party (for example, has not advised any party in the three years prior to appointment);

Existing Remuneration Policies means Z Energy's Short Term Incentive Scheme Policy (being Data Room document 09.04.03.06);

Final Orders means orders made, on application of Z Energy, that the Scheme is binding on Z Energy, Ampol, the Ampol Nominee (if applicable), Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

Final Orders Date means the day on which the Final Orders are granted by the Court;

First Court Date means the first date on which the application is made to the Court for the Initial Orders in accordance with section 236(2) of the Companies Act;

FMCA means the Financial Markets Conduct Act 2013;

Fundamental Warranties means the Z Energy Warranties set out in paragraphs 1, 2, 3, 4, 5, 6, 13 and 14;

FY22 Annual Forecast means the financial data book and capex schedule at Data Room Index numbers 03.01.02 and 03.01.06;

Government Agency means any government, department, officer or minister of any government and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity and includes the Overseas Investment Office, the New Zealand Commerce Commission, the Takeovers Panel and the Financial Markets Authority;

Growth Capital Expenditure means capital expenditure in relation to mergers, acquisitions and investments as well as specific new outlays that are expected to increase the revenue, profitability or cashflow, or otherwise further the strategy of the Z Energy Group;

GST means tax charged or levied under the GST Act;

GST Act means the Goods and Services Tax Act 1985 or any other applicable legislation or law imposing a goods and services tax, value added tax or equivalent tax;

GST Exclusive Consideration has the meaning given in clause 17.2;

Hutt City Terminal means the terminal at Hutt City operated by New Zealand Oil Services Limited and jointly owned by Z Energy and BP;

Implementation Date means the day on which the Scheme is to be implemented, being five Business Days after the Record Date, or such other date agreed between the parties in writing;



Independent Adviser means the person appointed by Z Energy, and approved by the Takeovers Panel, as independent adviser to prepare the Independent Adviser's Report;

Independent Adviser's Report means the independent adviser's report prepared by the Independent Adviser in relation to the Scheme in relation to its opinion on the value of the Shares, as amended or updated from time to time and including any supplementary or replacement report;

Information Sharing Protocols means the information sharing protocols between Z Energy and Ampol dated 20 August 2021;

Initial Orders means orders, on application by Z Energy, made by the Court for the purposes of section 236(2) of the Companies Act;

Insolvency Event means, in relation to a person, the occurrence of any of the following:

- (a) the person ceases or threatens to cease to carry on all or substantially all of its business or operations;
- (b) an application or an order is made, or a resolution is passed or proposed, for the person's dissolution;
- (c) the person is or becomes unable to pay its debts when due (as defined in the Companies Act), or enters into dealings with any of its creditors with a view to avoiding or in expectation of insolvency, or makes a general assignment or an arrangement or composition with or for the benefit of any of its creditors, or stops or threatens to stop payments generally;
- (d) the person goes into receivership or has a receiver, receiver and manager, official manager, trustee, statutory manager or other similar officer appointed in respect of all or any of its property;
- (e) a distress, attachment or other execution is levied or enforced upon or commenced against any of its assets;
- (f) any resolution is passed, or any proceeding is commenced, for the dissolution of that person;
- (g) the person takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this definition; and
- (h) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any applicable foreign law;

Integrity Capital Expenditure means all capital expenditure other than Growth Capital Expenditure including for the purpose of maintaining, updating or extending the life of existing fixed assets or intangibles for the continued use by the Z Energy Group, as well as to comply with changing laws, regulation or government policy;



JIFS means the joint inter-plane fuelling service for planes at Auckland Airport, jointly owned by Z Energy and BP;

Joint Ventures means the JUHI, WAP, JOSF, JIFS, Hutt City Terminal, WOSL and COLL;

JOSF means the joint operating storage facility at Christchurch Airport, jointly owned by Z Energy and BP;

JUHI means the joint user hydrant installation at Auckland Airport, jointly owned by Z Energy, BP and Mobil;

Loss means all losses, damages, costs, expenses, charges and other liabilities provided however that the parties shall not be liable for any indirect loss, economic loss, loss of opportunity or loss of profit whatsoever and however arising, including consequential loss or damage;

LTI Trustee means Z Energy LTI Trustee Limited;

Marsden Point Operations Commencement means the commencement of provision by Refining NZ or any Refining NZ group member of the Core ITS Services to customers substantially in accordance with the agreements in place with such customers at that time;

Marsden Point Transition means the transition by the Z Energy Group to an import-only supply chain as a result of the conversion of the Marsden Point Oil Refinery to an import only terminal;

Material Adverse Change means any matter, event, condition or change in circumstances or thing which occurs or is announced or is discovered (each a *Specified Event*) and which individually, or when aggregated with all other Specified Events, reduces or is reasonably likely to reduce:

- (a) the Net Assets of the Z Energy Group by \$100 million or more against the Average Net Assets; or
- (b) the EBITDAF of the Z Energy Group in any 12 month period following the Specified Event or Specified Events by \$40 million or more against what it would reasonably have been expected to have been for that period but for the Specified Event or Specified Events,

provided that such event, condition, matter, or change in circumstance or thing is not the result of:

- (c) any event or change in circumstances resulting in a delay in the Marsden Point Operations Commencement or the prevention of the Marsden Point Operations Commencement, each as contemplated by the Condition in clause 3.1(d);
- (d) any change in exchange rates or interest rates, general economic or financial conditions or legal or regulatory requirements generally affecting businesses in the industry in which the Z Energy Group operates or the markets in which the Z Energy Group operates or trades (not including the COVID-19 pandemic



and related government measures including the impact of any government-mandated alert levels and corresponding public health restrictions);

- (e) any change in the price of New Zealand Units under the New Zealand Emissions Trading Scheme;
- (f) any event, change, matter, change in circumstance or thing fairly disclosed in the Due Diligence Material or by the Company through the NZX market announcements platform no later than two Business Days before the date of this agreement;
- (g) any change in accounting policy of the Z Energy Group required by law;
- (h) any event, change, matter, change in circumstance or thing required by or arising as a consequence of this agreement (other than Z Energy's compliance with its obligations under clause 9.2 or actions taken by Z Energy under clause 9.3);
- (i) any of the following:
 - (i) an act of the Queen's enemies, terrorism, sabotage (excluding any form of cyber attack), act of war, blockade, insurrection, riot, civil disturbance or similar event; or
 - (ii) an act of God, earthquake, lightning, storm, flood, fire, explosion, cyclone, tidal wave, volcanic eruption, landslide or other similar natural events or circumstances (not including the COVID-19 pandemic and related government measures including the impact of any government-mandated alert levels and corresponding public health restrictions); or
- (j) in respect of paragraph (b) above only, the COVID-19 pandemic and related government measures including the impact of any government-mandated alert levels and corresponding public health restrictions;
- (k) in respect of paragraph (a) above only:
 - (i) the market price of crude oil or fuel products; and
 - (ii) the effect of the payment of any Permitted Dividends; or
- (l) an event, change, matter, change in circumstance or thing for which Ampol has given Z Energy its prior written approval for this purpose,

provided that:

- (m) in relation to the exclusions in paragraphs (d), (e), (i) and (k)(i) above, the effects of such matter, event, condition or change in circumstances or thing are not materially disproportionately adverse to the Z Energy Group as compared to the effects of such matter, event, condition or change in circumstances or thing on other entities in the industry in which the Z Energy Group operates; and



- (n) where the reduction or reasonably likely reduction in EBITDAF of the Z Energy Group caused by the Specified Event or Specified Events includes a one-off reduction (or reasonably likely reduction) in EBITDAF attributable to the Marsden Point Transition (the *Transition EBITDAF Impact*), then, in determining the amount of the reduction or reasonably likely reduction in the EBITDAF of the Z Energy Group for the purposes of paragraph (b) above:
 - (i) the Transition EBITDAF Impact will only be taken into account if it is in excess of the Anticipated Transition Impact, and then only to the extent of that excess; and
 - (ii) for clarity, the reduction in the EBITDAF of the Z Energy Group attributable to the Marsden Point Transition that does not form part of the Transition EBITDAF Impact will not be limited by sub-paragraph (i) above;

Mobil means Mobil Oil New Zealand Limited;

Net Assets means the consolidated net assets of the Z Energy Group, calculated in accordance with NZ GAAP;

Non-Adjusting Permitted Dividend means a fully imputed cash dividend for the six month period to 30 September 2021 of an amount of up to NZ\$0.05 per Share declared by Z Energy in connection with the announcement of Z Energy's half-year results which is consistent with Z Energy's dividend policy and past practice;

NZCC Condition means the Condition set out in clause 3.1(b);

NZ GAAP means "generally accepted accounting practice" as defined in section 8 of the Financial Reporting Act 2013;

NZX means NZX Limited and, where the context requires, the main board financial market that it operates;

NZX Listing Rules means the NZX Listing Rules for the NZX Main Board;

OIO Condition means the Condition set out in clause 3.1(a);

Other Regulatory Approvals Condition means the Condition set out in clause 3.1(c);

Permitted Dividend means the Non Adjusting Permitted Dividend and any Adjusting Permitted Dividend;;

Performance Rights means all rights to acquire Shares held by employees or officers of Z Energy Group in accordance with the PRLTIP Rules;

Permitted Encumbrances means in respect of the Z Energy Group's assets, but not the Scheme Shares:

- (a) a reservation of ownership or other purchase money security interest entered into in respect of supplies to a member of the Z Energy Group in the ordinary course of business;



- (b) a right or set-off or combination thereof arising by operation of law or practice over money deposited with a bank or financial institution in the ordinary course of business;
- (c) a security interest arising by operation of law and in the ordinary course of business provided that the debt it secures is paid when due or contested in good faith by appropriate proceedings; and
- (d) a security interest arising under section 17(1)(b) of the Personal Property Securities Act 1999 that does not secure payment or performance of an obligation,

in each case existing on the date of this agreement or is granted by the Z Energy Group in the period between the date of this agreement and the Implementation Date without breaching clause 9.2;

PPSR means the Personal Property Securities Register established under section 139 of the Personal Property Securities Act 1999;

Prescribed Occurrence means the occurrence of any of the events listed in Schedule 1 other than an event for which Ampol has given its prior approval in writing;

PRLTIP means the Z Energy Limited – Performance Rights Long Term Incentive Plan;

PRLTIP Rules means the rules of the PRLTIP as fairly disclosed in the Due Diligence Material;

Record Date means 7.00 pm on the date which is five Business Days after the later of:

- (a) the Final Orders Date; and
- (b) the date on which the last of the NZCC Condition, OIO Condition and Other Regulatory Approvals Condition is satisfied,

or such other date agreed between the parties in writing;

Reference Rate means in relation to interest payable on any payment due under this agreement, the mid or “FRA” rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10.45 am on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter on each succeeding Business Day of the period;

Refining NZ means The New Zealand Refining Company Limited;

Register means the register of Shares maintained by LINK Market Services Limited on behalf of Z Energy;

Registrar has the meaning given in the Companies Act;



Regulatory Conditions means the OIO Condition, the NZCC Condition, the Other Regulatory Approvals Condition and the Condition set out in clause 3.1(h) (No restraint);

Related Entity means:

- (a) in respect of Ampol, an entity that is under the Control of Ampol; and
- (b) in respect of Z Energy, each entity that is under the Control of Z Energy;

Related Party has the meaning given in the NZX Listing Rules;

Relevant Interest has the meaning given in section 235(1) of the FMCA;

Representative means in relation to a person:

- (a) any director, officer or employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, that person; and
- (b) when used in clauses 2.4, 12.2, 12.3, 12.4, 12.5, 12.7, 12.8 and 15.2 only, also includes any Related Entity and any director, officer or employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, any Related Entity;

Restricted Shares means Shares that are currently held by the LTI Trustee as forfeited Shares under a Z Energy historic employee share scheme;

Reverse Break Fee means NZ\$20,000,000 plus GST, if any;

Scheme means a scheme of arrangement under Part 15 of the Companies Act under which all of the Shares held by Scheme Shareholders will be transferred to Ampol or the Ampol Nominee (if applicable) and the Scheme Shareholders will be entitled to receive the Consideration, in the form attached as Annex 1 or in such other form as Z Energy and Ampol agree in writing and the Court approves under section 236(1) of the Companies Act;

Scheme Booklet means the explanatory memorandum (including the notice of meeting and proxy form) to be prepared in accordance with this agreement in connection with the Scheme, the despatch of which is to be approved by the Court and which is to be sent to Shareholders in advance of the Scheme Meeting;

Scheme Meeting means the meeting of Shareholders ordered by the Court to be convened pursuant to the Initial Orders in respect of the Scheme and includes any adjournment of that meeting;

Scheme Resolution means the resolution to be put to Shareholders at the Scheme Meeting to approve the Scheme;

Scheme Shareholder means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date;



Scheme Shares means all of the Shares on issue at 7.00pm on the Record Date other than Excluded Shares;

Second Court Date means the later of:

- (a) if there is no Court hearing in respect of the Final Orders, the last date Z Energy files affidavit(s) verifying the results of the Scheme Meeting and such other information as prescribed in the Initial Orders so as to obtain the Final Orders; and
- (b) if there is a Court hearing in respect of the Final Orders, the first date of such hearing, provided that if such hearing is adjourned, it means the first date on which the adjourned application is heard;

Share means a fully paid ordinary share in the capital of Z Energy;

Shareholder means a person who is registered in the Register as the holder of one or more Shares from time to time;

Superior Proposal means a written bona fide Competing Proposal received by Z Energy after the date of this agreement that:

- (a) does not result from a breach by Z Energy of any of its obligations under clause 12, or from any act by a member of the Z Energy Group or its Representatives which, if done by Z Energy, would constitute a breach of clause 12 by Z Energy; and
- (b) the Board determines, acting in good faith and after having taken advice from its external financial and legal advisers:
 - (i) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including its conditions precedent, timing considerations, the identity and financial condition and capacity of the proponent and any other matters affecting the implementation (including any matters affecting probability of implementation occurring) of the Competing Proposal (together, the *relevant aspects*);
 - (ii) assuming it is completed substantially in accordance with its terms, is more favourable to Shareholders as a whole than the Scheme (if applicable, as amended or varied under any Counter Proposal provided under clause 12.8), taking into account all the terms and conditions and the other relevant aspects of the Competing Proposal and the Scheme; and
 - (iii) failing to attempt to advance such Competing Proposal would constitute a breach of the fiduciary duties or statutory obligations by or of a director of Z Energy;

Surviving Clauses means clause 1 (interpretation), clause 11.1 (release of Z Energy Indemnified Persons), clause 11.2 (release of Ampol Indemnified Persons), clause 13 (break fee), clause 14.9 (effect of termination), clause 15 (announcements), clause 16 (payments), clause 17 (GST), clause 18 (notices),



clause 19 (general) (other than clause 19.7 (further assurance)) and clause 20 (governing law and jurisdiction);

Takeovers Code means the takeovers code approved in the Takeovers Code Approval Order 2000 (SR 2000/210) as amended, including by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993;

Takeovers Panel means the Takeovers Panel established by section 5(1) of the Takeovers Act 1993;

Tax means a tax, levy, charge, impost, fee, deduction, withholding or Duty of any nature, including stamp and transaction Duty or any goods and services tax, value added tax or consumption tax, which is imposed or collected by a Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts;

Third Party means a person other than a member of the Ampol Group;

Timetable means the summary timetable set out in Schedule 6 together with the detailed timetable that Z Energy and Ampol agree in writing from time to time;

Transaction means the acquisition by Ampol or the Ampol Nominee (if applicable) of all the Scheme Shares through implementation of the Scheme in accordance with the terms of this agreement;

Trigger Dispute means any dispute between the parties in relation to the obligations of the parties under clause 13;

WAP means the Wiri to Auckland Airport Pipeline, jointly owned by Z Energy, BP and Mobil;

WOSL means Wiri Oil Services Limited and the terminal at Wiri and Marsden Point operated by Wiri Oil Services Limited and jointly owned by Z Energy, Mobil, BP and Europa Oil (NZ) Limited;

Z Energy Director means each director of Z Energy from time to time;

Z Energy Disclosure Letter means the written side letter given by or on behalf of Z Energy to Ampol, and countersigned by Ampol, before execution of this agreement;

Z Energy Executive Team means Mike Bennetts, Lindis Jones, Figen Ulgen, Andy Baird, Dave Binnie, Debra Blackett, Mandy Simpson, Julian Hughes, Nicola Law, Nicolas Williams and Helen Sedcole;

Z Energy Group means Z Energy and its Related Entities;

Z Energy Indemnified Person means each member of the Z Energy Group and each of their respective directors, officers and employees;

Z Energy Information means all information included in the Scheme Booklet other than the Ampol Information and the Independent Adviser's Report;

Z Energy Undertakings means the undertakings set out in Part 2 of Schedule 2; and



Z Energy Warranties means the warranties set out in Part 1 of Schedule 2.

1.2 Z Energy awareness

Where any Z Energy Warranty is qualified by the expression so far as Z Energy is aware or any similar expression, Z Energy will be deemed to know or be aware of all matters or circumstances of which any Designated Person is actually aware as at the date the statement is made or given. For the avoidance of doubt, and without limiting clause 11.1, none of the individuals referred to in this clause 1.2 has any personal liability in respect of the Z Energy Warranties.

1.3 Things required to be done other than on a Business Day

Unless otherwise indicated, if the day on which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

1.4 Other rules of interpretation

In this agreement, unless the context requires otherwise:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
 - (i) that legislation as amended, extended or applied by or under any other legislation made before or after execution of this agreement;
 - (ii) any legislation which that legislation re-enacts with or without modification; and
 - (iii) any subordinate legislation made before or after execution of this agreement under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.4(a)(i), or under any legislation which it re-enacts as described in clause 1.4(a)(ii);
- (b) a reference to the NZX Listing Rules or ASX Listing Rules includes any variation, consolidation or replacement of those rules after the date of this agreement and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;
- (c) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (d) references to an individual or a natural person include his or her estate and personal representatives;
- (e) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of or to this agreement (and the schedules and annexes form part of this agreement);
- (f) subject to clause 19.2, references to a party to this agreement include the successors or assigns (immediate or otherwise) of that party;



- (g) a reference to any instrument or document includes any variation or replacement of it which has been, where relevant, fairly disclosed in the Due Diligence Material;
- (h) unless otherwise indicated, a reference to any time is a reference to that time in New Zealand;
- (i) a reference to \$, NZ\$ or dollars is to New Zealand currency;
- (j) singular words include the plural and vice versa;
- (k) a word of any gender includes the corresponding words of any other gender;
- (l) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (m) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words;
- (n) nothing is to be construed adversely to a party just because that party put forward this agreement or the relevant part of this agreement;
- (o) the headings do not affect interpretation; and
- (p) a reference to 'fairly disclosed' means disclosed in writing such that the matter, information or circumstance would reasonably be expected to come to the knowledge of a diligent and reasonable bidder or any of its representatives in the ordinary course of carrying out a due diligence exercise in respect of the Z Energy Group and its business, in sufficient detail such that the bidder can reasonably be expected to understand the nature, relevance and materiality of such matter, information or circumstance.

1.5 **Consents and approvals**

If the doing of any act, matter or thing under this agreement is dependent on the consent or approval of a party or is within the discretion of a party, such consent or approval may be given or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion (unless this agreement specifies otherwise).

2 **PROPOSAL AND IMPLEMENTATION OF SCHEME**

2.1 **Z Energy to propose Scheme**

Z Energy must, as soon as reasonably practicable, propose and, subject to the Scheme becoming Effective, implement the Scheme on and subject to the terms of this agreement.

2.2 **Consideration**

Each Scheme Shareholder is entitled to receive the Consideration in respect of each Scheme Share held by that Scheme Shareholder subject to and in accordance with the terms of this agreement and the Scheme.



2.3 **Ampol to pay Consideration**

Ampol undertakes in favour of Z Energy (in its own right and on behalf of the Scheme Shareholders) to, in consideration for and simultaneously with the transfer to Ampol (or, if nominated under clause 2.7, the Ampol Nominee) of each Scheme Share from each Scheme Shareholder under the terms of the Scheme, pay (or procure the payment of) the Consideration to each Scheme Shareholder in accordance with the Scheme and the Deed Poll.

