

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2006

Commission File Number: 000-25386

FX ENERGY, INC.

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of
incorporation or organization)

87-0504461

(I.R.S. Employer
Identification No.)

3006 Highland Drive, Suite 206, Salt Lake City, Utah

(Address of principal executive offices)

84106

(Zip Code)

Registrant's telephone number, including area code:

Telephone (801) 486-5555

Facsimile (801) 486-5575

Securities registered pursuant to Section 12(b) of the Act:

Title of each class

Common Stock, Par Value \$0.001

Name of each exchange on which registered

NASDAQ Global Market

Securities registered pursuant to Section 12(g) of the Act:

None

(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act.

Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter. **As of June 30, 2006, the aggregate market value of the voting and nonvoting common equity held by nonaffiliates of the registrant was \$158,234,000.**

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date. **As of March 2, 2007, FX Energy had outstanding 35,571,680 shares of its common stock, par value \$0.001.**

DOCUMENTS INCORPORATED BY REFERENCE. **FX Energy's definitive Proxy Statement in connection with the 2007 Annual Meeting of Stockholders is incorporated by reference in response to Part II, Item 5, and Part III of this Annual Report.**

FX ENERGY, INC.
Form 10-K for the fiscal year ended December 31, 2006

TABLE OF CONTENTS

Item		Page
	Part I	
--	Special Note on Forward-Looking Statements	3
1	Business	4
1A	Risk Factors	9
1B	Unresolved Staff Comments	15
2	Properties	15
3	Legal Proceedings	25
4	Submission of Matters to a Vote of Security Holders	25
	Part II	
5	Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	26
6	Selected Financial Data	27
7	Management's Discussion and Analysis of Financial Condition and Results of Operation.....	29
7A	Quantitative and Qualitative Disclosures about Market Risk	38
8	Financial Statements and Supplementary Data.....	39
9	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.....	39
9A	Controls and Procedures	39
9B	Other Information	39
	Part III	
10	Directors, Executive Officers and Corporate Governance	40
11	Executive Compensation	40
12	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.....	40
13	Certain Relationships and Related Transactions, and Director Independence	40
14	Principal Accountant Fees and Services.....	40
	Part IV	
15	Exhibits and Financial Statement Schedules	41
--	Signatures	46
--	Management's Report on Internal Control over Financial Reporting	F-1
--	Report of Independent Registered Public Accounting Firm.....	F-2

SPECIAL NOTE ON FORWARD-LOOKING STATEMENTS

This report contains statements about the future, sometimes referred to as “forward-looking” statements. Forward-looking statements are typically identified by the use of the words “believe,” “may,” “could,” “should,” “expect,” “anticipate,” “estimate,” “project,” “propose,” “plan,” “intend” and similar words and expressions. Statements that describe our future strategic plans, goals or objectives are also forward-looking statements. We intend that the forward-looking statements will be covered by the safe harbor provisions for forward-looking statements contained in Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934.

Readers of this report are cautioned that any forward-looking statements, including those regarding us or our management’s current beliefs, expectations, anticipations, estimations, projections, strategies, proposals, plans or intentions, are not guarantees of future performance or results of events and involve risks and uncertainties, such as:

- future drilling and other exploration schedules and sequences for wells and other activities;
- the future results of drilling individual wells and other exploration and development activities;
- future variations in well performance as compared to initial test data;
- the ability to economically develop and market discovered reserves;
- the prices at which we may be able to sell oil or gas;
- foreign currency exchange rate fluctuations;
- exploration and development priorities and the financial and technical resources of the Polish Oil and Gas Company, our principal joint venture and strategic partner in Poland;
- uncertainties inherent in estimating quantities of proved reserves and actual production rates and associated costs;
- future events that may result in the need for additional capital;
- the cost and availability of additional capital that we may require and possible related restrictions on our future operating or financing flexibility;
- our future ability to attract industry or financial participants to share the costs of exploration, exploitation, development and acquisition activities;
- future plans and the financial and technical resources of industry or financial participants;
- uncertainties of certain terms to be determined in the future relating to our oil and gas interests, including exploitation fees, royalty rates and other matters;
- uncertainties regarding future political, economic, regulatory, fiscal, taxation and other policies in Poland and the European Union; and
- other factors that are not listed above.

The forward-looking information is based on present circumstances and on our predictions respecting events that have not occurred, that may not occur, or that may occur with different consequences from those now assumed or anticipated. Actual events or results may differ materially from those discussed in the forward-looking statements. The forward-looking statements included in this report are made only as of the date of this report.

PART I

ITEM 1. BUSINESS

Introduction

We are an independent oil and gas exploration and production company. Through 2006, most of our production operations have been in the United States, primarily in Montana. However, our most significant exploration activity has been, and will continue to be, in Poland. We have focused on Poland because it has provided us with attractive conventional oil and gas exploration and production opportunities. In our view, these opportunities exist because the country was closed to competition from foreign oil and gas companies for many decades. As a result, and given the continuous advances in exploration technology, we believe Poland remains relatively immature as an oil and gas producing province. We believe Poland is underexplored, underdeveloped and underexploited today.

Activities and Assets in Poland

As of December 31, 2006, we held approximately 3.5 million gross acres in Poland, including 3.2 million gross acres in western Poland's Permian Basin where the gas-bearing Rotliegend sandstone reservoir rock is, in our opinion, a direct analog to the Southern North Sea gas basin offshore England and represents a largely untapped source of potentially significant gas reserves.

In February 2007, we announced plans to release approximately 557,000 acres in our ongoing efforts to highgrade our acreage and to maintain focus on our most prospective holdings. This will reduce our Permian basin acreage to 2.6 million acres.

We have identified a core area consisting of approximately 852,000 gross acres surrounding the Radlin field, a 390 billion cubic feet, or Bcf, Rotliegend gas field that was discovered in the 1980s by our joint venture partner, the Polish Oil and Gas Company ("POGC"). The primary focus of our exploration efforts in this core area is on structural traps in Rotliegend sandstones of the lower Permian. We have emphasized improved seismic processing and acquisition in our exploration, using technology developed for Rotliegend exploration in the Southern North Sea. With this approach we have made commercially successful discoveries in three of the four wells we have drilled on structural targets in the Rotliegend using two-dimensional, or 2-D, seismic data.

Based on these discoveries and associated technical work, we have identified a specific area, the Sroda area, as having high potential for substantial reserves and low drilling risk. Within the Sroda area we are now acquiring three-dimensional, or 3-D, seismic data over 100 square kilometers where we have identified a series of possible structural traps. We expect the 3-D seismic data will give us better definition of the targets and further reduce our drilling risk. Our goal is to have two rigs in the field to start an appraisal and development drilling program in the fourth quarter of 2007. We expect the resulting development project to yield substantial reserves and production, which can be used to support further exploration and development on our acreage in Poland.

We have made commercial discoveries in the course of our exploration, which at December 31, 2006, amounted to 19 Bcf of gas and 202,000 barrels of light crude oil, net to our interest, with estimated future net revenues, discounted to present value at 10% per annum, or PV-10 value, of approximately \$59 million. This excludes the recent Winna Gora discovery, which was undergoing production testing as of March 2, 2007. With the two wells that started production in late 2006, we anticipate materially higher gross revenues from production in Poland for 2007. We have pledged our production and reserves in Poland in support of a \$25 million line of credit with the Royal Bank of Scotland. The line of credit is intended primarily to fund development work in our core area which we anticipate will follow from the 3-D seismic survey currently underway.

While maintaining our focus on the Rotliegend structural trap play in our core area, we have also identified two other potential plays in this acreage: a stratigraphic gas trap play (“pinch-out”) in the Rotliegend and an oil and gas play in carbonates of the lower Permian. In eastern Poland, on our 250,000 gross-acre Block 255, we have one commercial success in the Carboniferous and have identified several additional Carboniferous leads. We anticipate continuing a modest level of exploration work on our non-core acreage and on the secondary plays in our core area, but we plan to focus the greatest portion of our efforts and resources on the structural trap gas play in our core Fences area.

We believe that we are uniquely situated because of our land position, our relationship with POGC, our significant working interests, and our current financial condition to exploit the untapped potential of western Poland’s Permian Basin and create substantial growth in oil and gas reserves and cash flows for our stockholders.

References to us in this report include FX Energy, Inc., our subsidiaries and the entities or enterprises organized under Polish law in which we have an interest and through which we conduct our activities in that country. See “Oil and Gas Terms” at the end of this item for definitions of certain industry terms.

Strategy

We hold substantial acreage in productive fairways or geological trends where we believe we have the opportunity to find conventional significant gas and oil reserves with lower risk through the application of new exploration technology. Our strategy is to:

- acquire large acreage positions in areas of known production, particularly where there has been little or no exploration for many years;
- bring to bear exploration technology that has not previously been applied to the area or to the particular play type;
- identify areas that appear to have substantial hydrocarbon resources, either in a single accumulation or in a series of similar accumulations, which would warrant a substantial, ongoing development effort with low drilling risk; and
- use the reserves and production resulting from the first successful development project to fund other development projects and/or additional exploration on our substantial acreage holdings.

Our primary strategic relationship is with POGC, a fully integrated oil and gas company primarily owned by the Treasury of the Republic of Poland, which is Poland’s principal domestic oil and gas exploration, production, transportation and distribution entity. Under our existing agreements, POGC has provided us with access to exploration opportunities, previously collected exploration data, and technical and operational support. We also use geophysical and drilling services provided by POGC and sell our gas production to POGC.

Key Personnel for Poland

Our chief technical advisor is Richard Hardman, CBE, who has built a career in international exploration over the past 40 years in the upstream oil and gas industry as a geologist in Libya, Kuwait, Colombia and Norway. In the United Kingdom, his career encompasses almost the whole of the exploration history of the North Sea—1969 to the present. With Amerada Hess from 1983 to 2002 as Exploration Director and later Vice President of Exploration, he was responsible for key Amerada North Sea and international discoveries, including the Valhall, Scott and South Arne fields. Mr. Hardman was made Commander of the British Empire in the New Year Honours, 1998, and has served as the Chairman of the Petroleum Society of Great Britain, President of the Geological Society, and President of the European Region of AAPG Europe. Mr. Hardman was appointed to our board of directors in October 2003 and is Chairman of our Technical and Advisory Panel.

Our Country Manager in Poland is Zbigniew Tatys, the former General Director of POGC's Upstream Exploration and Production Division. During his 20-year career with POGC, he rose through the ranks as a production engineer and was serving as Vice Chairman of POGC at the time of his retirement. Mr. Tatys has unique qualifications to lead us through our transition from a pure exploration company to an oil and natural gas producer in Poland.

Exploration, Development and Production Activities

Polish Exploration Rights

As of December 31, 2006, we held oil and gas exploration rights in Poland in the following gross acreage components:

	Operator		Gross Acreage	Working Interest
	FX Energy	POGC		
Concession Area:				
Fences (Fences I/II)		X	852,000	49%
Block 287(Fences III).....	X		770,000	100%
Block 255/Wilga.....	X		250,000	82%
Northwest	X		1,608,000	100%
Total gross acreage			<u>3,480,000</u>	

As we explore and evaluate our acreage in Poland, we expect to increasingly focus our operational and financial efforts on higher potential, lower risk areas. As we do so, we may elect not to retain our interest in acreage that we determine carries a higher exploration risk or lower potential. See "Wells and Acreage" below for further information.

Exploratory Activities in Poland

Our ongoing activities in Poland are conducted in four project areas: Fences (formerly described as Fences I/II, Block 287 (formerly described as Fences III), Northwest, and the Block 255/Wilga area. Our exploration activities are currently focused primarily on the core Fences area, where the gas-bearing Rotliegend sandstone reservoir rock is a direct analog to the Southern North Sea gas basin offshore England. We are focused on this core area because there have been substantial gas reserves developed and produced by POGC, we have made three commercial discoveries, and we have concluded that there is likely to be substantial additional natural gas in the same horizons that can be identified through the application of geophysical techniques that had not previously been applied in this area in Poland.

Fences Area

The Fences concession area is 852,000 acres (3,790 sq. km.) in western Poland's Permian Basin surrounding POGC's Radlin gas field. The Radlin field and several other POGC gas fields located in the Fences area are "fenced" or excluded from our exploration acreage. These fields, discovered by POGC between 1974 and 1982, produce from structural traps in the Rotliegend sandstone.

We entered into agreements in 2000 and 2003 with POGC to farm-in this area and by December 31, 2004, had spent the required \$20.0 million on exploration costs and earned our 49% interest. POGC holds a 51% interest and is the operator. In 2003 we farmed-out half of our 49% interest in a 45,000 acre parcel (approximately 2.5% of our interest in the Fences area) to CalEnergy Gas (Holdings) Ltd., the upstream gas business unit of MidAmerican Energy Holdings Company.

The Rotliegend is the primary target horizon throughout most of the Fences concession area, at depths from approximately 2,500 to 4,000 meters. There are two types of traps in the Rotliegend in this general area: structural traps and stratigraphic (“pinch-out”) traps, both of which are known to produce gas in the area. In addition, we have identified what appear to be carbonates in the lower Permian, a third type of trap that is known to produce both oil and gas in the area.

During 2000, we drilled the Kleka 11, our first Rotliegend target, which began producing in early 2001. During 2001, we drilled the Mieszkow-1, an exploratory dry hole. The Mieszkow well demonstrated the need to apply modern seismic data processing and to assure careful handling of velocities in seismic data interpretation. Since that time, we have emphasized the use of acquisition, processing and interpretation techniques that have been used successfully in the Rotliegend gas fields of the United Kingdom’s offshore Southern Gas Basin.

With Rotliegend structures as our target, and utilizing improved seismic processing and acquisition techniques, we completed the Zaniemysl-3 exploratory well in the Fences concession area as a commercial well in February 2004. Zaniemysl-3 contains gross proved reserves for the well estimated at approximately 24 Bcf of gas (5.7 Bcf net to our interest). See Item 2. Properties: Proved Reserves. The Zaniemysl well began producing gas in October of 2006, and is currently producing at 10 million cubic feet of natural gas per day, or MMcfD. In April 2005 we completed the Sroda-4 well as a commercial success (with production anticipated to begin in 2008) with gross proved reserves for the well estimated at approximately 16 Bcf of gas (7.9 Bcf net to our interest). In January 2006, we determined the Sroda-5 well to be noncommercial, largely due to cementation in the top 15 meters of the otherwise porous Rotliegend sandstone. This kind of cementation can be the result of faulting, and our technical group will review new 3-D seismic data to determine whether to recommend drilling a near offset to Sroda-5. In January 2007, we completed the Winna Gora well as a commercial success with reserves not yet determined. Production testing at Winna Gora was underway as of March 2, 2007. We began drilling the Roszkow-1 well in February of 2007.

With Rotliegend stratigraphic trapping (“pinch-outs”) as our target, in January 2005 we drilled the Rusocin-1 well, the first well in Poland intentionally focused on a stratigraphic trap in the Rotliegend. In a drill stem test the well flowed gas from an 8 meter (26 feet) section of the Rotliegend sandstone target reservoir and may have encountered the lower edge of a pinch-out trap. In December 2005 we determined that our second stratigraphic test well, the Lugi-1 well southeast of the Rusocin-1 well, was noncommercial.

We have identified what appears to be a carbonate target in the Zechstein (Ca2) horizon of the lower Permian, but have not yet drilled a target of this type.

Based on our technical work to date and on the results of the exploratory wells we have drilled in the Fences area, we are focusing our technical and financial resources on that part of the Fences area that is prone to structural traps in the Rotliegend. To that end we are currently acquiring 100 square kilometers of 3-D seismic data in the area where the Sroda-4, Sroda-5 and Winna Gora wells are located. During the remainder of 2007, we plan to complete this 3-D seismic acquisition project and prepare to drill appraisal and development wells as warranted. We may also consider drilling a Zechstein (Ca2) test well.

Block 287 Concession Area

The Block 287 concession area is 213,000 acres (863 sq. km.) located approximately 25 miles south of the Fences concession area. We own 100% of the exploration rights. Block 287 is part of a larger concession area, 770,000 acres, called Fences III. In early 2006 we drilled a dry hole, Drozdowice, in Fences III. Based on the well results and the technical work that preceded the well, and in light of our other opportunities, we have elected to surrender all of our acreage in this area, with the exception of Block 287, in 2007. The total area dropped will be approximately 557,000 acres.

