

This announcement contains inside information

7 May 2020

88 ENERGY AND XCD ENERGY TO MERGE VIA RECOMMENDED TAKEOVER OFFER

Creating an Alaska-Focused Oil Company

Highlights

- **88 Energy and XCD Energy to merge to form an oil exploration company with operations on the North Slope of Alaska, USA with platform of growth prospects.**
- **88 Energy to acquire XCD Energy via a unanimously recommended off-market takeover offer with:**
 - **2.4 new 88 Energy shares for every XCD Energy share held; and**
 - **0.7 new 88 Energy shares for every XCD Energy listed option held.**
- **The Board of Directors of XCD Energy unanimously recommend that XCD Energy securityholders accept the improved Offers, in the absence of a superior proposal and subject to the independent expert concluding that the offer is fair and reasonable, or not fair but reasonable.**
- **Share Offer values the XCD Energy shares at 1.2 cents each¹, representing a:**
 - **71% premium to the closing price of XCD Energy shares on ASX on 6 May 2020 of 0.7 cents;**
 - **140% premium to the closing price of XCD Energy shares on ASX on 24 April 2020 of 0.5 cents²;**
 - **143% premium to 30-day VWAP of XCD Energy shares³; and**
 - **55% premium to 60-day VWAP of XCD Energy shares³.**
- **Option Offer values the XCD Energy listed options at 0.35 cents each¹, representing a:**
 - **116% premium to the VWAP of all trades completed on ASX since the options were listed (XCDOA) on 25 February 2020 up to and including 6 May 2020.**
- **The merger creates an Alaska focused oil explorer with:**
 - **a diversified portfolio of 3 key project areas; Project Icewine, Yukon Leases and Project Peregrine at various stages of project maturity;**
 - **Board, management and technical team with proven operational capability and a track record for delivering on project objectives, together with access to an extensive network of global and Alaskan relationships – both business and technical; and**
 - **Increased scale, market presence, funding capability and share trading liquidity across ASX and AIM.**
- **XCD securityholders will hold approximately 20% of the combined group, thereby:**
 - **retaining exposure to the potential future upside of the Brookian oil plays across both sets of assets;**
 - **mitigating and diversifying exploration risk whilst gaining exposure to 88 Energy's assets, balance sheet and farm-out expertise; and**
 - **benefiting from the combined group's strong exploration and operating expertise, enhanced financial strength and the ability to optimise exploration activity across an enlarged portfolio.**
- **XCD Energy shareholders have entered into pre-bid acceptance agreements with 88 Energy in respect of 18.5% of shares on issue and 6.8% of listed options on issue.**

¹ Based on the closing price of 88 Energy shares on ASX of 0.5 cents on 6 May 2020. The implied value of the Share Offer and Option Offer will change with fluctuations in the 88 Energy share price.

² XCD Energy closing price on 24 April 2020, the last trading day prior to 88 Energy announcing its intention to make the Offers

³ VWAP of XCD Energy shares is calculated for the period up to and including the 24 April 2020, the last trading day prior to 88 Energy announcing its intention to make the Offers

Offer Terms

88 Energy Limited (ASX: 88E; AIM: 88E) ("**88 Energy**") and XCD Energy Limited (ASX: XCD) ("**XCD Energy**") are pleased to announce they have agreed to merge and have entered into a Bid Implementation Agreement ("**BIA**") by which 88 Energy will offer to acquire all of the fully paid ordinary shares and listed options on issue in XCD Energy via an off-market takeover offer ("**Offer**") under the *Corporations Act 2001* (Cth) (the "**Corporations Act**"). A copy of the BIA accompanies this announcement as Annexure "A".

Under the Offer, XCD Energy securityholders will receive improved terms from 88E as outlined below:

- 2.4 new 88 Energy shares for every XCD Energy share held ("**Share Offer**"); and
- 0.7 new 88 Energy shares for every XCD Energy listed option held ("**Option Offer**"),

(together, the "**Offers**").

The Share Offer values the XCD Energy shares at 1.2 cents each⁴, representing a:

- 71% premium to the closing price of XCD Energy shares on ASX on 6 May 2020 of 0.7 cents;
- 140% premium to the closing price of XCD Energy shares on ASX on 24 April 2020 of 0.5 cents⁵;
- 143% premium to 30-day VWAP of XCD Energy share⁶; and
- 55% premium to 60-day VWAP of XCD Energy share⁶.

Option Offer values the XCD Energy listed options at 0.35 cents each¹, representing an:

- 116% premium to the VWAP of all trades completed on ASX since the options were listed (XCDOA) on 25 February 2020 up to and including 6 May 2020.

The Board of Directors of XCD Energy unanimously recommend to XCD Energy shareholders and listed optionholders that they accept the Offers, in the absence of a superior proposal and subject to the independent expert concluding that the offer is fair and reasonable or not fair but reasonable.

All of the Directors of XCD Energy intend to accept, or procure the acceptance of, the Offers in respect of any XCD Energy shares and listed options that they own or control, which represents in aggregate 3.4 % of XCD Energy shares in issue and 3.6 % of XCD Energy listed options in issue⁷, in the absence of a superior proposal and subject to the independent expert concluding that the offer is fair and reasonable or not fair but reasonable.

The Offers value the equity of XCD Energy at approximately \$8.9 million⁴ and deliver a substantial premium to XCD Energy Shareholders and Optionholders, who will retain a ~20% ownership and participation in the future performance of the combined group.

Strategic Rationale for the Transaction

The transaction creates an Alaska-focused oil exploration and appraisal company with a diversified portfolio of three highly prospective project areas: Project Icewine, Yukon Leases and Project Peregrine and provides an attractive investment proposition for existing and new shareholders.

Key benefits of the transaction include:

- the creation of an established oil exploration and appraisal company with an attractive and complementary portfolio of exploration assets - at various stages of project maturity;

⁴ Based on the closing price of 88 Energy shares on ASX of 0.5 cents on 6 May 2020. The implied value of the Share Offer and Option Offer will change with fluctuations in the 88 Energy share price.

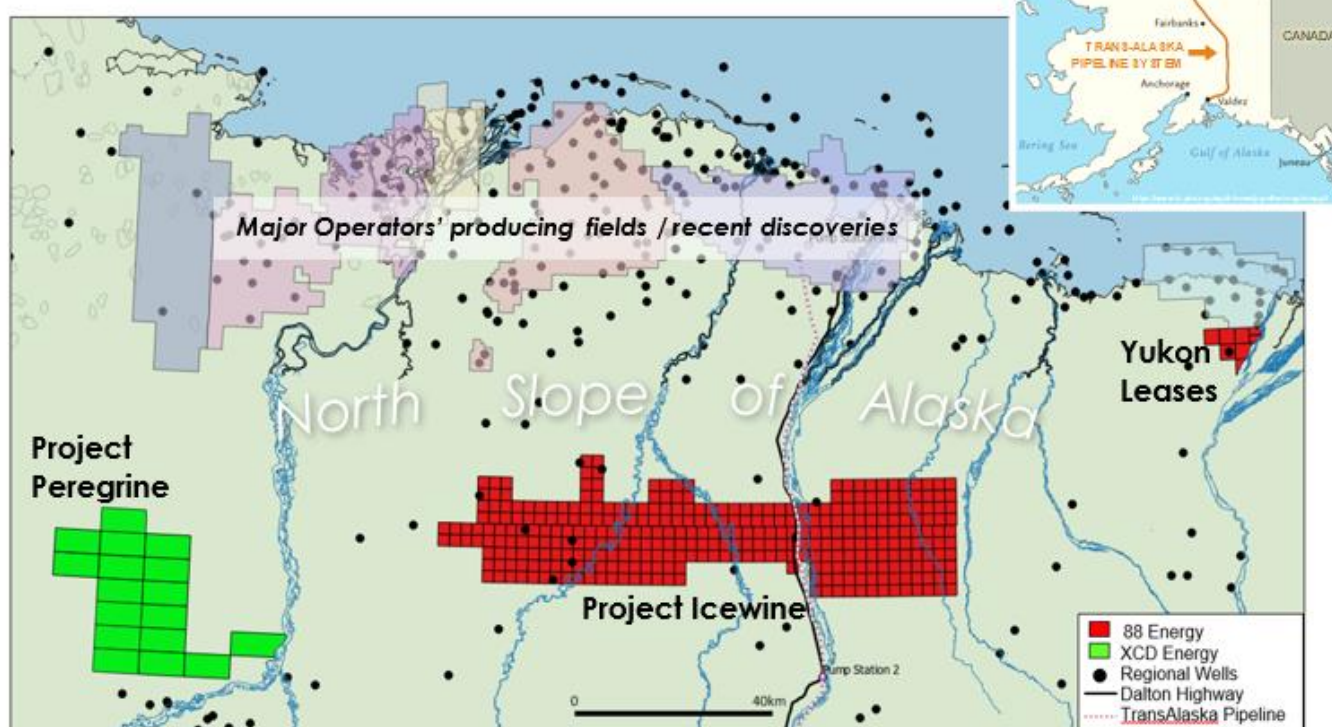
⁵ XCD Energy closing price on 24 April 2020, the last trading day prior to 88 Energy announcing its intention to make the Offers

⁶ VWAP of XCD Energy shares is calculated for the period up to and including the 24 April 2020, the last trading day prior to 88 Energy announcing its intention to make the Offers

⁷ Mr Ferguson has confirmed that he intends to exercise those XCD Energy Performance Rights (10M) referred to in the Bid Implementation Agreement once vested, and then accept the XCD Energy Shares issued on exercise into the Offers.

- enhanced strategic, commercial, technical and financial strength to optimise funding of operations, including an increased level of liquidity and exposure to a larger global investor base giving greater financing flexibility;
- the ability to optimise operational activity across the combined group's highly prospective exploration / appraisal portfolio with potential synergies associated with future project development and infrastructure requirements; and
- a strong board, management and technical team with a proven track record for advancing projects and delivering on milestones, including two 3D and one 2D seismic survey, drilling of four exploration wells safely and on budget over a 5 year period as well as execution of farm-in/farm-out transactions.

Fig.1 88 Energy and XCD Energy Assets



88 Energy Managing Director, Mr David Wall, said the strategic merit for the combination is clear:

"In a combined company, XCD Energy shareholders and listed option holders will be able to leverage from 88 Energy's geological and operational expertise, specific to the North Slope of Alaska, where we have drilled four wells as Operator, safely and within budget, and acquired several 2D and 3D seismic surveys over the last five years. This includes extensive technical knowledge of the regionally successful Brookian oil plays, in which 88 Energy retains significant upside exposure via its highly prospective portfolio of exploration/appraisal projects covering ~330,000 net acres (480,000 gross) co-located on the North Slope."

"88 Energy's Board is confident that merging the assets of 88 Energy and XCD Energy, combined with the potential upside offered, places the combined group in a strong position to fill the growing investment void in the ASX / AIM listed oil and gas sector."

XCD Energy Chairman, Mr Peter Stickland, said the transaction is compelling for XCD Energy shareholders.

"In addition to a significant premium, the transaction provides XCD Energy shareholders with the opportunity to become shareholders of a company with significantly increased scale and demonstrated operational capability that is focussed on the world class oil potential of the North Slope of Alaska," said Mr Stickland.