2.4 **General implementation obligations**

Each party must do everything reasonably necessary, including by procuring that its Representatives work in good faith and in a timely and co-operative manner with, in the case of Ampol, Z Energy and its Representatives and, in the case of Z Energy, Ampol and its Representatives, to implement the Scheme in accordance with this agreement and all applicable laws and regulations applicable to the Scheme.

2.5 **Timetable**

Each party must use all reasonable endeavours to ensure that the Scheme is implemented in accordance with the Timetable or otherwise as soon as reasonably practicable. Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of this clause 2.5 to the extent that such failure is due to circumstances or matters outside the party's control provided that such party has used reasonable endeavours to meet the Timetable. Each party will 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. If any date in the Timetable is not able to be achieved due to circumstances or matters outside of a party's control, the parties must consult in good faith with a view to amending the Timetable to the extent required to permit the Scheme to be implemented before the End Date.

2.6 **No amendment to Scheme without Ampol's consent**

Z Energy must not promote or consent to any modification of, or any amendment to, the Scheme or the Final Orders, or the making or imposition by the Court or any Government Agency of any condition to the Scheme, without:

- (a) Ampol's counsel's consent, where a modification or amendment is made, imposed or requested at a Court hearing (and Ampol must procure that such consent is not unreasonably withheld or delayed); or
- (b) Ampol's prior written consent, in the case of any other modification or amendment (such consent not to be unreasonably withheld or delayed).

2.7 **Ampol may elect a subsidiary to complete acquisition**

- (a) Ampol may elect to have a directly or indirectly wholly-owned subsidiary of Ampol (*Ampol Nominee*) acquire all of the Scheme Shares under the Scheme by giving written notice to Z Energy of the relevant subsidiary at least five Business Days before the First Court Date.
- (b) If Ampol nominates an Ampol Nominee to acquire all of the Scheme Shares pursuant to clause 2.7(a):
 - (i) Ampol and the Ampol Nominee will both enter into the Deed Poll;
 - (ii) Ampol will continue to be bound by this agreement; and



- (iii) Ampol will ensure that the Ampol Nominee completes the acquisition of the Scheme Shares in accordance with the terms of this agreement and the Deed Poll.

3 CONDITIONS PRECEDENT

3.1 Conditions

The Scheme will not become Effective and the obligations of Ampol under clause 2.3 do not become binding unless and until each of the conditions set out in the first column of the following table have been satisfied or waived in accordance with this clause 3.1 and clause 3.5:

Condition	Responsibility	Waiver
(a) (OIO approval) before 8.00am on the End Date, Ampol has obtained all consents required under the Overseas Investment Act 2005 to the implementation of the Scheme on terms or conditions acceptable to Ampol acting reasonably, provided that Ampol may not withhold its approval to terms or conditions of any consent if the terms or conditions imposed: (i) are the standard terms or conditions set out in Schedule 5 or are consistent in all material respects with such terms or conditions; or (ii) are consistent with the positive undertakings, plans or intentions specified in writing in Ampol's application for the consents required under the Overseas Investment Act 2005;	Ampol	None
(b) (Commerce Act) before 8.00am on the End Date, clearance has been given, or an authorisation granted, to Ampol under the Commerce Act 1986 for implementation of the Scheme on terms or conditions acceptable to Ampol acting reasonably, provided that Ampol may not withhold its approval to terms or conditions of any consent if the terms or conditions imposed are consistent with undertakings given to the New Zealand Commerce Commission, specified in, or specified in writing by Ampol in connection with, Ampol's application for clearance or authorisation under the Commerce Act 1986;	Ampol	None



Condition	Responsibility	Waiver
(c) (Other regulatory approvals) before 8.00am on the End Date, Ampol and Z Energy have received all approvals or consents from the Takeovers Panel, NZX and ASX as are required to implement the Transaction;	Z Energy and Ampol	None
(d) (Marsden Point Operations Commencement) : before 8.00am on the Implementation Date, no event or change in circumstances (including any action, decision or change of decision, taken or omitted to be taken, by Refining NZ, any Government Agency or any other party, including through law or regulation) occurs which either: <ul style="list-style-type: none"> (i) results in, or is reasonably likely to result in, the Marsden Point Operations Commencement being delayed until 30 June 2023 or later; or (ii) prevents, or is reasonably likely to prevent, the Marsden Point Operations Commencement from occurring at all; 	None	Ampol
(e) (Court approval) subject to clause 3.2, the Court approves the Scheme in accordance with section 236 of the Companies Act;	Z Energy	None
(f) (Shareholder approval) Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;	Z Energy	None
(g) (Independent adviser's report) the Independent Adviser concludes prior to the Scheme Meeting that the Consideration is above or within the Independent Adviser's valuation range for the Shares;	Z Energy	None
(h) (No restraint) no judgment, order, restraint or prohibition enforced or issued by any Government Agency is in effect at 8.00am on the Implementation Date, that prohibits, prevents or materially restricts the implementation of the Scheme;	Ampol and Z Energy	Ampol and Z Energy



Condition	Responsibility	Waiver
(i) (No Material Adverse Change) no Material Adverse Change occurs between the date of this agreement and 8.00am on the Implementation Date; and	Z Energy	Ampol
(j) (No Prescribed Occurrence) no Prescribed Occurrence occurs between the date of this agreement and 8.00am on the Implementation Date.	Z Energy	Ampol

3.2 Court approval

If the Court's approval of the Scheme in accordance with section 236(1) of the Companies Act would impose any terms or conditions other than those set out in the Scheme in the form attached as Annexure 1, then each such term or condition must be approved in writing by Z Energy and Ampol (both acting reasonably) prior to the Court granting the Final Orders.

3.3 Satisfaction of Conditions

In respect of each Condition:

- (a) each party specified in the second column of the table in clause 3.1 corresponding to that Condition must use all reasonable endeavours to procure that the Condition is satisfied:
 - (i) in the case of the Conditions in clauses 3.1(a) to 3.1(c), and clause 3.1(e) to 3.1(g), as soon as practicable and in any event before the End Date; and
 - (ii) in the case of the Conditions in clauses 3.1(d) and 3.1(h) to 3.1(j), at all times before 8.00am on the Implementation Date;
- (b) the other party must promptly provide all information and all other assistance reasonably required by the party referred to in clause 3.3(a) for the purposes of procuring the satisfaction of the Condition; and
- (c) each party must not take any action that will or is likely to hinder or prevent the satisfaction of the Condition,

provided that nothing in this clause 3.3 will require either party to incur any additional costs (other than customary advisor costs and filing fees) or to offer, agree to or accept any undertakings, commitments or conditions (other than as required under clause 3.1(a), clause 3.1(b) or clause 3.4(e)).

3.4 Regulatory applications

Without limiting clause 3.3 and subject to clause 9.1:

- (a) each party must make all applications necessary to satisfy the Regulatory Conditions in a form agreed with the other party in writing (acting reasonably) and by the dates specified in the Timetable (and, in the case of the OIO Condition, Z Energy will file its Vendor Information Form in a form agreed by Ampol (acting reasonably) by the date specified in the Timetable);



- (b) neither party may take any action that would, or would be reasonably likely to, prevent or hinder the satisfaction of a Regulatory Condition (provided that nothing in this paragraph will require either party to incur any additional costs (other than customary advisor costs and filing fees) or to offer, agree to or accept any undertakings, commitments or conditions (other than as required under clause 3.1(a), clause 3.1(b) or clause 3.4(e));
- (c) each party must consult with the other party in advance in relation to all material communications (whether written or oral, and whether direct or via a Representative) with any Government Agency relating to any approval or consent required to satisfy a Regulatory Condition, or any action taken or proposed by, or any enquiries made by, a Government Agency in relation to a Regulatory Condition and, subject at all times to the parties observing the Information Sharing Protocols and otherwise acting in accordance with the Commerce Act 1986:
 - (i) provide the other party with drafts of any material written communications to be sent to a Government Agency (including any applications necessary to satisfy the Regulatory Conditions), take any reasonable comments made by the other party into account in good faith when making any amendments and, where practicable and to the extent reasonable to do so, obtain the other party's prior written consent (not to be unreasonably withheld or delayed) before submitting any such communications (provided that the failure to obtain such consent will not prevent the party from providing that communication to the Government Agency) if it (acting reasonably) considers doing so is reasonably likely to progress satisfaction of the Regulatory Conditions;
 - (ii) provide copies of any material written communications sent to or received from a Government Agency to the other party promptly upon despatch or receipt (as the case may be);
 - (iii) in the case of a material meeting or phone call with a Government Agency relating to any approval or consent required to satisfy a Regulatory Condition, provide the other party with the opportunity to participate in the meeting or phone call (except: (A) where a Government Agency requests a separate meeting, and only after the parties have consulted together in good faith about that requirement and provided that, where a separate meeting is requested, the other party is kept reasonably apprised of material developments arising out of the separate meeting; or (B) in the case of an unscheduled in-bound call received by a party from a Government Agency);
- (d) each party must promptly notify the other party on becoming aware that a Regulatory Condition is or is likely to be satisfied or has become incapable of being satisfied, or of any fact or circumstances which will or is reasonably likely to prevent a Regulatory Condition from being satisfied;
- (e) each party must promptly and diligently progress the applications for satisfaction of the Regulatory Conditions (including by responding to queries in a fulsome and timely manner and in compliance with relevant timeframes) so as to expedite satisfaction of the Regulatory Conditions; and



- (f) subject to the terms of the applicable Regulatory Condition, Ampol must promptly offer to the relevant Government Agency to provide all undertakings, commitments or conditions that are requested or indicated by the Government Agency as being necessary in order to obtain or expedite the obtaining of the approval or consent required to satisfy a Regulatory Condition, provided such undertakings, commitments or conditions are: (A) customary for a consent or clearance of the nature sought by Ampol; and (B) will not impose a direct or indirect material commitment, liability, expense or cost on Ampol relative to those customary undertakings, commitments or conditions.

3.5 **Waiver of Conditions**

Where the third column of the table in clause 3.1 corresponding to a Condition states "none", that Condition may not be waived. Each other Condition is only for the benefit of, and may only be waived in writing by:

- (a) if one party is specified in the third column of the table in clause 3.1 corresponding to that Condition, that party; or
- (b) if both Z Energy and Ampol are specified in the third column of the table in clause 3.1 corresponding to that Condition, those parties jointly.

A party entitled to waive, or to join in the waiver of, a Condition may do so in its absolute discretion.

3.6 **Method of waiver**

Where a Condition may be waived by one party, that party may only waive the Condition by giving notice in writing to the other party. Where a Condition may only be waived by both Z Energy and Ampol jointly, those parties may only waive the Condition by agreeing in writing to do so.

3.7 **Effect of waiver**

If a party waives or joins in the waiver of a Condition in accordance with this clause 3, that waiver does not:

- (a) preclude that party from bringing a claim against the other party for any breach of this agreement; or
- (b) constitute a waiver of any other Condition.

3.8 **Termination**

Notwithstanding anything in this clause 3 or any rights of termination implied by law, this agreement may only be terminated in accordance with clause 14.

4 **SCHEME BOOKLET**

4.1 **Z Energy's obligations**

Without limiting clause 2, Z Energy must:

- (a) prepare the Scheme Booklet so that it contains:
 - (i) all information required by the Companies Act, the NZX Listing Rules, the ASX Listing Rules and any other applicable laws or regulations;



- (ii) any information required by the Takeovers Panel in order for Z Energy to obtain from the Takeovers Panel a letter of intention and a statement under section 236A(2)(b)(ii) of the Companies Act;
 - (iii) the responsibility statements referred to in clause 4.4; and
 - (iv) a statement by the Z Energy Directors reflecting the recommendation and undertaking referred to in clause 8.1 (modified appropriately if the Consideration is not within or above the Independent Adviser's valuation range for the Shares);
- (b) if not already appointed, appoint the Independent Adviser (including obtaining approval from the Takeovers Panel for that appointment), and provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (c) provide Ampol with successive drafts of the Scheme Booklet (excluding the Independent Adviser's Report) and successive drafts of any extracts of the Independent Adviser's Report that contain any factual matters about Ampol, in each case in a timely manner, and so that Ampol has a reasonable opportunity to review and comment on those drafts;
- (d) consider in good faith the reasonable comments of Ampol and its Representatives when preparing revised drafts of the Scheme Booklet or providing feedback on the Independent Adviser's Report;
- (e) as soon as practicable after preparation of an advanced draft of the Scheme Booklet suitable for review by the Takeovers Panel, provide that draft to Ampol with a request for Ampol's consent to provide it to the Takeovers Panel under clause 4.2(e);
- (f) as soon as practicable after receipt of the consent from Ampol referred to in clause 4.2(e), provide the Takeovers Panel the draft Scheme Booklet;
- (g) keep Ampol reasonably informed of any issues raised by any of the Takeovers Panel, NZX or ASX in relation to the Scheme Booklet and use reasonable endeavours to, in consultation with Ampol, resolve any such issues expeditiously;
- (h) in accordance with the Timetable, lodge the Scheme Booklet with the Court seeking the Initial Orders to dispatch the Scheme Booklet to Shareholders following receipt of the approval of the Scheme Booklet by the Takeovers Panel and the Takeovers Panel has indicated in writing that it intends to issue a 'no objection' statement before the Second Court Date; and
- (i) advise Ampol promptly if Z Energy becomes so aware either:
 - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Scheme Booklet under applicable law; or
 - (ii) that any part of the Z Energy Information in the Scheme Booklet is misleading or deceptive in any material respect, including by omission,



and in either case, if Z Energy becomes aware at any time, or receives advice from Ampol under clause 4.2(f):

- (iii) between the approval of the Scheme Booklet in accordance with clause 4.1(h) and the date of the Scheme Meeting, then, if considered by Z Energy that supplementary disclosure is required, provide supplementary disclosure to Shareholders in a timely manner in accordance with applicable law and after consulting with Ampol as to the content and presentation of that supplementary disclosure and will, if it considers it to be necessary or appropriate, seek the Court's guidance in respect of the supplementary disclosure and adjourn the Scheme Meeting to the earliest date reasonably practicable; and
- (iv) between the date of the Scheme Meeting and the Second Court Date, then, if considered by Z Energy that supplementary disclosure is required, apply to the Court for orders as to the procedure to be followed for the provision of supplementary disclosure to Shareholders and the effect on the approval of the Scheme, after consulting with Ampol in good faith and taking into account Ampol's reasonable comments.

4.2 **Ampol's obligations**

Without limiting clause 2, Ampol must:

- (a) prepare and provide to Z Energy for inclusion in the Scheme Booklet:
 - (i) information about the Ampol Group;
 - (ii) confirmation (in a form satisfactory to Z Energy, acting reasonably, but without disclosing any commercially sensitive terms) that Ampol will have access to sufficient funds to fund the Consideration; and
 - (iii) information equivalent to the information that would meet the requirements of Schedule 1 to the Takeovers Code,as required to be included in the Scheme Booklet by the Companies Act, the Takeovers Panel, the NZX Listing Rules, the ASX Listing Rules and any other applicable laws or regulations;
- (b) provide Z Energy with drafts of the information referred to in clause 4.2(a) in a timely manner, to provide Z Energy a reasonable opportunity to review those drafts and consider in good faith the reasonable comments of Z Energy and its Representatives when preparing revised drafts of that information;
- (c) provide all assistance and information reasonably requested by the Independent Adviser about Ampol to enable the Independent Adviser to prepare the Independent Adviser's Report;
- (d) as soon as practicable after receipt of any draft of the Scheme Booklet from Z Energy, review and provide comments on that draft;
- (e) subject to clause 4.3, before Z Energy provides the Scheme Booklet to the Takeovers Panel in accordance with clause 4.1(f) deliver to Z Energy written



consent from Ampol (which consent may not be unreasonably withheld or delayed) to that provision, including the inclusion of the Ampol Information in the Scheme Booklet in the form and context it appears;

- (f) advise Z Energy promptly if Ampol becomes aware at any time either:
 - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Ampol Information under any applicable law; or
 - (ii) that any part of the Ampol Information is misleading or deceptive in a material respect, including by omission,

and, if Ampol provides such advice, Z Energy will comply with clause 4.1(h);

- (g) at its option or if reasonably requested by Z Energy, procure that it is represented by counsel at the Court hearings convened for the purposes of considering the Initial Orders and the Final Orders at which, through its counsel, Ampol will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme. For the avoidance of doubt, Z Energy will prepare the Court documentation for the Initial Orders and Final Orders and Ampol's counsel will only prepare Ampol's affidavits and, if required, Ampol's submissions to the Court in support of Z Energy's application for the implementation of the Scheme; and
- (h) before a draft of the Scheme Booklet is lodged with the Takeovers Panel and NZX, and again before the Scheme Booklet is despatched to Shareholders, deliver to Z Energy written consent from Ampol (which consent may not be unreasonably withheld or delayed) to that lodgement or despatch and confirm to Z Energy the accuracy and completeness of the Ampol Information in the Scheme Booklet, including that the Ampol Information does not contain any material statement that is false or misleading in a material respect including because of any omission.

4.3 **Ampol confirmations and approvals**

If Ampol requires any change to be made to the form or content of the Ampol Information as a condition of giving its consent as referred to in clause 4.2(e) or clause 4.2(h) then:

- (a) if Z Energy disagrees with the change the parties must consult in good faith about the change and the reasons for it with a view to agreeing an alternative change that satisfies both parties; and
- (b) if the parties are unable to reach agreement, Z Energy must make such changes to the Ampol Information as Ampol reasonably requires.

4.4 **Responsibility statements**

The Scheme Booklet must contain responsibility statements, in a form to be agreed between the parties (acting reasonably), to the effect that:

- (a) Z Energy has provided, and is responsible for, the Z Energy Information in the Scheme Booklet, and that none of Ampol, the Ampol Nominee (if nominated



under clause 2.7) or their respective Representatives assumes any responsibility for the accuracy or completeness of the Z Energy Information;

- (b) Ampol has provided, and is responsible for, the Ampol Information, and that none of Z Energy or its Representatives assumes any responsibility for the accuracy or completeness of the Ampol Information; and
- (c) the Independent Adviser has provided the Independent Adviser's Report and is responsible for it and none of Ampol, Z Energy or their respective officers or employees assumes any responsibility for the accuracy or completeness of the Independent Adviser's Report.

5 **SCHEME IMPLEMENTATION STEPS**

5.1 **Z Energy's obligations**

Without limiting clause 2, Z Energy must, in accordance with the Timetable:

- (a) before the First Court Date, apply to the Takeovers Panel for a letter of intention (for the purposes of section 236A(2)(b)(ii) of the Companies Act) indicating that the Takeovers Panel intends to issue a no objection statement and that it does not intend to appear at the Court in respect of the Initial Orders;
- (b) apply to the Court for Initial Orders convening the Scheme Meeting, and if the Court makes and seals those orders:
 - (i) dispatch the Scheme Booklet to Shareholders and hold the Scheme Meeting in accordance with, and otherwise complying in all respects with, the Initial Orders; and
 - (ii) promptly deliver to the Registrar for registration a copy of the Initial Orders in accordance with section 236(4) of the Companies Act, by no later than 10 Business Days after the date the Initial Orders are granted;
- (c) upon sending the Scheme Booklet to Scheme Shareholders, lodge a copy of that Scheme Booklet with NZX and ASX in accordance with NZX Listing Rule 3.23.1 and the ASX Listing Rules;
- (d) if the Scheme Resolution is passed by the requisite majorities of Shareholders as set out under section 236A(4) of the Companies Act and subject to the satisfaction of the OIO Condition and the NZCC Condition before the End Date, promptly apply to:
 - (i) the Takeovers Panel for the production of a statement under section 236A(2)(b)(ii) of the Companies Act stating that the Takeovers Panel has no objection to the Court granting Final Orders; and
 - (ii) the Court for its approval of Final Orders; and



- (e) if the Court approves the Scheme in accordance with section 236(1) of the Companies Act (and once the Final Orders are sealed by the Court):
 - (i) promptly deliver to the Registrar for registration a copy of the Final Order in accordance with section 236(4) of the Companies Act, by no later than 10 Business Days after the date the Final Orders are granted;
 - (ii) use its best endeavours to procure that NZX and ASX suspend trading in the Shares from the close of trading on the later of two Business Days after:
 - (A) the Final Orders Date; and
 - (B) the date on which the last of the OIO Condition, the NZCC Condition and the Other Regulatory Approvals Condition are satisfied or, if capable of waiver, waived in accordance with clauses 3.5 and 3.6,or such other date as is agreed between the parties in writing;
 - (iii) close the Register as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Consideration;
 - (iv) subject to Ampol satisfying its obligations under clause 5.2(b) and if the Scheme becomes Effective, effect the transfer of the Scheme Shares to Ampol in accordance with the Scheme on the Implementation Date; and
 - (v) do all other things contemplated of it under the Scheme and all other things (if any) within its power as may be reasonably necessary for the implementation of the Transaction on a basis consistent with this agreement or necessary for Z Energy to lawfully give effect to the Scheme and the orders of the Court.