Within Block 287 there are three Rotliegend gas wells referred to as the Grabowka gas field. Originally drilled by POGC in 1983-85, these three wells were tested for production but never produced commercially. In early 2007, we entered into a joint venture agreement under which all costs of re-entering and completing the wells and building production facilities will be paid by our joint venture partner in exchange for discounted pricing on gas deliveries. If commercial, the project is expected to come on-stream in about one year at a rate of approximately 1 MMcfD, based on the original test data and subject to successful re-entry of the wells. The joint venture partner is PL Energia S.A., headquartered in Krzywoploty, Poland.

We do not plan to conduct further technical work on Block 287 until we can assess the results of the Grabowka re-entry project.

Block 255 Concession Area

The Block 255/Wilga concession area in east central Poland consists of exploration rights on approximately 250,000 gross acres held by us and POGC. We have an 82% working interest and are the operator; POGC holds the remaining 18% working interest. We have one producing well, Wilga-2, in Block 255, the result of an exploration project several years ago by us and Apache Corporation. The Wilga well was drilled in 2000 and as of December 31, 2006, had gross proved reserves of approximately 6 Bcf of gas and 247,000 barrels of light crude oil (4.9 Bcf and 202,000 barrels, net to our interest). Wilga-2 is currently producing approximately 3 million cubic feet, or Mcf, of high methane gas and 150 barrels of light crude oil per day from sands in the Carboniferous.

We plan to conduct a detailed reservoir test of Wilga-2 after at least six months of production that will allow us to measure reserves with greater accuracy and help us to decide whether to drill an offset well. We are also allocating technical resources to the Block 255/Wilga area in an effort to understand the two noncommercial wells that were drilled following the commercially successful Wilga-2 and to identify other potential targets in the block. We anticipate carrying out additional technical work during 2007.

New Concession Areas

In 2006, we acquired 100% interest in several concession blocks covering 1,608,000 acres (6,509 sq. km.) that together constitute our Northwest concession area. We have applied for additional concession blocks in Poland and anticipate that they will be issued in the very near term. We will allocate modest technical and financial resources to these areas during 2007, primarily in the form of data collection and seismic reprocessing, with a view to ascertaining relative hydrocarbon potential and exploration risk.

Activities and Assets in the United States

Nevada

During 2006, we drilled and abandoned one wildcat oil well, the West Bacon Flat-1, in Railroad Valley, Nevada. We plan to drill a small number of exploratory wells again in 2007 on land that is near our existing producing properties in Nevada. Our actual cash costs to drill each well is approximately \$100,000. We are able to maintain very low drilling costs due to an agreement with our 50% partner whereby our partner contributes drilling equipment and we contribute drilling labor, consisting of our existing employees in Montana.

Montana

During 2006, we drilled and abandoned a single test well at a heavy oil prospect, the Teton River-1 located in western Montana. We have no plans for further drilling in this area during 2007.

ITEM 1A. RISK FACTORS

Risk Factors

Our business is subject to a number of material risks, including, but not limited to, the following factors related directly and indirectly to our business activities in the United States and Poland.

Risks Relating to our Business

Our success depends largely on our discovery of economic quantities of oil or gas in Poland.

We currently have a limited amount of production in the United States and Poland. While during 2007 we anticipate that we will generate revenues substantially in excess of our general and administrative costs, these revenues are not sufficient to cover all of our exploration and development costs, and we will continue to rely on existing working capital and possibly on funds from external sources to cover these costs. Our exploration programs in Poland are based on interpretations of geological and geophysical data. The factors listed below, most of which are outside our control, may prevent us from establishing additional commercial production or substantial reserves as a result of our exploration, appraisal and development activities in Poland:

- we cannot assure that any future well will encounter commercial quantities of oil or gas;
- there is no method to predict in advance of drilling and testing whether any prospect encountering oil or gas will yield oil or gas in sufficient quantities to cover drilling or completion costs or to be economically viable;
- one or more appraisal wells may be required to confirm the commercial potential of an oil or gas discovery;
- we may continue to incur exploration costs in specific areas even if initial appraisal wells are plugged and abandoned or, if completed for production, do not result in production of commercial quantities of oil or gas; and
- drilling operations may be curtailed, delayed or canceled as a result of numerous factors, including operating problems encountered during drilling, weather conditions, compliance with governmental requirements, shortages or delays in the delivery of equipment or availability of services, and other factors.

We have limited control over our exploration and development activities in Poland.

Our partner, POGC, holds the majority interest and is operator of our Fences project area and has a minority interest in our Wilga project area. As a paying partner, we rely to a significant extent on the financial capabilities of POGC. If POGC were to fail to perform its obligations under contracts with us, it would most likely have a material adverse effect on us. In particular, we have prepared our exploration budget through 2007 based on the participation of and funding to be provided by POGC. Although we have rights to participate in exploration and development activities on some POGC-controlled acreage, we have limited rights to initiate such activities. Further, we have no direct interest in some of the underlying agreements, licenses and grants from the Polish agencies governing the exploration, exploitation, development or production of acreage controlled by POGC. Thus, our program in Poland involving POGC-controlled acreage would be adversely affected if POGC should elect not to pursue activities on such acreage, if the relationship between us and POGC should deteriorate or terminate, or if POGC or the governmental agencies should fail to fulfill the requirements of or elect to terminate such agreements, licenses or grants.

We cannot assure the exploration models we are using in Poland will lead to finding oil or gas in Poland.

We cannot assure the exploration models we and POGC have developed will provide a useful or effective guide for selecting exploration prospects and drilling targets. We will have to revise or replace these exploration models as a guide to further exploration if ongoing drilling results do not confirm their validity. These exploration models may be based on incomplete or unconfirmed data and theories that have not been fully tested. The seismic data, other technologies, and the study of producing fields in the area do not enable us to know conclusively prior to drilling that oil or gas will be present in commercial quantities. We cannot assure that the analogies that we draw from available data from other wells, more fully explored prospects, or producing fields will be applicable to our drilling prospects.

We cannot accurately predict the size of exploration targets or foresee all related risks.

Notwithstanding the accumulation and study of 2-D and 3-D seismic data, drilling logs, production information from established fields, and other data, we cannot predict accurately the oil or gas potential of individual prospects and drilling targets or the related risks. Our predictions are only rough, preliminary geological estimates of the forecasted volume and characteristics of possible reservoirs and are not an estimate of reserves. In some cases, our estimates may be based on a review of data from other exploration or producing fields in the area that ultimately may be found not to be similar to our exploration prospects. We may require several test wells and long-term analysis of test data and history of production to determine the oil or gas potential of individual prospects.

We have had limited exploratory success in Poland.

We have participated in drilling 24 exploratory wells in Poland, including six exploratory successes (the Wilga 2, Kleka 11, Zaniemysl-3, Sroda-4, Winna Gora-1 and Rusocin-1), and eighteen exploratory dry holes. Of our six exploratory successes in Poland, we are currently producing gas at our Wilga 2, Zaniemysl-3 and Kleka 11 wells.

We may not achieve the results anticipated in placing our current or future discoveries into production.

We may encounter delays in commencing the production and the sale of gas in Poland, including our recent gas discoveries and other possible future discoveries. The possible delays may include obtaining rights-of-way to connect to the POGC pipeline system, obtaining construction permits, availability of materials and contractors, the signing of oil or gas purchase/sales contracts, and other factors. Such delays would correspondingly delay the commencement of cash flow and may require us to obtain additional short-term financing pending commencement of production. Further, we may design proposed surface and pipeline facilities based on possible estimated results of additional drilling. We cannot assure that additional drilling will establish additional reserves or production that will provide an economic return for planned expenditures for facilities. We may have to change our anticipated expenditures if costs of placing a particular discovery into production are higher, if the project is smaller, or if the commencement of production takes longer than expected.

Privatization/Nationalization of POGC could affect our relationship and future opportunities in Poland.

Our activities in Poland have benefited from our relationship with POGC, which has provided us with exploration acreage, seismic data and production data under our agreements. The Polish government commenced the privatization of POGC by selling POGC's refining assets. In late 2005, POGC successfully completed an initial public offering on the Warsaw stock exchange, and approximately 15% of POGC is now owned by the public. Complete privatization or a re-nationalization of POGC may result in new policies, strategies or ownership that could adversely affect our existing relationship and agreements, as well as the availability of opportunities with POGC in the future.

We have a history of operating losses and may require additional capital in the future to fund our operations.

From our inception in January 1989 through December 31, 2006, we have incurred cumulative net losses of approximately \$94 million. We expect that our exploration and production activities may continue to result in net losses and that our accumulated deficit may increase. We anticipate that we will continue to incur losses through 2007 and possibly beyond, depending on whether our activities in Poland and the United States result in sufficient revenues to cover related operating expenses.

Until sufficient cash flow from operations can be obtained, we expect we will need additional capital to fully fund our ongoing planned exploration, appraisal, development and property acquisition programs in Poland. We may seek required funds from the issuance of additional debt, equity or hybrid securities, project financing, strategic alliances or other arrangements. Obtaining additional financing may dilute the interest of our existing stockholders or our interest in the specific project being financed. We cannot assure that additional funds could be obtained or, if obtained, would be on terms favorable to us. In addition to planned activities in Poland, we may require additional funds for general corporate purposes.

The loss of key personnel could have an adverse impact on our operations.

We rely on our officers and key employees and consultants and their expertise, particularly David N. Pierce, President and Chief Executive Officer; Thomas B. Lovejoy, Chairman of the Board and Executive Vice President; Andrew W. Pierce, Vice President-Operations; Jerzy B. Maciolek, Vice President-Exploration; Zbigniew Tatys, Poland Country Manager; and Richard Hardman, Director and Chairman of our technical committee. The loss of the services of any of these individuals may materially and adversely affect us. We have entered into employment agreements with our key executives. We do not maintain key-man insurance on any of our employees.

The price we receive for gas we sell will likely be lower than free market gas prices in western Europe.

Our limited number of wells and reserves means we cannot assure uninterrupted supply in sufficient quantities to meet the anticipated requirements of industrial users, so we currently are dependent on selling gas to POGC at prices generally lower than prevailing in western Europe. The market for the sale of gas in Poland is open to competition, but there are not yet many participants. Accordingly, we expect that the prices we receive for the gas we produce will be lower than would be the case in a fully competitive setting and may be lower than prevailing western European prices, at least until a fully competitive market develops in Poland or until we are able to assure potential purchasers other than POGC that we have sufficient wells and reserves to assure an uninterrupted supply in sufficient quantities. Further, there is no established market relationship between gas prices in short-term and long-term sales agreements. Notwithstanding the strong demand for gas in Poland, the availability of abundant quantities of gas from former members of the Soviet Union and the low cost of electricity from coal-fired generating facilities may also tend to depress gas prices in Poland.

Substantially all of the oil and gas currently produced in Poland is sold to a single customer or its affiliates.

We currently sell substantially all of the oil and gas produced in Poland to POGC or one of its affiliates. If POGC were to fail to perform its obligations under contracts with us, it would most likely have a material adverse effect on us. As discussed previously, the market for the sale of gas in Poland is open to competition, but there are not yet many participants. While our contracts provide us with the ability to market gas to other purchasers, including those outside of Poland, it may take a considerable amount of time to replace POGC as our primary customer.

Oil and gas price decreases and volatility could adversely affect our operations and our ability to obtain financing.

Oil and gas prices have been and are likely to continue to be volatile and subject to wide fluctuations in response to the following factors:

- the market and price structure in local markets;
- changes in the supply of and demand for oil and gas;
- market uncertainty;
- political conditions in international oil and gas producing regions;
- the extent of production and importation of oil and gas into existing or potential markets;
- the level of consumer demand;
- weather conditions affecting production, transportation and consumption;
- the competitive position of oil or gas as a source of energy, as compared with coal, nuclear energy, hydroelectric power and other energy sources;
- the availability, proximity and capacity of gathering systems, pipelines and processing facilities;
- the refining and processing capacity of prospective oil or gas purchasers;
- the effect of governmental regulation on the production, transportation and sale of oil and gas; and
- other factors beyond our control.

We have not entered into any agreements to protect us from price fluctuations and may or may not do so in the future.

Our industry is subject to numerous operating risks. Insurance may not be adequate to protect us against all these risks.

Our oil and gas drilling and production operations are subject to hazards incidental to the industry. These hazards include blowouts, cratering, explosions, uncontrollable flows of oil, gas or well fluids, fires, pollution, releases of toxic gas and other environmental hazards and risks. These hazards can cause personal injury and loss of life, severe damage to and destruction of property and equipment, pollution or environmental damage, and suspension of operations. To lessen the effects of these hazards, we maintain insurance of various types to cover our domestic and international operations. We cannot assure that the insurance policies carried by us can continue to be obtained on reasonable terms. POGC, as operator of the Fences project area, is self-insured. While we do carry limited third-party liability and all-risk insurance in Poland, we do not plan to purchase well control insurance on wells we drill in the Fences project area and may elect not to purchase such insurance on wells drilled in other areas in Poland as well. The current level of insurance does not cover all of the risks involved in oil and gas exploration, drilling and production. Where additional insurance coverage does exist, the amount of coverage may not be sufficient to pay the full amount of such liabilities. We may not be insured against all losses or liabilities that may arise from all hazards because such insurance is unavailable at economic rates, because of limitations on existing insurance coverage, or other factors. For example, we do not maintain insurance against risks related to violations of environmental laws. We would be adversely affected by a significant adverse event that is not fully covered by insurance. Further, we cannot assure that we will be able to maintain adequate insurance in the future at rates we consider reasonable.

Risks Relating to Conducting Business in Poland

Polish laws, regulations and policies may be changed in ways that could adversely impact our business.

Our oil and gas exploration, development and production activities in Poland are and will continue to be subject to ongoing uncertainties and risks, including:

- possible changes in government personnel, the development of new administrative policies, and practices and political conditions in Poland that may affect the administration of agreements with governmental agencies or enterprises;
- possible changes to the laws, regulations and policies applicable to us and our partners or the oil and gas industry in Poland in general;
- uncertainties as to whether the laws and regulations will be applicable in any particular circumstance;
- uncertainties as to whether we will be able to enforce our rights in Poland;
- uncertainty as to whether we will be able to demonstrate, to the satisfaction of the Polish authorities, our and POGC's compliance with governmental requirements respecting exploration expenditures, results of exploration, environmental protection matters, and other factors;
- the inability to recover previous payments to the Polish government made under the exploration rights or any other costs incurred respecting those rights if we were to lose or cancel our exploration and exploitation rights at any time;
- political instability and possible changes in government;
- export and transportation tariffs;
- local and national tax requirements;
- expropriation or nationalization of private enterprises and other risks arising out of foreign government sovereignty over our acreage in Poland; and
- possible significant delays in obtaining opinions of local authorities or satisfying other governmental requirements in connection with a grant of permits to conduct exploration and production activities.

Poland has a developing regulatory regime, regulatory policies and interpretations.

Poland has a developing regulatory regime governing exploration and development, production, marketing, transportation and storage of oil and gas. These provisions were recently promulgated and are relatively untested. Therefore, there is little or no administrative or enforcement history or established practice that can aid us in evaluating how the regulatory regime will affect our operations. It is possible those governmental policies will change or that new laws and regulations, administrative practices or policies or interpretations of existing laws and regulations will materially and adversely affect our activities in Poland. For example, Poland's laws, policies and procedures were changed to conform to the requirements that had to be met before Poland was admitted as a full member of the European Union.

Our oil and gas operations are subject to changing environmental laws and regulations that could have a negative impact on our operations.

Operations on our project areas are subject to environmental laws and regulations in Poland that provide for restrictions and prohibitions on spills, releases or emissions of various substances produced in association with oil and gas exploration and development. Additionally, if significant quantities of gas are produced with oil, regulations prohibiting the flaring of gas may inhibit oil production. In such circumstances, the absence of a gas gathering and delivering system may restrict production or may require significant expenditures to develop such a system prior to producing oil and gas. We are required to prepare and obtain approval of environmental impact assessments by governmental authorities in Poland prior to commencing oil or gas production, transportation and processing functions. We are also subject to the requirements of Natura 2000, which is an ecological network in the territory of the European Union. In May 1992, governments of the European Union adopted legislation designed to protect the most seriously threatened habitats and species across Europe.

We and our partners cannot assure that we have complied with all applicable laws and regulations in drilling wells, acquiring seismic data or completing other activities in Poland to date. The Polish government may adopt more restrictive regulations or administrative policies or practices. The cost of compliance with current regulations or any changes in environmental regulations could require significant expenditures. Further, breaches of such regulations may result in the imposition of fines and penalties, any of which may be material. These environmental costs could have an adverse effect on our financial condition, results of operations, or cash flows in the future.

Certain risks of loss arise from our need to conduct transactions in foreign currency.