“It allows our shareholders to continue to have a material interest in the upside associated with the Brookian oil plays, while mitigating and diversifying the subsurface and execution exploration risks,” he said.

“The XCD Energy Board believes that this transaction is in the best interests of XCD Energy and unanimously recommends it to our shareholders, in the absence of a superior proposal and subject to the independent expert concluding that the offer is fair and reasonable, or not fair but reasonable.”

Transaction Details

The Offers are subject to only a limited number of conditions, including a 90% minimum acceptance condition. The full list of conditions to the Offers are set out in Schedule 2 of the BIA provided in Annexure A of this announcement. Details of which conditions have been varied from those advised in 88 Energy’s initial ASX announcement on 27 April 2020 are set out below.

The Share Offer will extend to all XCD Energy shares which come into the bid class during the Offer period as a result of the exercise of listed or unlisted options or the conversion of performance rights held by XCD Energy executives (subject to obtaining any necessary ASIC modifications), during the Offer period. An Option Offer will be made in respect of the XCD Energy listed options currently on issue.

88 Energy and XCD Energy have agreed to a deal protection regime including no shop and no talk rights, a right to match any superior offer and payment of an agreed break fee or reverse break fee of A\$150,000 in certain circumstances.

Further details regarding the Offers will be contained in the Bidder’s Statement, which will be sent to XCD Energy securityholders. 88 Energy currently expects the Bidder’s Statement to be dispatched to XCD Energy securityholders in the coming weeks.

Independent Board Committee

As advised in 88 Energy’s initial ASX announcement on 27 April 2020 in relation to the Offers, the 88 Energy board of directors has established an independent board committee to consider, amongst other things, the terms of the revised takeover offer and the application of ASX Listing Rule 10.1 and Chapter 2E of the Corporations Act to the Offer (“Independent Board Committee”). The Independent Board Committee is comprised of each of the directors of 88 Energy, other than David Wall, the Managing Director, who currently holds 29,395,800 XCD Energy shares and 2,500,000 XCD Energy listed options.

The Independent Board Committee has independently assessed Mr Wall’s personal interest in XCD Energy and has determined that Listing Rule 10.1 does not apply to the revised takeover offer because Mr Wall’s XCD Energy shares and listed options do not have sufficient value for them to be classified as a “substantial asset” for the purposes of Listing Rule 10.1.

Additionally, the Independent Board Committee has also determined that Chapter 2E of the Corporations Act does not apply because Mr Wall will receive the same consideration as all other XCD Energy shareholders and listed option holders.

The Independent Board Committee approved the bid consideration payable under the Offers based on its own determination on the relative values of 88 Energy shares, and XCD Energy shares and listed options, having taken advice from 88 Energy’s corporate adviser.

Michael Evans (through his controlled entities, Tevlo Pty Ltd and Tour Holdings Pty Ltd) holds 4,000,000 shares in XCD Energy. The Independent Board Committee formed the view (and Michael Evans confirmed) that this holding was not significant enough to constitute a material personal interest under the Corporations Act and therefore did not preclude Mr Evans from being a member of the Independent Board Committee.

Owing to Mr Wall's and Mr Evan's interest in XCD Energy shares and XCD listed options, as detailed above, the Offers represent a related party transaction pursuant to the AIM Rules for Companies. Accordingly, Dr Steve Staley, the remaining independent director of 88 Energy, having consulted with the Company's nominated adviser, Cenkos Securities plc, consider that the terms of the Offers are fair and reasonable insofar as the Company's shareholders are concerned.

88 Energy's Intentions

If the Offers are successful, XCD Energy will become a wholly-owned subsidiary of 88 Energy.

Upon completion of the Offer, 88 Energy intends to continue to pursue the exploration activities across both sets of assets, including evaluation of their prospects, strategic relevance, funding requirements and financial performance as soon as possible.

Further details of 88 Energy's intentions will be included in its Bidder's Statement.

Bid Implementation Agreement

As noted above, 88 Energy and XCD Energy have entered into the BIA, a copy of which accompanies this announcement as Annexure "A".

Under the terms of the BIA, the parties have agreed to customary terms in relation to the conduct of the Offers, exclusivity and break fees. In addition, the parties have agreed to certain variations/waivers to the original conditions to the Offers proposed by 88 Energy in its announcement on 27 April 2020 as set out in clause 3.8 of the BIA. An update on the status of the conditions to the Offers will be included in 88 Energy's Bidder's Statement.

Pre-Bid Acceptance Deeds

88 Energy has entered into pre bid acceptance deeds with major XCD Energy shareholders and listed option holders in respect of 18.5% of the XCD Energy shares and 6.8% of the XCD Energy listed options on issue. Pursuant to these deeds, the relevant XCD listed security holders have undertaken to accept the Offers, in the absence of a superior proposal. Details of the security holders who have executed pre-bid acceptance deeds with 88 Energy are set out in 88 Energy's initial ASX announcement on 27 April 2020 in relation to the Offers.

Timetable

It is expected that 88 Energy's Bidder's Statement and XCD Energy's Target's Statement, containing further information about the Offers, will be posted to XCD Energy Shareholders and Listed Optionholders in around late-May 2020, with the Offers to open for acceptance around that time.

Advisers

88 Energy is being advised by Longreach Capital as corporate adviser and Steinepreis Paganin as the legal adviser in relation to the Offers.

XCD Energy is being advised by Taylor Collison as corporate adviser and GTP Legal as the legal adviser in relation to the Offers.

Forward Looking Statements and Disclaimers

This announcement is for information purposes only and does not constitute a prospectus or prospectus equivalent document. It is not intended to and does not constitute, or form part of, an offer, invitation or the solicitation of an offer to purchase or otherwise acquire, subscribe for, sell or otherwise dispose of any securities, or the solicitation of any vote or approval in any jurisdiction, nor shall there be any offer, sale, issuance or transfer of securities in any jurisdiction in contravention of any applicable law.

This announcement contains forward looking statements. Forward looking statements are often, but not always, identified by the use of words such as "seek", "anticipate", "forecast", "believe", "plan", "estimate", "expect" and "intend" and statements that an event or result "may", "will", "should", "could" or "might" occur or be achieved and other similar expressions.

The forward-looking statements in this announcement are based on current expectations, estimates, forecasts and projections about 88 Energy and XCD Energy and the industry in which they operate. They do, however, relate to future matters and are subject to various inherent risks and uncertainties. Actual events or results may differ materially from the events or results expressed or implied by any forward-looking statements. The past performance of 88 Energy or XCD Energy is no guarantee of future performance.

None of 88 Energy, XCD Energy, or any of their directors, officers, employees, agents or contractors makes any representation or warranty (either express or implied) as to the accuracy or likelihood of fulfilment of any forward looking statement, or any events or results expressed or implied in any forward looking statement, except to the extent required by law.

You are cautioned not to place undue reliance on any forward-looking statement. The forward-looking statements in this announcement reflect views held only as at the date of this announcement.

This announcement has been authorised by the respective Boards of 88 Energy and XCD Energy as well as the Independent Board Committee of 88 Energy.

88 Energy Limited

Dave Wall
Managing Director
88 Energy Ltd

Longreach Capital (Adviser to the Transaction)
Darren Martin
Tel: +61 412 144 719

Media and Investor Relations:

88 Energy Ltd
Dave Wall, Managing Director

Tel: +61 8 9485 0990
Email: admin@88energy.com

Finlay Thomson,
Investor Relations

Tel: +44 7976 248471

Cenkos Securities
Neil McDonald/Derrick Lee

Tel: + 44 131 220 6939

XCD Energy Limited

Dougal Ferguson
Managing Director
XCD Energy Ltd

Taylor Collison (Adviser to the Transaction)
Matthew Davies
Tel: +61 8 8217 3912

ANNEXURE A – BID IMPLEMENTATION AGREEMENT

**88 ENERGY LIMITED
ACN 072 964 179
(88 Energy)**

and

**XCD ENERGY LIMITED
ACN 108 403 425
(XCD Energy)**

BID IMPLEMENTATION AGREEMENT

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BETWEEN

88 ENERGY LIMITED (ACN 072 964 179) of Level 2, 5 Ord Street, West Perth, Western Australia 6005 (**88 Energy**);

AND

XCD ENERGY LIMITED (ACN 108 403 425) of Level 1, 35 Outram Street, West Perth, Western Australia 6005 (**XCD Energy**).

RECITALS

- A. 88 Energy is proposing to acquire all of the XCD Energy Shares and XCD Energy Quoted Options by way of the Takeover Bid.
- B. 88 Energy and XCD Energy have agreed to certain matters in relation to the Takeover Bid as set out in this agreement.
- C. The XCD Energy Board proposes to recommend that XCD Energy Shareholders and XCD Energy Quoted Optionholders accept the Offers in respect of their XCD Energy Shares and XCD Energy Quoted Options subject only to the qualifications that no Superior Proposal emerges and the Independent Expert concluding and continuing to conclude in its Independent Expert's Report that the Offers are either fair and reasonable, or not fair but reasonable.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following words have these meanings in this agreement unless the contrary intention appears:

88 Energy Board means the board of directors of 88 Energy.

88 Energy Confidential Information means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties before, on, or after the date of this agreement relating to the business, technology or other affairs of 88 Energy, the terms of this agreement, its existence and the fact the parties are in negotiations in relation to the agreement.

88 Energy Group means 88 Energy and its Subsidiaries.

88 Energy Material Adverse Change means any act, omission, event, change, matter or circumstance occurring, or being discovered or becoming public (either individually or aggregated with other acts, omissions, events, changes, matters or circumstances) which:

- (a) has, will or is reasonably likely to have a material adverse effect on the assets, liabilities, financial position, performance, profitability or prospects of the 88 Energy Group taken as a whole (whether individually or when aggregated with one or more other events, matters or things); or

- (b) any event, matter or thing, as described in sub-paragraph(a), which occurred before the date of this agreement but was not apparent from public filings by 88 Energy before then, becomes public,

where the financial impact of such event, change, condition, matter or thing on the 88 Energy Group exceeds \$5,000,000, but does not include:

- (a) anything which has arisen solely as a result of any actions taken by any member of the 88 Energy Group in the ordinary course of its business including, for the avoidance of doubt, any rationalisation or relinquishment of leases or permits which are less than 15% of the net acreage and are no longer considered prospective;
- (b) those events or circumstances required to be done or procured by 88 Energy pursuant to this agreement;
- (c) those events or circumstances relating to changes in business conditions affecting the global oil industry or security markets generally or a change in the market price of oil which impacts on 88 Energy and its competitors in a similar manner; or
- (d) an event, circumstance, matter or information that is known to XCD Energy or its Representatives on or prior to the date of this agreement or otherwise disclosed in public filings by 88 Energy with ASIC or provided to ASX on or prior to the date of this agreement.

88 Energy Share means a fully paid ordinary share in 88 Energy.

88 Energy Unlisted Option means an option to acquire an 88 Energy Share.

Advisers means, in relation to an entity, its legal, financial and other expert advisers.

Amount of the Consideration means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST exclusive market value of that consideration as reasonably determined by the supplier.

Announcement Date means 27 April 2020.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning in section 12 of the Corporations Act as if subsection (1) of that section is included as a reference to this agreement.

ASX means ASX Limited or the Australian Securities Exchange, as appropriate.

Bidder's Statement means the bidder's statement to be issued by 88 Energy in respect of the Takeover Bid in accordance with Chapter 6 of the Corporations Act.