5.2 **Ampol's obligations**

Without limiting clause 2, Ampol must:

- (a) at least five Business Days before the First Court Date, deliver to Z Energy a copy of the Deed Poll executed by Ampol; and
- (b) if the Court approves the Scheme in accordance with section 236(1) of the Companies Act (and once the Final Orders are sealed by the Court), do all things (if any) within its power as may be reasonably necessary for the implementation of the Transaction on a basis consistent with this agreement, and procure that, if the Scheme becomes Effective, Ampol (or, if nominated under clause 2.7, the Ampol Nominee) accepts a transfer of the Scheme Shares and Ampol provides the Consideration in accordance with clause 2.3 and the Deed Poll on or before the Implementation Date.

5.3 **Conditions certificate**

- (a) Subject to clause 5.3(b), on both:



- (i) the Business Day following the Final Orders Date (or such other date that is on or about this date as may be notified by Ampol to Z Energy at least three Business Days before such certificate is to be delivered); and

- (ii) 8.00am on the Implementation Date,

Z Energy must give Ampol a certificate from Z Energy signed by the Z Energy Group CEO and CFO stating that so far as Z Energy is aware:

- (iii) except to the extent previously waived, the Conditions in clauses 3.1(d) (*Marsden Point Operations Commencement*), 3.1(h) (*No restraint*), 3.1(i) (*No Material Adverse Change*) and 3.1(j) (*No Prescribed Occurrence*):

- (A) in relation to the certificate provided under clause 5.3(a)(i), would have been satisfied if 8.00am on the Implementation Date was read as the time the certificate is given to Ampol and Z Energy is not aware of anything that would prevent those Conditions being satisfied; or

- (B) in relation to the certificate provided under clause 5.3(a)(ii), are satisfied as at 8.00am on the Implementation Date;

- (iv) it is not in breach of clauses 9.2 (*Conduct of business*) or 10.1 (*Z Energy representations, warranties and undertakings*); and

- (v) there has not been any breach of any other provision of this agreement which might entitle Ampol to terminate under clause 14.1(a) or clause 14.1(b),

(*Z Energy Certificate*).

- (b) If the statements referred to in clause 5.3(a) would be inaccurate, Z Energy must provide a qualified Z Energy Certificate setting out full details of the matters which cause or are likely to cause that certificate not to be accurate.

- (c) For the avoidance of doubt:

- (i) a Z Energy Certificate is signed by the Z Energy Group CEO and CFO in his or her capacity as an officer of Z Energy, and in no other capacity;
 - (ii) no personal liability will be assumed by the Z Energy Group CEO or CFO as a result of the statements in the Z Energy Certificate; and
 - (iii) the statements in the Z Energy Certificate will not give rise to any liability of Z Energy to Ampol or any other person under this Agreement or otherwise.



6 Z ENERGY'S OTHER IMPLEMENTATION OBLIGATIONS

6.1 Information about Shareholders

Z Energy must:

- (a) comply with any reasonable request by Ampol to require disclosure of information in accordance with sections 290 and 291 of the FMCA, subject to its statutory and contractual obligations, and provide Ampol the information obtained as a result of requiring such disclosure; and
- (b) procure that its share registry provides to Ampol details of the Register and all other information about the Shareholders which Ampol reasonably requires in order to:
 - (i) canvas approval of the Scheme by Shareholders; or
 - (ii) facilitate the provision by Ampol of the Consideration in accordance with this agreement, the Scheme and the Deed Poll.

6.2 Promotion of Transaction

During the Exclusivity Period, Z Energy will use all reasonable endeavours to promote, and will provide all reasonable cooperation to Ampol in promoting, the merits of the Transaction to Shareholders, including:

- (a) providing (subject to Z Energy's statutory or contractual obligations) such information regarding Shareholders and their holdings as Ampol reasonably requests and will direct its share registry to provide all information reasonably requested by Ampol;
- (b) if requested by Ampol, Z Energy will retain the services of a proxy solicitation firm agreed with Ampol, to actively solicit affirmative proxies for the Scheme and provide Ampol with all information generated by that firm at regular intervals (but at least on a daily basis on each of the last seven Business Days before the Scheme Meeting) as to the aggregate tally of votes received by Z Energy in respect of the Scheme;
- (c) procuring that senior executives of the Z Energy Group are available on reasonable notice to:
 - (i) meet with key Shareholders if reasonably requested to do so by Ampol; and
 - (ii) communicate with the employees, joint venture partners and key suppliers of the Z Energy Group,in each case to discuss, and promote the merits of, the Transaction to such persons; and
- (d) undertake, in cooperation with Ampol, other reasonable actions to promote the affirmative vote of Shareholders for the Transaction, as reasonably requested by Ampol,



in each case subject to there being no Superior Proposal and the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for Z Energy.

6.3 **Board changes**

Subject to the Consideration having been paid to the Shareholders in accordance with and subject to the terms of the Scheme, Z Energy must procure that:

- (a) such persons as Ampol nominates (by notice to Z Energy no later than five Business Days before the Implementation Date) and who have provided to Z Energy a signed consent to act by that time are appointed as additional directors of Z Energy and/or such other Z Energy Group members on the Implementation Date (by no later than 5.00 pm); and
- (b) unless otherwise agreed by Ampol in writing, each member of the Board and, if requested by Ampol, any director of the other Z Energy Group members, other than those appointed in accordance with clause 6.3(a), resigns as a director of Z Energy and/or such other Z Energy Group member with effect from the Implementation Date and acknowledges in writing that he or she has no claim against any member of the Z Energy Group other than for accrued directors' fees and expenses.

6.4 **Release of Encumbrances**

After the signing of this agreement and in addition to its obligations under clause 9.1(c)(i)(B), Z Energy will assist Ampol to identify any Encumbrances over the assets of the Z Energy Group which are not Permitted Encumbrances and procure their release and removal from the PPSR with effect on the Implementation Date.

6.5 **Z Energy Long Term Incentive Plan**

- (a) Ampol acknowledges and agrees that:
 - (i) as at the date of this agreement, 3,238,616 Performance Rights have been issued by Z Energy in respect of 3,238,616 Shares for participants in the PRLTIP; and
 - (ii) if the Implementation Date is on or after 1 April 2022, Z Energy may issue up to a further 1,189,235 Performance Rights in respect of 1,189,235 Shares to participants in the PRLTIP.
- (b) Prior to the Record Date, the Z Energy Board will determine, in accordance with the PRLTIP Rules, that (at the Z Energy Board's discretion) some or all of the Performance Rights will become eligible to convert into Shares prior to the Record Date and that any remaining Performance Rights that do not convert into Shares prior to the Record Date will lapse and be cancelled, provided that:
 - (i) if the Implementation Date is on or prior to 31 March 2022, a maximum of 923,915 Shares may be transferred from treasury stock to participants in the PRLTIP on conversion of Performance Rights; and



- (ii) if the Implementation Date is on or after 1 April 2022, a maximum of 1,319,889 Shares may be transferred from treasury stock to participants in the PRLTIP on conversion of Performance Rights,

in each case with such Shares to be included as Scheme Shares.

(c) Z Energy must ensure that:

- (i) all Performance Rights that do become eligible for conversion into Shares in accordance with clause 6.5(b) are converted to Shares prior to the Record Date and that any Performance Rights that do not become eligible for conversion into Shares in accordance with clause 6.5(b) lapse or are cancelled or forfeited prior to the Record Date such that, on the Implementation Date, there are no Performance Rights on issue;
 - (ii) all Performance Rights that do become eligible for conversion into Shares in accordance with clause 6.5(b) are satisfied by the transfer of treasury shares from treasury stock to participants in the PRLTIP;
 - (iii) all remaining treasury shares held by Z Energy following the conversion of Performance Rights into Shares in accordance with clause 6.5(b) and clause 6.5(c)(ii) are cancelled prior to the Record Date such that, on the Implementation Date, there are no treasury shares held by Z Energy and no treasury shares shall form part of the Scheme Shares;
 - (iv) all Restricted Shares currently held by the LTI Trustee are transferred to Z Energy and cancelled for no net monetary consideration prior to the Record Date such that, on the Implementation Date, there are no Shares held by the LTI Trustee;
 - (v) LTI Trustee does not exercise the votes attached to any of the Restricted Shares that it holds at the Scheme Meeting on the basis there is no underlying beneficiary in respect of such Restricted Shares; and
 - (vi) no action is taken by Z Energy or any Z Energy Director in respect of the PRLTIP, which would, or would be reasonably likely to, create a separate interest class (as referred to in section 236(A)(4) of the Companies Act) of votes in respect of the Scheme;
- (i) the PRLTIP is terminated with effect on and from the Implementation Date; and
 - (ii) no more than the maximum number of Shares specified in clause 6.5(b)(i) or (ii) (as applicable) are issued to participants in the PRLTIP prior to the Record Date.

6.6 Means of holding the Scheme Meeting

The parties acknowledge that Z Energy's intention is that the Scheme Meeting will be held as a physical meeting, as opposed to an electronic/video/streamed meeting. If, due to the COVID-19 pandemic and related government measures including the impact of any government-mandated alert levels and corresponding public health



restrictions, Z Energy is considering holding the Scheme Meeting by electronic/video/streamed means, Z Energy will consult in good faith with Ampol in relation to this and the parties will together consider whether holding the Scheme Meeting in such a manner may adversely impact the outcome of the Scheme Resolution. If the parties consider such an adverse impact to be reasonably likely, they will give due consideration to taking steps that may assist to mitigate such impact, including deferring the Scheme Meeting until such time as it is expected that a physical Scheme Meeting can be held.

7 COURT PROCEEDINGS

7.1 Court documents

- (a) In relation to each Court application made in relation to the Scheme, including any appeal, Z Energy must prepare and provide Ampol successive drafts of all documents required to be given by Z Energy to the Court (including the originating applications, affidavits, memoranda, submissions and draft Court orders) a reasonable time before they are due to be submitted to the Court (and in any event not less than 72 hours before submission unless it is impractical in the circumstances) and must consider in good faith the reasonable comments of Ampol and its Representatives on those documents.
- (b) Z Energy must not provide the Court with any Court orders (whether in draft or not) or applications for Court orders, or consent to any changes to any Court orders, without Ampol having consented in writing to such documents being submitted to the Court or such changes being consented to.

7.2 Representation

In relation to each Court application made in relation to the Scheme, including any appeal:

- (a) Z Energy consents to the separate representation of Ampol by counsel; and
- (b) Ampol may appear and be represented in relation to the Court applications.

7.3 Court proceedings and conditionality

- (a) If the Court declines to make the orders sought by Z Energy under clause 5.1(b) or 5.1(d)(ii), due in whole or in part to the lack of satisfaction of, or the potential timing for satisfaction of (or where capable of waiver, waiver of) the Conditions, Z Energy must promptly make a further application for Initial Orders or Final Orders (as applicable), as soon as practicable after the earlier of:
 - (i) the parties satisfying the steps or matters specified by the Court or apparent from its directions or reasons as required, or desirable, in order to grant the Initial Orders or Final Orders (as the case may be) (*Court Guidance*); or
 - (ii) the OIO Condition and the NZCC Condition having been satisfied, or where capable of waiver, waived.
- (b) Z Energy will use its best endeavours to follow the Court Guidance and any guidance or requirements of the Takeovers Panel including, if indicated,



providing supplementary information to Shareholders and/or convening a second Scheme Meeting.

7.4 **Appeal if orders not made**

If the Court does not make any order sought by Z Energy under clause 5.1(b) or 5.1(d)(ii) (the *Decision*) to the extent clause 7.3 does not apply:

- (a) Z Energy and Ampol must consult in good faith as to the effect of the refusal and whether to appeal the Decision; and
- (b) if, within 10 Business Days after the Decision, Z Energy and Ampol agree to appeal the Decision or either of those parties obtains an opinion from an independent Queens Counsel, practising in the field of corporate and securities law litigation, to the effect that there are reasonable prospects of successfully appealing the Decision, then:
 - (i) Z Energy must appeal the Court's decision within the timeframe set out in rule 29 of the Court of Appeal (Civil) Rules 2005;
 - (ii) the cost of any such appeal is to be borne:
 - (A) if Z Energy and Ampol agreed to appeal the Decision, equally between the parties; or
 - (B) if Z Energy and Ampol did not agree to appeal the Decision, by the party who obtained the opinion from the independent Queens Counsel;
 - (iii) if the End Date would otherwise occur before the appeal is finally determined, the End Date is deferred to the date that is 10 Business Days after the appeal from the Decision is finally determined; and
 - (iv) if the appeal is successful and the relevant order is made, the End Date is further deferred to the date which is X days after the original End Date (disregarding the effect of clause 7.4(b)(iii)) where X is equal to the number of days between the date of the Decision and the date on which the appeal from the Court's decision is finally determined, or to such other date as the parties agree in writing.

8 **RECOMMENDATION AND VOTING INTENTIONS**

8.1 **Recommendation and voting intentions of Z Energy Directors**

- (a) Z Energy must ensure that each Z Energy Director recommends that Shareholders vote in favour of the Scheme and that each Z Energy Director undertakes to vote, or procure the voting of, all Shares held or controlled by him or her in favour of the Scheme subject to:
 - (i) no Superior Proposal having been received by Z Energy; and
 - (ii) the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares.



- (b) Z Energy must ensure that no senior executive of Z Energy makes any public statement that is not supportive of the implementation of the Scheme.

8.2 **Change to recommendation or voting intentions**

Z Energy must use all reasonable endeavours to ensure that no Z Energy Director changes, qualifies or withdraws the recommendation or the undertaking referred to in clause 8.1 or makes any statement inconsistent with that recommendation or that undertaking unless:

- (a) the Independent Adviser's Report concludes that the Consideration is below the Independent Adviser's valuation range for the Shares; or
- (b) Z Energy receives a Superior Proposal, and such change, qualification, withdrawal or statement is made in accordance with clause 12.8,

provided that reliance by Z Energy on the exclusions to this clause 8.2 will not prevent Ampol from having the benefit of, and enforcing, its rights under clause 12.8, 13.2 and clause 14.1(b).

8.3 **Notification of new circumstances**

Without limiting the operation of clauses 8.1, 8.2, 12, 13.2 or 14.1 if the Z Energy Board or Z Energy becomes aware that any one or more of the Z Energy Directors is reasonably likely to change, qualify or withdraw the recommendation or the undertaking referred to in clause 8.1 (other than under clause 8.2(b)), including as a result of the receipt or expected receipt of an unfavourable Independent Adviser's Report (including any update of or revision, amendment or supplement to, the Independent Adviser's Report), then Z Energy must:

- (a) immediately notify Ampol of that, and any public statement that the Z Energy Board or Z Energy intends to make if such event occurs; and
- (b) consult with Ampol in good faith for not less than two Business Days after the date the notice referred to in paragraph (a) above is given to consider and determine whether there are any steps that can be taken to avoid such change, qualification or withdrawal. Z Energy will ensure that the recommendation is not changed, qualified or withdrawn until the end of the consultation period.

9 **ACCESS, INFORMATION AND CONDUCT OF BUSINESS**

9.1 **Access and information**

Prior to satisfaction of OIO Condition and NZCC Condition

- (a) Until and including the time of satisfaction of the OIO Condition and the NZCC Condition, Z Energy must, subject at all times to the parties observing the Information Sharing Protocols and otherwise acting in accordance with the Commerce Act 1986:
 - (i) procure that Ampol and its Representatives are given reasonable access to the Designated Persons during normal business hours at mutually convenient times and on reasonable notice to Z Energy for the purposes of:

- (A) implementing the Scheme; and



- (B) keeping Ampol informed of material developments relating to the Z Energy business, including the operations of the Z Energy Group's business and its financial position, prospects and affairs, in each case, to the extent reasonably necessary to enable Ampol to prepare for the transition of ownership of the Z Energy Group to Ampol,

except to the extent that the provision of such access is prohibited by law or any confidentiality obligations owed to third parties and provided that:

- (C) Ampol will focus on material issues, having regard to management commitments of the Designated Persons;
 - (D) providing access pursuant to this clause 9.1(a)(i) does not result in unreasonable disruptions to the Z Energy Group's business in the opinion of Z Energy (acting reasonably), require Z Energy to make further disclosure to any other entity or Government Agency or require the disclosure of any document that would compromise the Z Energy Group's legal professional privilege;
 - (E) nothing in this clause 9.1(a)(i) will require Z Energy to provide information concerning its directors' and management's consideration of the Scheme or any Competing Proposal (but this proviso does not limit Z Energy's obligations under clause 12);
 - (F) nothing in this clause 9.1(a)(i) will, in relation to information that is (consistent with past practice) required to be provided to the Z Energy Board, require any person to provide any information to Ampol earlier than the time that information is provided to the Z Energy Board or in a different form than that information is provided to the Z Energy Board. The parties acknowledge that Z Energy's past practice is for material matters to be communicated to the Z Energy Board promptly; and
 - (G) nothing in this clause 9.1(a)(i) will require Z Energy to create any material new or additional report or other documentation that is not currently prepared by Z Energy;
- (ii) provide Ampol with summaries of decisions of the Board on material matters (provided that this clause does not require Z Energy to provide a summary of any decision that relates to its directors' and management's consideration of the Transaction or a Competing Proposal); and
 - (iii) provide Ampol with a monthly summary financial report reporting on the current financial performance, position and operations of Z Energy (in the same form and at the same time such information is provided to the Z Energy Board).