The amounts in our agreements relating to our activities in Poland are sometimes expressed and payable in United States dollars and sometimes in Polish zlotys. Conversions between United States dollars and Polish zlotys are made on the date amounts are paid or received. In the future, our financial results and cash flows in Poland may be affected by fluctuations in exchange rates between the Polish zloty and the United States dollar. We have not hedged our foreign currency activities in the past and do not plan to do so. Currencies used by us may not be convertible at satisfactory rates. In addition, the official conversion rates between United States and Polish currencies may not accurately reflect the relative value of goods and services available or required in Poland. Further, inflation may lead to the devaluation of the Polish zloty.

Risks Related to an Investment in our Common Stock

Our stockholder rights plan and bylaws discourage unsolicited takeover proposals and could prevent our stockholders from realizing a premium on our common stock.

We have a stockholder rights plan that may have the effect of discouraging unsolicited takeover proposals. The rights issued under the stockholder rights plan would cause substantial dilution to a person or group that attempts to acquire us on terms not approved in advance by our board of directors. In addition, our articles of incorporation and bylaws contain provisions that may discourage unsolicited takeover proposals that our stockholders may consider to be in their best interests that include:

- provisions that members of the board of directors are elected and retire in rotation; and
- the ability of the board of directors to designate the terms of, and to issue new series of, preferred shares.

Together, these provisions and our stockholder rights plan may discourage transactions that otherwise could involve payment to our stockholders of a premium over prevailing market prices for our common shares.

Our common stock price has been and may continue to be extremely volatile.

Our common stock has traded as low as \$3.98 and as high as \$8.37 during intraday trading between January 1, 2006, and the date of this report. Some of the factors leading to this volatility include:

- the outcome of individual wells or the timing of exploration efforts in Poland;
- the potential sale by us of newly issued common stock to raise capital or by existing stockholders of restricted securities;
- price and volume fluctuations in the general securities markets that are unrelated to our results of operations;
- the investment community's view of companies with assets and operations outside the United States in general and in Poland in particular;
- actions or announcements by POGC that may affect us;
- prevailing world prices for oil and gas;
- the potential of our current and planned activities in Poland; and
- changes in stock market analysts' recommendations regarding us, other oil and gas companies or the oil and gas industry in general.

Exploration failures in Poland may adversely affect the trading prices for our common stock.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

The Republic of Poland

The Republic of Poland is located in central Europe, has a population of approximately 39 million people, and covers an area comparable in size to New Mexico. During 1989, Poland peacefully asserted its independence and became a parliamentary democracy. Since 1989, Poland has enacted comprehensive economic reform programs and stabilization measures that have enabled it to form a free-market economy and turn its economic ties from the east to the west, with most of its current international trade with the countries of the European Union and the United States. The economy has undergone extensive restructuring in the post-communist era. The Polish government credits foreign investment as a forceful growth factor in successfully creating a stable free-market economy.

Since its transition to a market economy and a parliamentary democracy, Poland has experienced significant economic growth and political change. Poland has developed and is refining legal, tax and regulatory systems characteristic of parliamentary democracies with interpretation and procedural safeguards. The Polish government has taken steps to harmonize Polish legislation with that of the European Union, which it joined in May of 2004.

Poland has created an attractive legal framework and fiscal regime for oil and gas exploration by actively encouraging investment by foreign companies to offset its lack of capital to further explore its oil and gas resources. In July 1995, Poland's Council of Ministers approved a program to restructure and privatize the Polish petroleum sector. So far under this plan, a refinery located in Plock has been privatized as a publicly held company with its stock trading on the London and Warsaw stock exchanges. In September of 2005, POGC sold 15% of its stock in an initial public offering on the Warsaw Stock Exchange, raising a total of 2.7 billion Polish zlotys (approximately US \$900 million).

Prior to becoming a parliamentary democracy during 1989, the exploration and development of Poland's oil and gas resources were hindered by a combination of foreign influence, a centrally controlled economy, limited financial resources, and a lack of modern exploration technology. As a result of these and other factors, Poland is currently a net energy importer. Oil is imported primarily from countries of the former Soviet Union and the Middle East, and gas is imported primarily from Russia.

Polish Properties

Legal Framework

General Usufruct and Concession Terms

All of our rights in Poland have been awarded to us or to POGC pursuant to the Geological and Mining Law, which specifies the process for obtaining domestic exploration and exploitation rights. Under the Geological and Mining Law, the concession authority enters into mining usufruct (lease) agreements that grant the holder the exclusive right to explore for oil and gas in a designated area or to exploit the designated oil and/or gas field for a specified period under prescribed terms and conditions. The holder of the mining usufruct covering exploration must also acquire an exploration concession by applying to the concession authority and providing the opportunity for comment by local governmental authorities. The usufruct agreements include provisions that give the usufruct holder a claim for an extension of the usufruct (and the underlying concession), subject to having fulfilled all obligations under the usufruct and/or concession agreements.

The concession authority has granted us oil and gas exploration rights on the Block 287 (Fences III) and Wilga project areas, and has granted POGC oil and gas exploration rights on the Fences (Fences I/II) project areas. The agreements divide these areas into blocks, generally containing approximately 250,000 acres each. Concessions have been acquired for exploration in all areas that lie within existing usufructs. The exploration period begins after the date of the last concession signed under each respective usufruct. We believe all material concession terms have been satisfied to date.

If commercially viable oil or gas is discovered, the concession owner, during the first two years of production, then applies for an exploitation concession, as provided by the usufructs, generally with a term of 25 to 30 years or as long as commercial production continues. Upon the grant of the exploitation concession, the concession owner may become obligated to pay a fee, to be negotiated, but expected to be less than 1% of the market value of the estimated recoverable reserves in place. The concession owner would also be required to pay a royalty on any production, the amount of which will be set by the Council of Ministers, within a range established by legislation for the mineral being extracted. The royalty rate for high-methane gas is currently less than \$0.05 per Mcf. This rate could be increased or decreased by the Council of Ministers to a rate between \$0.02 and \$0.10 per Mcf (the current statutory minimum and maximum royalty rates). Local governments will receive 60% of any royalties paid on production. The holder of the exploitation concession must also acquire rights to use the land from the surface owner and could be subject to significant delays in obtaining the consents of local authorities or satisfying other governmental requirements prior to obtaining an exploitation concession.

Fences (Fences I/II) Project Area

The Fences (Fences I/II) project area consists of five oil and gas exploration concessions controlled by POGC. Three producing fields (Radlin, Kleka and Kaleje) lie within the concession boundary, but are excluded from the Fences concessions. The concessions have expiration dates ranging from August 2007 to July 2009. Remaining work commitments in the aggregate include acquiring 170 kilometers of 3-D seismic data, which is currently in process, and drilling one well. The westernmost Steszew concession, which expired in December of 2006, was dropped due to lack of prospectivity. POGC has filed an extension for all concessions that expire in 2007, which we expect to be granted.

Block 287 (Fences III) Project Area

The Fences III project area consists of a single oil and gas exploration concession held by us. Several producing fields lie within the concession boundaries, but are excluded from the Fences III project area. The concession is for a period of six years ending in December 2009. Work commitments included acquiring 100 kilometers of new 2-D seismic data or drilling one well, which was satisfied by the drilling of the Drozdowice-1 well, and analysis and interpretation of existing well data. Beginning in the fourth year, there is a drilling requirement of a second well that will be satisfied by re-entering and producing the Grabowka gas field. We have elected to surrender in 2007 all of the Fences III project area except for Block 287, which contains the Grabowka gas field.

Wilga/Block 255 Project Area

The Wilga project area consists of a single oil and gas exploration concession that expires in August 2009. The period carries a work commitment of trial production of the Wilga gas-condensate field and 165 kilometers of 2-D seismic data.

Northwest Concession

The new northwest concession consists of seven blocks, awarded in October 2006. The total work commitment for the seven blocks is outlined in three phases: Phase I - one year: reprocessing and reinterpretation of existing data; Phase II - two years: acquiring 960 kilometers of new 2-D seismic data; Phase III – three years: drilling seven wells.

As of December 31, 2006, all required usufruct/concession payments had been made for each of the above project areas. Usufruct/concession payments on new concessions obtained beginning in 2006 are payable in annual installments over a three-year period.

Production, Transportation and Marketing

The following table sets forth our net daily gas and oil production, average sales price, and average production costs associated with our Polish production during 2006, 2005, and 2004:

	<u>2006</u>	<u>2005</u>	<u>2004</u>
Average daily net gas production (Mcf) ⁽¹⁾	837	--	--
Average sales price per Mcf	\$ 3.88	\$ --	\$ --
Average daily net oil production (Bbls) ⁽¹⁾	106		
Average sales price per Bbl	\$ 56.58	\$ --	\$ --
Average production costs per Mcfe ⁽²⁾	\$ 0.56	\$ --	\$ --

(1) Average daily net production amounts shown are calculated based on days of actual production. See "Commencement of Polish Gas Production" in Item 7 below.

(2) Production costs include lifting costs (electricity, fuel, water, disposal, repairs, maintenance, transportation and similar items), and contract operator fees. Production costs do not include such items as general and administrative costs; depreciation, depletion and amortization; or Polish income taxes.

Poland has a network of gas pipelines and crude oil pipelines traversing the country serving major metropolitan, commercial, industrial and gas production areas, including significant portions of our acreage. Poland has a well-developed infrastructure of hard-surfaced roads and railways over which oil and/or light crude oil, or LCO, produced can be transported for sale. There are refineries in Gdansk and Plock in Poland and one in Germany near the western Polish border that we believe could process crude oil produced in Poland. Should we choose to export any oil or gas we produce, we will be required to obtain prior governmental approval.

We are currently selling all of our oil and gas production in Poland to POGC or one of its affiliates. Gas is sold pursuant to long-term sales contracts, typically for the life of each well, which obligate POGC to purchase all gas produced. Individual oil sales are negotiated with POGC-affiliated entities and are not subject to sales contracts.

United States Properties

Producing Properties

In the United States, we currently produce oil in Montana and Nevada. All of our producing properties, except for the Rattlers Butte field (an exploratory discovery during 1997), were purchased during 1994. A summary of our average daily production, average working interest and net revenue interest for our United States producing properties during 2006 follows:

	Average Daily Production (Bbls)		Average Working Interest	Average Net Revenue Interest
	Gross	Net		
United States producing properties:				
Montana:				
Cut Bank	218	188	99.6%	86.4%
Bears Den.....	7	5	98.0	78.3
Rattlers Butte	15	1	6.3	5.1
Total	240	194		
Nevada:				
Trap Springs.....	7	1	21.6	18.9
Munson Ranch	31	10	36.0	34.0
Bacon Flat	23	4	16.9	12.5
Total	61	15		
Total United States producing properties.....	301	209		

In Montana, we operate the Cut Bank and Bears Den fields and have an interest in the Rattlers Butte field, which is operated by an industry partner. Production in the Cut Bank field commenced with the discovery of oil in the 1940s at an average depth of approximately 2,900 feet. The Southwest Cut Bank Sand Unit, which is the core of our interest in the field, was originally formed by Phillips Petroleum Company in 1963. An initial pilot waterflood program was started in 1964 by Phillips and eventually encompassed the entire unit with producing wells on 40- and 80-acre spacing. In the Cut Bank field, we own an average working interest of 99.6% in 99 producing oil wells, 25 active injection wells and one active water supply well. The Bears Den field was discovered in 1929 and has been under waterflood since 1990. In the Bears Den field, we own a 98% working interest in three active water injection wells and five producing oil wells, which produce oil at a depth of approximately 2,430 feet. The Rattlers Butte field was discovered during 1997. In the Rattlers Butte field, we own a 6.3% working interest in two oil wells producing at a depth of approximately 5,800 feet and one active water injection well.

In Nevada, we operate the Trap Springs and Munson Ranch fields and have an interest in the Bacon Flat field, which is operated by an industry partner. The Trap Springs field was discovered in 1976. In the Trap Springs field, we produce oil from a depth of approximately 3,700 feet from one well, with a working interest of 21.6%. The Munson Ranch field was discovered in 1988. In the Munson Ranch field, we produce oil at an average depth of 3,800 feet from five wells, with an average working interest of 36%. The Bacon Flat field was discovered in 1981. In the Bacon Flat field, we produce oil from one well at a depth of approximately 5,000 feet, with a 16.9% working interest.

Production, Transportation and Marketing

The following table sets forth our average net daily oil production, average sales price and average production costs associated with our United States oil production during 2006, 2005 and 2004:

	Years Ended December 31,		
	2006	2005	2004
United States producing property data:			
Average daily net oil production (Bbls).....	209	217	234
Average sales price per Bbl.....	\$56.07	\$48.09	\$36.34
Average production costs per Bbl ⁽¹⁾	\$27.65	\$26.79	\$18.85

(1) Production costs include lifting costs (electricity, fuel, water, disposal, repairs, maintenance, pumper, transportation and similar items) and production taxes. Production costs do not include such items as general and administrative costs; depreciation, depletion and amortization; state income taxes or federal income taxes.

We sell oil at posted field prices to one of several purchasers in each of our production areas. We sell all of our Montana production, which represents over 94% of our total oil sales, to CENEX, a regional refiner and marketer. Posted prices are generally competitive among crude oil purchasers. Our crude oil sales contracts may be terminated by either party upon 30 days' notice.

Oilfield Services – Drilling Rig and Well-Servicing Equipment

In Montana, we perform, through our drilling subsidiary, FX Drilling Company, Inc., a variety of third-party contract oilfield services, including drilling, workovers, location work, cementing and acidizing. We currently have a drilling rig capable of drilling to a vertical depth of 6,000 feet, a workover rig, two service rigs, cementing equipment, acidizing equipment, and other associated oilfield servicing equipment.

Proved Reserves

Proved reserves are the estimated quantities of crude oil and natural gas that geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reserves under existing economic and operating conditions. Our proved oil and gas reserve quantities and values are based on estimates prepared by independent reserve engineers in accordance with guidelines established by the Securities and Exchange Commission, or SEC. Operating costs, production taxes and development costs were deducted in determining the quantity and value information. Such costs were estimated based on current costs and were not adjusted to anticipate increases due to inflation or other factors. No price escalations were assumed, and no amounts were deducted for general overhead, depreciation, depletion and amortization, and interest expense. The proved reserve quantity and value information is based on the weighted average price on December 31, 2006, of \$51.66 per barrel, or Bbl, for oil in the United States and \$49.49 per Bbl of oil and \$4.89 per Mcf of gas in Poland. The determination of oil and gas reserves is based on estimates and is highly complex and interpretive, as there are numerous uncertainties inherent in estimating quantities and values of proved reserves, projecting future rates of production and the timing and amount of development expenditures. The estimated present value, discounted at 10% per annum, of the future net cash flows, the Standardized Measure of Future Net Cash Flows ("SMOG"), or PV-10 Value, was determined in accordance with Statement of Financial Accounting Standards ("SFAS") No. 69, "Disclosure About Oil and Gas Activities," and SEC guidelines. Our proved reserve estimates are subject to continuing revisions as additional information becomes available or assumptions change.

Estimates of our proved United States oil reserves were prepared by Larry Krause Consulting, an independent engineering firm in Billings, Montana. Estimates of our proved Polish gas reserves were prepared by RPS Energy, an independent engineering firm in the United Kingdom. No estimates of our proved reserves were filed with or included in any report to any other federal agency during 2006.

The following summary of proved reserve information as of December 31, 2006, represents discounted, after tax estimates net to us only, and should not be construed as exact:

	United States		Poland			Total
	Oil	PV-10 Value	Oil	Gas	PV-10 Value	PV-10 Value
	(MBbls)	(In thousands)	(MBbls)	(MMcf)	(In thousands)	(In thousands)
Proved reserves:						
Developed producing	382	\$4,565	202	11,382	\$ 40,370	\$ 44,935
Undeveloped.....	--	--	--	7,882	18,822	18,822
Total.....	382	\$4,565	202	19,264	\$59,192	\$63,757

Drilling Activities

The following table sets forth the exploratory wells that we drilled during the years ended December 31, 2006, 2005 and 2004:

	Years Ended December 31,					
	2006		2005		2004	
	Gross	Net	Gross	Net	Gross	Net
Discoveries:						
United States	--	--	--	--	--	--
Poland	--	--	2.0	0.7	2.0	0.7
Total	--	--	2.0	0.7	2.0	0.7
Exploratory dry holes:						
United States	2.0	1.5	4.0	2.0	--	--
Poland	1.0	1.0	2.0	1.0	--	--
Total.....	3.0	2.5	6.0	3.0	--	--
Total wells drilled.....	3.0	2.5	8.0	3.7	2.0	0.7

In January of 2007, we announced a commercial discovery at our Winna Gora-1 well in western Poland, in which we have a 49% working interest. The Winna Gora well is not included in the above table.