Business Day means a business day as defined in the Listing Rules.

Competing Transaction means any expression of interest, proposal, offer or transaction notified to the XCD Energy Board which, if completed substantially in

accordance with its terms, would mean a person (other than 88 Energy or its Related Bodies Corporate) would:

- (a) directly or indirectly, acquire an interest or Relevant Interest in or become the holder of:
 - (i) 20% or more of all XCD Energy Shares; or
 - (ii) all or a substantial part of the business conducted by the XCD Energy Group.
- (b) acquire control of XCD Energy, within the meaning of section 50AA of the Corporations Act; or
- (c) otherwise directly or indirectly acquire or merge with XCD Energy or acquire an economic interest in the whole or a substantial part of XCD Energy or their businesses (including by takeover offer, scheme of arrangement, capital reduction, sale of assets, strategic alliance, joint venture, partnership or reverse takeover bid).

Conditions means the conditions to the Offers which are set out in Schedule 2.

Confidential Information means 88 Energy Confidential Information or XCD Energy Confidential Information, as the case requires.

Confidentiality Agreement means the confidentiality agreement entered into between 88 Energy and XCD Energy dated 26 April 2020.

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

Encumbrance means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect.

End Date means the earliest of:

- (a) date of termination of this agreement in accordance with its terms; and
- (b) the end of the Offer Period,

or such later date as the parties agree.

Excluded Information means 88 Energy Confidential Information or XCD Energy Confidential Information which:

- (a) is in or becomes part of the public domain other than through a breach of this agreement or an obligation of confidence owed to the party providing the Confidential Information;
- (b) the recipient of the Confidential Information can prove by contemporaneous written documentation was already known to it at the time of disclosure by the party providing the Confidential Information (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the recipient of the Confidential Information acquires from a source other than the party providing the Confidential Information or any Related

Body Corporate or Representative of the party providing the Confidential Information where such source is entitled to disclose it.

Exclusivity Period means the period from and including the date of this agreement until the earlier of:

- (a) the date of termination of this agreement;
- (b) the end of the Offer Period; and
- (c) the date that is 6 months after the date of this agreement.

Foreign XCD Energy Securityholder means an XCD Energy Shareholder or XCD Energy Quoted Optionholder:

- (a) who is a citizen or resident of a jurisdiction other than residents of Australia and its external territories or New Zealand; or
- (b) whose address shown in the Register is a place outside Australia and its external territories or New Zealand, unless 88 Energy determines that:
 - (i) it is lawful and not unduly onerous or unduly impracticable to issue that XCD Energy Shareholder or XCD Energy Quoted Optionholder with 88 Energy Shares on completion of the Offers; and
 - (ii) it is lawful for that XCD Energy Shareholder or XCD Energy Quoted Optionholder to participate in the Offers by the law of the relevant place outside Australia and its external territories or New Zealand.

GST means a goods and services or similar tax imposed in Australia.

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

Independent Expert means the independent expert to be engaged by XCD Energy to prepare the Independent Expert's Report.

Independent Expert's Report has the meaning given in clause 4.2 and includes any updates that are issued by the Independent Expert.

Input Tax Credit has the meaning it has in the GST Act.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it or its Subsidiaries is in liquidation, in provisional liquidation, under administration or wound up or has had a controller, receiver or receiver and manager appointed to any part of its property;
- (c) it or its Subsidiaries enters into a deed of company arrangement;
- (d) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);

- (e) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (f) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (g) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the other party to this agreement reasonably deduces it is so subject);
- (h) it is otherwise unable to pay its debts when they fall due; or
- (i) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Insurance Policy means the directors and officers insurance policy in favour of XCD Energy Directors which is in place at the date of this agreement in accordance with a deed of indemnity, insurance and access between XCD Energy and any XCD Energy Director.

Insurance Run-Off Period means that period commencing on the Retirement Date and expiring on the date 7 years after the Retirement Date.

Joint Announcement Date means the date on which the joint announcement referred to in clause 10.1 is released to ASX.

Listing Rules means the Listing Rules of ASX.

Lodgement Date means the date 88 Energy lodges the Bidder's Statement with ASIC.

Material Contract means a contract or commitment requiring total payments by, or providing revenue to, a party in excess of \$200,000, in the case of the XCD Energy Group and \$1,000,000 in the case of 88 Energy.

Offer Date means:

- (a) the date which is 5 Business Days after the Lodgement Date, unless the parties otherwise agree on an earlier despatch date for the Offers following lodgement of the Bidder's Statement with ASIC, in which case the Offer Date will be the earlier despatch date agreed by the parties; or
- (b) such other date agreed on in writing by the parties.

Offer Period means the period during which the Offers are open for acceptance.

Offers means offer to:

- (a) XCD Energy Shareholders by way of the Takeover Bid in respect of the XCD Energy Shares on issue as at the date of the Offers and those XCD Energy Shares that are issued during the Offer Period as a result of the exercise or conversion of convertible securities (subject always to any necessary ASIC modifications being obtained and to the extent they are permitted to vest in accordance with this agreement) that are on issue as at the date of this agreement; and

- (b) XCD Energy Quoted Optionholders, by way of the Takeover Bid in respect of the XCD Energy Quoted Options.

Officers means, in relation to an entity, its directors, officers, and employees.

Prescribed Occurrence means any of the events listed in Schedule 3.

Register means the share register of XCD Energy and **Registry** has a corresponding meaning.

Register Date means the date set by 88 Energy pursuant to section 633(2) of the Corporations Act.

Regulatory Authority includes:

- (a) ASX and ASIC;
- (b) a government or governmental, semi-governmental or judicial entity or authority including the Takeovers Panel;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

Reimbursement Fee means \$150,000.

Related Bodies Corporate has the meaning given to it in the Corporations Act.

Related Person in respect of a party or its Related Bodies Corporate, each director, officer, employee, Adviser (and each director, officer, employee or contractor of that Adviser), agent or representative of that party or Related Body Corporate.

Relevant Interest has the meaning given to it in the Corporations Act.

Representatives of a party includes:

- (a) a Related Bodies Corporate of the party; and
- (b) each of the Officers and Advisers of the party or any of its Related Bodies Corporate.

Restriction Period means the period commencing on the date of this agreement and ending on the End Date.

Retirement Date means the date on which the last of the XCD Energy Directors at the date of this agreement ceases to be a XCD Energy Director (provided that the Offer has become unconditional and 88 Energy has a Relevant Interest in at least 50.1% of XCD Energy Shares (on a fully diluted basis)).

Sale Nominee has the meaning given in clause 3.4.

Subsidiaries has the meaning given in the Corporations Act.

Superior Proposal means a Competing Transaction which is, in the determination of the XCD Energy Board acting in good faith and in order to satisfy what the XCD Energy Board consider to be their fiduciary and statutory duties:

- (a) reasonably capable of being completed taking into account all aspects of the Competing Transaction; and
- (b) more favourable to XCD Energy Shareholders than the Takeover Bid, taking into account all terms and conditions of the Competing Transaction.

Takeover Bid means the off-market takeover bids by 88 Energy for all XCD Energy Shares and all XCD Energy Quoted Options to be implemented in accordance with Chapter 6 of the Corporations Act.

Target's Statement means the target's statement to be issued by XCD Energy in respect of the Takeover Bid under Section 638 of the Corporations Act.

Tax means any tax, levy, impost, charge or duty that is assessed, levied, imposed or collected by any Regulatory Authority together with any related interest, penalties, fines and expenses in connection with them.

Third Party means a person other than XCD Energy, 88 Energy or their respective Related Bodies Corporate or Associates.

Timetable means the timetable set out in Schedule 1.

XCD Energy Board means the board of directors of XCD Energy.

XCD Energy Confidential Information means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this agreement relating to the business, technology or other affairs of XCD Energy or its Subsidiaries, the terms of this agreement, its existence and the fact the parties are in negotiations in relation to the agreement.

XCD Energy Director means a director of XCD Energy.

XCD Energy Group means XCD Energy and its Subsidiaries.

XCD Energy Material Adverse Change means any act, omission, event, change, matter or circumstance occurring, or being discovered or becoming public (either individually or aggregated with other acts, omissions, events, changes, matters or circumstances) which:

- (a) has, will or is reasonably likely to have a material adverse effect on the assets, liabilities, financial position, performance, profitability or prospects of the XCD Energy Group taken as a whole (whether individually or when aggregated with one or more other events, matters or things); or
- (b) any event, matter or thing, as described in sub-paragraph (a), which occurred before the date of this agreement but was not apparent from public filings of XCD Energy before then, becomes public,

where the financial impact of such event, change, condition, matter or thing on the XCD Energy Group exceeds \$1,000,000, but does not include:

- (a) anything which has arisen solely as a result of actions taken by any member of the XCD Energy Group in the ordinary course of its business including, for the avoidance of doubt, any rationalisation or relinquishment of leases or permits which are less than 15% of the net acreage and are no longer considered prospective;

- (b) those events or circumstances required to be done or procured by XCD Energy pursuant to this agreement;
- (c) those events or circumstances relating to changes in the global oil industry or security markets generally or a change in the market price of oil which impacts on XCD Energy and its competitors in a similar manner; or
- (d) an event, circumstance, matter or information that is known to 88 Energy or its Representatives on or prior to the date of this agreement or otherwise disclosed in public filings by XCD Energy with ASIC or provided to ASX on or prior to the date of this agreement.

XCD Energy Quoted Option means an option to acquire an XCD Energy Share, which is quoted on the ASX (ASX:XCDOA).

XCD Energy Quoted Optionholder means a holder of one or more XCD Energy Quoted Options.

XCD Energy Securityholder means an XCD Energy Shareholder or an XCD Energy Quoted Optionholder (as applicable).

XCD Energy Share means a fully paid ordinary share in XCD Energy.

XCD Energy Shareholder means a holder of one or more XCD Energy Shares.

1.2 Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect its interpretation;
- (b) no provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision;
- (c) specifying anything after the words "include" or "for example" or similar expressions does not limit what else is included;

and unless the context otherwise requires:

- (d) the expression **person** includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (e) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation;
- (f) a reference to any document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;

- (h) words importing the singular include the plural (and vice versa) and words indicating a gender include every other gender;
- (i) reference to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this agreement and a reference to this agreement includes any schedule, exhibit or annexure to this agreement;
- (j) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) a reference to time is to Western Standard Time as observed in Perth, Western Australia;
- (l) if a period of time is specified and dates from a given day or the day of an event, it is to be calculated exclusive of that day;
- (a) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) where an action is required to be undertaken on a day that is not a Business Day it shall be undertaken on the next Business Day;
- (n) if an act under this agreement to be done by a party on or by a given day is done after 5.00 pm on that day, it is taken to be done on the next day;
- (o) a reference to a payment is to a payment by bank cheque or such other form of cleared funds the recipient otherwise allows in the relevant lawful currency specified;
- (p) a reference to **\$** or **dollar** is to the lawful currency of the Commonwealth of Australia; and
- (q) a reference to a party using or an obligation on a party to use reasonable endeavours or its best endeavours does not oblige that party to agree to commercially onerous or unreasonable conditions.

2. CO-OPERATION

2.1 General obligations

XCD Energy and 88 Energy must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and the resources of external advisers); and
- (b) procure that its Representatives work in good faith and in a timely and co-operative fashion with the other party and its Representatives (including by attending meetings and by providing such records and information as the other party reasonably requires),

to implement the Takeover Bid.