After satisfaction of OIO Condition and NZCC Condition

- (b) From the time of satisfaction of the OIO Condition and NZCC Condition, Z Energy must, subject at all times to the parties observing the Information



Sharing Protocols and otherwise acting in accordance with the Commerce Act 1986:

- (i) procure that Ampol and its Representatives are given reasonable access to the properties, books and records and senior management team of the Z Energy Group during normal business hours at mutually convenient times and on reasonable notice to Z Energy and information about the Business reasonably requested by Ampol or its Representatives for the purposes of:
 - (A) implementing the Scheme;
 - (B) keeping Ampol informed of material developments relating to the Z Energy business; and
 - (C) enabling Ampol to understand the operations of the Z Energy Group's business, financial position, prospects and affairs in order to allow and facilitate the development and implementation of Ampol's plans for the carrying on of the Z Energy business following implementation of the Scheme to the extent reasonably necessary to prepare for the transition of ownership of the Z Energy Group to Ampol,except to the extent that the provision of such access is prohibited by law or any confidentiality obligations owed to third parties and provided that:
 - (D) Ampol will focus on material issues, having regard to management commitments and the impact of information requests on the Z Energy Group's business;
 - (E) providing access or information pursuant to this clause does not result in unreasonable disruptions to the Z Energy Group's business in the opinion of Z Energy (acting reasonably), require Z Energy to make further disclosure to any other entity or Government Agency or require the disclosure of any document that would compromise the Z Energy Group's legal professional privilege; and
 - (F) nothing in this clause will require Z Energy to provide information concerning its directors' and management's consideration of the Scheme or any Competing Proposal (but this proviso does not limit Z Energy's obligations under clause 12); and
- (ii) provide Ampol with copies of Board minutes and papers provided to the Board (including monthly management accounts for the Z Energy Group), however, Z Energy may redact information from such papers to the extent it relates to the Transaction or a Competing Proposal; and

Before and after satisfaction of OIO Condition and NZCC Condition

- (c) From the date of this agreement until and including the Implementation Date, Z Energy must, subject at all times to the parties observing the Information



Sharing Protocols and otherwise acting in accordance with the Commerce Act 1986:

- (i) without limiting clause 9.1(a)(i) or clause 9.1(b), Z Energy agrees to:
 - (A) provide reasonable and timely assistance to Ampol to finalise the preparation of any definitive financing documentation; and
 - (B) provide reasonable assistance to Ampol to prepare for any repayment of the Z Energy Group's existing indebtedness (including any preparation for the termination and release of related security interests), including, without limitation, by sending notices of intention to repay existing financiers prior to the Implementation Date,

provided, in each case, that:

- (C) neither Z Energy nor any member of the Z Energy Group shall be required to incur any liability in connection with any acquisition, debt or equity financing prior to implementation of the Scheme that is not reimbursable by Ampol;
- (D) Ampol must indemnify and hold harmless, and hereby does indemnify and hold harmless, Z Energy, members of the Z Energy Group and their respective Representatives from and against any and all Losses suffered or incurred by any of them in connection with, or as a result of, any act or omission in relation to any matter covered by this clause 9.1(c) or in connection with, or as a result of, any debt financing and any information utilised in connection therewith, in each case other than to the extent any of the foregoing arises from the fraud or wilful misconduct of, or breach of this agreement by Z Energy, a member of the Z Energy Group or their respective Representatives;
- (E) nothing in this clause 9.1(c), shall require cooperation to the extent that it would:
 - (AA) cause any condition precedent in clause 3.1 to not be satisfied or otherwise cause a breach of this agreement;
 - (BB) require Z Energy or a member of the Z Energy Group to take any action that would reasonably be expected to conflict with or violate its constituent documents, any law, stock exchange listing rules or any agreement to which it is party or by which it is bound; or
 - (CC) require the approval of Shareholders of Z Energy; and
- (F) no member of the Z Energy Group shall be required to execute prior to implementation of the Scheme any agreements, including any credit or other agreements, pledge or security



documents, or other certificates, legal opinions or documents in connection with the debt financing.

9.2 **Conduct of business**

From the date of this agreement until and including the Implementation Date, Z Energy must ensure that it and each other member of the Z Energy Group:

- (a) carries on its business in the ordinary course consistent with business plans and forecasts fairly disclosed in the Due Diligence Material, including in the FY22 Annual Forecast, and in substantially the same manner as previously conducted;
- (b) maintains insurance in respect of the Z Energy Group's business and assets, covering such risks and for such amounts as would be maintained in accordance with the Z Energy Group's ordinary practice and in any event to a level no less than that in place immediately prior to the date of this agreement and not approve any proposal which would have the effect of reducing the level or extent of insurance maintained by any Joint Venture;
- (c) uses all reasonable endeavours to:
 - (i) keep available the services of its directors and the leadership team of Z Energy;
 - (ii) maintain its assets in a reasonable state of operating condition, order and repair as they were at the date of this agreement, having regard to the age and book value of such assets, except for ordinary depreciation and fair wear and tear (but provided, in the case of fair wear and tear, that the Z Energy Group continues to comply with its ordinary practices for monitoring and repairing wear and tear of its assets); and
 - (iii) preserve its relationships with all Government Agencies and all customers, suppliers, licensors, licensees, joint venturers, financiers and others with whom it has business dealings;
- (d) maintains all material Authorisations necessary to operate the Business, and ensures all conditions attaching to those Authorisations are complied with in all material respects;
- (e) promptly notifies Ampol of:
 - (i) any claim that is made or legal proceedings instituted against Z Energy, or another member of the Z Energy Group, or any director or employee of any member of the Z Energy Group (of which it becomes aware), other than any claim or legal proceeding that has potential liability which is less than \$250,000; and
 - (ii) any actual or threatened material enquiries or investigations by any Government Agency in relation to the Business (including in relation to



Tax) and any material correspondence with any Government Agency in relation to the Business;

- (f) does not:
 - (i) incur capital expenditure:
 - (A) that is Integrity Capital Expenditure that is not budgeted for in the FY22 Annual Forecast or, if it is budgeted for in the FY22 Annual Forecast, exceeds \$5,000,000 for a single item or related items that should reasonably be assessed together; or
 - (B) that is Growth Capital Expenditure that exceeds \$2,500,000 for a single item or related items that should reasonably be assessed together (irrespective of whether such capital expenditure is included in the FY22 Annual Forecast);
 - (ii) does not, except in the ordinary course of trading, transfer or otherwise dispose of, or create any Encumbrance in respect of, an asset or assets (either singularly or in the aggregate) having a value exceeding \$5,000,000;
 - (iii) create or incur any liability or indebtedness (whether contingent or otherwise), except normal liabilities or indebtedness incurred in the ordinary course of the Business and not exceeding (either singularly or in the aggregate) \$5,000,000;
 - (iv) increase the facility limit on any of the Z Energy Group's bank facilities or exceed borrowing or cash reserve limitations as established by any financier of the Z Energy Group, except for increases in the ordinary course of business not exceeding \$5,000,000 (provided that, for the avoidance of doubt, Z Energy is not restricted from increasing the aggregate level of its borrowings under any existing debt facility, where increasing the level of its borrowings does not require an increase in the facility limits of any of its existing bank facility);
 - (v) acquire or dispose of assets (including shares or other securities in any body corporate or any units in any trust, or other similar interests), other than current assets acquired or disposed of in the ordinary course of business, or an asset or assets (either singularly or in the aggregate) with a book value not exceeding \$5,000,000;
 - (vi) enter into, waive any material rights under, seek a waiver of material rights from the counterparty to, vary or terminate any contract, commitment or arrangement (including any lease but excluding any fuel purchase or procurement contract) which:
 - (A) restrains any member of the Z Energy Group from engaging in or competing with any business in any place;
 - (B) may require annual expenditure by the relevant member of the Z Energy Group in excess of \$5,000,000;



- (C) may result in annual revenues to the relevant member of the Z Energy Group in excess of \$10,000,000; or
- (D) may result in aggregate expenditure by, or aggregate revenues to, the relevant member of the Z Energy Group for the minimum term of the relevant contract, commitment or arrangement (including any rights of renewal or extension) in excess of \$15,000,000;
- (vii) enter into, waive any material rights under, seek a waiver of material rights from the counterparty to, vary or terminate any material fuel purchase agreement or other procurement arrangement on terms which are materially inconsistent with the terms and conditions of Z Energy's previous equivalent or similar fuel purchase agreements or other procurement arrangements as fairly disclosed to Ampol in the Due Diligence Material provided that this clause will not require Z Energy to contract with the same counterparties it has contracted with in the past for any new fuel purchase agreement or procurement arrangement;
- (viii) provide any guarantee of, or security for, or indemnity in connection with the obligations of any person other than a member of the Z Energy Group;
- (ix) enter into, amend or close out any material foreign exchange, interest rate, commodity or carbon contract, swap, derivative or hedge in a manner or to an extent that is materially inconsistent with Z Energy's existing hedging and foreign exchange risk management practices as at the date of this agreement and as fairly disclosed to Ampol in the Due Diligence Material;
- (x) create or otherwise permit to arise any Encumbrance over any of its or any member of the Z Energy Group's assets other than in the ordinary course of business;
- (xi) employ any new employee whose salary would exceed \$175,000 per annum other than:
 - (A) new employees employed in the ordinary course of business to fill a vacant position within the business and provided that the terms and remuneration of those new hires are consistent with Z Energy's past practices; or
 - (B) new employees employed as a result of a restructuring of roles provided that such new employees do not result in an increase in the aggregate remuneration expense of the Z Energy Group in connection with the restructured roles;
- (xii) increase the total headcount of the Z Energy Group to more than 500 employees;



- (xiii) pay aggregate remuneration to employees of the Z Energy Group that is greater than the total employee remuneration expenses included in the FY22 Annual Forecast;
- (xiv) increase or accelerate the remuneration of (including any benefits in kind), make any retention payment or termination payment to, or otherwise change the terms and conditions of employment of, any Z Energy Director or any employee of any member of the Z Energy Group whose salary exceeds \$175,000 per annum except:
 - (A) for salary increases in the normal course and in the amount per annum permitted under the Z Energy Disclosure Letter; and
 - (B) as permitted under clause 6.5;
- (xv) make, or commit to make, any bonus payment to:
 - (A) any Z Energy Director or any member of the Z Energy Executive Team; or
 - (B) any other employee of any member of the Z Energy Group that is not consistent with Z Energy's Existing Remuneration Policies and Z Energy's past practices for payment of employee bonuses;
- (xvi) make any material Tax election (other than an election in the ordinary course of business consistent with past practice), or settle, compromise or prejudice any material Tax liability, or initiate or engage in any disputes procedures or challenge proceedings relating to Tax;
- (xvii) make any change in accounting methods, principles or practices used by it (except if required by a change in International Financial Reporting Standards);
- (xviii) change its constitution or pass any resolution of Shareholders or any class of Shareholders (other than the Scheme Resolution, any resolution to appoint (or reappoint) a director of Z Energy and any resolution to authorise the Board to fix the fees and expenses of Z Energy's auditor);
- (xix) fail to comply in all material respects with all laws and regulations applicable to the Business or do or omit to do anything which results in a material risk of termination, revocation, suspension, modification or non-renewal of any material Authorisation held by it;
- (xx) acquire any interest in "sensitive land" for the purposes of the Overseas Investment Act 2005;
- (xxi) enter into or exit any joint venture (including the Joint Ventures), strategic alliance or partnership;
- (xxii) commence, compromise or settle any litigation or similar proceedings for an amount exceeding \$1,000,000;



- (xxiii) make any material change to any publicly stated corporate policy or strategy;
- (xxiv) vote on or otherwise approve or disapprove any matter that requires the approval of the board of directors or shareholders of a Joint Venture that would result in the relevant Joint Venture undertaking an action that would be in breach of this clause 9.2(f) if done by a Z Energy Group member or that is otherwise outside of the ordinary course of business of the relevant Joint Venture; or
- (xxv) agree, conditionally or otherwise, to do any of the things referred to in the preceding paragraphs of this clause 9.2(f), or announce or represent to any person that any of those things will be done.

9.3 **Exception**

Any member of the Z Energy Group may do any thing referred to in clause 9.2, or not do any thing required to be done under clauses 9.2(a) or 9.2(c):

- (a) with the prior written consent of Ampol (such consent not to be unreasonably withheld, conditioned or delayed);
- (b) necessary to comply with any law or any regulatory requirement or direction of a Government Agency;
- (c) as fairly disclosed in Z Energy Disclosure Letter;
- (d) reasonably and prudently required to respond to any emergency, act of god or other disaster, including the COVID-19 pandemic; or
- (e) to the extent required to give effect to the Scheme or as expressly contemplated or required under this agreement,

and in the case of the situations described in paragraphs (b), (d) or (e) above, only provided that Z Energy informs Ampol as soon as possible of the actions taken or proposed to be taken, and, to the extent practicable, considers any feedback or suggestions made by Ampol as to the proposed course of action. The parties note that the objective of this clause is that no action is taken or not taken, which may affect the future prospects of the Z Energy Group, including its relationships with third parties without reasonable involvement of Ampol.

For the avoidance of doubt: (a) the parties must at all times observe the Information Sharing Protocols and otherwise act in accordance with the Commerce Act 1986 in connection with any information shared or action taken or not taken under clauses 9.2 or 9.3; and (b) nothing in clauses 9.2 or 9.3 requires either party to act in any way that could reasonably be expected to give rise to a breach or a potential breach of the Commerce Act 1986.

9.4 **Consents to change of control and waivers of pre-emptive and other rights**

In respect of each contract that Z Energy and Ampol agree (acting reasonably) in writing prior to the First Court Date requires a counterparty notification or consent in relation to the change of control of Z Energy or a waiver by a counterparty in respect of pre-emptive rights or other rights (including rights arising for Z Energy's financiers under Z Energy's financing facilities and note documents, including in



relation to an event of review or prepayment event, howsoever described) that arise as a result of the change of control of Z Energy:

- (a) Z Energy and Ampol will agree in good faith a communications plan to notify the relevant counterparty of the change of control of Z Energy that will occur if the Scheme becomes Effective and Z Energy will, and will procure that each member of the Z Energy Group will, make such notifications to the counterparties and use all reasonable endeavours to obtain (with Ampol's reasonable assistance) the consents or waivers required in relation to the change of control of Z Energy and any resulting pre-emptive rights or other rights of the counterparties;
- (b) each party must promptly provide to the relevant counterparty all information reasonably required for the purposes of making any notification or seeking any consent referred to in clause 9.4(a); and
- (c) after the Scheme Meeting and if the Scheme has been approved by Shareholders, to the extent reasonably requested by Ampol, Z Energy will use all reasonable endeavours (including committing resources of its senior employees) to assist with obtaining the agreed consents or approvals and will collaborate with Ampol to introduce it to relevant Z Energy Group counterparties to jointly discuss the implications of the Transaction, including change of control consents or notifications or waivers of pre-emptive or other rights.

Nothing in this clause 9.4 will require either party to pay any money or provide any other valuable consideration to or for the benefit of any person or otherwise be contrary to the interests of either party, as the case may be.

9.5 **Transition Committee**

- (a) As soon as practicable, and in any event within one week after the date of this agreement, Z Energy and Ampol shall form a transition committee (*Transition Committee*) in accordance with this clause 9.5. The Transition Committee will, subject to this agreement, establish its terms of reference, meeting schedules, information sharing protocols and escalation methodologies.
- (b) The Transition Committee shall comprise two representatives of each of Z Energy and Ampol. A party may appoint, replace or nominate a representative by giving written notice to the other party.
- (c) The Transition Committee will, subject at all times to observing the Information Sharing Protocols:
 - (i) co-ordinate implementation of the Scheme between the parties;
 - (ii) co-ordinate preparation for the transition of ownership of Z Energy to Ampol;
 - (iii) discuss and resolve matters arising in relation to this agreement or the Transaction within its terms of reference; and
 - (iv) undertake any other matters reasonably requested by a party that are material in connection with the Transaction.



- (d) The representatives of Ampol on the Transition Committee will have authority to provide consent in writing on behalf of Ampol to any actions of Z Energy that would otherwise be restricted under clause 9.2.
- (e) The representatives of Z Energy on the Transition Committee will have authority to provide consent in writing on behalf of Z Energy to any actions of Ampol that would otherwise be restricted under this agreement.

9.6 Permitted Dividends

- (a) To avoid doubt, where Z Energy declares any Permitted Dividend it may declare a supplementary dividend in respect of shareholders that Z Energy has reasonably determined are non-resident for the purposes of the Income Tax Act 2007.
- (b) The amount of imputation credits that may be attached to any Permitted Dividend must be restricted to the amount of income tax payable (or estimated tax payable using reasonable forecasts) for the period up to the date on which the relevant Permitted Dividend is paid plus any brought forward imputation credits, provided that the imputation credit account of Z Energy shall not have a debit balance as at the Implementation Date.
- (c) Z Energy must consult with Ampol in relation to the proposed amount of imputation credits that are intended to be attached to any Permitted Dividend (including providing appropriately detailed working papers).

10 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

10.1 Z Energy representations, warranties and undertakings

- (a) Z Energy represents and warrants to Ampol on the date of this agreement, immediately prior to the last affidavits being filed in respect of the Final Orders and at 8.00am on the Implementation Date that each of the Z Energy Warranties is true, accurate and not misleading.
- (b) Z Energy undertakes to Ampol to comply with each of the Z Energy Undertakings.
- (c) The Z Energy Warranties are given subject to and are qualified by matters and circumstances:
 - (i) fairly disclosed to Ampol in the Due Diligence Material; or
 - (ii) fairly disclosed through the NZX market announcement platform at least two Business Days' prior to the date of this agreement.

10.2 Ampol representations, warranties and undertakings

- (a) Ampol represents and warrants to Z Energy on the date of this agreement, immediately prior to the last affidavits being filed in respect of the Final Orders and at 8.00am on the Implementation Date that each of the Ampol Warranties is true, accurate and not misleading.
- (b) Ampol undertakes to Z Energy to comply with each of the Ampol Undertakings.



10.3 **Indemnity by Z Energy**

Subject to clause 13.7, Z Energy indemnifies Ampol against, and must pay to Ampol on demand an amount equal to, all Losses directly incurred or suffered by the Ampol Indemnified Persons arising out of or in connection with:

- (a) any matter or circumstance that results in any of the Z Energy Warranties being untrue, inaccurate or misleading when given; or
- (b) any breach of the Z Energy Undertakings.

10.4 **Indemnity by Ampol**

Subject to clause 13.7, Ampol indemnifies Z Energy against, and must pay to Z Energy on demand an amount equal to, all Losses directly incurred or suffered by the Z Energy Indemnified Persons arising out of or in connection with:

- (a) any matter or circumstance that results in any of the Ampol Warranties being untrue, inaccurate or misleading when given; or
- (b) any breach of the Ampol Undertakings.

10.5 **Scheme becoming Effective**

After the Scheme becomes Effective, any breach of the representations and warranties or the undertakings made or given under this clause 10 may only give rise to a claim for damages or under the indemnities in this clause 10 and does not entitle a party to terminate this agreement.

11 **RELEASES**

11.1 **Release of Z Energy Indemnified Persons**

Ampol waives and releases, and must procure that each member of the Ampol Group waives and releases, all rights and claims which it may have against any Z Energy Indemnified Person (other than Z Energy) in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that Z Energy Indemnified Person in connection with any representation, warranty or undertaking given by Z Energy in this agreement or the preparation of the Z Energy Information or the Due Diligence Material except where the Z Energy Indemnified Person has engaged in wilful misconduct or fraud. The parties acknowledge and agree that:

- (a) Z Energy has sought and obtained the waiver and release in this clause 11.1 as agent for and on behalf of each Z Energy Indemnified Person and may enforce the provisions of this clause 11.1 on behalf of any Z Energy Indemnified Person;
- (b) any Z Energy Indemnified Person may plead this clause 11.1 in response to any claim made by any member of the Ampol Group against them; and
- (c) the undertakings contained in this clause 11.1 are given for the benefit of each Z Energy Indemnified Person and are intended to be enforceable against Ampol by each Z Energy Indemnified Person in accordance with the provisions of the Contract and Commercial Law Act 2017.



11.2 Release of Ampol Indemnified Persons

Z Energy waives and releases, and must procure that each member of the Z Energy Group waives and releases, all rights and claims which it may have against any Ampol Indemnified Person (other than Ampol) in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that Ampol Indemnified Person in connection with any representation, warranty or undertaking given by Ampol in this agreement or the preparation of the Ampol Information except where the Ampol Indemnified Party has engaged in wilful misconduct or fraud. The parties acknowledge and agree that:

- (a) Ampol has sought and obtained the waiver and release in this clause 11.2 as agent for and on behalf of each Ampol Indemnified Person and may enforce the provisions of this clause 11.2 on behalf of any Ampol Indemnified Person;
- (b) any Ampol Indemnified Person may plead this clause 11.2 in response to any claim made by any member of the Z Energy Group against them; and
- (c) the undertakings contained in this clause 11.2 are given for the benefit of each Ampol Indemnified Person and are intended to be enforceable against Z Energy by each Ampol Indemnified Person in accordance with the provisions of the Contract and Commercial Law Act 2017.