Wells and Acreage

As of December 31, 2006, our producing gross and net well count consisted of the following:

	Number of Wells	
	Gross	Net
Well count:		
United States ⁽¹⁾	127.0	120.0
Poland	3.0	1.6
Total	130.0	121.6

(1) All of our producing United States wells are oil wells. We have no gas production in the United States.

The following table sets forth our gross and net acres of developed and undeveloped oil and gas acreage as of December 31, 2006:

	Developed		Undeveloped	
	Gross	Net	Gross	Net
United States:				
Montana	10,732	10,418	4,510	4,417
Nevada	400	128	9,332	6,351
Total	11,132	10,546	13,482	10,768
Poland: ⁽¹⁾				
Fences project area (Fences I/II)	225	110	852,000	406,000
Block 287 (Fences III) project area(2)	--	--	770,000	770,000
Wilga project area	543	441	250,000	205,000
Northwest project area	--	--	1,608,000	1,608,000
Total Polish acreage	768	551	3,480,000	2,989,000
Total Acreage	11,900	11,097	3,493,482	2,999,768

(1) All gross undeveloped Polish acreage is rounded to the nearest 50,000 acres and net undeveloped Polish acreage is rounded to the nearest 1,000 acres.

(2) We have determined to surrender approximately 557,000 gross acres in Fences III project area during 2007.

Government Regulation

Poland

Our activities in Poland are subject to political, economic and other uncertainties, including the adoption of new laws, regulations or administrative policies that may adversely affect us or the terms of our exploration or production rights; political instability and changes in government or public or administrative policies; export and transportation tariffs and local and national taxes; foreign exchange and currency restrictions and fluctuations; repatriation limitations; inflation; environmental regulations; and other matters. These operations in Poland are subject to the Geological and Mining Law dated as of September 4, 1994, and the Protection and Management of the Environment Act dated as of January 31, 1980, which are the current primary statutes governing environmental protection. Agreements with the government of Poland respecting our areas create certain standards to be met regarding environmental protection. Participants in oil and gas exploration, development and production activities generally are required to (1) adhere to good international petroleum industry practices, including practices relating to the protection of the environment; and (2) prepare and submit geological work plans, with specific attention to environmental matters, to the appropriate agency of state geological administration for its approval prior to engaging in field operations such as seismic data acquisition, exploratory drilling and field-wide development. Poland's regulatory framework respecting environmental protection is not as fully developed and detailed as that which exists in the United States. We intend to conduct our operations in Poland in accordance with good international petroleum industry practices and, as they develop, Polish requirements.

We expect Poland will continue to pass further legislation aimed at harmonizing Polish environmental law with that of the European Union. The European Union Treaty of Accession will require divestment by the Polish government of certain portions of its oil and gas business. Changes in the industry ownership may affect the business climate where we operate.

United States

State and Local Regulation of Drilling and Production

Our exploration and production operations are subject to various types of regulation at the federal, state and local levels. Such regulation includes requiring permits for the drilling of wells, maintaining bonding requirements in order to drill or operate wells and regulating the location of wells, the method of drilling and casing wells, the surface use and restoration of properties upon which wells are drilled, and the plugging and abandoning of wells. Our operations are also subject to various conservation laws and regulations. These include the regulation of the size of drilling and spacing units or proration units and the density of wells that may be drilled and the unitization or pooling of oil and gas properties. In this regard, some states allow the forced pooling or integration of tracts to facilitate exploration while other states rely on voluntary pooling of lands and leases. In addition, state conservation laws establish maximum rates of production from oil and gas wells, generally prohibit the venting or flaring of gas, and impose certain requirements regarding the ratability of production.

Our oil production is affected to some degree by state regulations. States in which we operate have statutory provisions regulating the production and sale of oil and gas, including provisions regarding deliverability. Such statutes and related regulations are generally intended to prevent waste of oil and gas and to protect correlative rights to produce oil and gas between owners of a common reservoir. Certain state regulatory authorities also regulate the amount of oil and gas produced by assigning allowable rates of production to each well or proration unit.

Environmental Regulations

The federal government and various state and local governments have adopted laws and regulations regarding the control of contamination of the environment. These laws and regulations may require the acquisition of a permit by operators before drilling commences, restrict the types, quantities and concentration of various substances that can be released into the environment in connection with drilling and production activities, limit or prohibit drilling activities on certain lands lying within wilderness, wetlands and other protected areas, and impose substantial liabilities for pollution resulting from our operations. These laws and regulations may also increase the costs of drilling and operating wells. We may also be held liable for the costs of removal and damages arising out of a pollution incident to the extent set forth in the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, or OPA '90. In addition, we may be subject to other civil claims arising out of any such incident. As with any owner of property, we are also subject to clean-up costs and liability for hazardous materials, asbestos or any other toxic or hazardous substance that may exist on or under any of our properties. We believe that we are in compliance in all material respects with such laws, rules and regulations and that continued compliance will not have a material adverse effect on our operations or financial condition. Furthermore, we do not believe that we are affected in a significantly different manner by these laws and regulations than our competitors in the oil and gas industry.

The Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA, also known as the "Superfund" law, imposes liability, without regard to fault or the legality of the original conduct, on certain classes of persons that are considered to be responsible for the release of a "hazardous substance" into the environment. These persons include the owner or operator of the disposal site or sites where the release occurred and companies that disposed or arranged for the disposal of the hazardous substances. Under CERCLA, such persons may be subject to joint and several liability for the costs of cleaning up the hazardous substances that have been released into the environment, for damages to natural resources, and for the costs of certain health studies. Furthermore, it is not uncommon for neighboring landowners and other third parties to file claims for personal injury and property damage allegedly caused by hazardous substances or other pollutants released into the environment.

The Resource Conservation and Recovery Act, or RCRA, and regulations promulgated thereunder govern the generation, storage, transfer and disposal of hazardous wastes. RCRA, however, excludes from the definition of hazardous wastes "drilling fluids, produced waters and other wastes associated with the exploration, development, or production of crude oil, gas or geothermal energy." Because of this exclusion, many of our operations are exempt from RCRA regulation. Nevertheless, we must comply with RCRA regulations for any of our operations that do not fall within the RCRA exclusion.

The OPA '90 and related regulations impose a variety of regulations on responsible parties related to the prevention of oil spills and liability for damages resulting from such spills. OPA '90 establishes strict liability for owners of facilities that are the site of a release of oil into "waters of the United States." While OPA '90 liability more typically applies to facilities near substantial bodies of water, at least one district court has held that OPA '90 liability can attach if the contamination could enter waters that may flow into navigable waters.

Stricter standards in environmental legislation may be imposed on the oil and gas industry in the future, such as proposals made in Congress and at the state level from time to time, that would reclassify certain oil and gas exploration and production wastes as "hazardous wastes" and make the reclassified wastes subject to more stringent and costly handling, disposal and clean-up requirements. The impact of any such changes, however, would not likely be any more burdensome to us than to any other similarly situated company involved in oil and gas exploration and production.

Federal and Indian Leases

A substantial part of our producing properties in Montana consists of oil and gas leases issued by the Bureau of Land Management or by the Blackfoot Tribe under the supervision of the Bureau of Indian Affairs. Our activities on these properties must comply with rules and orders that regulate aspects of the oil and gas industry, including drilling and operating on leased land and the calculation and payment of royalties to the federal government or the governing Indian nation. Our operations on Indian lands must also comply with applicable requirements of the governing body of the tribe involved including, in some instances, the employment of tribal members. We believe we are currently in full compliance with all material provisions of such regulations.

Safety and Health Regulations

We must also conduct our operations in accordance with various laws and regulations concerning occupational safety and health. Currently, we do not foresee expending material amounts to comply with these occupational safety and health laws and regulations. However, since such laws and regulations are frequently changed, we are unable to predict the future effect of these laws and regulations.

Title to Properties

We rely on sovereign ownership of exploration rights and mineral interests by the Polish government in connection with our activities in Poland and have not conducted and do not plan to conduct any independent title examination. We regularly consult with our Polish legal counsel when doing business in Poland.

Nearly all of our United States working interests are held under leases from third parties. We typically obtain a title opinion concerning such properties prior to the commencement of drilling operations. We have obtained such title opinions or other third-party review on nearly all of our producing properties, and we believe that we have satisfactory title to all such properties sufficient to meet standards generally accepted in the oil and gas industry. Our United States properties are subject to typical burdens, including customary royalty interests and liens for current taxes, but we have concluded that such burdens do not materially interfere with the use of such properties. Further, we believe the economic effects of such burdens have been appropriately reflected in our acquisition cost of such properties and reserve estimates. Title investigation before the acquisition of undeveloped properties is less thorough than that conducted prior to drilling, as is standard practice in the industry.

Employees and Consultants

As of December 31, 2006, we had 42 employees, consisting of nine in Salt Lake City, Utah; 22 in Oilmont, Montana; one in Greenwich, Connecticut; three in Houston, Texas; and seven in Poland. Our employees are not represented by a collective bargaining organization. We consider our relationship with our employees to be satisfactory. We also regularly engage technical consultants to provide specific geological, geophysical and other professional services. Our executive officers and other management employees regularly travel to Poland to supervise activities conducted by our staff and others under contract on our behalf.

Offices and Facilities

Our corporate offices, located at 3006 Highland Drive, Salt Lake City, Utah, contain approximately 3,500 square feet and are rented at \$3,400 per month under a month-to-month agreement. In Montana, we own a 16,160 square foot building located at the corner of Central and Main in Oilmont. During 2005, we opened an office in Warsaw, located at Ul. Chalubinskiego 8, where we rent an office for approximately \$4,300 per month.

Oil and Gas Terms

The following terms have the indicated meaning when used in this report:

“Appraisal well” means a well drilled following a successful exploratory well used to determine the physical extent, reserves and likely production rate of a field.

“Bbl” means oilfield barrel.

“Bcf” means billion cubic feet of natural gas.

“Bcfe” means billion cubic feet of natural gas equivalent using a ratio of one barrel of oil to 6,000 cubic feet of natural gas.

“Development well” means a well drilled within the proved area of an oil or gas reservoir to the depth of a stratigraphic horizon known to be productive.

“Exploratory well” means a well drilled to find and produce oil or gas in an unproved area, to find a new reservoir in a field previously found to be productive of oil or gas in another reservoir, or to extend a known reservoir.

“Field” means an area consisting of a single reservoir or multiple reservoirs all grouped on or related to the same individual geological structural feature and/or stratigraphic conditions.

“Gross” acres and “gross” wells mean the total number of acres or wells, as the case may be, in which an interest is owned, either directly or through a subsidiary or other Polish enterprise in which we have an interest.

“Horizon” means an underground geological formation that is the portion of the larger formation that has sufficient porosity and permeability to constitute a reservoir.

“LCO” means light crude oil.

“MBbls” means thousand oilfield barrels.

“Mcf” means thousand cubic feet of natural gas.

“MMcf” means million cubic feet of natural gas.

“MMcfd” means million cubic feet of natural gas per day.

“Net” means, when referring to wells or acres, the fractional ownership working interests held by us, either directly or through a subsidiary or other Polish enterprise in which we have an interest, multiplied by the gross wells or acres.

“Proved reserves” means the estimated quantities of crude oil, gas and gas liquids that geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reservoirs under existing economic and operating conditions, *i.e.*, prices and costs as of the date the estimate is made. “Proved reserves” may be developed or undeveloped.

“PV-10 Value” means the estimated future net revenue to be generated from the production of proved reserves discounted to present value using an annual discount rate of 10.0%, the Standardized Measure of Future Net Cash Flows (“SMOG”). These amounts are calculated net of estimated production costs, future development costs and future income taxes, using prices and costs in effect as of a certain date, without escalation and without giving effect to non property-related expenses, such general and administrative costs, debt service, and depreciation, depletion and amortization.

“Reservoir” means a porous and permeable underground formation containing a natural accumulation of producible oil and/or gas that is confined by impermeable rock or water barriers and that is distinct and separate from other reservoirs.

“Usufruct” means the Polish equivalent of a U.S. oil and gas lease.

ITEM 3. LEGAL PROCEEDINGS

We are not a party to any material legal proceedings, and no material legal proceedings have been threatened by us or, to the best of our knowledge, against us.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matter was submitted to a vote of our security holders during the fourth quarter of the fiscal year ended December 31, 2006.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Price Range of Common Stock and Dividend Policy

The following table sets forth, for the periods indicated, the high and low closing prices for our common stock as quoted under the symbol "FXEN" on the NASDAQ Global Market, or its predecessor, Nasdaq National Market:

	Low	High
2007:		
First Quarter (through March 2, 2007)	\$ 5.83	\$ 7.88
2006:		
Fourth Quarter	4.72	7.00
Third Quarter	4.19	5.48
Second Quarter	3.98	5.71
First Quarter	4.04	8.37
2005:		
Fourth Quarter	7.98	12.35
Third Quarter	9.58	12.08
Second Quarter	9.31	12.23
First Quarter	10.65	15.98

We have never paid cash dividends on our common stock and do not anticipate that we will pay dividends in the foreseeable future. We intend to reinvest any future earnings to further expand our business. We estimate that, as of March 2, 2007, we had approximately 10,000 stockholders.

Equity Compensation Plans

The information from the definitive proxy statement for the 2007 annual meeting of stockholders under the caption "Equity Compensation Plans" is incorporated herein by reference.

Recent Sales of Unregistered Securities

On November 17, 2006, we entered into a \$25.0 million Senior Facility Agreement with the Royal Bank of Scotland plc. As part of the fees for establishing this facility, we issued two-year warrants to purchase 110,000 shares of our common stock at \$6.00 per share. No underwriter participated in this transaction.

These warrants were issued to a non-United States person outside the jurisdiction of the Securities Act of 1933 in reliance on Regulation S promulgated thereunder.

ITEM 6. SELECTED FINANCIAL DATA

The following selected financial data for the five years ended December 31, 2006, are derived from our audited consolidated financial statements and notes thereto, certain of which are included in this report. The selected financial data should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements and the notes thereto included elsewhere in this report:

	Years Ended December 31,				
	2006	2005	2004	2003	2002
	(In thousands, except per share amounts)				
Statement of Operations Data:					
Revenues:					
Oil and gas sales.....	\$ 6,533	\$ 3,805	\$ 3,096	\$ 2,230	\$ 2,209
Oilfield services	1,696	2,132	710	98	533
Total revenues	<u>8,229</u>	<u>5,937</u>	<u>3,806</u>	<u>2,328</u>	<u>2,742</u>
Operating costs and expenses:					
Lease operating expenses ⁽¹⁾	2,647	2,462	1,946	1,546	1,365
Exploration costs ⁽²⁾	5,608	8,369	3,013	523	1,031
Recovery of previously expensed					
Input VAT	--	(2,121)	--	--	--
Impairment of oil and gas properties ⁽³⁾	3,583	--	--	161	1,548
Oilfield services costs.....	1,245	1,689	551	190	540
Depreciation, depletion and					
amortization.....	1,290	903	636	599	618
Accretion expense	53	45	41	37	--
Amortization of deferred					
compensation (G&A)	2,759	125	--	--	55
Stock compensation (G&A) ⁽⁴⁾	--	76	5,859	--	--
General and administrative (G&A)	5,606	6,592	4,909	3,253	2,440
Total operating costs and expenses	<u>22,791</u>	<u>18,140</u>	<u>16,955</u>	<u>6,309</u>	<u>7,597</u>
Operating loss	<u>(14,562)</u>	<u>(12,203)</u>	<u>(13,149)</u>	<u>(3,981)</u>	<u>(4,855)</u>
Other income (expense):					
Interest and other income	795	780	529	36	119
Interest expense	--	--	--	(788)	(1,189)
Total other income (expense).....	<u>795</u>	<u>780</u>	<u>529</u>	<u>(752)</u>	<u>(1,070)</u>
Loss before cumulative effect of					
change in accounting principle	(13,767)	(11,423)	(12,620)	(4,733)	(5,925)
Cumulative effect of change in					
accounting principle	<u>--</u>	<u>--</u>	<u>--</u>	<u>1,800</u>	<u>--</u>
Net loss	<u>\$ (13,767)</u>	<u>\$ (11,423)</u>	<u>\$ (12,620)</u>	<u>\$ (2,933)</u>	<u>\$ (5,925)</u>

– Continued –

	Years Ended December 31,				
	2006	2005	2004	2003	2002
	(In thousands)				
Basic and diluted net loss per share:					
Basic and diluted loss per common share before cumulative effect of change in accounting principle	\$ (0.39)	\$ (0.33)	\$ (0.41)	\$ (0.41)	\$ (0.34)
Cumulative effect of change in accounting principle	--	--	--	0.09	--
Basic and diluted net loss per common share	<u>\$ (0.39)</u>	<u>\$ (0.33)</u>	<u>\$ (0.41)</u>	<u>\$ (0.32)</u>	<u>\$ (0.34)</u>
Basic and diluted weighted average shares outstanding	35,163	34,733	30,691	19,885	17,641
Cash Flow Statement Data:					
Net cash used in operating activities	\$(5,303)	\$(10,105)	\$ (5,886)	\$ (5,561)	\$ (2,162)
Net cash provided by (used in) investing activities ...	8,135	4,656	(41,492)	(1,446)	(295)
Net cash (used in) provided by financing activities...	(578)	4,055	33,791	23,673	5
Balance Sheet Data:					
Working capital (deficit)	\$ 11,967	\$ 27,715	\$ 33,777	\$ 16,032	\$ (9,150)
Total assets	39,167	48,271	52,962	23,769	5,441
Long-term debt	--	--	--	--	--
Stockholders' equity (deficit)	31,965	42,280	48,556	21,459	(4,869)

- (1) Includes lease operating expenses and production taxes.
- (2) Includes geophysical and geological costs, exploratory dry hole costs and nonproducing leasehold impairments.
- (3) Includes proved and unproved property write-downs relating to our properties in the United States and Poland.
- (4) Includes noncash compensation charge of \$5.8 million associated with the cashless exercise of certain employee stock options.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion of our historical financial condition and results of operations should be read in conjunction with Item 6. Selected Consolidated Financial Data, our consolidated financial statements and related notes contained in this report.