2.2 Access to people and information

- (a) Between the date of this agreement and the earlier of the end of the Offer Period and the date this agreement is terminated, each party must, to the extent reasonably required to implement the Takeover Bid:
 - (i) as soon as reasonably practicable provide the other party and its Representatives with any documents, records, and other information (subject to applicable privacy laws) reasonably requested by them; and
 - (ii) provide the other party and its Officers and Advisers with reasonable access within normal business hours to the other party's Officers and Advisers (provided that such access does not impose an undue burden) which the party reasonably requires for the purposes of:
 - (A) further understanding the other party's financial position (including its working capital position), trading performance and management control systems;
 - (B) implementing the Takeover Bid;
 - (C) preparing for carrying on the business of XCD Energy and 88 Energy following implementation of the Takeover Bid; and
 - (D) any other purpose which is agreed in writing between the parties.
- (b) The obligations in clause 2.2(a), do not apply to the extent that:
 - (i) in respect of XCD Energy, the access or information is connected to the XCD Energy Board's deliberations in relation to the transactions contemplated by this agreement, or information connected to a potential Competing Transaction; and
 - (ii) in respect of 88 Energy, the access or information is connected to the 88 Energy Board's deliberations in relation to the transactions contemplated by this agreement.

2.3 Implementation obligations of XCD Energy

XCD Energy must:

- (a) provide all necessary information about the Register to 88 Energy which 88 Energy reasonably requires in order to assist 88 Energy to solicit acceptances under the Takeover Bid;
- (b) provide all necessary directions to the Registry promptly to provide any information that 88 Energy reasonably requests in relation to the Register, including any sub-register, and, where requested by 88 Energy, XCD Energy must procure such information is provided to 88 Energy in such electronic form as is reasonably requested by 88 Energy; and
- (c) undertake regular beneficial shareholder analysis and promptly exercise its powers under section 672A of the Corporations Act if requested to do

so by 88 Energy, acting reasonably, subject to 88 Energy meeting 100% of the costs of such services and preparing the requests to the shareholders.

2.4 Appointment of directors – XCD Energy Board

As soon as practicable after 88 Energy has a Relevant Interest in more than 50% of the XCD Energy Shares and the Offers become or are declared unconditional, XCD Energy must take all actions necessary to ensure the resignation and appointment of directors of XCD Energy such that a majority of the directors of XCD Energy are directors nominated by 88 Energy in writing, but provided that a minimum of two of the existing XCD Energy Board remain, a proper board is constituted at all times and that 88 Energy procures that its appointees to the XCD Energy Board do not participate in decisions of XCD Energy in relation to the Takeover Bid until after the End Date and a quorum remains for that purpose.

3. THE OFFERS

3.1 Offers by 88 Energy

88 Energy must, by no later than the Offer Date, and in any event as soon as reasonably practicable, make Offers to all XCD Energy Shareholders in respect of all of their XCD Energy Shares on the terms of this agreement or terms no less favourable to XCD Energy Shareholders than the terms of this agreement and otherwise in accordance with all applicable provisions of the Corporations Act.

3.2 Consideration

The consideration offered by 88 Energy under the Takeover Bid will be:

- (a) for every XCD Energy Shareholder, 2.4 88 Energy Shares for every XCD Energy Share held as at the Register Date; and
- (b) for every XCD Energy Quoted Optionholder, 0.7 88 Energy Shares for every XCD Energy Quoted Option held as at the Register Date.

3.3 Fractional entitlements

If the number of XCD Energy Shares held by an XCD Energy Shareholder means that their aggregate entitlement to 88 Energy Shares is not a whole number, or in the case of XCD Energy Quoted Optionholder, the number of XCD Energy Quoted Options held by an XCD Energy Quoted Optionholder means that their aggregate entitlement to 88 Energy Shares is not a whole number, then any fractional entitlement will be rounded up to the nearest whole number.

3.4 Foreign XCD Energy Securityholders

- (a) 88 Energy will, unless satisfied in its sole discretion that the laws of a Foreign XCD Energy Securityholder's country of residence (as shown in the Register) allow for the issue of 88 Energy Shares to the Foreign XCD Energy Securityholder (either unconditionally or after compliance with conditions which 88 Energy regards in its sole discretion but acting reasonably as acceptable and not unduly onerous and not unduly impracticable), issue the 88 Energy Shares to which a Foreign XCD Energy Securityholder would otherwise become entitled, to a nominee appointed by 88 Energy (**Sale Nominee**).
- (b) 88 Energy will cause the 88 Energy Shares to be offered for sale by the Sale Nominee on ASX as soon as practicable and otherwise in the

manner, at the price and on such other terms and conditions as are determined by the Sale Nominee acting in good faith; and

- (c) 88 Energy will cause the Sale Nominee to pay (after deducting any applicable brokerage, duty and other selling costs, taxes and charges) each Foreign XCD Energy Securityholder, the amount ascertained in accordance with the following formula (calculated on an average basis so that all Foreign XCD Energy Securityholder who accept the Offers receive the same value per XCD Energy Share, subject to rounding):

$$\frac{\text{NPS} \times \text{FS}}{\text{TS}}$$

Where:

NPS is the amount received by the Sale Nominee upon the sale of 88 Energy Shares, less the expenses of the sale (brokerage, stamp duty and other selling costs, taxes and charges);

FS is the number of 88 Energy Shares which would have been allotted and issued to the Foreign XCD Energy Securityholder but for the 88 Energy Shares being issued to the Sale Nominee; and

TS is the total number of 88 Energy Shares allotted and issued to the Sale Nominee under this Section 3.4(c) in respect of the XCD Energy Shares held by all Foreign XCD Energy Securityholder.

3.5 Conditions of the Offers

- (a) The Offers and any contract which results from their acceptance will be subject to the Conditions.
- (b) Each party must use all reasonable endeavours to satisfy the Conditions as soon as practicable after the date of this agreement.
- (c) XCD Energy must use all reasonable endeavours to ensure that the Conditions in paragraphs 3 (No Prescribed Occurrence) and 5 (Conduct of Business) of Schedule 2 are not breached prior to the end of the Offer Period, provided that nothing in this clause requires the directors of XCD Energy to take any action which would result in a breach of a statutory or fiduciary duty or prevents XCD Energy taking any of the actions contemplated in clause 3.8.
- (d) 88 Energy may waive the satisfaction of any Condition in its sole discretion.

3.6 Offer Period

The parties intend that the Offer Period will be one (1) month, but acknowledge and agree that the Offer Period may be extended by 88 Energy at its discretion or automatically, in accordance with the Corporations Act.

3.7 Variation

- (a) 88 Energy may vary the Offers in accordance with the Corporations Act.
- (b) Subject to the Corporations Act, 88 Energy may declare the Offers to be free from any Condition or extend the Offer Period at any time.

3.8 Non-reliance on and wavier of potential prior breach of Conditions

88 Energy agrees that it will not rely on a breach of:

- (a) Condition 4:
 - (i) to the extent that any person purports to exercise, states an intention to exercise (whether or not that intention is stated to be a final decision), or asserts the ability to exercise (as contemplated in paragraph 4(b) of that Condition), any right stated in that Condition, where such person is not entitled to exercise that right; or
 - (ii) to the extent that obligations or liabilities under any such agreement total less than \$200,000 (as contemplated in paragraph (d) of that Condition); or
 - (iii) in relation to any mandates in connection with the Takeover Bid which have been disclosed in writing to 88 Energy prior to signing this agreement;
- (b) Condition 5(e) to the extent that a variation of a contract, commitment or arrangement is not material;
- (c) Condition 5(g) to the extent that the contract, commitment or other arrangement is not material;
- (d) Condition 5(i) in relation to any fees from mandates in connection with the Takeover Bid which have been disclosed in writing to 88 Energy prior to signing this agreement; and
- (e) Conditions 5(j) and 5(k) in relation to the matters contemplated in clause 5.3,

and 88 Energy agrees to waive each of those Conditions to the extent as set out above.

4. DOCUMENTATION AND RECOMMENDING DIRECTORS' RECOMMENDATION

4.1 88 Energy's obligations to prepare documentation

- (a) 88 Energy will prepare:
 - (i) the Bidder's Statement; and
 - (ii) an acceptance form for the Offers,in each case consistent with clauses 3.2 to 3.6 and in accordance with the Corporations Act.
- (b) 88 Energy agrees to do and to procure its Officers to do such things as are reasonably necessary to prepare the Bidder's Statement, its lodgement with ASIC and despatch to XCD Energy Shareholders in accordance with the Timetable, subject to XCD Energy granting any necessary consents and ASIC granting any necessary modifications.

4.2 XCD Energy's obligations to prepare documentation

- (a) As soon as practicable and, in any event, within 3 Business Days after the date of this agreement, XCD Energy must promptly engage the Independent Expert to prepare a report in accordance with applicable laws for inclusion in the Target's Statement on whether the Takeover Bid is fair and reasonable to XCD Energy Shareholders (**Independent Expert's Report**). XCD Energy must provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report and 88 Energy must provide any information reasonably requested by XCD Energy to enable the Independent Expert to prepare the Independent Expert's Report.
- (b) XCD Energy will prepare the Target's Statement in response to the Offers in accordance with the Corporations Act and ensure that the Target's Statement includes the Independent Expert's Report.
- (c) XCD Energy agrees to do and to procure its Officers to do such things as are reasonably necessary to prepare the Target's Statement, its lodgement with ASIC and despatch to XCD Energy Securityholders in accordance with the Timetable, subject to 88 Energy granting any necessary consents and ASIC granting any necessary modifications.

4.3 Provision of Information

Each party agrees that it will provide to the other party and the Independent Expert such information (including Confidential Information on the terms set out in this agreement) as is reasonably required by the other party in order to enable the other party to fulfil its obligations under this agreement, including, but not limited to, the preparation of the Bidder's Statement and Target's Statement and to enable the Independent Expert to prepare and finalise the Independent Expert's Report.

4.4 Recommendation of XCD Energy Directors

XCD Energy represents and warrants that:

- (a) the XCD Energy Board will recommend that all XCD Energy Securityholders accept the Offers, subject to there being no Superior Proposal and the Independent Expert concluding and continuing to conclude in its Independent Expert's Report that the Offers are either fair and reasonable, or not fair but reasonable;
- (b) it has been informed by each of the directors of XCD Energy that they intend to accept the Offers within the later of 21 days of the Offers becoming open for acceptance and the date that is 5 Business Days after the date on which the Independent Expert's Report is finalised in respect of all XCD Energy Shares or XCD Energy Quoted Options owned or controlled by that director (including any XCD Energy Shares which may be issued in accordance with clause 5.3(a)), subject to there being no Superior Proposal and the Independent Expert concluding and continuing to conclude in its Independent Expert's Report that the Offers are either fair and reasonable, or not fair but reasonable; and
- (c) it has been informed by each of the directors of XCD Energy that they will not withdraw, revise, revoke or qualify, or make any public statement inconsistent with, the recommendation in clause 4.4(a) unless a Superior Proposal emerges or the Independent Expert does not conclude in its

Independent Expert's Report that the Offers are either fair and reasonable, or not fair but reasonable.