11.3 D&O Insurance and Indemnity

- (a) Ampol acknowledges that, subject to clause 11.3(b), Z Energy may, prior to the Implementation Date, enter into a run-off directors' and officers' liability insurance policy that is effective on the Implementation Date in respect of any Z Energy Directors or officers (or the directors or officers of any other member of the Z Energy Group) for a seven year period (the *D&O Run-off Policy*) and pay all premiums required.
- (b) Provided that the D&O Run-off Policy is, to the extent practicable, obtained on terms consistent with the terms of Z Energy's existing directors' and officers' liability insurance policy as provided in the Due Diligence Material, Ampol agrees that:
 - (i) Z Energy entering into and paying the premium for the D&O Run-off Policy does not breach any provision of this agreement; and
 - (ii) after the Implementation Date it will not, and will procure that no member of the Z Energy Group will, vary or cancel the D&O Run-off Policy (for so long as such member of the Z Energy Group remains a Related Entity of Z Energy).
- (c) Z Energy and Ampol will consult in good faith on the selection of the D&O Run-off Policy.
- (d) Z Energy will keep Ampol informed of material developments and communications with brokers and insurers in relation to the obtaining of the D&O Run-off Policy.
- (e) Following the Implementation Date, to the extent permitted by law, Ampol will procure that Z Energy maintains in place all indemnities and associated rights of access to information provided by Z Energy for the benefit of the



current and former directors and officers of Z Energy (including any indemnity provided in accordance with, or set out in, Z Energy's Constitution) and which have been fairly disclosed to Ampol in the Due Diligence Material.

12 EXCLUSIVITY

12.1 No existing discussions

Z Energy represents and warrants that, other than in relation to the discussions with Ampol in relation to the Scheme, it is not currently in negotiations or discussions in respect of any Competing Proposal with any person.

12.2 No shop restriction

Subject to clause 12.13, during the Exclusivity Period, Z Energy must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) solicit, invite, encourage or initiate any Competing Proposal or any offer, proposal, expression of interest, enquiry, negotiation or discussion with any Third Party in relation to, or for the purpose of, or that may reasonably be expected to encourage or lead to, a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.2(a) on its behalf.

12.3 No talk restriction

Subject to clause 12.4 and clause 12.13, during the Exclusivity Period Z Energy must not, and must procure that none of its Representatives, directly or indirectly:

- (a) enter into, permit, continue or participate in, negotiations or discussions with any Third Party in relation to a Competing Proposal, or for the purpose of or that may reasonably be expected to encourage or lead to a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.3(a) on its behalf,

even if the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Z Energy or any of its Representatives or has been publicly announced.

12.4 No talk exception

The restriction in clause 12.3 does not apply to the extent that it restricts Z Energy or its Representatives from taking or refusing to take any action with respect to a bona fide Competing Proposal (which was not encouraged, solicited, invited, facilitated or initiated in contravention of clause 12.2 or 12.3) if, acting in good faith and after having taken written advice from its external financial and legal advisers, the Board has determined that:

- (a) the Competing Proposal is, or is reasonably capable of becoming, a Superior Proposal; and
- (b) it is necessary to respond to such Competing Proposal in order to fulfil the fiduciary duties or statutory obligations of the Z Energy directors.



12.5 **No due diligence restriction**

Subject to clause 12.6 and clause 12.13 but without limiting clauses 12.3 and 12.4, during the Exclusivity Period, Z Energy must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) make available to any Third Party, or cause or permit any Third Party to receive, any non-public information relating to Z Energy or any of its Related Entities that may reasonably be expected to assist such Third Party in formulating, developing or finalising a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.5(a) on its behalf.

12.6 **No due diligence exception**

The restriction in clause 12.5 does not apply in respect of a bona fide Competing Proposal (in either case which was not encouraged, solicited, invited, facilitated or initiated in contravention of clauses 12.2 to 12.4) if all of the following requirements are satisfied:

- (a) acting in good faith and after having obtained written advice from its external financial and legal advisers, the Board has determined that:
 - (i) the Competing Proposal is, or is reasonably capable of becoming, a Superior Proposal; and
 - (ii) it is necessary to respond to such Competing Proposal in order to fulfil the fiduciary duties or statutory obligations of the Z Energy directors;
- (b) the Third Party has first entered into a written agreement in favour of Z Energy restricting the use and disclosure by the Third Party and its affiliates and advisers of the information made available to the Third Party, on terms not substantially more favourable to the Third Party than those in the Confidentiality Agreement; and
- (c) to the extent that any information made available to the Third Party has not previously been provided to Ampol (or differs from any information previously provided to Ampol), Z Energy provides that information to Ampol at the same time as it is provided to the Third Party.

12.7 **General notification obligations**

- (a) During the Exclusivity Period, Z Energy must as soon as practicable in the circumstances and in any event within 48 hours notify Ampol if:
 - (i) Z Energy or any of its Representatives receives any Competing Proposal; or
 - (ii) Z Energy or any of its Representatives receives any request for information relating to the Z Energy Group or its business or any request for access to any non-public information of any member of the Z Energy Group in connection with a current or future Competing Proposal; or



- (iii) Z Energy proposes to take any action in reliance on the exceptions in clause 12.4 or clause 12.6.
- (b) A notice given under clause 12.7(a) must be accompanied by all material details of the relevant event, including (as the case may be):
 - (i) the identity of the person who provided the Competing Proposal or made the relevant approach, inquiry or proposal to initiate discussions or to whom any information is proposed to be provided as referred to in clause 12.7(a);
 - (ii) all material terms and conditions of any Competing Proposal including the amount and form of consideration to be offered, the conditions to which it is subject, the proposed timetable and any break fee arrangements (to the extent known); and
 - (iii) the nature of the information or access requested and/or provided or action proposed to be taken.
- (c) Without limiting Z Energy's other obligations under this clause 12.7, Z Energy shall keep Ampol reasonably informed on a prompt and timely basis of the status and any material developments regarding any Competing Proposal and the material terms and conditions thereof (including any change in price or form of consideration or other material amendment thereto), within 24 hours after receipt or delivery thereof and provide information regarding any Competing Proposal as reasonably requested by Ampol.

12.8 **Matching rights**

- (a) Without limiting clause 12.2 or clause 12.3, during the Exclusivity Period, Z Energy:
 - (i) must not, and must procure that each of its Representatives does not, enter into, or agree to enter into, any agreement, arrangement or understanding to undertake, give effect to or implement any Competing Proposal;
 - (ii) must procure that no Z Energy Director changes, qualifies or withdraws his or her recommendation in favour of the Scheme in order to publicly recommend any Competing Proposal; and
 - (iii) must not make, and ensure that no Z Energy Director makes, any public statement recommending any Competing Proposal to Shareholders,

unless and until:

- (iv) acting in good faith and after having taken written advice from its external financial and legal advisers, the Board has determined that:
 - (A) the Competing Proposal is a Superior Proposal; and
 - (B) failing to take one or more of the actions specified in clause 12.8(a)(i) to (iii) would be likely to constitute a breach of the



fiduciary duties or statutory obligations of the directors of Z Energy; and

- (v) Z Energy has provided Ampol with all the information in relation to the Competing Proposal it is required to provide under clause 12.7 and a written explanation as to why Z Energy considers the Competing Proposal is a Superior Proposal; and
- (vi) Z Energy has given Ampol at least five Business Days from the date Z Energy gives notice to Ampol under clause 12.8(a)(v) (including all of the information required to be provided under that clause) in respect of the Competing Proposal (*Matching Period*) in which to provide a Counter Proposal in accordance with clause 12.8(b); and
- (vii) upon the expiry of the Matching Period:
 - (A) Ampol has not provided a Counter Proposal under clause 12.8(a)(vi); or
 - (B) if Ampol has provided a Counter Proposal under clause 12.8(b) and Z Energy having complied with clause 12.9(a) then, acting in good faith and after having taken written advice from its external financial and legal advisers, the Board has determined that:
 - (AA) the Competing Proposal nevertheless continues to constitute a Superior Proposal (taking into account the Counter Proposal); and
 - (BB) failing to respond to such Competing Proposal would be likely to continue to constitute a breach of the fiduciary duties or statutory obligations of the Board.
- (b) During the Matching Period Ampol may (but is not required to) make a proposal (a *Counter Proposal*) to amend the terms of the Scheme and this agreement or make an alternative proposal to Z Energy or Shareholders with a view to providing an outcome for Shareholders that, taken as a whole, is no less favourable to Shareholders than that offered under the relevant Competing Proposal.

12.9 **Z Energy's response to Counter Proposal**

If, during the Matching Period, Ampol makes a Counter Proposal:

- (a) Z Energy must use all reasonable endeavours to procure that the Board considers the Counter Proposal in good faith; and
- (b) if the Board acting in good faith determines that the terms and conditions of the Counter Proposal taken as a whole are no less favourable to Shareholders than those in the relevant Competing Proposal, then:
 - (i) the parties must each use all reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Counter Proposal as soon as reasonably practicable; and



- (ii) Z Energy must procure that each Z Energy Director makes a public statement recommending the Counter Proposal to Shareholders.

12.10 Changes to Proposals

Any material change to a Competing Proposal including:

- (i) any material change to the terms referred to in clause 12.7(b)(i) and/or (ii); or
- (ii) any incomplete or non-binding proposal or expression of interest becoming complete, capable of acceptance or binding on the Third Party bidder,

will be taken to constitute a new Competing Proposal in respect of which Z Energy must separately comply with its obligations under clause 12.7 to clause 12.9.

12.11 Termination if unmatched Superior Proposal progresses

If:

- (a) Z Energy has complied fully with clause 12.7 in relation to a Competing Proposal; and
- (b) in full compliance with clause 12.8(a):
 - (i) Z Energy enters into, or agrees to enter into, any agreement, arrangement or understanding to undertake, give effect to or implement the Competing Proposal; or
 - (ii) any Z Energy Director changes, qualifies or withdraws his or her recommendation in favour of the Scheme in order to publicly recommend the Competing Proposal; or
 - (iii) Z Energy makes, or any Z Energy Director makes, any public statement recommending the Competing Proposal to Shareholders,

then either party may terminate this agreement by notice to the other party in accordance with clause 14.

12.12 Standstill arrangements with other parties

During the Exclusivity Period, except with the prior written consent of Ampol, Z Energy must not amend or waive, and must enforce, the terms of any standstill agreement or arrangement between Z Energy and any person other than a member of the Ampol Group.

12.13 Normal provision of information

Nothing in this clause 12 prevents a party from:

- (a) providing information required to be provided by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules or ASX Listing Rules; or
- (b) making presentations to, and responding to bona fide enquiries from, stockbrokers, portfolio investors and equity market analysts in relation to the Scheme or in accordance with its usual practices.



13 **BREAK FEES AND REVERSE BREAK FEE**

13.1 **Acknowledgement and agreement**

Z Energy (on the one hand) and Ampol (on the other hand) each acknowledges and agrees that:

- (a) the other and its Related Entities have incurred and will continue to incur significant costs and expenses in pursuing the Transaction including:
 - (i) advisory costs;
 - (ii) costs of management and directors' time;
 - (iii) in respect of Ampol, funding costs;
 - (iv) out of pocket expenses; and
 - (v) opportunity costs of pursuing the Transaction or in not pursuing alternative transactions or business opportunities;
- (b) the costs and expenses actually incurred by each party and its Related Entities are of such nature that they cannot accurately be ascertained;
- (c) the Break Fee, Ampol Regulatory Approval Break Fee and Reverse Break Fee are each liquidated damages based on a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by the relevant party and its Related Entities in pursuing the Transaction;
- (d) the parties have negotiated the inclusion of this clause 13 in this agreement and would not have entered into this agreement without it; and
- (e) each party has received external legal and financial advice in relation to this clause 13 and has concluded that it is reasonable and appropriate for it to agree to payment of the Break Fee, Ampol Regulatory Approval Break Fee or Reverse Break Fee (as applicable) in the circumstances described in clause 13.2, 13.3 or 13.4 (as applicable) in order to secure the other party's entry into this agreement.

13.2 **Circumstances where Break Fees payable**

- (a) Subject to clause 13.6 and clause 13.8, Z Energy must pay the Break Fee to Ampol if:
 - (i) at any time before this agreement is terminated a Competing Proposal is announced and the person making the Competing Proposal or one or more persons that Control, or are under the Control of, that person completes, within 15 months of the date of termination, a transaction in all material respects of the kind referred to in the definition of Competing Proposal;
 - (ii) at any time before this agreement is terminated, any Z Energy Director fails to make the recommendation, or any Z Energy Director fails to give the undertaking, referred to in clause 8.1 or changes, qualifies or withdraws that recommendation or undertaking or makes any



statement materially inconsistent with that recommendation or that undertaking, except:

- (A) in response to a Superior Proposal and then subject to Z Energy's full compliance with clause 12.8; or
 - (B) where, subject to clause 13.2(b), the Independent Adviser issues an Independent Adviser's Report which concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares; or
 - (iii) Ampol terminates this agreement as permitted under clause 14.1(a), 14.1(b) or 14.1(d) due, in relation to termination under clause 14.1(d), to a Prescribed Occurrence occurring on or after the date of this agreement (but not, for the avoidance of doubt, where Ampol terminates this agreement as permitted under clause 14.1(d) due to a Material Adverse Change); or
 - (iv) either party terminates this agreement under clause 12.11.
- (b) If the exception to paragraph 13.2(a)(ii)(B) applies, the Break Fee will nonetheless be payable by Z Energy to Ampol if, prior to the issue of the Independent Adviser's Report concluding that the Consideration was not within or above the Independent Adviser's valuation range, a Competing Proposal is received by Z Energy or made public and within 15 months after the date that Competing Proposal is received or becomes public, the person making the Competing Proposal or one or more persons that Control, or are under the Control of, that person completes in all material respects a transaction of the kind referred to in the definition of Competing Proposal.

13.3 Circumstances where Ampol Regulatory Approval Break Fee payable

Subject to clause 13.6 and clause 13.8, Ampol must pay the Ampol Regulatory Approval Break Fee if this agreement is terminated:

- (a) by Z Energy under clause 14.5 because of a material breach by Ampol of its undertakings with respect to satisfying the NZCC Condition and the OIO Conditions under clause 3.3 or clause 3.4 (unless the NZCC Condition or the OIO Condition is nonetheless satisfied by the End Date); or
- (b) by either party under clause 14.5 because of the failure to satisfy the OIO Condition or the NZCC Condition by the End Date in accordance with the terms of this agreement (or clause 14.8 following such failure), other than where such failure is due to a breach by Z Energy of its undertakings with respect to satisfying the NZCC Condition or the OIO Condition under clause 3.3 or 3.4.



13.4 **Circumstances where Reverse Break Fee payable**

Subject to clauses 13.6 and clause 13.8, Ampol must pay the Reverse Break Fee to Z Energy if Z Energy terminates this agreement as permitted under clause 14.2(a), (b) or (c) (and not, for clarity, under clause 14.2(d)).

13.5 **Payment of Break Fees**

If the Break Fee, Ampol Regulatory Approval Break Fee or Reverse Break Fee become payable under this agreement, Z Energy or Ampol (as the case requires) must pay it to or as directed by the other party without withholding or set-off (except as required by law) within 10 Business Days after receipt of a written demand for payment from the other party.

13.6 **Break Fee or Reverse Break Fee not payable**

Notwithstanding anything else in this agreement:

- (a) none of the Break Fee, Ampol Regulatory Approval Break Fee nor Reverse Break Fee is payable if the Scheme becomes Effective;
- (b) each of the Break Fee, Ampol Regulatory Approval Break Fee and Reverse Break Fee is payable only once;
- (c) in the event that Z Energy pays the Break Fee under this clause 13, in no circumstances will Ampol be required to pay the Ampol Regulatory Approval Break Fee or the Reverse Break Fee (and vice versa); and
- (d) in the event that Ampol pays the Reverse Break Fee under this clause 13, in no circumstances will Ampol be required to pay the Ampol Regulatory Approval Break Fee (and vice versa).

13.7 **Sole and exclusive remedy**

- (a) Ampol acknowledges and agrees that payment of the Break Fee is the sole and exclusive remedy available to Ampol in connection with any event or occurrence referred to in clause 13.2 and Z Energy is not liable for any loss or damage arising in connection with any such event or occurrence other than its obligation to pay Ampol the Break Fee under this clause 13.
- (b) Z Energy acknowledges and agrees that payment of the Ampol Regulatory Approval Break Fee or the Reverse Break Fee are the sole and exclusive remedy available to Z Energy in connection with any event or occurrence referred to in clause 13.3 and clause 13.4 respectively and Ampol is not liable for any loss or damage arising in connection with any such event or occurrence other than its obligation to pay Z Energy the Ampol Regulatory Approval Break Fee or Reverse Break Fee (as the case may be) under this clause 13.

13.8 **Amendments to Break Fee Arrangements**

If either of the following occurs:

- (a) the Takeovers Panel indicates to either party in writing that it requires any modification to the amount of the Break Fee, Ampol Regulatory Approval Break Fee or Reverse Break Fee or the circumstances in which any of them is to be paid (the *Break Fee Arrangements*) as a condition of not opposing the Scheme; or



- (b) the Court requires any modification to a Break Fee Arrangement as a condition of making orders convening the Scheme Meeting,

then the parties must amend this clause 13 to the extent required to give effect to the requirements of the Takeovers Panel or the Court, as the case may be, and, in the circumstances referred to in clause 13.8(b), the parties must give any required undertakings.

13.9 Specific performance and other rights

- (a) Subject to clause 13.7 and clause 13.11, nothing in this agreement precludes Z Energy from suing Ampol for specific performance or from otherwise terminating this agreement in accordance with its terms and/or suing Ampol for damages (the amount of which it is acknowledged will be limited to the amount of any Ampol Regulatory Approval Break Fee or Reverse Break Fee actually paid to Z Energy by Ampol in accordance with this agreement).
- (b) Subject to clause 13.7 and clause 13.10, nothing in this agreement precludes Ampol from suing Z Energy for specific performance or from otherwise terminating this agreement in accordance with its terms and/or suing Z Energy for damages (the amount of which it is acknowledged will be limited to the amount of the Break Fee actually paid to Ampol by Z Energy in accordance with this agreement).

13.10 Z Energy's limitation of liability

Notwithstanding any other provision of this agreement:

- (a) the maximum aggregate liability of Z Energy to Ampol under or in connection with this agreement, howsoever arising and including in respect of any breach of this agreement, will be the amount of the Break Fee;
- (b) a payment by Z Energy of the Break Fee represents the sole and absolute liability of Z Energy to Ampol under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by Z Energy to Ampol in connection with this agreement; and
- (c) the amount of the Break Fee payable to Ampol under this clause 13 shall be reduced by the amount of any loss or damage recovered by Ampol in relation to a breach of any other clause of this agreement.

13.11 Ampol's limitation of liability

Notwithstanding any other provision of this agreement:

- (a) the maximum aggregate liability of Ampol to Z Energy under or in connection with this agreement, howsoever arising and including in respect of any breach of this agreement, will be the amount of either (and not both) the Reverse Break Fee or the Ampol Regulatory Break Fee;
- (b) a payment by Ampol of either the Reverse Break Fee or the Ampol Regulatory Break Fee represents the sole and absolute liability of Ampol to Z Energy under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by Ampol to Z Energy in connection with this agreement; and



- (c) the amount of the Reverse Break Fee or the Ampol Regulatory Break Fee payable to Z Energy under this clause 13 shall be reduced by the amount of any loss or damage recovered by Z Energy in relation to a breach of any other clause of this agreement.

13.12 Trigger Dispute

- (a) A Trigger Dispute is to be provisionally determined in accordance with clauses 13.12 - 13.14.
- (b) If a Trigger Dispute arises, the party contending that the relevant event has occurred must, as soon as reasonably practicable, deliver a notice specifying the details and particulars of its position, the facts upon which it relies, and enclosing copies of the documents upon which it relies and a statement (not more than 10 standard pages) explaining the rationale for its position on the Trigger Dispute. Such statement shall be signed or endorsed by a senior manager or director of the relevant party.
- (c) The other party must, within 10 Business Days of the receipt of the documents provided for in clause 13.12(b) above, deliver a notice specifying the details and particulars of its position, the facts upon which it relies, and enclosing copies of the documents upon which it relies and a statement (not more than 10 standard pages) explaining the rationale for its position on the Trigger Dispute. Such statement shall be signed or endorsed by a senior manager or director of the relevant party.
- (d) Following exchange of statements in accordance with clause 13.12(c), the parties respective Chief Executive Officers (or any nominated representatives of such persons) shall endeavour in good faith to reach resolution on the Trigger Dispute within five Business Days.