Introduction

As a result of the very different characteristics of our two major operating areas (the U.S. and Poland), our financial results show a distinct dichotomy. Our U.S. operations are relatively mature, while our Polish operations are early in their initial development. See "Results of Operations by Business Segment" below.

Through 2006, most of our oil and gas production, revenues and lease operating expenses have been attributable to our U.S. operations. The same is true of our oilfield service revenues and costs. Our U.S. operations have been the source of essentially all of our operating cash flow. These operations are relatively stable, with only modest growth or decline on an annual basis.

Most of our exploration costs have been attributable to our efforts in Poland. We expect our Polish operations will continue to represent the bulk of our exploration costs, reflecting the nature of our exploration efforts there. However, with our recent commencement of oil and gas production in Poland in late 2006, we expect these operations will begin to contribute significantly to our revenues, lease operating expenses and depreciation, depletion and amortization ("DD&A"). Consequently, our results through 2006 may not be indicative of our future operations.

Following is a brief discussion concerning certain significant events in Poland that occurred during 2006.

Commencement of Polish Gas Production

Our exploration efforts in Poland have led to our first meaningful production in 2006, as we began producing and selling gas from two of our drilling successes, the Wilga and Zaniemysl wells. After spending almost a year obtaining permits, designing and constructing the production facilities and preparing the necessary sales and operating agreements, production at our Wilga well, located southeast of Warsaw, officially commenced on September 18th, and production began at our Zaniemysl well, located in western Poland, on October 12th.

Zaniemysl-3

Production at the Zaniemysl well reached its targeted initial production rate of 10 MMcfD in early November 2006, and has remained essentially constant since that time. We contracted with POGC for Zaniemysl gas sales nearly a year ago with a base price of approximately \$2.40 per Mcf. The contract, which is for the life of the field, contains an escalator clause based on consumer gas prices in Poland. As of January 1, 2007, we were selling gas at the wellhead at a price of \$3.70 per Mcf at current exchange rates. At this price and assuming the well maintains its targeted production rate, we believe we will realize gross revenues of approximately \$3 million from our 24.5% share of the well in 2007.

We plan to conduct a detailed reservoir test after six months of plateau production. This test, together with the production up to that point, will allow us to measure reserves with greater accuracy than is possible today and help us to decide whether to drill an offset well. At December 31, 2006, the Zaniemysl-3 well had approximately 24 Bcf of gross proved reserves (5.7 Bcf net to our interest), but based upon 3-D seismic data and study to date, we believe that the reservoir contains significant additional reserves that may be captured through a second well on the structure.

Wilga-2

The Wilga well has been a complex engineering endeavor. The well is capable of producing approximately 2 MMcf and between 90 and 125 barrels of LCO per day from each of the three zones. Our plan is to produce two zones simultaneously, when conditions permit, switching one out every six months so that each zone will be on for twelve months and off for six months. Initial production of 4 MMcf and 220 barrels of LCO per day was reached in mid-November. The capability of the Wilga well to continually produce these volumes of gas is constrained to some extent by our ability to sell all of the LCO produced, as we have a fixed amount of LCO storage on site.

At the commencement of production, we had a single purchaser contracted to take all of the LCO produced. Due to unforeseen circumstances, the purchaser was unable to fulfill its commitment to take all of our LCO production. Accordingly, shortly after reaching our targeted initial production levels, we were required to reduce production from the well to a single zone, pending obtaining additional LCO purchasers. Since that time, we have begun selling our LCO to several different purchasers. Production levels in early 2007 have varied between 2 and 3 MMcf and 110 and 170 barrels of LCO per day. We are negotiating with several LCO purchasers to take higher LCO quantities and expect the LCO marketing situation to be resolved in the first half of 2007, allowing the well to return to its targeted initial production levels. As with the Zaniemysl well above, the Wilga well is likely to significantly alter our production, revenues and expenses for 2007 and beyond.

We contracted for Wilga gas sales nearly a year ago at a price based on consumer gas prices in Poland. Effective January 1, 2007, the tariff used as our basis at Wilga was increased, and we are currently selling gas at approximately \$6.43 per Mcf at current exchange rates. All gas is sold to a subsidiary of POGC. Our LCO is priced at a slight discount to Brent, which varies from 7% to 12% depending on the purchaser. Assuming current prices remain in effect, and assuming daily production of 4 MMcf and 200 barrels of LCO is reached by the end of the first quarter of 2007, we should realize gross revenues of approximately \$10 million from our 82% share of the well in 2007. These figures will vary depending on our ability to market 100% of our LCO production.

As with our Zaniemysl well, we plan to conduct a detailed reservoir test after six months of production that will allow us to measure reserves with greater accuracy and help us to decide whether to drill an offset well. At December 31, 2006, the Wilga-2 well had approximately 6 Bcf of gross proved gas reserves and 247,000 barrels of LCO (4.9 Bcf and 202,000 barrels, net to our interest), but based upon 2-D seismic data and study to date, we believe that the reservoir contains significant additional reserves that may be captured through additional drilling on the structure.

Establishment of \$25 million Senior Credit Facility

In November of 2006, we entered into a \$25 million Senior Facility Agreement (the Facility) with The Royal Bank of Scotland plc (RBS). We believe our arrangement with RBS is the first onshore gas project financing in Poland. The Facility is provided to FX Energy Poland Sp. z o.o., a wholly owned subsidiary of FX Energy, Inc. Funds from the Facility, which became available to us in March, 2007, will cover infrastructure and development costs at a variety of our Polish gas projects. The Facility is collateralized by our commercial wells and production in Poland.

The Facility is significant to us on a number of levels. First, and foremost, we view the Facility as a validation by a respected international financial institution of the value of our reserves, production and land in Poland. Second, it provides us with the ability to leverage our balance sheet and finance the development of our gas projects in Poland at a reasonable cost. Third, it provides us with a potentially important initial relationship in the financial community.

Under the terms of the Facility, the initial commitment is for approximately \$18.6 million, which is based solely on the proved reserve values of our Wilga, Zaniemysl and Kleka wells. Once we achieve certain amounts of net cumulative production from these wells, the ongoing commitment amount will be based on proved and probable reserves, which should cause the commitment amount to increase to close to the entire face amount of the Facility. The terms of the Facility call for interest payments only through the end of 2010. The principal amount of the Facility will begin to be reduced at that time, terminating at the end of 2012, unless we have been successful in adding additional properties and/or reserves to our borrowing base. Interest will be accrued at LIBOR plus an

applicable margin, which is currently 1.25%, but which will be reduced to 0.625% upon the attainment of the above-discussed cumulative production thresholds. We expect to satisfy those production requirements sometime during the second quarter of 2007.

In consideration for the Facility, we paid a 1% origination fee and issued warrants to purchase 110,000 shares of our common stock, valid for two years at an exercise price of \$6.00 per share. The Black-Scholes value of these warrants (approximately \$305,000), along with the loan origination fee and associated legal fees, have been capitalized as deferred financing costs, and will be amortized over the six-year term of the loan, beginning in 2007. An annual unused commitment fee of 1/2% will be charged quarterly based on the average daily unused portion of the Facility.

Polish Gas Prices and the Value of Polish Gas Reserves

Poland has historically subsidized the cost of gas it imports from Russia and other countries for its consumers. However, subsequent to joining the European Union, and in an effort to create a more transparent gas market, Poland has recently begun raising consumer prices in-country, and appears likely to do so over the next few years.

We are a direct beneficiary of these price increases. As discussed above, gas production from all of our currently producing Polish wells is sold to POGC, or one of its affiliates, subject to gas sales agreements that are in effect for the entire life of the fields. In the cases of Wilga and Zaniemysl, the agreements provide for price change mechanisms that are tied to Polish consumer gas prices. Increases in consumer prices in Poland would have several effects. First, and most important, higher prices mean increased revenues and cash flows. Second, the price increases at our properties would increase the value of our reserves. Third, an increase in the value in our reserves would increase our borrowing capacity for project financing purposes. It should be noted that a decrease in Polish consumer prices in the future would have the opposite and negative effects. Nevertheless, the following table illustrates the effect that recent price increases had on the pre-tax PV-10 value of our Polish gas reserves from 2005 to 2006 (excluding the Kleka 11 well):

	2006		2005		\$ Change in PV-10 (MM\$)	% Change in PV-10
	Net Proved Reserves (Bcfe)	Pre-Tax PV-10 value (MM\$)	Net Proved Reserves (Bcfe)	Pre-Tax PV-10 value (MM\$)		
Well:						
Wilga-2	6.037	\$ 29.14	6.298	\$ 17.37	\$ 11.77	68%
Zaniemysl-3	5.717	13.96	5.888	8.85	5.11	58%
Sroda-4	7.882	18.82	7.882	14.16	4.66	33%
Total	19.636	\$ 61.92	20.068	\$ 40.38	\$ 21.54	53%

Rusocin Property Impairment

During the second half of 2004, we and POGC drilled the Rusocin-1 well, the first well intentionally focused on a stratigraphic trap in the Rotliegend. In a January 2005 initial drill stem test, the well flowed gas from an 8 meter section of the Rotliegend sandstone target reservoir. Results of the initial drill stem test indicated that the reservoir may extend beyond the mapped faults, suggesting a larger reservoir along the Wolsztyn High. We believe the well may have discovered the lower edge of a pinch-out at the top of the Rotliegend sandstone with 20-25% porosity, and that the well contains commercial quantities of natural gas.

Following the Rusocin discovery, however, our exploration and production efforts have been focused in other areas and play types, primarily in the Sroda area, and it is likely that this focus will continue in the near term. During the fourth quarter of 2006, we determined to delay steps to place the Rusocin well into production as we focus on the Sroda area in 2007. Our future plans may include further exploration and development along the pinch-out trend.

In accordance with the provisions of FASB Staff Position 19-1, "Accounting for Suspended Well Costs," the capitalized costs associated with this well of \$3.4 million were charged to expense in the fourth quarter of 2006.

Critical Accounting Policies

Oil and Gas Activities

We follow the successful efforts method of accounting for our oil and gas properties. Under this method of accounting, all property acquisition costs and costs of exploratory and development wells are capitalized when incurred, pending determination of whether the well has found proved reserves. If an exploratory well has not found proved reserves, these costs plus the costs of drilling the well are expensed. The costs of development wells are capitalized, whether productive or nonproductive. Geological and geophysical costs on exploratory prospects and the costs of carrying and retaining unproved properties are expensed as incurred. An impairment allowance is provided to the extent that net capitalized costs of unproved properties, on a property-by-property basis, are not considered to be realizable. An impairment loss is recorded if the net capitalized costs of proved oil and gas properties exceed the aggregate undiscounted future net cash flows determined on a property-by-property basis. The impairment loss recognized equals the excess of net capitalized costs over the related fair value, determined on a property-by-property basis. Gains and losses are recognized on sales of entire interests in proved and unproved properties. Sales of partial interests are generally treated as a recovery of costs and any resulting gain or loss is recorded as other income. As a result of the foregoing, our results of operations for any particular period may not be indicative of the results that could be expected over longer periods.

As of December 31, 2006, we had \$2.4 million of capitalized exploratory well costs pending the determination of proved reserves. Further information can be found in note 1 to the consolidated financial statements.

Oil and Gas Reserves

Engineering estimates of our oil and gas reserves are inherently imprecise and represent only approximate amounts because of the subjective judgments involved in developing such information. There are authoritative guidelines regarding the engineering criteria that have to be met before estimated oil and gas reserves can be designated as "proved." Proved reserve estimates are updated at least annually and take into account recent production and technical information about each field. In addition, as prices and cost levels change from year to year, the estimate of proved reserves also changes. This change is considered a change in estimate for accounting purposes and is reflected on a prospective basis in related depreciation, depletion and amortization ("DD&A") rates.

Despite the inherent imprecision in these engineering estimates, these estimates are used in determining DD&A expense and impairment expense and in disclosing the supplemental standardized measure of discounted future net cash flows relating to proved oil and gas properties. DD&A rates are determined based on estimated proved reserve quantities (the denominator) and capitalized costs of producing properties (the numerator). Producing properties' capitalized costs are amortized based on the units of oil or gas produced. Therefore, assuming all other variables are held constant, an increase in estimated proved reserves decreases our DD&A expense. Also, estimated reserves are used to calculate future cash flows from our oil and gas operations, which serve as an indicator of fair value in determining whether a property is impaired or not. The larger the estimated reserves, the less likely the property is impaired.

Stock-based Compensation

Effective January 1, 2006, we adopted the provisions of SFAS No. 123R, "Share-Based Payments" ("SFAS No. 123R"). Under SFAS No. 123R, share-based compensation cost is measured at the grant date, based on the estimated fair value of the award, and is recognized as expense over the employee's requisite service period. We adopted SFAS No. 123R using the modified prospective transition method. Under this method, prior periods are not revised for comparative purposes. The provisions of SFAS No. 123R apply to new awards and to awards that are outstanding on the effective date that are subsequently modified or cancelled. Compensation expense for unvested awards at the effective date will be recognized over the remaining requisite service period using the compensation cost calculated for pro forma disclosure purposes under SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS No. 123").

See notes 1 and 10 in the notes to the consolidated financial statements for information on the adoption of SFAS 123(R), "Share-Based Payments."

Results of Operations by Business Segment

We operate within two segments of the oil and gas industry: the exploration and production, or E&P, segment in Poland and the United States, and the oilfield services segment in the United States. Direct revenues and costs, including depreciation, depletion and amortization costs, or DD&A, general and administrative costs, or G&A, and other income directly associated with their respective segments are detailed within the following discussion. DD&A, G&A, amortization of deferred compensation, interest income, other income, interest expense, and other costs, which are not allocated to individual operating segments for management or segment reporting purposes, are discussed in their entirety following the segment discussion. The following table summarizes the results of operations by segment for the years ended December 31, 2006, 2005 and 2004 (in thousands):

	Reportable Segments				
	Exploration & Production		Oilfield Services	Non-Segmented	Total
	U.S.	Poland			
Year ended December 31, 2006:					
Revenues	\$ 4,260	\$ 2,273	\$ 1,696	\$ --	\$ 8,229
Net income (loss) ⁽¹⁾	463	(6,779)	296	(7,747)	(13,767)
Year ended December 31, 2005:					
Revenues	\$ 3,805	\$ --	\$ 2,132	\$ --	\$ 5,937
Net income (loss) ⁽²⁾	(84)	(6,238)	78	(5,179)	(11,423)
Year ended December 31, 2004:					
Revenues	\$ 3,096	\$ --	\$ 710	\$ --	\$ 3,806
Net income (loss) ⁽³⁾	(228)	(3,532)	692	(9,552)	(12,620)

(1) Nonsegmented reconciling items for 2006 include \$5,606 of general and administrative costs, \$2,759 of noncash stock compensation expense, \$795 of other income, and \$177 of corporate DD&A.