4.5 Review of Bidder's Statement and Target's Statement

Subject to there being no Superior Proposal:

- (a) 88 Energy agrees that it will provide XCD Energy with a reasonable opportunity to review the final draft of its Bidder's Statement and any supplementary bidder's statements and XCD Energy agrees that it will provide 88 Energy with a reasonable opportunity to review the final draft of its Target's Statement and any supplementary Target's statements; and
- (b) each party agrees to consider in good faith, and consult in relation to, all reasonable and timely comments received from the other and its Advisers and make such changes to its statement as are reasonably required by the other.

4.6 Timetable

Each party agrees to use its reasonable endeavours to comply with the Timetable provided that the parties acknowledge that the Independent Expert's Report is being prepared to accompany the Target's Statement and the timing of the preparation of the Independent Expert's Report may delay the date that XCD Energy lodges and despatches the Target's Statement.

4.7 Consent to early dispatch of Bidder's Statement

XCD Energy agrees (by authority of its directors) that the Offers and accompanying documents to be sent by 88 Energy under the Takeover Bid under item 6 of section 633(1) of the Corporations Act may (subject to agreement with XCD Energy) be sent earlier than the date for sending under item 6 of section 633(1) of the Corporations Act as contemplated in the Timetable.

5. CONDUCT OF BUSINESS

5.1 Overview

- (a) From the date of this agreement until the expiry of the Restriction Period, each party must:
 - (i) conduct its business in the ordinary and proper course and in substantially the same manner as previously conducted; and
 - (ii) regularly consult with the other party on the manner of conduct of its business, including on any matters that may have an adverse impact on the integration of the businesses of 88 Energy and XCD Energy following implementation of the Takeover Bid.
- (b) For the purpose of clause 5.1(a) and subject to the terms of this agreement:
 - (i) 88 Energy making the Offers and responding to any Competing Transaction (together with all associated activity and expenditure) in accordance with this agreement, is deemed to be 88 Energy conducting its business in the ordinary and proper course; and

- (ii) XCD Energy responding to the Offers and responding to any potential Competing Transaction (together with all associated activity and expenditure) in accordance with this agreement, is deemed to be XCD Energy conducting its business in the ordinary and proper course.
- (c) Nothing in clause 5.1(a) restricts the ability of either Party to take any action which:
 - (i) is required, permitted or contemplated by this agreement;
 - (ii) has been fairly disclosed by the Party prior to execution of this agreement, including in public filings to the ASX;
 - (iii) is required by any applicable law or Government Agency;
 - (iv) is required to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property);
 - (v) has been agreed to in writing by the other Party; or
 - (vi) involves the incurring of reasonable costs in relation to the transactions contemplated by the Takeover Bid.

5.2 Prohibited actions

Other than with 88 Energy's prior approval or as fairly disclosed to 88 Energy in writing or to the ASX before the date of this agreement, XCD Energy must not during the Restriction Period:

(a) **Material Contracts**

Enter into, terminate or materially vary, amend or modify a Material Contract.

(b) **Employment agreements**

Increase the remuneration of or pay any bonus (including under any existing or proposed employee performance bonus policy or retention bonus policy) or issue or agree to issue any securities or options to (other than the issue of any shares in connection with the exercise of options or as provided in clause 5.3), or otherwise vary or amend the employment or consultancy agreements with, any of its directors or employees, except that this clause shall not preclude a party from making any payments under an existing employment contract which complies with the Corporations Act and the Listing Rules and is in place as at the date of this agreement and a copy of which has previously been provided to the other party.

(c) **Accelerate rights**

Accelerate the rights of any of its directors or employees to benefits of any kind other than as provided in clause 5.3.

(d) **Termination payments**

Pay a director or executive a termination payment, other than as provided for in an existing employment contract in place as at the date of this agreement and a copy of which has previously been provided to the other party.

(e) **Arrangements with financial advisers**

Amend in any material respect any arrangement with its financial advisers in respect of the transactions contemplated by this agreement.

(f) **Financial accommodation**

Obtain or agree to obtain any financial accommodation from any party.

(g) **Prescribed Occurrence**

Take any action which would be reasonably expected to give rise to a Prescribed Occurrence.

(h) **Disposal**

Offer to dispose or agree to dispose of, or create, or offer to create an equity interest in, any mineral asset (including any geological data) or a material interest in any such asset without prior consultation of the other party.

(i) **Agreement**

Agree to do any of the matters set out above.

5.3 Vesting of XCD Energy Performance Rights and payment of Short Term Incentive

The parties agree that, as soon as practicable after the date of this agreement, XCD Energy will provide written confirmation to the Managing Director of XCD Energy that, upon 88 Energy acquiring a Relevant Interest in more than 50% of the XCD Energy Shares and the Offers becoming or being declared unconditional:

- (a) 10,000,000 of the XCD Energy Performance Rights held by the Managing Director of XCD Energy will vest and be exercised, in accordance with their terms and conditions, and all XCD Energy Shares resulting from the exercise will be issued and registered before the end of the Offer Period; and
- (b) 50% of the maximum short term incentive payment for the period ending 30 June 2020 will be paid to the Managing Director of XCD Energy (being an amount of \$63,500) in early July 2020.

5.4 Director and Officer Insurance

- (a) During the Insurance Run-Off Period XCD Energy must, and 88 Energy must procure XCD Energy to, ensure that the Officer is at all times covered under the Insurance Policy, or a further insurance policy on terms not materially less favourable to the Officer than the terms of the Insurance Policy operating at the Retirement Date.
- (b) The undertakings contained in clause 5.4(a) are subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly.

6. EXCLUSIVITY

6.1 No existing discussions

XCD Energy represents and warrants that, other than the discussions with 88 Energy in respect of the Takeover Bid, it is not currently in negotiations or discussions in respect of any Competing Transaction with any person.

6.2 No-shop and no talk

During the Exclusivity Period, XCD Energy must not, and must ensure that each of its Related Persons do not, directly or indirectly:

- (a) **(no shop)** solicit, invite, encourage or initiate (including by the provision of non-public information to any Third Party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 6.2(a); or
- (b) **(no talk and no due diligence)** subject to clause 6.3:
 - (i) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal;
 - (ii) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;
 - (iii) disclose or otherwise provide any non-public information about the business or affairs of the XCD Energy Group to a Third Party (other than a government agency) with a view to obtaining, or which would reasonably be expected to encourage or lead to receipt of, an actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the XCD Energy Group whether by that Third Party or another person); or
 - (iv) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 6.2(a),

but nothing in this clause 6.2 prevent XCD Energy from making normal presentations to brokers, portfolio managers and analysts in the ordinary course of business or promoting the merits of the Takeover Bid.

6.3 Fiduciary exception

Clause 6.2(b) does not prohibit any action or inaction by XCD Energy or any of its Related Persons in relation to any actual, proposed or potential Competing Proposal, which the XCD Energy Board acting in good faith determines, having

regard to written advice from its external Advisers, is a Superior Proposal (or which may reasonably be expected to result in the Competing Proposal becoming a Superior Proposal) and the failure to take or not take such action would constitute, or would be likely to constitute, a breach of the fiduciary or statutory duties of the directors of XCD Energy, provided that the actual, proposed or potential Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 6.2(a).

6.4 Notice of approach

- (a) During the Exclusivity Period, XCD Energy must as soon as possible (and in any event within 24 hours) notify 88 Energy in writing if it or any of its Related Persons becomes aware of any:
 - (i) negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate any negotiations or discussions in respect of any inquiry, expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal;
 - (ii) proposal made to XCD Energy or any of its Related Persons, in connection with, or in respect of any exploration or completion of, an actual, proposed, or potential Competing Proposal; or
 - (iii) provision by XCD Energy or any of its Related Persons of any non-public information concerning the business or operations of XCD Energy or the XCD Energy Group to any a Third Party (other than a government agency) in connection with an actual, proposed or potential Competing Proposal,

whether direct or indirect, solicited or unsolicited, and in writing or otherwise unless (and only to the extent that) the XCD Energy Board, acting in good faith and having regard to external legal advice, determines that it would be a breach of their fiduciary or statutory duties to notify 88 Energy.

- (b) A notification given under clause 6.4(a) must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal, together with all terms and conditions of the actual, proposed or potential Competing Proposal.
- (c) Commencing upon the provision of any notice referred to in clause 6.4(a), XCD Energy must as soon as possible advise 88 Energy of any material developments in relation to an actual, proposed or potential Competing Proposal, including material amendments or proposed amendments to the terms of such actual, proposed or potential Competing Proposal, and advise 88 Energy of the timing of any board meeting to consider that proposal unless (and only to the extent that) the XCD Energy Board, acting in good faith and having regard to external legal advice, determines that it would be a breach of their fiduciary or statutory duties to notify 88 Energy.

6.5 Matching right

- (a) Without limiting clause 6.2, during the Exclusivity Period, XCD Energy:

- (i) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, XCD Energy or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
- (ii) must procure that none of its directors change their recommendation of the Takeover Bid or publicly recommend an actual, proposed or potential Competing Proposal or recommend against the Takeover Bid (provided that a statement that no action should be taken by XCD Energy Shareholders pending the assessment of a Competing Proposal by the XCD Energy Board and its advisers shall not contravene this clause),

unless:

- (iii) the XCD Energy Board acting in good faith and in order to satisfy what the members of the XCD Energy Board consider to be their statutory or fiduciary duties (having received written advice from its external financial and legal advisers) determines that the Competing Proposal would be or would be likely to be an actual, proposed or potential Superior Proposal;
 - (iv) XCD Energy has provided 88 Energy with all terms and conditions of the actual, proposed or potential Competing Proposal, including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal;
 - (v) XCD Energy has given 88 Energy at least 5 Business Days after the date of the provision of the information referred to in clause to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and
 - (vi) 88 Energy has not announced or otherwise formally proposed to XCD Energy a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal by the expiry of the 5 Business Day period in clause 6.5(a)(v) above.
- (b) If 88 Energy proposes to XCD Energy, or announces, amendments to the terms of the Takeover Bid including increasing the amount of consideration offered under the Offers or a new proposal that constitutes a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal (**Counterproposal**) by the expiry of the 5 Business Day period in clause 6.5(a)(v) above, XCD Energy must procure that the XCD Energy Board considers the 88 Energy Counterproposal and if the XCD Energy Board, acting reasonably and in good faith, determines that the Counterproposal (as completed) would provide an equivalent or superior outcome for XCD Energy Shareholders as a whole compared with the Competing Proposal, then XCD Energy and 88 Energy must use their best endeavours to agree the amendments to this agreement that are reasonably necessary to reflect the Counterproposal and to implement the Counterproposal, in each case as soon as reasonably practicable, and XCD Energy must procure that each of the directors of XCD Energy continues to recommend the Takeover Bid (as modified by the Counterproposal) to XCD Energy Securityholders.

6.6 Cease discussions

XCD Energy must, and must procure that its Related Bodies Corporate, cease any discussions or negotiations existing as at the date of this agreement relating to:

- (a) any actual, proposed or potential Competing Proposal; or
- (b) any transaction that would, or would reasonably be expected to, reduce the likelihood of success of the Takeover Bid.