13.13 Expert Determination

If the Trigger Dispute is not resolved within 10 Business Days of the exchange of the documents provided for under clause 13.12(c):

- (a) either party may, by written notice to the other, refer the Trigger Dispute to the Expert to be determined in accordance with sub-paragraphs (b) to (g) below (such Expert to be appointed jointly by the parties on the basis of these provisions);
- (b) within 10 Business Days of the Expert being appointed, the party referring the Trigger Dispute to the Expert must provide the Expert (copying the other party) with:
 - (i) this agreement;
 - (ii) the statements provided in accordance with clause 13.12;
 - (iii) statement(s) of evidence signed or endorsed by a senior manager or director of the relevant party in reply to the material provided by the other party under clause 13.12(c), together with any additional documents referred to in the statement(s); and



- (iv) written submissions of not more than 10 standard pages in support of that party's position;
- (c) within 10 Business Days of receiving the documents specified in clause 13.13(b), the other party must provide the Expert (copying the other party) with:
 - (i) statement(s) of evidence signed or endorsed by a senior manager or director of the relevant party in rejoinder to the statement(s) of evidence provided by the other party under clause 13.13(b)(iii), together with any additional documents referred to in its statement(s); and
 - (ii) written submissions of not more than 10 standard pages in support of that party's position;
- (d) the parties shall procure that the Expert shall make his/her determination (with reasons which substantiate the determination) within 4 weeks of receipt of the information under clause 13.13(c);
- (e) in determining the dispute, the Expert must act as an expert and not an arbitrator;
- (f) the parties agree that there will be no ex parte communication between any party and the expert regarding any matter in the Trigger Dispute and that all written communications by any party to the Expert will be copied to the other party; and
- (g) the Expert's fees will be borne equally by the parties.

13.14 Determination is provisional only

- (a) If the Expert determines that a payment is required to be made by a party under this clause 13, then such payment shall be made promptly in accordance with clause 13.14(c).
- (b) After either:
 - (i) the Expert delivers a decision on the Trigger Dispute; or
 - (ii) the Expert has failed to deliver a decision on the Trigger Dispute within eight weeks of receipt of the information under clause 13.13(c), whichever is earlier,

either party is at liberty to commence proceedings in the New Zealand courts for the final determination of the Trigger Dispute and any other related issues, provided that, if the Expert decides that a payment is required to be made by a party under this clause 13, such payment must be made by that party in accordance with clause 13.14(a) and clause 13.14(c) before commencing proceedings.

- (c) The party required to make a payment under clause 13.14(a) must:



- (i) make such payment within 20 Business Days of the Expert's determination; or
- (ii) if it wishes to further litigate the merits of the Trigger Dispute, within 20 Business Days of the Expert's determination:
 - (A) make such payment into a solicitor's trust account to be held in escrow pending final determination of the Trigger Dispute by a court, from which no appeal has been or could be taken; and
 - (B) file proceedings in the High Court in respect of the Trigger Dispute and continue thereafter to pursue such proceedings expeditiously.
- (d) It is acknowledged and agreed that:
 - (i) the purpose of clauses 13.12 to 13.14 (inclusive) is to deliver a provisional payment outcome but without prejudicing either party in relation to the further litigation of the underlying Trigger Dispute; and
 - (ii) none of the conclusions or findings in the Expert's determination in any way limit the parties' ability to have the merits of the Trigger Dispute determined on the merits, de novo and afresh through proceedings in the New Zealand courts.

14 TERMINATION

14.1 Events affecting the Z Energy Group

Subject to clause 14.3, Ampol may terminate this agreement by giving notice in writing to Z Energy before 8.00am on the Implementation Date if:

- (a) Z Energy is in breach of any Z Energy Warranty or any event occurs or circumstance arises that would cause any Z Energy Warranty to be untrue as at 8.00am on the Implementation Date, where the consequences of that breach (other than in respect of a Fundamental Warranty) are material in the context of the Scheme and the Z Energy Group (taken as a whole);
- (b) Z Energy is in breach of any Z Energy Undertaking or any other provision under this agreement and that breach is material in the context of the Scheme, or to the Z Energy Group taken as a whole. For the avoidance of doubt, it will be a material breach of this agreement if any Z Energy Director fails to make the recommendation, or any Z Energy Director fails to give the undertaking, referred to in clause 8.1 or changes, qualifies or withdraws that recommendation or undertaking once made or makes any statement inconsistent with that recommendation or that undertaking, except where there is a Superior Proposal in full compliance with clause 12.8(a) or where the Independent Adviser issues an Independent Adviser's Report which concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares;
- (c) the Condition set out in clause 3.1(d) is not satisfied (or waived by Ampol under clause 3.5) by the End Date;



- (d) a Material Adverse Change or a Prescribed Occurrence occurs on or after the date of this agreement; or
- (e) clause 12.11 applies and Z Energy has not already terminated this agreement.

14.2 Events affecting Ampol

Subject to clause 14.3, Z Energy may terminate this agreement by giving notice in writing to Ampol before 8.00am on the Implementation Date if:

- (a) a breach of any Ampol Warranty or any event occurs or circumstance arises that would cause any Ampol Warranty to be untrue as at 8.00am on the Implementation Date where the consequences of that breach are material in the context of the Scheme;
- (b) Ampol is in breach of any Ampol Undertaking or any other provision of this agreement and that breach is material in the context of the Scheme or to the Ampol Group taken as a whole;
- (c) an Insolvency Event occurs in respect of Ampol; or
- (d) clause 12.11 applies and Ampol has not already terminated this agreement.

14.3 Notice of termination

A party may only exercise a right of termination under clause 14.1 or clause 14.2 if:

- (a) the party wishing to terminate has given notice to the other party setting out the circumstances that it considers permit it to do so and stating its intention to do so;
- (b) the relevant circumstances have not been remedied within 10 Business Days after the time that the notice is given or any shorter period ending at 8.00am on the Implementation Date; and
- (c) the party wishing to terminate does so before the earlier to occur of 15 Business Days after the time that the notice is given and 8.00am on the Implementation Date.

14.4 Recommendation and Independent Adviser's Report

Either Z Energy or Ampol may terminate this agreement by giving notice in writing to the other if the Independent Adviser's Report concludes prior to the Scheme Meeting that the Consideration is below the Independent Adviser's valuation range for the Shares.

14.5 Regulatory Conditions not satisfied

Either Z Energy or Ampol may terminate this agreement by giving notice in writing to the other if:

- (a) any of the Regulatory Conditions that are for the benefit of that party (or both parties) are not satisfied by the End Date;
- (b) the relevant Regulatory Conditions, if capable of waiver under clause 3.5, have not been waived by the End Date; and



- (c) the terminating party has complied in all material respects with its obligations under clauses 3.3 and 3.4 in relation to the satisfaction of the relevant Regulatory Condition.

14.6 Scheme Resolution not passed

Either Z Energy or Ampol may terminate this agreement by giving notice in writing to the other if:

- (a) the Scheme Meeting is held but the Scheme Resolution is not passed by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act; and
- (b) the terminating party has complied in all material respects with its obligations under this agreement.

14.7 Court determines not to grant the Final Orders

Subject first to complying with clauses 7.3 and 7.4, either party may terminate this agreement by giving notice in writing to the other party if the Court determines not to grant the Final Orders and the terminating party has complied in all material respects with its obligations under this agreement.

14.8 End Date

Either Z Energy or Ampol may terminate this agreement by giving notice in writing to the other if the Scheme has not become Effective by the End Date, provided that the terminating party's failure to comply with its obligations under this agreement has not directly and materially contributed to the Scheme not becoming Effective by the End Date.

14.9 Effect of termination

If this agreement is terminated under this clause 14 then:

- (a) except as provided in clause 14.9(c), all the provisions of this agreement cease to have effect and each party is released from its obligations to further perform this agreement;
- (b) each party retains all rights that it has against the other party in respect of any breach of this agreement occurring before termination; and
- (c) the provisions of, and the rights and obligations of each party under, this clause 14 and each of the Surviving Clauses survive termination of this agreement.

15 ANNOUNCEMENTS

15.1 Initial announcements

As soon as reasonably practicable after this agreement is signed Z Energy must issue an announcement in a form agreed with Ampol and including a statement that:

- (a) each Z Energy Director recommends that Shareholders vote in favour of the Scheme; and
- (b) each Z Energy Director undertakes to vote, or procure the voting of, all Shares held or controlled by him or her in favour of the Scheme,



in each case in the absence of a Superior Proposal and subject to the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares.

15.2 Other announcements

Each party must not make, and must procure that its Representatives do not make, any public announcement concerning the Scheme or the subject matter of this agreement other than:

- (a) the announcement referred to in clause 15.1;
- (b) in the case of Z Energy, any administrative information in relation to the Shareholders approving the Scheme at the Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;
- (c) with the written consent of the other party, which must not be unreasonably withheld or delayed; or
- (d) if required by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules or the ASX Listing Rules, but if either party is so required to make any announcement, it must promptly notify the other party, where practicable and lawful to do so, before the announcement is made and must co-operate with the other party regarding the timing and content of such announcement or any action which the other party may reasonably elect to take to challenge the validity of such requirement,

provided that the obligations in this clause will not prevent Ampol or Z Energy from responding to media and other stakeholders where not inconsistent with announcements that are permitted to be made in accordance with the terms of this agreement, including this clause 15.2.

16 PAYMENTS

16.1 Manner of payments

Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), each payment to be made under this agreement must be made in NZ\$ by transfer of the relevant amount into the relevant account on or before the date on which the payment is due and in immediately available funds. The relevant account for a given payment is the account that the party due to receive the payment specifies, not less than 10 Business Days before the date on which payment is due, by giving notice to the party due to make the payment.

16.2 Default interest

If a party defaults in making any payment when due of any sum payable under this agreement, it must pay interest on that sum from (and including) the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of 5% above the Reference Rate on that sum, which interest accrues from day to day and must be compounded monthly.



17 **GST**

17.1 **Interpretation**

Words and expressions that are defined in the GST Act have the same meaning when used in this clause 17. For the purposes of this clause 17, references to GST chargeable and input tax credit entitlements of any entity include GST chargeable against, and the input tax credit entitlements of, the representative member of the GST group of which the entity is a member.

17.2 **Consideration exclusive of GST**

For avoidance of doubt, the parties agree that the supply of Shares pursuant to this agreement is an exempt supply of a financial service and therefore not subject to GST. All other stated amounts payable or consideration to be provided under or in connection with this agreement do not include GST (GST Exclusive Consideration).

17.3 **Payment of GST**

If GST is chargeable on any supply made under or in connection with this agreement the recipient must pay to the party that has made or will make the supply (the *Supplier*), in addition to the GST Exclusive Consideration, an additional amount equal to the GST chargeable on that supply (the *Additional Amount*). The recipient must pay the Additional Amount without set-off, demand or deduction, at the same time and in the same manner as any GST Exclusive Consideration for that supply is required to be paid, except that the recipient is not required:

- (a) to pay the Additional Amount unless and until the Supplier has issued a tax invoice (or other similar document or information) under clause 17.4; or
- (b) to pay any GST Default Amounts included in the Additional Amount if those GST Default Amounts result from the Supplier failing to comply with its obligations under the GST Act.

17.4 **Tax invoice or taxable supply information**

For any supply to which clause 17.3 applies, the Supplier must issue a tax invoice (or other similar document or information) which complies with the GST Act.

17.5 **Adjustments**

If an event referred to in section 25(1) of the GST Act occurs in relation to a taxable supply made under or in connection with this agreement, the GST payable on that supply will be recalculated to reflect that adjustment, a debit note or credit note (or other similar document or information) will be issued as required by the GST Act and an appropriate payment will be made between the parties.

17.6 **Input tax credits**

Notwithstanding any other provision of this agreement, if an amount payable under or in connection with this agreement is calculated by reference to any loss, damage, cost, expense, charges or other liability incurred or suffered by a party, then the amount payable must be reduced by the amount of any input tax credit or other deduction from output tax to which that entity is entitled in respect of the acquisition of any supply to which the loss, damage, cost, expense, charge or other liability relates.



18 NOTICES

18.1 Manner of giving notice

Any notice or other communication to be given under this agreement must be in writing (which includes email) and may be physically delivered or sent by email to the party to be served as follows:

(a) to Z Energy at:

Address: 3 Queens Wharf, Wellington Central, Wellington,
6011, New Zealand

Email: debra.blackett@z.co.nz

For the attention of: Debra Blackett

with a copy (which does not constitute notice) to:

Address: Chapman Tripp, Level 34, PwC Tower, 15 Customs
Street, Auckland Central, Auckland 1010

Email: josh.blackmore@chapmantripp.com /
roger.wallis@chapmantripp.com

For the attention of: Josh Blackmore and Roger Wallis

(b) to Ampol at:

Address: 29-33 Bourke Road Alexandria NSW 2015

Email: secretariat@ampol.com.au

For the attention of: Company Secretary

with a copy (which does not constitute notice) to:

Address: Bell Gully, Level 22, Vero Centre, 48 Shortland
Street, Auckland 1010

Email: haydn.wong@bellgully.com /
james.gibson@bellgully.com

For the attention of: Haydn Wong and James Gibson

or at any such other address or email address notified for this purpose to the other parties under this clause 18.1.

18.2 When notice given

Any notice or other communication is deemed to have been given:

(a) if delivered, on the date of delivery but if the notice or other communication would otherwise be taken to be received after 5.00 pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or



communication is taken to be received at 9.00 am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt; or

- (b) if sent by email:
 - (i) between 9am and 5pm on a Business Day in the jurisdiction of the recipient (as recorded on the device from which the sender sent the email), at the time of transmission unless the sender receives an automated message that the email has not been delivered (excluding an "out of office" automated message); or
 - (ii) if clause 18.2(b)(i) does not apply, at 9am on the Business Day most immediately after the time of sending in the jurisdiction of the recipient.

18.3 **Proof of service**

In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

18.4 **Documents relating to legal proceedings**

This clause 18 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this agreement.

19 **GENERAL**

19.1 **Amendments**

- (a) This agreement may only be amended prior the Scheme becoming Effective.
- (b) Any amendment to this agreement will only be effective if it is in writing and signed by all the parties.
- (c) Notwithstanding clauses 11.1(c) and 11.2(c) this agreement may be varied by the parties to it without the approval of any Z Energy Indemnified Person, any Ampol Indemnified Person or any director, officer or employee of Z Energy or of any other member of the Z Energy Group.

19.2 **Assignments**

None of the rights or obligations of a party under this agreement may be assigned, transferred or novated without the prior written consent of the other party (such consent not to be unreasonably withheld).

19.3 **Costs**

Except as otherwise expressly provided in this agreement, each party must pay the costs and expenses incurred by it in connection with entering into and performing its obligations under this agreement, the Scheme and the Deed Poll.



19.4 **Entire agreement**

This agreement contains the entire agreement between the parties relating to the Transaction and supersedes all previous agreements, whether oral or in writing, between the parties relating to the Transaction except for the Confidentiality Agreement and the Information Sharing Protocols.

19.5 **Execution in counterparts**

This agreement may be executed in counterparts, which taken together must constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this agreement by executing a counterpart. Scanned signatures are taken to be valid and binding to the same extent as original signatures.

19.6 **Exercise and waiver of rights**

The rights of each party under this agreement:

- (a) may be exercised as often as necessary;
- (b) except as otherwise expressly provided by this agreement, are cumulative and not exclusive of rights and remedies provided by law; and
- (c) may be waived only in writing and specifically,

and delay in exercising or non exercise of any such right is not a waiver of that right.

19.7 **Further assurance**

Each party undertakes, at the request, cost and expense of the other party, to sign all documents and to do all other acts, which may be necessary to give full effect to this agreement.

19.8 **Severability**

The provisions contained in each clause of this agreement are enforceable independently of each other clause of this agreement and the validity and enforceability of any clause of this agreement will not be affected by the invalidity or unenforceability of any other clause.

20 **GOVERNING LAW AND JURISDICTION**

20.1 **Governing law**

This agreement and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.

20.2 **Jurisdiction**

The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this agreement) and each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.



20.3 **Service of process**

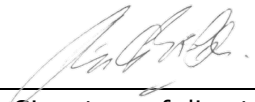
Ampol:

- (a) appoints Haydn Wong or James Gibson of Bell Gully as its agent in New Zealand for service of process and other documents in any legal action or proceedings arising out of or in connection with this agreement; and
- (b) will ensure that at all times prior to the Implementation Date or termination of this agreement, the agent noted in clause 20.3(a) or a replacement appointed by Ampol and notified to Z Energy, is authorised and able to accept service of process and other documents on its behalf in New Zealand.



EXECUTION PAGE

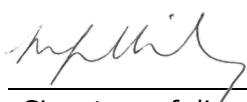
EXECUTED on behalf of **AMPOL LIMITED**



Signature of director

Steven Gregg

Name of director



Signature of director / ~~company~~
~~secretary~~

Matthew Halliday

Name of director / ~~company~~ ~~secretary~~

EXECUTED on behalf of **Z ENERGY LIMITED**

Signature of director

Name of director

Signature of director

Name of director



EXECUTION PAGE

EXECUTED on behalf of **AMPOL LIMITED**

Signature of director

Signature of director / company
secretary

Name of director

Name of director / company secretary

EXECUTED on behalf of **Z ENERGY LIMITED**

Signature of director

Abby Foote

Name of director

Signature of director

Mark Cross

Name of director



SCHEDULE 1 – PRESCRIBED OCCURRENCES

- 1 Z Energy or another member of the Z Energy Group authorises, declares, pays, or makes any dividends, bonuses or other payments or distributions (within the meaning of the Companies Act) of any nature (including, without limitation, any share buybacks, redemptions or other form of capital reduction), other than:
 - (a) any distribution from a wholly owned Z Energy Group member to Z Energy or another wholly owned Z Energy Group member; or
 - (b) a Permitted Dividend.
- 2 Any Z Energy Group member issuing, agreeing to issue, or granting an option or right to subscribe for, shares, convertible securities, other securities or financial products of any nature (including warrants, options, phantom or cash settled rights over Shares, convertible notes, entitlements, rights or interests in any ordinary shares) other than the issuing of shares by a wholly owned Z Energy Group member to Z Energy or another wholly owned Z Energy Group member.
- 3 Z Energy or a member of the Z Energy Group:
 - (a) altering the rights, privileges, benefits, entitlements or restrictions attaching to any securities (including the Shares) or other securities or financial products (if any) of any member of the Z Energy Group; or
 - (b) converting all or any of the Shares into a larger or smaller number.
- 4 Any alteration to the constitutional documents of any member of the Z Energy Group.
- 5 An Insolvency Event occurs in respect of Z Energy, or an Insolvency Event occurs in respect of another member of the Z Energy Group that is material to the Z Energy Group taken as a whole.
- 6 A resolution is passed for any amalgamation of any member of the Z Energy Group, or any of them is involved in any merger or scheme of arrangement (other than a solvent scheme of arrangement or an amalgamation, merger or scheme of arrangement involving solely Z Energy and/or one or more wholly owned Z Energy Group member).
- 7 The Shares cease to be quoted, or are suspended from trading for a period of longer than three trading days, on the NZX or the ASX (other than in connection with implementation of the Scheme).
- 8 A member of the Z Energy Group is, or will be, under any obligation to make any payment or provide any consideration to any of its employees or directors in the event of any member of the Z Energy Group becoming a subsidiary of Ampol or under Ampol's control, which is material in the context of the Z Energy Group taken as a whole (unless approved in writing by Ampol or as expressly provided for in the Z Energy Disclosure Letter).
- 9 A member of the Z Energy Group increases the remuneration of (including with regard to any superannuation, benefits, incentives or bonuses), or materially varies



the terms of employment of, or terminates the employment of, any of its directors, officers or members of the Z Energy Executive Team, other than within the exceptions provided in clauses 9.2(f)(xiv) or 9.3 or on the basis of retirement by rotation under the NZX Listing Rules.