(2) Nonsegmented reconciling items for 2005 include \$5,551 of general and administrative costs, \$201 of noncash stock compensation expense, \$711 of other income, and \$138 of corporate DD&A.

(3) Nonsegmented reconciling items for 2004 include \$4,136 of general and administrative costs, \$5,859 of noncash stock compensation expense, \$525 of other income, and \$82 of corporate DD&A.

A comparison of the results of operations by business segment and the information regarding nonsegmented items for each of the years presented follows. Further information concerning our business segments can be found in Note 11, Business Segments, in the consolidated financial statements.

Exploration and Production Segment

Gas Revenues. As discussed previously, we began gas production in Poland during 2006, and we expect the related gas revenues to rapidly become the primary component of our revenue. Revenues from gas sales were \$1.8 million during 2006, compared to \$0 in both 2005 and 2004.

Gas revenue and production information for each of our three producing wells during 2006 was as follows:

	Volumes (Mcf)	Revenue	Price per Mcf
Wilga-2	159,691	\$ 963,254	\$ 6.15
Zaniemysl-3	164,183	572,504	3.49
Kleka 11	137,429	253,763	1.85

Note: Gas prices vary from property to property based primarily on the energy content of the gas, as well the year in which the gas sales contract was consummated.

Our Wilga-2 well, located just southeast of Warsaw, commenced production on September 19, 2006. This well has three separate productive zones, is capable of producing from two zones simultaneously, and produces both gas and light crude oil (LCO). Estimated peak production with two zones producing simultaneously is approximately 4 MMcf and 220 Bbls of LCO per day. During the fourth quarter of 2006, we did produce from two zones for a short period of time; however, our LCO purchaser was unable to take all of the contracted LCO quantities produced, which caused us to reduce production back to a single zone until we can find a suitable replacement purchaser or purchasers. We expect to remedy this situation during the first quarter of 2007, and resume our estimated initial production rates.

Gas production began at our Zaniemysl-3 well, located in western Poland, on October 12, 2006. Initial production of 10 MMcfD was reached on November 9, 2006, and has remained essentially constant since that time.

Production from our Kleka 11 well remains fairly constant from month to month, averaging approximately 770 MMcfD. We did not record any gas revenues during 2005 and 2004 from the Kleka 11 well. See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operation: Introduction—Fences I Commitment and Settlement, related to settling our Fences I obligation with POGC.

Oil Revenues. Oil revenues were \$4.7 million, \$3.8 million and \$3.1 million for the years ended December 31, 2006, 2005 and 2004, respectively. Included in 2006 revenues were approximately \$483,000 related to the sale of a total of 8,549 barrels of LCO in Poland during 2006. All other oil revenues during the three years were derived from our producing properties in the United States. During these three years, oil revenues fluctuated primarily due to volatile oil prices and changing production rates that are a function of normal property declines. U.S. oil revenues in 2006 increased from 2005 levels by approximately \$607,000 due to higher oil prices, offset by approximately \$151,000 related to production declines. Oil revenues in 2005 increased from 2004 levels by approximately \$922,000 due to higher oil prices, offset by approximately \$213,000 related to lower oil production.

A summary of the amount and percentage change, as compared to their respective prior-year period, for oil revenues, average oil prices, oil production volumes, and lifting costs per barrel for the years ended December 31, 2006, 2005 and 2004, is set forth in the following table:

	For the year ended December 31,		
	2006	2005	2004
Revenues	\$4,744,000	\$3,805,000	\$3,096,000
Percent change versus prior year	+24.7%	+22.9%	+38.8%
Average price (per Bbl)	\$56.13	\$48.45	\$36.44
Percent change versus prior year	+15.9%	+32.9%	+38.6%
Production volumes (per Bbl)	84,520	78,534	84,970
Percent change versus prior year	+7.6%	-7.5%	+1.0%
Lifting costs per Bbl ⁽¹⁾	\$25.23	\$26.79	\$18.85
Percent change versus prior year	-5.8%	+42.1%	+5.9%

(1) Lifting costs per barrel are computed by dividing the related lease operating expenses by the total barrels of oil produced. LCO lifting costs in Poland are based on an allocation of total costs based on relative revenues between oil and gas. Lifting costs do not include production taxes.

Lease Operating Costs. Lease operating costs were \$2.6 million in 2006, \$2.5 million in 2005 and \$1.9 million in 2004. Operating costs rose slightly from 2005 to 2006 as we commenced gas and LCO production at our Wilga well in Poland. Lease operating costs at our Kleka and Zaniemysl wells were not significant in 2006. We also continued recompleting wells in Montana, adding nine producing wells. Operating costs rose from 2004 to 2005 as we took advantage of higher oil prices and revenues to work over and recomplete several wells in Montana, which increased our operating costs by approximately \$440,000. In addition, the higher oil revenues in 2005 resulted in higher value-based production taxes of approximately \$34,000.

Exploration Costs. Our exploration efforts are focused in Poland, and the expenses consist of oil and gas leasehold impairments. Exploration costs were \$5.6 million, \$8.4 million and \$3.0 million for the years ended December 31, 2006, 2005 and 2004, respectively.

Geological and geophysical costs, or G&G costs, were \$4.2 million, \$3.3 million and \$2.5 million for the years ended December 31, 2006, 2005 and 2004, respectively. During all three years, most of our G&G costs were spent on acquiring, processing and interpreting new seismic data on the Fences I and II areas, including our new 3-D seismic survey in the Sroda area which began shooting in late 2006.

Exploratory dry-hole costs were \$1.6 million, \$5.1 million and \$472,000 for the years ended December 31, 2006, 2005 and 2004, respectively. Our 2006 exploration costs include approximately \$800,000 associated with the Drozdowice-1 well in our Fences III prospect in Poland, along with additional amounts for two dry holes in Montana and Nevada. During 2005, we plugged and abandoned two wells in Poland, the Sroda-5 and Lugi 1 wells, for a total cost of approximately \$4.6 million. In addition, we plugged and abandoned four exploratory wells in Nevada for a total cost of approximately \$713,000. As part of the abandonment of our Pomeranian project area, we were required to plug and abandon the Tuchola 108-2 well in 2004.

Impairment Costs. Impairments of oil and gas properties were \$3.6 million, \$0 and \$0 for the years ended December 31, 2006, 2005 and 2004, respectively. As discussed previously, during 2006 we impaired the entire amount of capitalized costs associated with our Rusocin-1 well. There were no similar impairments during 2005 or 2004.

DD&A Expense - Producing Operations. DD&A expense for producing properties was \$957,000, \$511,000 and \$259,000 for the years ended December 31, 2006, 2005 and 2004, respectively. The increase from 2005 to 2006 was due primarily to the commencement of production at our properties in Poland, which accounted for \$304,000 of the \$446,000 increase. The remaining increase is due to capital cost additions in 2006 at our Montana producing properties. The increase from 2004 to 2005 was due primarily to a reduction in oil reserves associated with higher operating costs, offset by lower production volumes.

Oilfield Services Segment

Oilfield Services Revenues. Oilfield services revenues were \$1.7 million, \$2.1 million and \$710,000 for the years ended December 31, 2006, 2005 and 2004, respectively. Activity in the contract drilling industry where we operate picked up significantly during 2004, increased again in 2005, and slowed somewhat in 2006. Oilfield services revenues will continue to fluctuate from period to period based on market demand, weather, the number of wells drilled, downtime for equipment repairs, the degree of emphasis on using our oilfield services equipment on our own properties, and other factors. We cannot accurately predict future oilfield services revenues.

Oilfield Services Costs. Oilfield services costs were \$1.2 million, \$1.7 million and \$551,000 for the years ended December 31, 2006, 2005 and 2004, respectively, or 73%, 79% and 78% of oilfield servicing revenues, respectively. In general, oilfield servicing costs are directly associated with oilfield services revenues. As such, oilfield services costs will continue to fluctuate period to period based on the number of wells drilled, revenues generated, weather, downtime for equipment repairs, the degree of emphasis on using our oilfield services equipment on our Company-owned properties, and other factors.

DD&A Expense - Oilfield Services. DD&A expense for oilfield services was \$155,000, \$243,000 and \$290,000 for the years ended December 31, 2006, 2005 and 2004, respectively. We spent \$295,000, \$264,000 and \$99,000 on upgrading our oilfield servicing equipment during 2006, 2005 and 2004, respectively.

Nonsegmented Items

G&A Costs - Corporate. G&A costs were \$5.6 million, \$6.6 million and \$4.9 million for the years ended December 31, 2006, 2005 and 2004, respectively. During 2006, we made significant reductions in legal and consulting fees, reducing our G&A by approximately \$612,000. Decreases in other G&A areas were offset to some extent by higher employee costs, as we increased headcount in our Poland office. During 2005, we opened a new office in Warsaw, Poland, hiring five experienced individuals to assist in our exploration and production efforts. A portion of the G&A increase in 2005 was attributable to these new office costs, including salaries, taxes and benefits. In addition, we added administrative staff in the United States, where we also experienced higher compensation related costs.

Stock Compensation (G&A). Stock compensation expense recorded in 2005 represents the amortization of stock and options issued to consultants prior to the adoption of SFAS No. 123R. In 2004, two of our officers exercised options to acquire a total of approximately 650,000 shares of our common stock at an exercise price of \$3.00 per share, by canceling options to purchase approximately 350,000 shares and applying the option equity to pay the exercise price on the options exercised. The 10-year options were due to expire during the second quarter. In connection with this cashless exercise, we recorded a stock compensation charge of approximately \$5.8 million, which is equal to the difference between the exercise price and fair value of the options on the date of exercise, and a corresponding increase in additional paid-in capital. This noncash transaction had no impact on our working capital, cash flows or stockholders' equity.

Amortization of Deferred Compensation (G&A). As discussed above, we adopted the provisions of SFAS No. 123R on January 1, 2006, using the modified prospective method. Under this method, prior periods are not revised for comparative purposes. Stock-based awards that are granted prior to the effective date continue to be accounted for in accordance with SFAS No. 123, except that stock option expense for unvested options must be recognized in the consolidated statement of operations. Stock compensation expense recorded for 2006 represents \$1.0 million of amortization related to restricted stock granted in November 2005 and December 2006 and \$1.7 million of amortization of unvested stock options granted prior to 2005, using the compensation cost calculated for pro forma disclosure purposes under SFAS No. 123.

Interest and Other Income - Corporate. Interest and other income was \$817,000, \$725,000 and \$529,000 for the years ended December 31, 2006, 2005 and 2004, respectively. Increases in both yearly periods are due to higher cash balances generally available for investment, coupled with rising interest rates over the two-year period.

Income Taxes. We incurred net losses of \$13.8 million, \$11.4 million and \$12.6 million for the years ended December 31, 2006, 2005 and 2004, respectively. SFAS No. 109, "Accounting for Income Taxes," requires that a valuation allowance be provided if it is more likely than not that some portion or all of a deferred tax asset will not be realized. Our ability to realize the benefit of our deferred tax asset will depend on the generation of future taxable income through profitable operations and the expansion of our exploration and development activities. The market and capital risks associated with achieving the above requirement are considerable, resulting in our conclusion that a full valuation allowance be provided. Accordingly, we did not recognize any income tax benefit in our consolidated statement of operations for these years.

Liquidity and Capital Resources

To date, we have financed our operations principally through the sale of equity securities, issuance of debt securities, and agreements with industry participants that funded our share of costs in certain exploratory activities in return for an interest in our properties. We believe our cash resources and marketable securities at December 31, 2006, together with anticipated revenues in 2007 and availability under our \$25 million Senior Facility Agreement, are sufficient to cover our planned exploration program and ongoing operations in the United States and Poland for the next 12 months.

We may seek to obtain additional funds for future capital investments from the sale of additional securities, project financing to help finance the completion of successful wells, sale of partial property interests, or other arrangements, all of which may dilute the interest of our existing stockholders or our interest in the specific project financed. We will allocate our existing capital as well as funds we may obtain in the future among our various projects at our discretion. We may change the allocation of capital among the categories of anticipated expenditures depending upon future events. For example, we may change the allocation of our expenditures based on the actual results and costs of future exploration, appraisal, development, production, property acquisition and other activities. In addition, we may have to change our anticipated expenditures if costs of placing any particular discovery into production are higher, if the field is smaller, or if the commencement of production takes longer than expected.

Working Capital (current assets less current liabilities). Our working capital was \$12.0 million as of December 31, 2006, a decrease of \$15.7 million from December 31, 2005. The decrease is due primarily to costs associated with our drilling and seismic activities during 2006, coupled with the costs of production facilities at our Wilga and Zaniemysl wells.

Operating Activities. We used net cash of \$5.3 million, \$10.1 million and \$5.9 million in our operating activities during 2006, 2005 and 2004, respectively, primarily as a result of the net losses, excluding noncash charges, incurred in those years. Our current assets at year-end included approximately \$1.6 million in accrued oil and gas sales from both the United States and Poland, and \$710,000 in refundable Input VAT that we expect to receive during the first six months of 2007. Our current liabilities at year-end included approximately \$3.1 million in costs related to our exploration activities in Poland that were paid in early 2007.

Investing Activities. We received net cash from investing activities of \$8.1 million and \$4.7 million in 2006 and 2005, respectively, and used net cash of \$41.5 million in investing activities in 2004. In 2006 we received \$16.8 million from the maturities of marketable securities. We invested \$782,000 in marketable securities. We spent \$7.5 million for oil and gas property additions, \$6.9 million of which was related to our Polish drilling activities, with the remainder being spent on our domestic properties. We also spent \$67,000 upgrading our office equipment and \$295,000 adding to our oilfield services equipment.

In 2005 we received \$6.8 million from the sale of marketable securities and \$1.9 million from the recovery of previously capitalized Input VAT. We invested \$627,000 in marketable securities. We spent \$3.8 million for oil and gas property additions, \$3.3 million of which was related to our Polish drilling activities, with the remainder being spent on our domestic properties. We also spent \$158,000 upgrading our office equipment and \$264,000 upgrading our oilfield services equipment.

In 2004 we transferred \$32.7 million to our investment portfolio of marketable securities. We also spent \$8.4 million for oil and gas property additions, \$7.7 million of which was related to our Polish drilling activities, with the remainder being spent on our domestic properties. We also spent \$395,000 upgrading our office equipment and purchasing new oilfield technical software.

Financing Activities. We used net cash in financing activities of \$578,000 in 2006, and received net cash of \$4.1 million and \$33.8 million from our financing activities during 2005 and 2004, respectively. All the cash used in financing activities in 2006 was used to pay the loan origination fees and associated legal costs related to our \$25 million Senior Credit Facility. All of the proceeds in 2005 were from the exercise of stock options and warrants. In 2004 we received a total of \$20.7 million in net proceeds from the sale of securities. In addition, the exercise of warrants and options provided additional proceeds of \$13.1 million.

Contractual Obligations and Contingent Liabilities and Commitments

We had no significant contractual obligations or commitments as of December 31, 2006.

Our oil and gas drilling and production operations are subject to hazards incidental to the industry that can cause severe damage to and destruction of property and equipment, pollution or environmental damage and suspension of operations, personal injury and loss of life. To lessen the effects of these hazards, we maintain insurance of various types to cover our United States and Poland operations and also rely on the insurance or financial capabilities of our exploration partners in Poland. These measures do not cover risks related to violations of environmental laws or all other risks involved in oil and gas exploration, drilling and production. We would be adversely affected by a significant adverse event that is not fully covered by insurance or by our inability to maintain adequate insurance in the future at rates we consider reasonable.

New Accounting Pronouncements

In June 2006, the Financial Accounting Standards Board issued FASB Interpretation Number 48, *Accounting for Uncertainty in Income Taxes – an interpretation of FASB Statement No. 109* (“FIN 48”), which clarifies the accounting for uncertainty in income taxes recognized in a company’s financial statements in accordance with SFAS No. 109. The provisions of FIN 48 are effective as of the beginning of our 2007 fiscal year, with the cumulative effect of the change in accounting principle recorded as an adjustment to opening retained earnings. We do not believe the adoption of this pronouncement will have an affect on our consolidated financial statements.

In September 2006, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 108 (“SAB 108”). SAB 108 was issued to provide interpretive guidance on how the effects of the carryover or reversal of prior year misstatements should be considered in quantifying a current year misstatement. The provisions of SAB 108 are effective for the Company for the December 31, 2006 year-end. The provisions of SAB 108 had no impact on our consolidated financial position, results of operations or cash flows.