6.7 Provision of information by XCD Energy

- (a) Subject to clause 6.7(b), during the Exclusivity Period, XCD Energy must as soon as possible provide 88 Energy with:
 - (i) in the case of written materials, a copy of; and
 - (ii) in any other case, a written statement of,

any material non-public information about the business or affairs of XCD Energy or the XCD Energy Group disclosed or otherwise provided to any Third Party in connection with an actual, proposed or potential Competing Proposal that has not previously been provided to 88 Energy.
- (b) XCD Energy will not, and will procure that none of its Related Persons provide any information to a Third Party in relation to an actual, proposed or potential Competing Proposal, unless:
 - (i) permitted by clause 6.3; and
 - (ii) that Third Party has entered into a confidentiality agreement with XCD Energy on customary terms and which is no more favourable to the Third Party than the Confidentiality Agreement.

6.8 Compliance with law

- (a) If it is finally determined by a court, or the Takeovers Panel, that the agreement by the parties under this clause 6 or any part of it:
 - (i) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the XCD Energy Board;
 - (ii) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
 - (iii) was, or is, or would be, unlawful for any other reason,then, to that extent (and only to that extent) XCD Energy will not be obliged to comply with that provision of clause 6.
- (b) The parties must not make or cause to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 6.8.

7. REIMBURSEMENT FEE

7.1 Background to Reimbursement Fee

- (a) Each party acknowledges that, if they enter into this agreement and the Takeover Bid is subsequently not implemented, the parties will incur significant costs, including those set out in clause 7.5.
- (b) In these circumstances, the parties have agreed that provision be made for the payment outlined in this clause 7, without which the parties would not have entered into this agreement or otherwise agreed to implement the Takeover Bid.
- (c) XCD Energy and the XCD Energy Board believe, having taken advice from its external legal adviser, that the implementation of the Takeover Bid will provide benefits to it and its shareholders, and that it is reasonable and appropriate that XCD Energy agree to the payments referred to in clause 7.2 in order to secure 88 Energy's participation in the Takeover Bid.
- (d) 88 Energy and the 88 Energy Board believe, having taken advice from its external legal adviser, that the implementation of the Takeover Bid will provide benefits to it and its shareholders, and that it is reasonable and appropriate that 88 Energy agree to the payments referred to in clause 7.3 in order to secure XCD Energy's participation in the Takeover Bid.

7.2 Triggers for payment of Reimbursement Fee by XCD Energy

Subject to clauses 7.6 and 7.8, XCD Energy must pay the Reimbursement Fee to 88 Energy without set-off or withholding, if:

- (a) during the Exclusivity Period, any one or more members of the XCD Energy Board withdraws, adversely revises or adversely qualifies his or her support of the Takeover Bid or his or her recommendation that XCD Energy Securityholders accept the Offers or fails to recommend that XCD Energy Securityholders accept the Takeover Bid, or, having made such a recommendation, withdraws, adversely revises or adversely qualifies that recommendation for any reason;
- (b) during the Exclusivity Period, any one or more members of the XCD Energy Board recommends that XCD Energy Securityholders accept or vote in favour of, or otherwise supports or endorses (including support by way of accepting or voting, or by way of stating an intention to accept or vote, in respect of any XCD Energy Securities held or controlled by them or held on their behalf), a Competing Proposal of any kind that is announced (whether or not such proposal is stated to be subject to any pre-conditions) during the Exclusivity Period;
- (c) a Competing Proposal of any kind is announced during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such announcement, a Third Party completes a Competing Proposal; or
- (d) 88 Energy has terminated this agreement pursuant to clause 9.1(a), 9.1(c) or 9.2(b).
- (e) For the avoidance of doubt, the Reimbursement Fee will not be payable to 88 Energy if the Independent Expert concludes in its Independent Expert's Report that the Offers are not fair and not reasonable and XCD Energy terminates this agreement pursuant to clause 9.3(b).

7.3 Triggers for payment of Reimbursement Fee by 88 Energy

Subject to clauses 7.6 and 7.8, 88 Energy must pay the Reimbursement Fee to XCD Energy without set-off or withholding, if XCD Energy has terminated this agreement pursuant to clause 9.1(a) or 9.1(c).

7.4 Timing of payment of Reimbursement Fee

- (a) A demand by either party for payment of the Reimbursement Fee under clause 7.2 or 7.3 (as applicable) must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account into which the other party is to pay the Reimbursement Fee,

and may only be made after the End Date and provided that 88 Energy has not become the registered legal and beneficial holder of at least 50.1% of XCD Energy Shares.

- (b) Subject to clause 7.8, XCD Energy must pay the Reimbursement Fee into the account nominated by 88 Energy, without set-off or withholding, within 5 Business Days after receiving a demand for payment where 88 Energy is entitled under clause 7.2 to the Reimbursement Fee.
- (c) Subject to clause 7.8, 88 Energy must pay the Reimbursement Fee into the account nominated by XCD Energy, without set-off or withholding, within 5 Business Days after receiving a demand for payment where XCD Energy is entitled under clause 7.3 to the Reimbursement Fee.

7.5 Basis of Reimbursement Fee

The amount payable by XCD Energy pursuant to clause 7.2 and 88 Energy pursuant to clause 7.3 is purely and strictly compensatory in nature and has been calculated to reimburse the receiving party for costs including the following:

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

and the parties agree that:

- (e) the costs actually incurred will be of such a nature that they cannot all be accurately ascertained; and

- (f) the amount payable is a genuine and reasonable pre-estimate of those costs,

and each party represents and warrants that it has received advice from its external legal adviser on the operation of this clause 7.

7.6 Compliance with law

This clause 7 does not impose an obligation on a party to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the Reimbursement Fee:

- (a) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
- (b) is determined to be unenforceable or unlawful by a court,

provided that, in either case, all lawful avenues of appeal and review, judicial and otherwise, have been exhausted. For the avoidance of doubt, any part of the Reimbursement Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by the relevant party. To the extent that the Reimbursement Fee has already been paid, the recipient of the Reimbursement Fee must refund the relevant portion of the Reimbursement Fee paid under this agreement within 5 Business Days of receipt of a demand for refund.

7.7 Reimbursement Fee payable only once

Where the Reimbursement Fee becomes payable to 88 Energy under clause 7.2 or XCD Energy under clause 7.3 and is actually paid, the recipient of the Reimbursement Fee Energy cannot make any claim against the other party for payment of any subsequent Reimbursement Fee.

7.8 Limitation of liability

Notwithstanding any other provision of this agreement, except in relation to a wilful or intentional breach of or non-compliance with any provision of this agreement by the party which pays the Reimbursement Fee:

- (a) the maximum liability of a party to all other parties under or in connection with this agreement including in respect of any breach of this agreement will be the Reimbursement Fee;
- (b) a payment by a party in accordance with this clause 7 represents the sole and absolute liability of that party under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by that party in connection with this agreement; and
- (c) the amount of the Reimbursement Fee paid to the recipient under this clause 7 shall be reduced by the amount of any loss or damage recovered by any other party in relation to a breach of this agreement.

8. WARRANTIES

8.1 88 Energy Warranties

88 Energy represents and warrants to XCD Energy that as at the date of this agreement that, subject to the matters fairly disclosed in public filings of 88 Energy, provided by 88 Energy to XCD Energy in writing prior to the date of this agreement, are within the actual knowledge to the XCD Group or otherwise in the public domain:

- (a) each member of the 88 Energy Group is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery of this agreement by 88 Energy has been properly authorised by all necessary corporate action and 88 Energy has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
- (c) (subject to the laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it and execution of this agreement will not result in a breach of or default under 88 Energy's constitution or any agreement or agreement or writ, order or injunction, rule or regulation to which 88 Energy or any of its Subsidiaries is a party or to which they are bound or require any consent or approval, authorisation or permit from any governmental agency;
- (d) the 88 Energy Shares to be offered as consideration under clause 3 will be duly authorised and validly issued, not liable to the imposition of any duty and be free of all Encumbrances, security interests and third party rights, will be fully paid and will rank equally with all other 88 Energy Shares;
- (e) to the best of 88 Energy's knowledge, having made reasonable enquiries, it has complied with its continuous disclosure obligations under the Listing Rules and the Corporations Act and is not relying on Listing Rule 3.1A to withhold any information from disclosure other than as disclosed in writing to 88 Energy or its Representatives on or before the date of this agreement;
- (f) its accounts are prepared on a consistent basis with past practices (except to the extent that the adoption of Australian Accounting Standards requires a change to past practices) and in accordance with all relevant accounting standards;
- (g) no resolutions have been passed or steps taken, and no petition or other process has been presented or threatened in writing against it for winding-up or dissolution, and no receiver, receiver and manager, liquidator, administrator or like official has been appointed, or is threatened or expected to be appointed, over the whole or any part of its assets;
- (h) there is no litigation, claim, action or proceeding pending or in progress or threatened against or relating to any member of the 88 Energy Group that does or is reasonably likely to constitute a 88 Energy Material Adverse Change;

- (i) all material leases and permits held by, or on behalf of, 88 Energy or any Subsidiary of 88 Energy are in good standing and 88 Energy and its Subsidiaries are in compliance with the conditions of such leases and permits and the applicable petroleum and gas legislation in all material respects and, as far as 88 Energy is aware, such material leases and permits are not liable to forfeiture;
- (j) there has not been an event of default or notice of a breach of covenant pursuant to the Brevet debt facility agreement;
- (k) it is not aware of any act, omission, event or fact that would result in one or more of the Conditions being breached, except as disclosed by the 88 Energy to XCD Energy in writing prior to the date of this agreement; and
- (l) as at the date of this agreement, 88 Energy has the following securities on issue (as set out in the table below) and there are no other shares, options, notes or other securities of 88 Energy and no rights to be issued such shares, options, notes or other securities other than as a result of the conversion or exercise of convertible securities or as envisaged by this agreement.

Shares	
88 Energy Shares	7,109,635,564
Options	
88 Energy Unlisted Options	
• exercisable at \$0.055 each on or before 27 October 2021	131,500,000
• exercisable at \$0.05 each on or before 27 October 2021	22,000,000
• exercisable at \$0.03 each on or before 31 July 2020	10,000,000
Performance Rights	
Performance Rights	50,214,913

8.2 XCD Energy Warranties

XCD Energy represents and warrants to 88 Energy as at the date of this agreement that, subject to the matters fairly disclosed in public filings of XCD Energy, provided by XCD Energy to 88 Energy in writing prior to the date of this agreement, are within the actual knowledge to the 88 Energy Group or otherwise in the public domain:

- (a) each member of the XCD Energy Group is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery of this agreement by XCD Energy has been properly authorised by all necessary corporate action and XCD Energy has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;

- (c) (subject to the laws generally affecting creditors' rights and the principles of equity) this agreement constitutes legal, valid and binding obligations on it and execution of this agreement will not result in a breach of or default under XCD Energy's constitution or any agreement or deed or writ, order or injunction, rule or regulation to which XCD Energy or any of its Subsidiaries is a party or to which they are bound or require any consent or approval, authorisation or permit from any governmental agency;
- (d) to the best of XCD Energy's knowledge, having made reasonable enquiries, it has complied with its continuous disclosure obligations under the Listing Rules and the Corporations Act and is not relying on Listing Rule 3.1A to withhold any information from disclosure other than as disclosed in writing to 88 Energy or its Representatives on or before the date of this agreement;
- (e) XCD Energy Group's accounts are prepared on a consistent basis with past practices (except to the extent that the adoption of Australian Accounting Standards requires a change to past practices) and in accordance with all relevant accounting standards;
- (f) no resolutions have been passed or steps taken, and no petition or other process has been presented or threatened in writing against it for winding-up or dissolution, and no receiver, receiver and manager, liquidator, administrator or like official has been appointed, or is threatened or expected to be appointed, over the whole or any part of its assets;
- (g) there is no litigation, claim, action or proceeding pending or in progress or threatened against or relating to any member of the XCD Energy Group that does or is reasonably likely to constitute an XCD Energy Material Adverse Change;
- (h) all material leases and permits held by, or on behalf of, XCD Energy or any Subsidiary of XCD Energy are in good standing and XCD Energy and its Subsidiaries are in compliance with the conditions of such leases and permits and the applicable petroleum and gas legislation in all material respects and, as far as XCD is aware, such material leases and permits are not liable to forfeiture;
- (i) it is not aware of any act, omission, event or fact that would result in one or more of the Conditions being breached, except as disclosed by XCD Energy to 88 Energy in writing prior to the date of this agreement; and
- (j) as at the date of this agreement, XCD Energy has the following securities on issue (as set out in the table below) and there are no other shares, options, notes or other securities of XCD Energy and no rights to be issued such shares, options, notes or other securities other than as a result of the conversion or exercise of convertible securities or as envisaged by this agreement.