- 10 A member of the Z Energy Group accelerates the rights of any of its directors, officers or employees to benefits of any kind, other than as permitted under clause 6.5 in respect of the PRLTIP.
- 11 A member of the Z Energy Group enters into a transaction with a Related Party (other than a Related Party that is also a member of the Z Energy Group) that is material to the Z Energy Group taken as a whole.
- 12 Z Energy or another Z Energy Group member amends (or agrees to amend) in a material respect any agreement or arrangement with any financial advisor in relation to the Transaction or a Competing Proposal, or enters into an agreement or arrangement with a new financial advisor, in respect of the Transaction or a Competing Proposal.
- 13 The board or shareholders of a Z Energy Group member passes a resolution or to do or authorise the doing of any act or matter referred to in any of paragraphs 1 to 12 above.



SCHEDULE 2 – Z ENERGY WARRANTIES AND UNDERTAKINGS

Part 1 - Z Energy Warranties

- 1 Z Energy is a corporation validly existing under the laws of New Zealand.
- 2 Z Energy has the power to execute and deliver this agreement and to perform its obligations under this agreement and the Scheme, and has taken all necessary corporate action to authorise such execution and delivery and the performance of such obligations.
- 3 Z Energy's obligations under this agreement are legal, valid and binding obligations enforceable subject to and in accordance with their terms.
- 4 The execution and delivery by Z Energy of this agreement and the performance of its obligations under this agreement and the Scheme do not and will not conflict with or constitute a default under any provision of:
 - (a) its constitution; or
 - (b) any law, order, judgement, award, injunction, decree, rule or regulation by which Z Energy is bound.
- 5 As at the date of this agreement, Z Energy's capital structure is as set out in Schedule 4 Part A, and the Z Energy Group's capital structure is as set out in Part B and there are no other shares, options or other securities (including equity securities, debt securities or convertible securities) or other instruments which are convertible into securities in a member of the Z Energy Group on issue, nor has any member of the Z Energy Group offered or agreed to issue or grant, and no person has any right to call for the issue or grant of, any such shares, options or other securities or other instruments to any Third Party.
- 6 As at 8.00am on the Implementation Date, there will be on issue no more than 519,289,407 Shares, and no securities, options, performance rights or instruments will be outstanding or become outstanding which give (or may give) any right to or which may become convertible into Shares.
- 7 Z Energy has filed with the Registrar, NZX and ASX all documents required to be filed with the Registrar, NZX or ASX, including pursuant to NZX Listing Rule 3.1 (*Z Energy Reporting Documents*) and is not in breach of its continuous and periodic disclosure obligations under the Companies Act, the NZX Listing Rules or the ASX Listing Rules and is not relying on the carve-out in NZX Listing Rule 3.1 to withhold any information from public disclosure. The Z Energy Reporting Documents do not contain any untrue statement of a material fact or omit to state a material fact required to be stated in it, except to the extent that such statements have been modified or superseded by a later Z Energy Reporting Document.
- 8 The Due Diligence Material has been prepared and provided in good faith and, as far as Z Energy is aware, as at the date it was prepared, the Due Diligence Material was true and accurate in all material respects and no information that has been included in the Due Diligence Material was, when given, materially false or misleading, including by omission.



- 9 As at the date of this agreement, Z Energy is not aware of any material circumstance which has not been disclosed in the Due Diligence Material and which might reasonably be expected materially and adversely to affect the financial position, business, assets, prospects or profitability of the Z Energy Group or the value of the Shares, or which might otherwise reasonably be expected to be material to a purchaser of the Shares.
- 10 No member of the Z Energy Group has a legal or equitable interest in land that has not been fairly disclosed in the Due Diligence Material.
- 11 No Prescribed Occurrence has occurred on or after the date of this agreement.
- 12 Each member of the Z Energy Group has complied in all material respects with all New Zealand and foreign laws and regulations applicable to them, has all material Authorisations for them to conduct the business of the Z Energy Group as presently being conducted and, so far as Z Energy is aware, no member of the Z Energy Group is under investigation with respect to the violation of any laws, regulations or applicable Authorisations.
- 13 As at the date of this agreement, Z Energy is not in negotiations or discussions (other than with Ampol and its Representatives) with any party relating to, or which may reasonably be expected to lead to, any Competing Proposal.
- 14 The execution of this agreement by Z Energy will not affect any waiver or amendment of any standstill agreement or arrangement between Z Energy and any person other than a member of the Ampol Group.
- 15 Z Energy Group does not have any outstanding financing (other than, for the avoidance of doubt, foreign exchange hedging which has been fairly disclosed in the Due Diligence Material or which is entered into in the ordinary course of business during the period commencing on the date of this agreement and ending the Implementation Date) that is not reflected in its financial statements and notes thereto for the year ended 31 March 2021, and since 31 March 2021 no member of Z Energy Group has engaged in any financing of a type which is not required to be shown or reflected in its financial statements or notes thereto.
- 16 Other than as fairly disclosed in the Due Diligence Material, there is no current or, so far as the Z Energy is aware on the date of this agreement, pending or threatened claim, dispute, demand, action, litigation, prosecution, arbitration, investigation, mediation or other proceeding which could reasonably be expected to result in an award, settlement, fine, penalty, order, loss or other liability to the Z Energy Group of more than \$2,000,000.

Part 2 - Z Energy Undertakings

- 1 Z Energy will ensure that the Z Energy Information:
 - (a) is prepared in good faith and on the understanding that each of the Ampol Indemnified Parties will rely on that information for the purposes of considering and approving the Ampol Information in the Scheme Booklet;
 - (b) complies with the Companies Act, FMCA and all other applicable laws and the NZX Listing Rules and ASX Listing Rules; and



- (c) in the form and context in which it appears in the Scheme Booklet is true and correct in all material respects and is not misleading or deceptive, including by omission as at the date the Scheme Booklet is sent to Shareholders.
- 2 Z Energy will provide to Shareholders and Ampol all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the Z Energy Information, in the form and context in which it appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive, including by omission.
- 3 All information provided by or on behalf of Z Energy to the Independent Adviser will be provided in good faith and:
 - (a) to the extent such information relates to topics or matters in respect of which information has also been made available to Ampol as part of the Due Diligence Material, relates to time periods prior to the date of this agreement and such information is material as it relates to the assessment of the value of the Scheme Shares, that information will be consistent in all material respects with the information made available to Ampol in relation to the same topics or matters; and
 - (b) on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive including by omission.



SCHEDULE 3 – AMPOL WARRANTIES AND UNDERTAKINGS

Part 1 - Ampol Warranties

- 1 Ampol is a corporation validly existing under the laws of its place of incorporation.
- 2 Ampol has and, in relation to the Deed Poll, will have upon execution of the Deed Poll, the power to execute and deliver and to perform its obligations under this agreement and the Deed Poll, and has taken or, in relation to the Deed Poll, will take prior to execution of the Deed Poll, all necessary corporate action to authorise such execution and delivery and the performance of such obligations.
- 3 The obligations of Ampol under this agreement are, and the obligations of Ampol under the Deed Poll will, on execution of the Deed Poll be, legal, valid and binding obligations enforceable subject to and in accordance with their terms.
- 4 The execution and delivery by Ampol of this agreement and the execution and, in due course, delivery by Ampol of the Deed Poll do not and will not conflict with or constitute a default under any provision of:
 - (a) its constitution; or
 - (b) any law, order, judgment, award, injunction, decree, rule or regulation by which Ampol is bound.
- 5 As at 8.00am on the Second Court Date Ampol will have binding agreements in place to fund its obligation to pay the Consideration in accordance with the Scheme and the Deed Poll conditional only upon:
 - (a) the Court approving the Scheme and the Scheme becoming Effective; and
 - (b) the Conditions (to the extent they have not been satisfied or waived prior to the Second Court Date) and other customary conditions precedent to draw down.

Part 2 - Ampol Undertakings

- 1 Ampol will ensure that the Ampol Information:
 - (a) is prepared in good faith and on the understanding that each of the Z Energy Indemnified Parties will rely on that information to prepare the Scheme Booklet and to propose and implement the Scheme in accordance with the Companies Act;
 - (b) complies with the Companies Act and the FMCA and all other applicable laws; and
 - (c) in the form and context in which it appears in the Scheme Booklet is true and correct in all material respects and is not misleading or deceptive, including by omission as at the date the Scheme Booklet is sent to Shareholders.
- 2 Ampol will provide to Z Energy all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date



of the Scheme Meeting which is necessary to ensure that the Ampol Information, in the form and context in which that information appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive in any material respect, including by omission.

- 3 All information provided by or on behalf of Ampol to the Independent Adviser will be provided in good faith and on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive, including by omission.
- 4 Subject to the Companies Act and the Scheme becoming Effective, Ampol undertakes in favour of Z Energy and each Z Energy Indemnified Party that it will:
 - (a) subject to clause 5 below, for a period of 7 years from the Implementation Date, ensure that the constitutions of Z Energy and each Z Energy Group member continue to have equivalent obligations to those currently contained in their constitutions at the date of this agreement that provide for each company to indemnify each of its current and former directors and officers against any liability (excluding for fraud or wilful misconduct) incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Z Energy Group; and
 - (b) procure that Z Energy and each Z Energy Group member complies with any provisions in deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time (provided that such deeds have been fairly disclosed in the Due Diligence Material) and without limiting the foregoing, Ampol will not, and will procure that no member of the Z Energy Group will, vary or cancel the D&O Run-off Policy put in place in accordance with clause 11.3, subject to clause 5 below, for a period of 7 years from the retirement date of each director and officer. For the avoidance of doubt, this clause does not intend to impose any obligation on Ampol to pay for run-off insurance or any further insurance to achieve these purposes.
- 5 The undertakings contained in clause 4 above are given until the earlier of the end of the relevant period specified in that clause or the relevant Z Energy Group member ceasing to be part of the Ampol Group.



SCHEDULE 4 – CAPITAL STRUCTURE

Part A – Z Energy

Type of security	Total number on issue
Quoted Ordinary Shares (including treasury shares and Restricted Shares)	520,136,969
Treasury shares	1,968,326
Restricted Shares	199,125
Performance Rights	3,238,616

Part B – Z Energy Group

Entity name	Total number on issue	Class	Name of shareholder(s)
Z Energy 2015 Limited	12,500,001	Ordinary	Z Energy Limited
Flick Energy Limited	58,001,802	Ordinary	Z Energy Limited (70.17%) Other shareholders (29.83%)
Z Energy ESPP Trustee Limited	1	Ordinary	Z Energy Limited
Z Energy LTI Trustee Limited	1	Ordinary	Z Energy Limited



SCHEDULE 5 - STANDARD OIO CONDITIONS

For the purposes of clause 3.1(a)(i) of this agreement, the terms and conditions are:

- (a) Ampol must acquire the Shares and the land that is the subject of the application by the date stated in the consent, otherwise the consent will lapse or become invalid and Ampol must not acquire the Shares or the land that is the subject of the application;
- (b) the requirement that Ampol or the Ampol Nominee must acquire the Shares and the land that is the subject of the application using the acquisition, ownership and control structure described in Ampol's application, and that only Ampol or the Ampol Nominee as the consent holders may acquire the Shares, not any other subsidiary, trust or other entity;
- (c) the requirement for Ampol to notify the Overseas Investment Office (*OIO*) in writing within two months after the date of settlement confirming that settlement of the acquisition of the Shares took place, such notice to include:
 - (i) the date of settlement;
 - (ii) the final consideration paid (plus GST if any);
 - (iii) the structure by which the acquisition was made and who acquired the Shares; and
 - (iv) copies of transfer documents and settlement statements.
- (d) the requirement that the individuals with control of Ampol must remain not unsuitable to own or control the Shares;
- (e) the requirement that Ampol must notify the OIO within 20 working days if Ampol:
 - (i) becomes aware that it does not or any individual who controls Ampol does not meet any of the investor test factors listed in section 18A(4) of the Overseas Investment Act 2005;
 - (ii) ceases to be an overseas person;
 - (iii) disposes of all or any part of the Shares or the land the subject of the application; or
 - (iv) Ampol's New Zealand service address as stated in its application changes;
- (f) the requirement that Ampol report in writing annually to the OIO detailing progress of its business plan during the financial year;
- (g) the requirement that Ampol must allow a person appointed by the OIO to conduct an inspection any land which is the subject of the application for the consent (*Inspector*) for the purpose of monitoring compliance with the OIO consent conditions (*Inspection*), provided that Ampol has been given at least two weeks' written notice of the Inspection.



- (h) the requirement that, for the purpose of conducting an Inspection, Ampol must allow an Inspector to:
 - (i) gather information and provide that information to the OIO;
 - (ii) enter any land, including any building on it, other than a dwelling, which is the subject of the application for the consent;
 - (iii) remain for as long as is reasonably required to conduct the Inspection;
 - (iv) conduct surveys, inquiries, tests, and measurements;
 - (v) take photographs and video recordings; and
 - (vi) do all other things that are reasonably necessary to enable an Inspector to carry out an Inspection;
- (i) the requirement that Ampol must take all reasonable steps to facilitate an Inspection, including:
 - (i) directing its employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection; and
 - (ii) being available, or requiring its agents, employees, tenants or other occupiers to be available at all reasonable times during an Inspection to facilitate access by an Inspector onto and across the land which is the subject of the application for the consent, including providing transport across the land if reasonably required.



SCHEDULE 6 – SUMMARY TIMETABLE

	Event	Indicative Date
1.	Ampol to submit its: (i) clearance application under Commerce Act 1986 to the New Zealand Commerce Commission; and (ii) application under the Overseas Investment Act 2005	Q4 CY2021
2.	Application for Initial Orders filed and First Court Date	Q1 CY2022
3.	Scheme Meeting	Q1 CY2022
4.	OIO Condition and NZCC Conditions satisfied	Q2 CY2022
5.	Final Orders Date and Implementation	Q2 CY2022



ANNEXURE 1 - SCHEME PLAN

SCHEME OF ARRANGEMENT PURSUANT TO PART 15 OF THE COMPANIES ACT 1993

PARTIES

Z ENERGY LIMITED ("Z Energy")

AMPOL LIMITED ("Ampol")

Each person who is registered in the Register as the holder of one or more Scheme Shares (together the "**Scheme Shareholders**")

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Scheme Plan, unless the context otherwise requires:

Ampol Nominee means [].

ASX means ASX Limited or the Australian Securities Exchange, as the context requires.

Business Day means any day other than a Saturday, Sunday, a statutory public holiday in Auckland, New Zealand or Sydney, Australia and excluding any day between 25 December 2021 and 4 January 2022 (both dates inclusive).

Companies Act means the Companies Act 1993.

Conditions means:

- (a) the conditions set out in clause 3.1 of the Scheme Implementation Agreement; and
- (b) such other conditions made or required by the Court under section 236(1) or section 237(1) of the Companies Act and approved in writing by Z Energy and Ampol in accordance with clause 3.2 of the Scheme Implementation Agreement.

Consideration means \$3.78 in respect of each Scheme Share held by a Scheme Shareholder, as adjusted in accordance with the Scheme Implementation Agreement, which is payable in cash.

Court means the High Court of New Zealand, Wellington Registry.

Deed Poll means the deed poll entered into by Ampol [and Ampol Nominee] in favour of the Scheme Shareholders.

Encumbrance means:

- (a) any security interest within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999 and any option, right to acquire, right of pre-emption, assignment by way of security or trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business); and
- (b) any agreement to create any of the foregoing.



End Date has the meaning given to that term in the Scheme Implementation Agreement

Final Court Orders means orders made, on application of Z Energy, that the Scheme is binding on Z Energy, Ampol, any Ampol Nominee, the Scheme Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act.

Final Orders Date means the day on which the Final Court Orders are granted by the Court.

Funds has the meaning given to that term in clause 3.1.

Government Agency means any government, department, officer or minister of any government and any governmental, semi-governmental, regulatory, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity, and includes the Overseas Investment Office, the Takeovers Panel, and the Financial Markets Authority.

Implementation Date means the day on which the Scheme is to be implemented, being the date five Business Days after the Record Date, or such other date as Ampol and Z Energy agree in writing, and *Implementation* correspondingly means the time at which implementation commences with the first step under clause 4.1(a).

LINK means LINK Market Services Limited.

NZX means NZX Limited and, where the context requires, the main board financial market that it operates.

NZX Listing Rules means the NZX Listing Rules for the NZX Main Board.

Record Date has the meaning given to that term in the Scheme Implementation Agreement.

Register means the Share register maintained by LINK on behalf of Z Energy.

Registered Address means, in relation to a Shareholder, the address of that Shareholder shown in the Register as at the Record Date.

Scheme means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under Part 15 of the Companies Act and approved by Z Energy and Ampol in writing.

Scheme Implementation Agreement means the scheme implementation agreement dated 10 October 2021 between Z Energy and Ampol.

Scheme Meeting means the special meeting of Shareholders ordered by the Court to be convened pursuant to section 236(2)(b) and 236A(2) of the Companies Act in respect of the Scheme (and including any meeting convened following any adjournment or postponement of that meeting).

Scheme Shareholder means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date;

Scheme Shares means all of the Shares on issue on the Record Date.

Share means a fully paid ordinary share in Z Energy.



Shareholder means a person who is registered in the Register as the holder of one or more Shares from time to time.

Takeovers Panel means the Takeovers Panel established by section 5(1) of the Takeovers Act 1993.

Trading Halt Date means the date which is two Business Days after the Final Orders Date or such other date as Ampol and Z Energy agree in writing.

Trust Account has the meaning given to that term in clause 3.1.

Unconditional means all of the Conditions having been satisfied or, if capable of waiver in accordance with the Scheme Implementation Agreement, waived.

1.2 Interpretation: In this Scheme Plan, unless the context otherwise requires:

- (a) headings are to be ignored in construing this document;
- (b) the singular includes the plural and vice versa;
- (c) words of any gender include all genders;
- (d) a reference to a clause, is a reference to a clause of this Scheme Plan;
- (e) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) reference to any document (including this Scheme Plan) includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
- (g) reference to a party, person or entity includes:
 - (i) an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
 - (ii) an employee, sub-contractor, agent, successor, permitted assign, executor, administrator and other representative of such party, person or entity;
- (h) written and in writing include any means of reproducing words, figures or symbols in a tangible and visible form;
- (i) the words including or includes do not imply any limitation;
- (j) a reference to any time is a reference to that time in New Zealand; and
- (k) references to money or \$ are to New Zealand dollars.

1.3 Things required to be done other than on a Business Day: Unless otherwise indicated, if the day on which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.



1.4 **No contra proferentem:** No term or condition of this Scheme Plan will be construed adversely to a party solely because that party was responsible for the preparation of this Scheme Plan or a provision of it.

1.5 **Ampol Nominee:** Ampol may elect a directly or indirectly wholly-owned subsidiary of Ampol (*Ampol Nominee*) to acquire all of the Scheme Shares under the Scheme by giving written notice to Z Energy of the relevant subsidiary at least five Business Days before the First Court Date. If Ampol nominates an Ampol Nominee to acquire all of the Scheme Shares pursuant to the Scheme Implementation Agreement, Ampol will ensure that the Ampol Nominee completes the acquisition of the Scheme Shares, and Ampol will pay the Consideration on behalf of the Ampol Nominee, each in accordance with the terms of the Scheme Implementation Agreement and the Deed Poll.

2. CONDITIONS

2.1 **Conditions:** The implementation of the Scheme is conditional in all respects on:

- (a) all of the Conditions having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Implementation Date; and
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with its terms before 8.00am on the Implementation Date.

3. CONSIDERATION INTO TRUST ACCOUNT

3.1 **Obligation to pay Consideration into Trust Account:** Subject to the Scheme Implementation Agreement not having been terminated and the Scheme having become Unconditional (except for the Conditions set out in clauses 3.1(d), (h), (i) and (j) of the Scheme Implementation Agreement), Ampol must, by no later than 5.00pm on the Business Day before the Implementation Date, deposit (or procure the deposit of) in immediately available cleared funds an amount equal to the aggregate amount of the Consideration payable to Scheme Shareholders in a New Zealand dollar denominated trust account operated by LINK and notified by LINK to Ampol no later than 5.00pm on the Business Day falling three Business Days before the Implementation Date (the *Funds* and that account the *Trust Account*).