We have reviewed all other recently issued, but not yet adopted, accounting standards in order to determine their effects, if any, on our consolidated results of operations, financial position or cash flows. Based on that review, we believe that none of these pronouncements will have a significant effect on our current or future earnings or operations.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Price Risk

Realized pricing for our oil production in the United States is primarily driven by the prevailing worldwide price of oil, subject to gravity and other adjustments for the actual oil sold. Historically, oil prices have been volatile and unpredictable. Price volatility relating to our oil production in the United States is expected to continue in the foreseeable future.

Our gas in Poland is sold to POGC or its subsidiaries under contracts that extend for the life of each field. Prices are determined contractually and, in the case of our Wilga and Zaniemysl wells, are tied to published tariffs. Gas sold at Kleka is sold at a fixed price without regard to any published tariff or index. The currently limited volumes and sources of our gas production mean we cannot assure uninterrupted production or production in amounts that would be meaningful to industrial users, which may depress the price we may be able to obtain by limiting our market for potential customers. POGC is the primary purchaser of domestic gas in Poland. We expect that the prices we receive in the short term for gas we produce will be lower than would be the case in a more competitive setting and may be lower than prevailing western European prices, at least until a fully competitive market develops in Poland.

We currently do not engage in any hedging activities to protect ourselves against market risks associated with oil and gas price fluctuations, although we may elect to do so if we achieve a significant amount of production in Poland.

Foreign Currency Risk

We have entered into various agreements in Poland denominated in the Polish zloty. The Polish zloty is subject to exchange rate fluctuations that are beyond our control. We do not currently engage in hedging transactions to protect ourselves against foreign currency risks, nor do we intend to do so in the immediate future; our policy is to use zloty-based revenues generated in Poland to pay for all zloty-based invoices, supplemented as needed by transferring US dollars to Poland to cover invoices that exceed the generated revenues.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Our consolidated financial statements, including the independent registered public accounting firm's report on our consolidated financial statements, are included beginning at page F-2 immediately following the signature page of this report.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

During the year ended December 31, 2006, we have not disagreed with our independent registered public accounting firm on any items of accounting treatment or financial disclosure.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit to the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified by the Securities and Exchange Commission's rules and forms, and that information is accumulated and communicated to our management, including our principal executive and principal financial officers (whom we refer to in this periodic report as our Certifying Officers), as appropriate to allow timely decisions regarding required disclosure. Our management evaluated, with the participation of our Certifying Officers, the effectiveness of our disclosure controls and procedures as of December 31, 2006, pursuant to Rule 13a-15(b) under the Securities Exchange Act. Based upon that evaluation, our Certifying Officers concluded that, as of December 31, 2006, our disclosure controls and procedures were effective.

Internal Control over Financial Reporting

Pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, management's report on internal control over financial reporting and the report of PricewaterhouseCoopers LLP, our independent registered public accounting firm, on management's assessment and the effectiveness of internal control over financial reporting are included on pages F-1 and F-2 of this report and are incorporated in this Item 9A by reference.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during our most recently completed fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information from the definitive proxy statement for the 2007 annual meeting of stockholders under the captions “Corporate Governance,” “Proposal 1. Election of Directors,” and “Section 16(a) Beneficial Ownership Reporting Compliance” is incorporated herein by reference.

ITEM 11. EXECUTIVE COMPENSATION

The information from the definitive proxy statement for the 2007 annual meeting of stockholders under the caption “Executive Compensation” is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information from the definitive proxy statement for the 2007 annual meeting of stockholders under the caption “Principal Stockholders” is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information from the definitive proxy statement for the 2007 annual meeting of stockholders under the captions “Certain Relationships and Related Transactions” and “Director Independence” is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information from the definitive proxy statement for the 2007 annual meeting of stockholders under the caption “Relationship with Independent Auditors” is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

- (a) The following documents are filed as part of this report or incorporated herein by reference.

1. Financial Statements. See the following beginning at page F-1:

	<u>Page</u>
Management's Report on Internal Control over Financial Reporting	F-1
Report of Independent Registered Public Accounting Firm.....	F-2
Consolidated Balance Sheets as of December 31, 2006 and 2005	F-4
Consolidated Statements of Operations for the Years Ended December 31, 2006, 2005 and 2004	F-6
Consolidated Statements of Comprehensive Loss for the Years Ended December 31, 2006, 2005 and 2004	F-7
Consolidated Statements of Cash Flows for the Years Ended December 31, 2006, 2005 and 2004	F-8
Consolidated Statement of Stockholders' Equity (Deficit) for the Years Ended December 31, 2006, 2005 and 2004.....	F-9
Notes to the Consolidated Financial Statements.....	F-10

- 2. Supplemental Schedules.** The supplemental schedules have been omitted because they are not applicable or the required information is otherwise included in the accompanying consolidated financial statements and the notes thereto.

- 3. Exhibits.** The following exhibits are included as part of this report:

Exhibit Number*	Title of Document	Location
Item 3		
Articles of Incorporation and Bylaws		
3.01	Restated and Amended Articles of Incorporation	Incorporated by reference from the quarterly report on Form 10-Q for the quarter ended September 30, 2000, filed November 7, 2000.
3.02	Bylaws	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2005, filed March 14, 2006.
3.03	Articles of Amendment to the Restated Articles of Incorporation of FX Energy, Inc.	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2005, filed March 14, 2006.
Item 4		
Instruments Defining the Rights of Security Holders		
4.01	Specimen Stock Certificate	This filing.
4.03	Form of Rights Agreement dated as of April 4, 1997, between FX Energy, Inc. and Fidelity Transfer Corp.	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2003, filed March 15, 2004.

Exhibit Number*	Title of Document	Location
Item 10	Material Contracts	
10.26	Frontier Oil Exploration Company 1995 Stock Option and Award Plan**	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2003, filed March 15, 2004.
10.27	FX Energy, Inc. 1996 Stock Option and Award Plan**	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2003, filed March 15, 2004.
10.28	FX Energy, Inc. 1997 Stock Option and Award Plan**	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2003, filed March 15, 2004.
10.29	FX Energy, Inc. 1998 Stock Option and Award Plan**	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2003, filed March 15, 2004.
10.30	Employment Agreements between FX Energy, Inc. and each of David Pierce and Andrew Pierce, effective January 1, 1995**	Incorporated by reference from the registration statement on Form SB-2, SEC File No. 33-88354-D.
10.32	Form of Stock Option with related schedule (D. Pierce and A. Pierce)**	Incorporated by reference from the registration statement on Form SB-2, SEC File No. 33-88354-D.
10.39	Employment Agreement between FX Energy, Inc. and Jerzy B. Maciolek**	Incorporated by reference from the registration statement on Form S-1, SEC File No. 333-05583, filed June 10, 1996.
10.42	Employment Agreement between FX Energy, Inc. and Scott J. Duncan**	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2003, filed March 15, 2004.
10.52	Form of Indemnification Agreement between FX Energy, Inc. and certain directors, with related schedule**	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2003, filed March 15, 2004.
10.53	Agreement on Cooperation in Exploration of Hydrocarbons on Foresudetic Monocline dated April 11, 2000, between Polskie Gornictwo Naftowe i Gazownictwo S.A. (POGC) and FX Energy Poland, Sp. z o.o. relating to Fences I project area	Incorporated by reference from the current report on Form 8-K filed May 2, 2000.
10.59	Sales / Purchase Agreement Special Provisions between Plains Marketing Canada, L.P. and FX Drilling Company Inc. agreed April 29, 2002	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2002, filed March 27, 2003.
10.60	Form of Non-Qualified Stock Option awarded August 14, 2002, with related schedule**	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2002, filed March 27, 2003.

Exhibit Number*	Title of Document	Location
10.62	Agreement Regarding Cooperation within the Poznan Area (Fences II) entered into January 8, 2003, by and between Polskie Gornictwo Naftowe i Gazownictwo S.A. and FX Energy Poland Sp. z o.o.	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2002, filed March 27, 2003.
10.63	Settlement Agreement Regarding the Fences I Area entered into January 8, 2003, by and between Polskie Gornictwo Naftowe i Gazownictwo S.A. and FX Energy Poland Sp. z o.o.	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2002, filed March 27, 2003.
10.64	Farmout Agreement Entered into by and between FX Energy Poland Sp. z o.o. and CalEnergy Power (Polska) Sp. z o.o. Covering the “Fences Area” in the Foresudetic Monocline made as of January 9, 2003	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2002, filed March 27, 2003.
10.67	FX Energy, Inc. 1999 Stock Option and Award Plan**	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2003, filed March 15, 2004.
10.68	FX Energy, Inc. 2000 Stock Option and Award Plan**	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2003, filed March 15, 2004.
10.69	FX Energy, Inc. 2001 Stock Option and Award Plan**	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2003, filed March 15, 2004.
10.70	FX Energy, Inc. 2003 Long-Term Incentive Plan	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2003, filed March 15, 2004.
10.74	Greater Zaniemysl Area Agreement made as of March 12, 2004, among FX Energy Poland Sp. z o.o. and CalEnergy Resources Poland Sp. z o.o.	Incorporated by reference from the quarterly report on Form 10-Q for the period ended March 31, 2004, filed May 11, 2004.
10.75	Form of Indemnification Agreement between FX Energy, Inc. and directors and officers with related schedule**	This filing.
10.76	Supplemental Indemnification Agreement between FX Energy, Inc. and Dennis B. Goldstein**	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2004, filed March 15, 2005.
10.77	Description of compensation arrangement with executive officers and directors**	This filing.
10.78	Form of Employment Agreement with related schedule**	This filing.

Exhibit Number*	Title of Document	Location
10.79	Change in Control Compensation Agreement with related schedule**	This filing.
10.81	FX Energy, Inc. 2004 Long-Term Incentive Plan**	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2004, filed March 15, 2005.
10.82	Letter of Engagement, H. Allen Turner, dated February 14, 2007	Incorporated by reference from the current report on Form 8-K filed February 20, 2007
10.83	US\$25,000,000 Senior Facility Agreement among FX Poland Sp. z o.o., FX Energy, Inc., FX Energy Netherlands Partnership CV., FX Energy Netherlands BV., and The Royal Bank of Scotland PLC, dated November 17, 2006	This filing.
10.84	Common Stock Purchase Warrant dated November 17, 2006	This filing.
10.85	Agreement for Pledges over Shares in FX Energy Poland Sp. z o.o., dated December 18, 2006	This filing
10.86	Subordination Deed dated December 21, 2006	This filing.
10.87	Restated FX Energy, Inc. 401(k) Stock Bonus Plan dated January 25, 2007**	This filing.
10.88	Agreement for the Sale of Natural Gas between FX Energy Poland Sp. z o.o. and Mazowiecka Spółka Gazownictwa Sp. z o.o., dated December 29, 2005	This filing.
10.89	Agreement No. PL/012216736/05-0030/DH/HB for the Sale of Natural Gas between FX Energy Poland Sp. z o.o. and Polskie Górnictwo Naftowe I Gazownictwo S.A., dated December 8, 2005	This filing.
10.90	Agreement for the Sale of Wellhead Natural Gas between FX Energy Poland Sp. z o.o. and PL Energia S.A., dated January 26, 2007	This filing.
Item 21	Subsidiaries of the Registrant	
21.01	Schedule of Subsidiaries	Incorporated by reference from the annual report on Form 10-K for the period ended December 31, 2003, filed March 15, 2004.
Item 23	Consents of Experts and Counsel	
23.01	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm	This filing.
23.02	Consent of Larry D. Krause, Petroleum Engineer	This filing.

Exhibit Number*	Title of Document	Location
23.03	Consent of RPS Energy, Petroleum Engineers	This filing.
Item 31	Rule 13a-14(a)/15d-14(a) Certifications	
31.01	Certification of Chief Executive Officer Pursuant to Rule 13a-14	This filing.
31.02	Certification of Chief Financial Officer Pursuant to Rule 13a-14	This filing.
Item 32	Section 1350 Certifications	
32.01	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	This filing.
32.02	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	This filing.

* All exhibits are numbered with the number preceding the decimal indicating the applicable SEC reference number in Item 601, and the number following the decimal indicating the sequence of the particular document. Omitted numbers in the sequence refer to documents previously filed as an exhibit, but no longer required.

** Identifies each management contract or compensatory plan or arrangement required to be filed as an exhibit, as required by Item 15(a)(3) of Form 10-K.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

FX ENERGY, INC. (Registrant)

Dated: March 12, 2007

By: /s/ David N. Pierce
David N. Pierce
President and Chief Executive Officer

Dated: March 12, 2007

By: /s/ Clay Newton
Clay Newton
Principal Financial Officer

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: March 12, 2007	<u>/s/ Thomas B. Lovejoy</u> Thomas B. Lovejoy, Director
Dated: March 12, 2007	<u>/s/ David N. Pierce</u> David N. Pierce, Director
Dated: March 12, 2007	<u>/s/ Dennis B. Goldstein</u> Dennis B. Goldstein, Director
Dated: March 12, 2007	<u>/s/ David L. Worrell</u> David L. Worrell, Director
Dated: March 12, 2007	<u>/s/ Arnold S. Grundvig, Jr.</u> Arnold S. Grundvig, Jr., Director
Dated: March 12, 2007	<u>/s/ Jerzy B. Maciolek</u> Jerzy B. Maciolek, Director
Dated: March 12, 2007	<u>/s/ Richard Hardman</u> Richard Hardman, Director
Dated: March 12, 2007	<u>/s/ H. Allen Turner</u> H. Allen Turner, Director



MANAGEMENT'S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Management of FX Energy, Inc., together with its consolidated subsidiaries (the Company), is responsible for establishing and maintaining adequate internal control over financial reporting. The Company's internal control over financial reporting is a process designed under the supervision of the Company's principal executive and principal financial officers to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for external reporting purposes in accordance with U.S. generally accepted accounting principles.

As of the end of the Company's 2006 fiscal year, management conducted an assessment of the effectiveness of the Company's internal control over financial reporting based on the framework established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this assessment, management has determined that the Company's internal control over financial reporting as of December 31, 2006, was effective.

The Company's internal control over financial reporting includes policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect transactions and dispositions of assets; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that receipts and expenditures are being made only in accordance with authorizations of management and the directors of the Company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the Company's consolidated financial statements.

Management's assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2006, has been audited by PricewaterhouseCoopers LLP, independent registered public accounting firm, as stated in its report appearing on pages F-2 and F-3, which expresses unqualified opinions on management's assessment and on the effectiveness of the Company's internal control over financial reporting as of December 31, 2006.



REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and Board of Directors
of FX Energy, Inc. and its subsidiaries

We have completed integrated audits of FX Energy, Inc.'s consolidated financial statements and of its internal control over financial reporting as of December 31, 2006 in accordance with the standards of the Public Company Accounting Oversight Board (United States). Our opinions, based on our audits, are presented below.

Consolidated financial statements

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of operations, of comprehensive loss, of cash flows and of stockholders' equity (deficit) present fairly, in all material respects, the financial position of FX Energy, Inc. and its subsidiaries (the Company) at December 31, 2006 and 2005, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2006 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 1 to the consolidated financial statements, the Company changed the manner in which it accounts for share-based compensation on January 1, 2006.

Internal control over financial reporting

Also, in our opinion, management's assessment, included in Management's Report on Internal Control over Financial Reporting appearing on page F-1, that the Company maintained effective internal control over financial reporting as of December 31, 2006 based on criteria established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), is fairly stated, in all material respects, based on those criteria. Furthermore, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2006, based on criteria established in *Internal Control — Integrated Framework* issued by the COSO. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express opinions on management's assessment and on the effectiveness of the Company's internal control over financial reporting based on our audit. We conducted our audit of internal control over financial reporting in accordance with the standards of the

Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. An audit of internal control over financial reporting includes obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we consider necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PricewaterhouseCoopers LLP

Salt Lake City, Utah
March 9, 2007

FX ENERGY, INC. AND SUBSIDIARIES
Consolidated Balance Sheets
As of December 31, 2006 and 2005
(in thousands)

	<u>2006</u>	<u>2005</u>
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 4,644	\$ 2,390
Marketable securities, available for sale	10,448	26,479
Receivables:		
Accrued oil and gas sales	1,615	416
Joint interest and other receivables	263	1,592
Input VAT receivable	710	2,032
Inventory	206	96
Other current assets	322	270
Total current assets	<u>18,208</u>	<u>33,275</u>
Property and equipment, at cost:		
Oil and gas properties (successful efforts method):		
Proved	19,293	12,483
Unproved	2,912	3,739
Other property and equipment	4,624	4,262
Gross property and equipment	26,829	20,484
Less accumulated depreciation, depletion and amortization	(7,134)	(5,844)
Net property and equipment	<u>19,695</u>	<u>14,640</u>
Other assets:		
Certificates of deposit	382	356
Loan fees	882	-
Total other assets	<u>1,264</u>	<u>356</u>
Total assets	<u>\$ 39,167</u>	<u>\$ 48,271</u>

-Continued-

The accompanying notes are an integral part of these consolidated financial statements.