Shares	
XCD Energy Shares	699,728,934
Options	
XCD Energy Quoted Options	117,500,000
XCD Energy Unquoted Options	
• exercisable at \$0.072 on or before 28/11/20	3,000,000
• exercisable at \$0.096 on or before 28/11/20	3,000,000
• exercisable at \$0.048 on or before 4/12/21	1,000,000
• exercisable at \$0.072 on or before 4/12/21	1,000,000
• exercisable at \$0.096 on or before 4/12/21	1,000,000
• exercisable at \$0.048 on or before 4/12/21	4,000,000
Performance Rights	
Performance Rights Class A	5,000,000
Performance Rights Class B	5,000,000
Performance Rights Class C	5,000,000
Performance Rights Class D	5,000,000

9. TERMINATION

9.1 Termination rights

This agreement may be terminated by a party by notice to the other party:

- (a) if the other party is in material breach of this agreement and that breach is not remedied by that other party within 5 Business Days of it receiving notice from the first party of the details of the breach and the first party's intention to terminate;
- (b) if 88 Energy withdraws the Takeover Bid as permitted by the Corporations Act for any reason including non-satisfaction of a Condition or if the Takeover Bid lapses;
- (c) if there is a material breach of a representation or warranty contained in clause 8 by the other party and that breach is not remedied by that other party within 5 Business Days of it receiving notice from the first party of the details of the breach and the first party's intention to terminate;
- (d) if a Court or other Regulatory Authority has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Takeover Bid; or
- (e) if the other party or any of their Subsidiaries becomes Insolvent.

9.2 Termination by 88 Energy

This agreement may be terminated by 88 Energy by notice in writing to XCD Energy if:

- (a) a Superior Proposal is made or publicly announced for XCD Energy by a third party;
- (b) a director of XCD Energy does not recommend the Takeover Bid be accepted by XCD Energy Securityholders or having recommended the Takeover Bid, withdraws or adversely modifies his recommendation of the Takeover Bid;
- (c) a person (other than 88 Energy or its Associates) has a Relevant Interest in more than 20% of the XCD Energy Shares on issue (other than existing XCD Energy Shareholders who at the date of this agreement hold a Relevant Interest in more than 20% of the XCD Energy Shares on issue); or
- (d) an XCD Energy Material Adverse Change or a Prescribed Occurrence occurs.

9.3 Termination by XCD Energy

This agreement may be terminated by XCD Energy by notice in writing to 88 Energy if:

- (a) an 88 Energy Material Adverse Change has occurred;
- (b) the Independent Expert concludes in its Independent Expert's Report that the Offers are not fair and not reasonable; or
- (c) a majority of the XCD Energy Directors recommend a Superior Proposal, provided always that clause 6 has been complied with and 88 Energy has decided not to match that Superior Proposal in accordance with clause 6.5.

9.4 Effect of termination

If this agreement is terminated by a party under this clause 9:

- (a) each party will be released from its obligations under this agreement except that clauses 1, 7, 9, 11, 13 and 14 will continue to apply;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this agreement; and
- (c) in all other respects, all future obligations of the parties under this agreement will immediately terminate and be of no further force or effect, including, without limitation, any further obligations in respect of the Takeover Bid.

10. ANNOUNCEMENT OF TAKEOVER BID

10.1 Public announcement of Takeover Bid

Immediately after signing this agreement, the parties must procure the issue to ASX of a joint announcement in the form agreed between the parties.

10.2 Required disclosure

Subject always to its continuous disclosure obligations under the Listing Rules and applicable laws, where a party is required by law or the Listing Rules to make any announcement or make any disclosure relating to a matter the subject of the Takeover Bid, it must use best endeavours to give the other party as much notice as reasonably practicable having regard to its disclosure obligations and consult with the other party to the extent reasonably practicable having regard to its disclosure obligations.

10.3 Other announcements

Subject to clause 10.1 and 10.2 and its continuous disclosure obligations under the Listing Rules and applicable laws, no party may make any public announcement or disclosure in connection with the Takeover Bid (including disclosure to a Regulatory Authority) unless it has used best endeavours to obtain the approval of the form of the disclosure by the other party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.

11. CONFIDENTIAL INFORMATION OBLIGATIONS

11.1 Disclosure of 88 Energy Confidential Information

No 88 Energy Confidential Information may be disclosed by XCD Energy to any person except:

- (a) Representatives of XCD Energy or its Related Bodies Corporate requiring the information for the purposes of this agreement;
- (b) with the written consent of 88 Energy;
- (c) if XCD Energy is required to do so by law or by the Listing Rules; or
- (d) if XCD Energy is required to do so in connection with legal proceedings relating to this agreement.

11.2 Use of 88 Energy's Confidential Information

XCD Energy must use 88 Energy's Confidential Information exclusively for the purpose of considering the Takeover Bid, any Competing Transaction and preparing the Target's Statement and for no other purpose (and must not make any use of any 88 Energy's Confidential Information to the competitive disadvantage of 88 Energy or any of its Related Bodies Corporate).

11.3 Disclosure of XCD Energy Confidential Information

No XCD Energy Confidential Information may be disclosed by 88 Energy to any person except:

- (a) Representatives of 88 Energy requiring the information for the purposes of this agreement;
- (b) with the written consent of XCD Energy;
- (c) if 88 Energy is required to do so by law or by the Listing Rules; or

- (d) if 88 Energy is required to do so in connection with legal proceedings relating to this agreement.

11.4 Use of XCD Energy Confidential Information

88 Energy must use the XCD Energy Confidential Information exclusively for the purpose of preparing the Bidder's Statement and for no other purpose (and must not make any use of any XCD Energy Confidential Information to the competitive disadvantage of XCD Energy or any of its Subsidiaries).

11.5 Disclosure by recipient of Confidential Information

Any party disclosing information under clause 11.1(a) or 11.1(b) or 11.3(a) or 11.3(b) must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 11.1 or 11.3.

11.6 Excluded Information

Clauses 11.1 to 11.5 (inclusive) do not apply to the Excluded Information.

11.7 Return of Confidential Information

A party who has received Confidential Information from another under this agreement must, on the request of the other party, immediately deliver to that party all documents or other materials containing or referring to that information which are in its possession, power or control or in the possession, power or control of persons who have received Confidential Information from it under clauses 11.1(a) or 11.1(b) or 11.3(a) or 11.3(b).

11.8 Termination

This clause 11 will survive termination (for whatever reason) of this agreement.

11.9 Termination of existing Confidentiality Agreement

The terms of this clause 11 supersede and replace the obligations of confidentiality set out in the Confidentiality Agreement which is terminated upon execution of this agreement.

12. NOTICES AND OTHER COMMUNICATIONS

12.1 Requirements for notices

Each notice authorised or required to be given to a party shall be in legible writing and in English addressed to the party's address set out in clause 12.2 (or such other address nominated in accordance with clause 12.3).

12.2 Details

The initial address of the parties shall be as follows:

Party	Address	Attention	E-mail
88 Energy	Level 2, 5 Ord Street, West Perth, Western Australia 6008	David Wall	DWall@88energy.com

XCD Energy	Level 1, 35 Outram Street, West Perth, Western Australia 6008	Dougal Ferguson	dferguson@xcdenergy.com
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With a copy of communications to 88 Energy to Peter Wall (E-mail: pwall@steinpag.com.au) and Matt Ireland (Email: mireland@steinpag.com.au), and a copy of communications to XCD Energy (for information purposes only) to Grant Paterson (E-mail: gpaterson@gtplegal.com).

12.3 Change of Address

Each party may from time to time change its address by giving notice pursuant to clause 12.1 to the other party.

12.4 Receipt of notice

Any notice given pursuant to this clause 12 will be conclusively deemed to have been received:

- (a) in the case of personal delivery, on the actual day of delivery;
- (b) if sent by mail, two (2) Business Days from and including the day of posting; or
- (c) if sent by e-mail, when a delivery confirmation report is received by the sender which records the time that the e-mail was delivered to the addressee's e-mail address (unless the sender receives a delivery failure notification indicating that the e-mail has not been delivered to the addressee),

but if the delivery or receipt is on a day that is not a Business Day or is after 5:00 pm (addressee's time) it is regarded as received at 9:00 am on the following Business Day.

13. GOODS AND SERVICES TAX (GST)

13.1 Consideration does not include GST

The consideration specified in this agreement does not include any amount for GST.

13.2 Recovery of GST

If a supply under this agreement is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

13.3 Time of payment

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a tax invoice.

13.4 Adjustment of additional amount

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount.

13.5 Reimbursement

If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

13.6 Survival

This clause 13 will survive termination of this agreement.

14. MISCELLANEOUS

14.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions) unless this agreement expressly states otherwise.

14.2 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

14.3 No liability for loss

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this agreement.

14.4 Approvals and consents

By giving its approval or consent, a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

14.5 Conflict of interest

The parties' rights and remedies under this agreement may be exercised even if it involves a conflict of duty or a party has a personal interest in their exercise.

14.6 Remedies cumulative

The rights and remedies in this agreement are in addition to other rights and remedies given by law independently of this agreement.

14.7 Variation and waiver

A provision of this agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

14.8 No merger

The warranties, undertakings and indemnities in this agreement do not merge on completion of any transaction contemplated by this agreement.

14.9 Indemnities

The indemnities in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this

agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

14.10 Further steps

Each party agrees, at its own expense, to do anything the other party asks (such as obtaining consents, signing, and producing documents and getting documents completed and signed):

- (a) to bind the party and any other person intended to be bound under this agreement; or
- (b) to show whether the party is complying with this agreement.

14.11 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

14.12 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this agreement and other related documentation except for stamp duty.

14.13 Duty

88 Energy agrees to pay all duty (including fines and penalties) payable and assessed on this agreement or in respect of a transaction evidenced by this agreement.

14.14 Assignment

A party may not assign or otherwise deal with its rights under this agreement or allow any interest in them to arise or be varied in each case, without the prior written consent of the other party.