3.2 Details of Trust Account:

- (a) Subject to clauses 3.2(b), 5.4, 5.5 and 5.6, the Trust Account will be held and operated by LINK on the basis that the Funds are held on trust for Ampol and to its order, such that only Ampol may direct how the Funds will be paid from the Trust Account.
- (b) Clause 3.2(a) is subject to a standing written direction from Ampol to Z Energy and to LINK to make payment of the Consideration to the Scheme Shareholders in accordance with this Scheme Plan upon transfer of the Scheme Shares to Ampol under clause 4.1(a).
- (c) The details of the Trust Account will be provided to Ampol by (or on behalf of) LINK not less than three Business Days before the Implementation Date.

3.3 **Interest:** Any interest earned on the amount deposited in the Trust Account up to Implementation will be payable to Ampol by LINK as directed by Ampol (less bank fees and other third party charges relating to the Trust Account).



- 3.4 **Scheme not implemented:** Should the implementation of the Scheme not occur by 5.00pm on the Implementation Date for any reason, LINK will immediately repay the Funds to Ampol to such New Zealand dollar denominated account instructed to LINK by Ampol.

4. IMPLEMENTATION

- 4.1 **Implementation:** Subject to any amendments or variations as may be required by the Court, the conditions referenced in clause 2 being satisfied (to be confirmed to LINK by written notice given by Ampol and Z Energy prior to 9.00 am on the Implementation Date, which written notice must be so given immediately after 8.00am on the Implementation Date upon the conditions set out in clause 2 being satisfied), the Consideration having been deposited into the Trust Account in accordance with clause 3.1, commencing at 9.00 am on the Implementation Date, the following steps will occur sequentially:

- (a) without any further act or formality, all the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to the Ampol Nominee, and Z Energy must enter, or procure LINK enter, the name of Ampol Nominee in the Register as holder of all of the Scheme Shares; and
- (b) in accordance with the direction set out in clause 3.2(b), subject to compliance in full with clause 4.1(a), Z Energy must instruct LINK to pay or procure the payment from the Trust Account of the cash Consideration to each Scheme Shareholder based on the number of Scheme Shares held by that Scheme Shareholder as set out in the Register as at the Record Date.

5. PAYMENT OF CONSIDERATION

- 5.1 **Method of payment:** The payment obligations under clause 4.1(b) will be satisfied by:

- (a) where a Scheme Shareholder has, prior to the Record Date, provided bank account details to enable LINK and Z Energy to make payments of New Zealand dollars by electronic funds transfer, LINK must pay the Consideration in New Zealand dollars to the Scheme Shareholder by electronic funds transfer of the relevant amount to the bank account nominated by that Scheme Shareholder;
- (b) where a Scheme Shareholder has, prior to the Record Date, provided bank account details to enable LINK and Z Energy to make payments of Australian dollars by electronic funds transfer, LINK must pay the Consideration to the Scheme Shareholder by electronic funds transfer of the relevant amount in Australian dollars to the bank account nominated by that Scheme Shareholder;
- (c) where a Scheme Shareholder that has an address outside of New Zealand and Australia has, prior to the Record Date, registered provided sufficient written instructions to enable LINK to make payment in foreign currency, LINK must pay that Consideration (less any applicable costs and fees) to such Scheme Shareholder (in the currency nominated by such Scheme Shareholder at such exchange rate that LINK may obtain to convert the New Zealand dollar amount of Consideration to that foreign currency); or
- (d) where a Scheme Shareholder has not provided the information and/or taken the steps contemplated by clauses 5.1(a), 5.1(b) and 5.1(c) to enable payment to be made to such Scheme Shareholder in a manner contemplated



by one of those clauses (or if an electronic payment to such Scheme Shareholder is rejected by the recipient bank) LINK must retain the Consideration owed to that Scheme Shareholder in the Trust Account to be claimed by the Scheme Shareholder in accordance with clause 5.5.

If a Shareholder has given more than one payment direction, then the later direction in time of receipt will be followed.

5.2 Joint holders: In the case of Scheme Shares held in joint names:

- (a) the Consideration is payable to the bank account nominated by the joint holders or, at the sole discretion of Z Energy, nominated by the holder whose name appears first in the Register as at the Record Date; and
- (b) any other document required to be sent under this Scheme Plan will be sent to either, at the sole discretion of Z Energy, the holder whose name appears first in the Register as at the Record Date or to the joint holders.

5.3 Surplus in Trust Account: To the extent that, following satisfaction of the obligations under clause 4.1(b), there is a surplus in the Trust Account, that surplus (less the aggregate amount of the Consideration retained in the Trust Account in accordance with clause 5.1(d) or clause 5.6(b), and less bank fees and other third party charges relating to the Trust Account) shall be promptly paid in full to Ampol.

5.4 Holding on Trust: Z Energy must, in respect of any monies retained by LINK pursuant to clause 5.1(d) or clause 5.6(b), instruct LINK to hold such monies in the Trust Account on trust for the relevant Scheme Shareholders for a period of two years and thereafter, subject to clause 5.6, to pay any remaining money in the Trust Account to Z Energy.

5.5 Unclaimed monies: During the period of two years commencing on the Implementation Date, on request in writing from a Scheme Shareholder that has not received payment of the Consideration in accordance with clause 5.1(a), 5.1(b) or 5.1(c), LINK must, if such Scheme Shareholder has taken the necessary steps required to effect payment to such Scheme Shareholder in a manner contemplated by clause 5.1(a), 5.1(b) or 5.1(c), pay to that Scheme Shareholder the Consideration held on trust for that Scheme Shareholder in a manner contemplated by clause 5.1(a), 5.1(b) or 5.1(c) (or in any other manner approved by LINK and agreed to by that Scheme Shareholder).

5.6 Orders of a court or Government Agency: Notwithstanding any other provision of this Scheme Plan, if written notice is given to Z Energy prior to the Record Date of an order or direction made by a court of competent jurisdiction or a Government Agency that:

- (a) requires Consideration to be provided to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 4.1(b), Z Energy will be entitled to procure, and Ampol will be deemed to have instructed LINK to ensure, that provision of that Consideration is made in accordance with that order or direction; or
- (b) prevents the Consideration from being provided to any particular Scheme Shareholder in accordance with clause 4.1(b), or the payment of such Consideration is otherwise prohibited by applicable law, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Consideration) will be retained in the Trust Account until such time as provision of the Consideration to the Scheme Shareholder in accordance with



clause 4.1(b) or clause 5.5 (as applicable) is permitted by that order or direction or otherwise by law,

and such provision or retention (as the case may be) will constitute the full discharge of Ampol's and Z Energy's obligations under clause 4.1(b) with respect to the amount so provided or retained.

5.7 Exchange Rate:

- (a) If a Scheme Shareholder elects to be paid in Australian dollars as contemplated by clause 5.1(b), the conversion of the Consideration into Australian dollars will be undertaken in a manner and at an exchange rate determined by LINK, and neither Z Energy nor Ampol will be responsible for (or have any liability in connection with) any such conversion.
- (b) If a Scheme Shareholder elects to be paid in a foreign currency as contemplated by clause 5.1(c), the conversion of the Consideration into such foreign currency will be undertaken in a manner and at an exchange rate determined by LINK, and neither Z Energy nor Ampol will be responsible for (or have any liability in connection with) any such conversion.

6. DEALING IN SHARES

6.1 Trading Halt:

- (a) Following the sealing of the Final Court Orders Z Energy will advise NZX and ASX of the grant of the Final Court Orders and, once known, the Trading Halt Date and Record Date and use its reasonable endeavours to procure that the NZX and ASX suspend trading in the Shares from the close of trading on the Trading Halt Date.
- (b) Z Energy must not accept for registration, nor recognise for any purpose (except a transfer to Ampol pursuant to this Scheme Plan and any subsequent transfer by Ampol or its successors in title), any transfer or transmission application or other request received after 7.00 pm on the Record Date or received prior to such time, but not in registrable or actionable forms.

6.2 Register:

- (a) Z Energy must register registrable transmission applications or registrable transfers of Shares received prior to the Trading Halt Date before 7.00pm on the Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires Z Energy to register a transfer that relates to a transfer of Shares on which Z Energy has a lien.
- (b) 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, after 7.00pm on the Trading Halt Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and Z Energy and Ampol shall be entitled to disregard any such disposal.
- (c) For the purposes of determining entitlements to the Consideration, but subject to the requirements of the NZX Listing Rules, Z Energy must maintain the Register in accordance with the provisions of this clause 6 until the Consideration has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Consideration.



- (d) From 7.00pm on the Record Date, each entry that is current on the Register (other than entries on the Register in respect of Excluded Shares), will cease to have effect except as evidence of entitlement to the Consideration in respect of the Shares relating to that entry.
- (e) As soon as possible on the first Business Day after the Record Date and in any event by 7.00pm on that day, Z Energy must make available to Ampol in the form Ampol reasonably requires, details of the names, Registered Addresses and holdings of Shares for each Scheme Shareholder as shown in the Register on the Record Date.

7. GENERAL PROVISIONS

7.1 Amendments to Consideration: Ampol may increase the Consideration by written notice at any time to Z Energy prior to the Scheme Meeting, provided that the Scheme Implementation Agreement has not been terminated in accordance with its terms prior to the receipt of such notice by Z Energy.

7.2 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 Plan to Ampol will, at the time of transfer to Ampol [Nominee], vest in Ampol [Nominee] free from all Encumbrances and free from any restrictions on transfer of any kind.
- (b) Each Scheme Shareholder is taken to have warranted to Ampol [and Ampol Nominee] on the Implementation Date that all their Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme Plan will, at the time of transfer, be fully paid and free from all Encumbrances and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Shares to Ampol [and Ampol Nominee] together with any rights and entitlements attaching to those Shares.

7.3 Authority given to Z Energy: Each Scheme Shareholder, without the need for any further act:

- (a) on the Final Orders Date, irrevocably appoints Z Energy as its attorney and agent for the purpose of enforcing the Deed Poll against Ampol (but without limiting each Scheme Shareholder's right to itself enforce the Deed Poll); and
- (b) on the Implementation Date, irrevocably appoints Z Energy 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 the Scheme and the transactions contemplated by it,

and Z Energy accepts each such appointment. Each such attorney and agent, may sub-delegate its functions, authorities or powers under this clause 7.3 to one or more of Z Energy's directors or senior managers.

7.4 Binding effect of Scheme:

- (a) The Scheme binds:
 - (i) Z Energy;
 - (ii) Ampol;



- (iii) any Ampol Nominee; and
 - (iv) all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on the Scheme, did not vote at the Scheme Meeting, or voted against the Scheme at the Scheme Meeting).
 - (b) In the event of any inconsistency, this Scheme Plan overrides the constitution of Z Energy.
- 7.5 **End Date:** If the Scheme has not become Unconditional on or before the End Date, or if the Scheme Implementation Agreement is terminated in accordance with its terms at any time, this Scheme Plan is immediately void and of no further force or effect (other than any provision of the Scheme or this Scheme Plan relating to the repayment to Ampol of any Funds deposited in accordance with clause 3 and the interest thereon (less bank fees and other third party charges relating to the Trust Account)).
- 7.6 **No liability when acting in good faith:** Each Scheme Shareholder agrees that none of the directors, officers or employees of Z Energy or Ampol, will be liable for anything done or omitted to be done in the performance of the Scheme in good faith.
- 7.7 **Successor obligations:** To the extent that any provision of the Scheme or this Scheme Plan imposes any obligation on Ampol or Z Energy that continues or arises after the implementation of the Scheme, such obligation may instead be performed by any successor or related company of Ampol or Z Energy (as applicable) in which case the obligation will be satisfied as if performed by Ampol or Z Energy (as applicable).
- 7.8 **Governing law:**
- (a) This Scheme Plan and any non-contractual obligations arising out of or in connection with it is governed by and must be construed in accordance with the laws of New Zealand.
 - (b) The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Scheme Plan (including a dispute relating to any non-contractual obligations arising out of or in connection with this Scheme Plan) and the parties irrevocably submit to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.



ANNEXURE 2 - DEED POLL

This **Deed Poll** is made on

2021

between (1) **Ampol Limited** (*Ampol*)
and (2) **[any Ampol Nominee]** (*Ampol Nominee*)
and (2) **Each registered holder of Scheme Shares as at 7.00pm on the Scheme Record Date** (*Scheme Shareholders*)

Introduction

- A. Z Energy Limited (**Z Energy**) and Ampol are parties to the Scheme Implementation Agreement.
- B. Z Energy has agreed in the Scheme Implementation Agreement to propose a scheme of arrangement between Z Energy, Ampol, and the Scheme Shareholders, the effect of which will be that all Scheme Shares will be transferred to Ampol [Nominee] and Ampol will provide or procure the provision of the Consideration to the Scheme Shareholders.
- C. Ampol is entering into this Deed Poll for the purpose of undertaking in favour of Scheme Shareholders to pay the Consideration [on behalf of Ampol Nominee] to Scheme Shareholders in accordance with the terms of the Scheme Plan.
- D. [Ampol Nominee is entering into this Deed as Ampol's nominee to acquire all of the Scheme Shares in accordance with the terms of the Scheme Plan in consideration for, and simultaneously with, the payment of the Consideration by Ampol on behalf of Ampol Nominee to Scheme Shareholders.]

It is agreed

1 DEFINED TERMS AND INTERPRETATION

1.1 Defined terms

In this Deed, unless the context requires otherwise:

Final Orders means orders made on application of Z Energy, that the Scheme is binding on Z Energy, Ampol, [Ampol Nominee], the Scheme Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

Scheme Implementation Agreement means the scheme implementation agreement between Z Energy and Ampol Limited dated 10 October 2021;

Scheme Plan means the scheme plan attached as Annexure 1 to the Scheme Implementation Agreement, subject to any alterations or conditions approved by Ampol and Z Energy in writing and which are disclosed to the Court prior to the Court making the Final Orders; and

words defined in the Scheme Plan which are not separately defined in this Deed Poll have the same meaning when used in this Deed Poll.



1.2 Interpretation

Clauses 1.2 and 1.3 of the Scheme Plan apply to the interpretation of this Deed Poll, except that references to “this Scheme Plan” are to be read as reference to “this Deed Poll”.

2 NATURE OF THIS DEED POLL

2.1 Third party rights and appointment of attorney

- (a) This Deed Poll is intended to, and does, confer a benefit on, and therefore may be relied on and enforced by, any Scheme Shareholder in accordance with its terms under Part 2, Subpart 1 of the Contract and Commercial Law Act 2017 (but not otherwise), even though the Scheme Shareholders are not party to the Deed Poll.
- (b) Under the Scheme Plan, each Scheme Shareholder appoints Z Energy as the Scheme Shareholder’s attorney and agent to enforce this Deed Poll against Ampol with effect on and from the date prescribed for such appointment in the Scheme Plan (but without limiting each Scheme Shareholder’s right to itself enforce this Deed Poll).

Notwithstanding clauses 2.1(a) and 2.1(b), this Deed Poll may be varied by Ampol and Z Energy in accordance with clause 7.2 without the approval of any Scheme Shareholder.

2.2 Continuing obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until either:

- (c) Ampol and Ampol Nominee have fully performed their respective obligations under this Deed Poll; or
- (d) this Deed Poll is terminated under clause 3.2.

3 CONDITIONS

3.1 Conditions

This Deed Poll, and the obligations of Ampol and Ampol Nominee under it, are conditional in all respects on the Scheme becoming Unconditional.

3.2 Termination

The obligations of Ampol and Ampol Nominee under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if the Scheme Implementation Agreement is validly terminated in accordance with its terms before the Scheme becomes Unconditional, unless Ampol and Z Energy otherwise agree in writing.

3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2, then Ampol and Ampol Nominee are each released from their respective obligations to further perform this Deed Poll.



4 SCHEME CONSIDERATION

- (a) Subject to the Scheme Implementation Agreement not being terminated and the Scheme having become Unconditional (save for the Conditions set out in clauses 3.1(d), 3.1(h), 3.1(i) and 3.1(j) of the Scheme Implementation Agreement), Ampol undertakes in favour of each Scheme Shareholder to deposit, or procure the deposit of, in immediately available cleared funds, by no later than 5.00pm on the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Consideration payable to all Scheme Shareholders as set out in the Scheme Plan, such deposit to be made into the Trust Account to be held and dealt with by LINK in accordance with the Scheme Plan.
- (b) Subject to clause 3, Ampol irrevocably acknowledges and agrees that, subject to compliance in full by Z Energy with its obligations under clause 4.1(a) of the Scheme Plan, the Consideration deposited into the Trust Account must be, and will be, paid in accordance with clause 4.1(b) of the Scheme Plan in satisfaction of the Scheme Shareholders' respective entitlements to receive the Consideration under the Scheme in accordance with the Scheme Plan.

5 WARRANTIES

[Each of Ampol and Ampol Nominee] warrants in favour of each Scheme Shareholder that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (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 prior to the Implementation Date 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.

6 NOTICES

6.1 Manner of giving notice

Any notice or other communication to be given under this Deed Poll must be in writing and may be physically delivered or sent by email to Ampol at:

Address: Bell Gully, Level 22, Vero Centre, 48 Shortland Street,
Auckland 1010

Email: james.gibson@bellgully.com /haydn.wong@bellgully.com

For the attention of: James Gibson and Haydn Wong



or at any such other address or email address notified for this purpose to the other parties under this clause. Any notice or other communication sent by post must be sent by prepaid ordinary post (if the country of destination is the same as the country of origin) or by airmail (if the country of destination is not the same as the country of origin).

6.2 When notice given

In the absence of earlier receipt, any notice or other communication is deemed to have been given:

- (a) if delivered, on the date of delivery; or
- (b) if sent by email, four business hours (being the hours between 9am and 5pm on a Business Day in the jurisdiction of the recipient) after the time 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 (excluding an "out of office" automated message),

but if the notice or other communication would otherwise be taken to be received after 5.00 pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9.00 am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

6.3 Proof of service

In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

6.4 Documents relating to legal proceedings

This clause 6 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Deed Poll.

7 GENERAL

7.1 Waiver

- (a) Neither Ampol nor Ampol Nominee may rely on the words or conduct of any Scheme Shareholder as a waiver of any right in respect of the Scheme unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) For the purposes of clause 7.1(a):
 - (i) conduct includes a delay in exercising a right;
 - (ii) right means any right arising under or in connection with this Deed Poll and includes the right to rely on this clause; and



- (iii) waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

7.2 **Variation**

- (a) Subject to clauses 7.2(b) and 7.2(c), this Deed Poll may not be varied.
- (b) Before the date on which the Final Orders are made, this Deed Poll may be varied by agreement in writing between Ampol and Z Energy, in which event Ampol and, if applicable Ampol Nominee, will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.
- (c) If the Court orders that it is a condition of the Scheme that Ampol enters into a new deed poll which has the effect of reversing any variation under clause 7.2(b), then, if Ampol so agrees, Ampol and, if applicable, Ampol Nominee, must promptly enter into a further deed poll in favour of the Scheme Shareholders to give effect to the reversal of that variation.

7.3 **Cumulative rights**

The rights, powers and remedies of Ampol, Ampol Nominee and Scheme Shareholders under this Deed Poll are cumulative and do not exclude any other rights, power or remedies provided by law independently of this Deed Poll.

7.4 **Assignment**

The rights and obligations of Ampol, Ampol Nominee and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with at law or in equity. Any purported dealing in contravention of this clause 7.4 is invalid.

7.5 **Further assurance**

Ampol must, at its own expense, do all things reasonably required of it to give full force and effect to this Deed Poll and the transactions contemplated by it.

7.6 **Governing law and jurisdiction**

- (a) This Deed Poll and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.
- (b) The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed Poll (including a dispute relating to any non-contractual obligations arising out of or in connection with this Deed Poll) and Ampol and Ampol Nominee irrevocably submit to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.



EXECUTION

Executed as a deed poll.

Ampol Limited by

Director

Director / Company Secretary

Print Name

Print Name

[Ampol Nominee] Limited by

Director

Director

Print Name

Print Name