14.15 No representation or reliance

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement;
- (b) it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement; and
- (c) clauses 14.15(a) and 14.15(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

14.16 Governing law

This agreement is governed by and is to be construed according to the laws of Western Australia. Each party submits to the non-exclusive jurisdiction of the courts of Western Australia.

14.17 Counterparts

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

14.18 Knowledge and belief

Any statement made by a party on the basis of its knowledge, information, belief or awareness, is made on the basis that the party has, in order to establish that the statement is accurate and not misleading in any material respect, made all reasonable enquiries of its officers, managers and employees who could reasonably be expected to have information relevant to matters to which the statement relates.

SCHEDULE 1 – TIMETABLE

Date	Event
7 May 2020	Joint Announcement Date
11 May 2020	Lodgement Date Date 88 Energy lodges Bidder's Statement with ASIC and serves it on XCD Energy and ASX
14 May 2020	Register Date Date set by 88 Energy pursuant to section 633(3) of the Corporations Act
18 May 2020	Offer Date 88 Energy despatch the Bidder's Statement to XCD Energy Shareholders
25 May 2020	Date XCD Energy lodges Target's Statement and Independent Expert's Report with ASIC and serves it on 88 Energy and ASX XCD Energy despatch the Target's Statement and Independent Expert's Report to XCD Energy Shareholders.
18 June 2020	Offer Period ends (unless extended in accordance with the Corporations Act)

SCHEDULE 2 – BID CONDITIONS

Each of the Offers, and any contract resulting from acceptance of the Offers, are subject to the following conditions:

1. Minimum Acceptance

At or before the end of the Offer Period, 88 Energy has a Relevant Interest in:

- (a) the number of XCD Energy Shares that represents at least 90% of the aggregate of all the XCD Energy Shares on issue (on a fully-diluted basis); and
- (b) the number of XCD Energy Quoted Options that represents at least 90% of the aggregate of all the XCD Energy Quoted Options on issue.

2. No regulatory action

Between the Announcement Date and the end of the Offer Period (each inclusive):

- (a) there is not in effect any preliminary or final decision, order or ruling issued by any Government Authority;
- (b) no application is made to any Government Authority (other than by 88 Energy or any associate of 88 Energy);
- (c) no action or investigation is announced, commenced, or threatened by any Government Authority,

in consequence of or in connection with the Offers (other than an application to, or a decision or order of, or action or investigation by, ASIC or the Takeovers Panel in exercise of the powers and discretions conferred by the Corporations Act) which restrains, prohibit or impedes, or threatens to restrain, prohibit or impede, or materially impact on, the making of the Offers and the completion of any transaction completed by the Bidder's Statement (including, without limitation, full, lawful, timely and effectual implementation of 88 Energy's intentions expressed in the Bidder's Statement) or which requires the divestiture by 88 Energy of any XCD Energy shares or XCD Energy listed options or any material assets of the XCD Energy Group.

3. No Prescribed Occurrences

Between the Announcement Date and the date 3 business days after the end of the Offer Period (each inclusive) no Prescribed Occurrence occurs.

4. No exercise of rights under certain agreements or arrangements

If between the Announcement Date and the end of the Offer Period (each inclusive) any person:

- (a) is entitled to exercise, or will as a result of the Takeover Bid, the acquisition of XCD Energy Shares or XCD Energy Quoted Options by 88 Energy or the removal of XCD Energy from the official list of ASX if the Takeover Bid is successful become entitled to exercise; or

- (b) purports to exercise, states an intention to exercise (whether or not that intention is stated to be final decision), or asserts the ability to exercise,

any right under any provision of any agreement or other arrangement to which any member of the XCD Energy Group is a party or to which any member of the XCD Energy Group or any of its assets or businesses may be subject, which results in, or could result in:

- (c) any moneys borrowed by any member of the XCD Energy Group being or becoming repayable or being declared repayable immediately or earlier than the repayment date provided for in such agreement or arrangement;
- (d) any such agreement or arrangement that imposes or may impose obligations or liabilities on any party of more than \$100,000 per annum or more than \$200,000 in total or that is otherwise material to the business of the XCD Energy Group being terminated or modified or not renewed or the performance of any obligations under any such agreement or arrangement being accelerated; or
- (e) any assets of any member of the XCD Energy Group, including any interest of any member of the XCD Energy Group in any body corporate, trust, joint venture or other entity, being sold, transferred or offered for sale or transfer, including under any pre-emptive rights or similar provisions, or any contractual arrangements relating to any such asset or interest, being terminated or modified,

that person gives the relevant member of the XCD Energy Group and 88 Energy in writing a binding, irrevocable and unconditional release or waiver of that right.

5. Conduct of business

Between the Announcement Date and the end of the Offer Period (each inclusive), no member of the XCD Energy Group:

- (a) announces, declares, determines to pay, makes or pays any dividend or other distribution (whether in cash or in specie);
- (b) incurs capital expenditure exceeding \$50,000 or, except in the ordinary course of trading, transfers or otherwise disposes of or creates any Encumbrance in respect of, assets having a value exceeding \$50,000;
- (c) acquires or disposes of any shares or other securities in any body corporate or any units in any trust, or substantially all of the assets of any business except where the aggregate consideration paid or received by all members of the XCD Energy Group for all such acquisitions or disposals does not exceed \$50,000 or enters into, or terminates any participation in, any partnership, joint venture or similar commitment;
- (d) borrows an amount which when combined with all other amounts borrowed since the Announcement Date exceeds \$50,000 or enters into any swap, option, futures contract, forward commitment or other derivative transaction;
- (e) enters into, waives any material rights under, varies or terminates any contract, commitment or arrangement which may require annual expenditure by the relevant member of XCD Energy Group in excess of

\$50,000 or is otherwise of material importance to the business of the XCD Energy Group;

- (f) enters into any unusual or abnormal contract or commitment which is outside the ordinary course of business and which could reasonably be expected to:
 - (i) change the nature of the business conducted by the XCD Energy Group; or
 - (ii) have a material adverse impact on the business conducted by the XCD Energy Group;
- (g) enters into, amends, or agrees to enter into or amend any contract, commitment or other arrangement with a related party (as defined in section 228 of the Corporations Act), or an associate of that related party, of XCD Energy;
- (h) other than in the ordinary course of business and consistent with past practice, XCD Energy or any of its subsidiaries disposes of, acquires or agrees to dispose of or acquire, or creates or agrees to create an equity interest in respect of any assets (including, without limitation, under any off-take, joint venture or similar deed), properties or businesses, or incurs, agrees to incur or enters into a commitment or a series of commitments involving capital expenditure by the XCD Energy Group, whether in one or more transactions, where the amounts or value involved in such transaction or transactions, commitments or series of commitments exceeds \$50,000 in aggregate;
- (i) pays or agrees to pay the costs and expenses of all advisers to XCD Energy Group in connection with the Takeover Bid where such costs and expenses exceed \$250,000;
- (j) accelerates the rights of any of its directors or employees to compensation or benefits of any kind (including, without limitation, the vesting of any performance rights);
- (k) increases the remuneration of, makes any bonus payment, retention payment or termination payment to, or otherwise changes the terms and conditions of employment of:
 - (i) any directors of XCD Energy; or
 - (ii) any employee of any member of the XCD Energy Group whose total employment cost exceeds \$25,000.
- (l) issues any securities convertible into XCD Energy Shares;
- (m) changes its constitution (including adopting a new constitution or modifying or repealing its constitution or a provision of it) or passes any resolution of shareholders or any class of shareholders;
- (n) commences, compromises or settles any litigation or similar proceedings for an amount exceeding \$50,000;
- (o) becomes Insolvent; or

- (p) agrees, conditionally or otherwise, to do any of the things referred to in paragraphs (a) to (o) above, or announces or represents to any person that any of those things will be done,

unless the doing of that thing was specifically disclosed in any ASX announcement made by XCD Energy before the Announcement Date.

6. No inaccurate public information

88 Energy does not become aware, during the period between the Announcement Date and the end of the Offer Period (each inclusive) that:

- (a) any announcement made by XCD Energy to ASX;
- (b) any document lodged by or on behalf of XCD Energy with ASIC; or
- (c) any other public statement made by or on behalf of XCD Energy,

is inaccurate or misleading in any material way, including by omission.

7. No XCD Energy Material Adverse Change

Between the Announcement Date and the end of the Offer Period (each inclusive), no XCD Energy Material Adverse Change occurs.

SCHEDULE 3 – PRESCRIBED OCCURRENCES

- (a) XCD Energy converts all or any of its shares into a larger or smaller number of shares under section 254H of the Corporations Act.
- (b) XCD Energy or a Subsidiary resolves to reduce its share capital in any way.
- (c) XCD Energy or a Subsidiary enters into a buy-back agreement or resolves to approve the terms of a buy-back agreement under subsection 257C(1) or 257D(1) of the Corporations Act.
- (d) XCD Energy or a Subsidiary issues shares, or grants an option over its shares, or agrees to make such an issue or grant such an option.
- (e) XCD Energy or a Subsidiary issues, or agrees to issue, convertible notes.
- (f) XCD Energy or a Subsidiary disposes, or agrees to dispose, of the whole or a substantial part of its business or property.
- (g) XCD Energy or a Subsidiary grants, or agrees to grant, a Security Interest in the whole, or a substantial part, of its business or property.
- (h) XCD Energy or a Subsidiary resolves to be wound up.
- (i) A liquidator or provisional liquidator of XCD Energy or a Subsidiary is appointed.
- (j) A court makes an order for the winding up of XCD Energy or a Subsidiary.
- (k) An administrator of XCD Energy or a Subsidiary is appointed under section 436A, 436B or 436C of the Corporations Act.
- (l) XCD Energy or a Subsidiary executes a deed of company arrangement.
- (m) A receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of XCD Energy or a Subsidiary.

EXECUTED by the parties as an agreement.

EXECUTED by 88 ENERGY LIMITED)
ACN 072 964 179)
in accordance with section 127 of the)
Corporations Act 2001 (Cth):)



Signature of director

Michael Evans

Name of director



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

Ashley Gilbert

Name of ~~director~~/company secretary*

*please delete as applicable

EXECUTED by)
XCD ENERGY LIMITED)
ACN 108 403 425)
in accordance with section 127 of the)
Corporations Act 2001 (Cth):)

Signature of director

Name of director

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

Name of director/company secretary*

*please delete as applicable

EXECUTED by the parties as an agreement.

EXECUTED by 88 ENERGY LIMITED)
ACN 072 964 179)
in accordance with section 127 of the)
Corporations Act 2001 (Cth):)

Signature of director

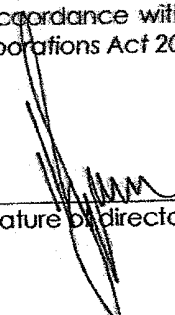
Signature of director/company
secretary*

Name of director

Name of director/company secretary*

*please delete as applicable

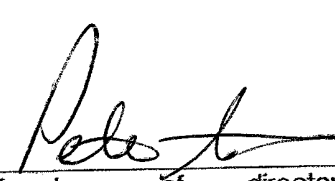
EXECUTED by)
XCD ENERGY LIMITED)
ACN 108 403 425)
in accordance with section 127 of the)
Corporations Act 2001 (Cth):)



Signature of director

Dougai J. Ferguson

Name of director



Signature of director/company
secretary*

PETER STICKLAND

Name of director/company secretary*

*please delete as applicable