FX ENERGY, INC. AND SUBSIDIARIES
Consolidated Balance Sheets
As of December 31, 2006 and 2005
(in thousands, except share data)
-Continued-

	<u>2006</u>	<u>2005</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable.....	\$ 5,234	\$ 4,110
Accrued liabilities.....	1,007	1,450
Total current liabilities.....	6,241	5,560
Asset retirement obligation.....	961	431
Total liabilities.....	7,202	5,991
Commitments and contingencies (Note 6)		
Stockholders' equity:		
Preferred stock, \$0.001 par value, 5,000,000 shares authorized as of December 31, 2006 and 2005; no shares outstanding.....	--	--
Common stock, \$0.001 par value, 100,000,000 shares authorized as of December 31, 2006 and 2005; 35,560,744 and 35,097,279 shares issued and outstanding as of December 31, 2006 and 2005, respectively.....	36	35
Additional paid in capital.....	125,706	125,216
Deferred compensation.....	--	(2,975)
Accumulated other comprehensive loss.....	(72)	(58)
Accumulated deficit.....	(93,705)	(79,938)
Total stockholders' equity.....	31,965	42,280
Total liabilities and stockholders' equity.....	\$ 39,167	\$ 48,271

The accompanying notes are an integral part of these consolidated financial statements.

FX ENERGY, INC. AND SUBSIDIARIES
Consolidated Statements of Operations
For the years ended December 31, 2006, 2005 and 2004
(in thousands, except per share amounts)

	<u>2006</u>	<u>2005</u>	<u>2004</u>
Revenues:			
Oil and gas sales.....	\$ 6,533	\$ 3,805	\$ 3,096
Oilfield services	1,696	2,132	710
Total revenues	<u>8,229</u>	<u>5,937</u>	<u>3,806</u>
Operating costs and expenses:			
Lease operating expenses	2,647	2,462	1,946
Exploration costs	5,608	8,369	3,013
Recovery of previously expensed Input VAT	--	(2,121)	--
Impairment of oil and gas properties	3,583	--	--
Oilfield services costs	1,245	1,689	551
Depreciation, depletion and amortization	1,290	903	636
Accretion expense	53	45	41
Stock compensation (G&A)	--	76	5,859
Amortization of deferred compensation (G&A)	2,759	125	--
General and administrative costs (G&A)	5,606	6,592	4,909
Total operating costs and expenses	<u>22,791</u>	<u>18,140</u>	<u>16,955</u>
Operating loss	<u>(14,562)</u>	<u>(12,203)</u>	<u>(13,149)</u>
Other income (expense):			
Interest and other income	795	780	529
Total other income (expense)	<u>795</u>	<u>780</u>	<u>529</u>
Net loss	<u>\$ (13,767)</u>	<u>\$ (11,423)</u>	<u>\$ (12,620)</u>
Basic and diluted net loss per common share	<u>\$ (0.39)</u>	<u>\$ (0.33)</u>	<u>\$ (0.41)</u>
Basic and diluted weighted average number of shares outstanding	<u>35,163</u>	<u>34,733</u>	<u>30,691</u>

The accompanying notes are an integral part of these consolidated financial statements.

FX ENERGY, INC. AND SUBSIDIARIES
Consolidated Statements of Comprehensive Loss
For the years ended December 31, 2006, 2005 and 2004
(in thousands)

	<u>2006</u>	<u>2005</u>	<u>2004</u>
Net loss	\$ (13,767)	\$ (11,423)	\$ (12,620)
Other comprehensive income (loss)			
Increase (decrease) in market value of available for sale marketable securities	(14)	281	(339)
Comprehensive loss	<u>\$ (13,781)</u>	<u>\$ (11,142)</u>	<u>\$ (12,959)</u>

The accompanying notes are an integral part of these consolidated financial statements.

FX ENERGY, INC. AND SUBSIDIARIES
Consolidated Statements of Cash Flows
For the years ended December 31, 2006, 2005 and 2004
(in thousands)

	2006	2005	2004
Cash flows from operating activities:			
Net loss	\$ (13,767)	\$ (11,423)	\$ (12,620)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation, depletion and amortization	1,290	903	636
Impairment of oil and gas properties	3,583	--	--
Property abandonment	--	242	--
Accretion expense	53	45	41
(Gain) loss on property dispositions	--	(18)	1
Stock compensation (G&A)	--	76	5,859
Amortization of deferred compensation (G&A)	2,759	125	--
Common stock issued for services (G&A)	517	610	406
Increase (decrease) from changes in working capital items:			
Receivables	1,451	(2,438)	(1,077)
Inventory	(110)	(4)	(13)
Other current assets	(52)	(46)	(98)
Other assets	(25)	3	(10)
Accounts payable and accrued liabilities	(995)	1,848	989
Asset retirement obligation	(7)	(28)	--
Net cash used in operating activities	(5,303)	(10,105)	(5,886)
Cash flows from investing activities:			
Additions to oil and gas properties	(7,521)	(2,989)	(8,437)
Additions to other property and equipment	(362)	(422)	(395)
Recovery of previously capitalized VAT	--	1,921	--
Additions to marketable securities	(782)	(627)	(32,660)
Proceeds from maturities of marketable securities	16,800	6,750	--
Proceeds from sale of assets	--	23	--
Net cash provided by (used in) investing activities	8,135	4,656	(41,492)
Cash flows from financing activities:			
Payment of loan fees	(578)	--	--
Proceeds from issuance of common stock , net of offering costs	--	--	20,724
Proceeds from exercise of stock options and warrants	--	4,055	13,067
Net cash provided by (used in) financing activities	(578)	4,055	33,791
Net increase (decrease) in cash	2,254	(1,394)	(13,587)
Cash and cash equivalents at beginning of year	2,390	3,784	17,371
Cash and cash equivalents at end of year	\$ 4,644	\$ 2,390	\$ 3,784

The accompanying notes are an integral part of these consolidated financial statements.

FX ENERGY, INC. AND SUBSIDIARIES
Consolidated Statement of Stockholders' Equity (Deficit)
For the years ended December 31, 2006, 2005 and 2004
(in thousands)

		Common Stock				Accumulated		
	Preferred	Shares	Par Value	Deferred	Additional	Other	Accumulated	Total
	Stock	Issued	\$0.001 Per	Compensation	Paid in	Comprehensive	Deficit	Stockholders'
			Share		Capital	Income (Loss)		Equity (Deficit)
Balance as of December 31, 2003	--	27,300	\$ 27	\$ --	\$ 77,327	\$ --	\$ (55,895)	\$ 21,459
Common stock offering, net	--	3,103	3	--	20,721	--	--	20,724
Common stock issued for services	--	43	--	--	406	--	--	406
Exercise of stock options	--	554	--	--	2,987	--	--	2,987
Stock compensation	--	710	1	--	5,858	--	--	5,859
Exercise of warrants	--	2,688	3	--	10,077	--	--	10,080
Other comprehensive loss	--	--	--	--	--	(339)	--	(339)
Net loss for year	--	--	--	--	--	--	(12,620)	(12,620)
Balance as of December 31, 2004	--	34,398	34	--	117,376	(339)	(68,515)	48,556
Common stock issued for services	--	58	--	--	610	--	--	610
Exercise of stock options	--	593	1	--	3,874	--	--	3,875
Stock compensation	--	--	--	--	76	--	--	76
Deferred compensation	--	--	--	(3,100)	3,100	--	--	--
Amortization of deferred compensation ..	--	--	--	125	--	--	--	125
Exercise of warrants	--	48	--	--	180	--	--	180
Other comprehensive income	--	--	--	--	--	281	--	281
Net loss for year	--	--	--	--	--	--	(11,423)	(11,423)
Balance as of December 31, 2005	--	35,097	35	(2,975)	125,216	(58)	(79,938)	42,280
Common stock issued for services	--	464	1	--	706	--	--	707
Elimination of deferred compensation upon adoption of SFAS No. 123R	--	--	--	2,975	(2,975)	--	--	--
Amortization of deferred compensation ..	--	--	--	--	2,759	--	--	2,759
Other comprehensive loss	--	--	--	--	--	(14)	--	(14)
Net loss for year	--	--	--	--	--	--	(13,767)	(13,767)
Balance as of December 31, 2006	--	35,561	\$ 36	\$ --	\$ 125,706	\$ (72)	\$ (93,705)	\$ 31,965

The accompanying notes are an integral part of these consolidated financial statements.

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements

Note 1: Summary of Significant Accounting Policies

Organization

FX Energy, Inc., a Nevada corporation, and its subsidiaries (collectively referred to hereinafter as the “Company”), is an independent energy company with activities concentrated within the upstream oil and gas industry. In Poland, the Company has projects involving the exploration and exploitation of oil and gas prospects in partnership with the Polish Oil and Gas Company (“POGC”), other industry partners and for its own account. In the United States, the Company explores for and produces oil from fields in Montana and Nevada and has an oilfield services company in northern Montana that performs contract drilling and well servicing operations.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries and the Company’s undivided interests in Poland. All significant inter-company accounts and transactions have been eliminated in consolidation. At December 31, 2006, the Company owned 100% of the voting common stock or other equity securities of its subsidiaries.

Cash Equivalents

The Company considers all highly-liquid debt instruments purchased with an original maturity of three months or less to be cash equivalents.

Concentration of Credit Risk

Excluding the receivable for Input VAT, which is due from the State Treasury Office of Poland, the majority of the Company’s receivables are within the oil and gas industry, primarily from the purchasers of its oil and gas, fees generated from oilfield services and its industry partners. Substantially all of the Company’s domestic receivables are with Cenex, a regional refiner and marketer, and substantially all of the Company’s Polish receivables are with the Polish Oil and Gas Company or one of its affiliates. The receivables are not collateralized. To date, the Company has experienced minimal bad debts, and has no allowance for doubtful accounts at December 31, 2006 and 2005. The majority of the Company’s cash and cash equivalents are held by four financial institutions in Utah, Montana, New York and Poland. The Company’s marketable securities are held by two financial institutions in Utah and New York.

Inventory

Inventory consists primarily of tubular goods and production related equipment and is valued at the lower of average cost or market.

Oil and Gas Properties

The Company follows the successful efforts method of accounting for its oil and gas operations. Under this method of accounting, all property acquisition costs and costs of exploratory and development wells are capitalized when incurred, pending determination of whether an individual well has found proved reserves. If it is determined that an exploratory well has not found proved reserves, or if the determination that proved reserves have been found cannot be made within one year, or if the Company is not making sufficient progress assessing the reserves and the economic and operating viability of the project, the costs of the well are expensed. The costs of development wells are capitalized whether productive or nonproductive. Geological and geophysical costs on exploratory prospects and the costs of carrying and retaining unproved properties are expensed as incurred. An impairment allowance is provided to the extent that capitalized costs of unproved properties, on a property-by-property basis, are not considered to be realizable. Depletion, depreciation and amortization (“DD&A”) of capitalized costs of proved oil

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements
- Continued -

and gas properties is provided on a field-by-field basis using the units-of-production method. The computation of DD&A takes into consideration the anticipated proceeds from equipment salvage. An impairment loss is recorded if the net capitalized costs of proved oil and gas properties exceed the aggregate undiscounted future net revenues determined on a field-by-field basis. The impairment loss recognized equals the excess of net capitalized costs over the related fair value determined on a property-by-property basis. Gains and losses are recognized on sales of entire interests in proved and unproved properties. Sales of partial interests are generally treated as a recovery of costs and any resulting gain or loss is recorded as other income.

The following table reflects the net changes in capitalized exploratory well costs, which are capitalized pending the determination of proved reserves, during 2006, 2005 and 2004.

	December 31,		
	2006	2005	2004
	(In thousands)		
Beginning balance at January 1	\$ 3,435	\$ 8,779	\$ --
Additions to capitalized exploratory well costs pending the determination of proved reserves	2,386	313	8,779
Reclassifications to wells, facilities and equipment based on the determination of proved reserves	--	(5,559)	--
Capitalized exploratory well costs charged to expense	(3,435)	(98)	--
Ending balance at December 31	<u>\$ 2,386</u>	<u>\$ 3,435</u>	<u>\$ 8,779</u>

The 2006 balance includes costs associated with the Winna Gora and Roszkow wells in Poland, which were in process at year end. As of March 2, 2007, production tests were being conducted at the Winna Gora well, and the Roszkow well was still being drilled. As a result of its current focus in the Sroda area, the Company has determined to delay assessing the reserves and the economic and operating viability of its Rusocin well in Poland. The provisions of FASB Staff Position No. FAS 19-1, Accounting for Suspended Well Costs (FSP 19-1) require the costs associated with this well, approximately \$3.4 million, to be impaired at December 31, 2006.

The 2005 balance included costs associated with the Rusocin well in Poland which was under evaluation. The 2004 balance included costs associated with the Rusocin and Sroda wells in Poland and the East Inselberg well in Nevada.

Other Property and Equipment

Other property and equipment, including oilfield servicing equipment, is stated at cost. Depreciation of other property and equipment is calculated using the straight-line method over the estimated useful lives (ranging from 3 to 40 years) of the respective assets. The costs of normal maintenance and repairs are charged to expense as incurred. Material expenditures that increase the life of an asset are capitalized and depreciated over the estimated remaining useful life of the asset. The cost of other property and equipment sold, or otherwise disposed of, and the related accumulated depreciation are removed from the accounts and any gain or loss is reflected in current operations.

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements
- Continued -

The historical cost of other property and equipment, presented on a gross basis with accumulated depreciation, is summarized as follows:

	December 31,		Estimated
	2006	2005	Useful Life
	(In thousands)		(in years)
Other property and equipment:			
Drilling rigs	\$ 3,317	\$ 3,022	6
Other vehicles.....	290	290	5
Building	108	106	40
Office equipment and furniture	909	844	3 to 6
Total cost	4,624	4,262	
Accumulated depreciation	(3,863)	(3,530)	
Net property and equipment	<u>\$ 761</u>	<u>\$ 732</u>	

Supplemental Disclosure of Cash Flow Information

Noncash investing and financing transactions not reflected in the consolidated statements of cash flows include the following:

	Year Ended December 31,		
	2006	2005	2004
	(In thousands)		
Noncash investing transactions:			
Additions to properties included in current liabilities	\$2,359	\$798	\$1,076
Recovery of previously capitalized VAT included in Input VAT receivable	--	254	--
Additions to properties previously included in other and current assets.....	--	--	490

Supplemental disclosure of cash paid for interest and income taxes:

	Year Ended December 31,		
	2006	2005	2004
	(In thousands)		
Supplemental disclosure:			
Cash paid during the year for interest.....	\$ --	\$ --	\$ --
Cash paid during the year for income taxes	--	--	--

Revenue Recognition

Revenues associated with oil and gas sales are recorded when title passes, which is upon delivery to the pipeline or purchaser, and are net of royalties. Oilfield service revenues are recognized when the related service is performed.

Investments

The cost and estimated market value of marketable securities at December 31, 2006, are as follows (in thousands):

	Cost	Gross Unrealized Losses	Estimated Market Value
Marketable securities	<u>\$10,520</u>	<u>\$(72)</u>	<u>\$10,448</u>

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements
- Continued -

The cost and estimated market value of marketable securities at December 31, 2005, were as follows (in thousands):

	<u>Cost</u>	<u>Gross Unrealized Losses</u>	<u>Estimated Market Value</u>
Marketable securities	\$26,537	\$(58)	\$26,479

The investments consist primarily of U.S. government agency bonds and notes, whose value fluctuates with changes in interest rates. The Company believes all gross unrealized losses are temporary. The investments have been classified as available-for-sale, and are reported at fair value with unrealized gains and losses, if any, recorded as a component of other comprehensive income (loss).

Stock-Based Compensation

The Company maintains several share-based incentive plans. Under these plans, the Company may issue options or restricted stock awards. Options are granted at an option price equal to the market value of the stock at the date of grant, have terms ranging from five to seven years and vest in three equal annual installments. Restricted stock awards have similar terms and vesting requirements.

Effective January 1, 2006, the Company adopted the provisions of SFAS No. 123R, "Share-Based Payments" ("SFAS No. 123R"). Under SFAS No. 123R, share-based compensation cost is measured at the grant date, based on the estimated fair value of the award, and is recognized as expense over the employee's requisite service period. The Company adopted SFAS No. 123R using the modified prospective transition method. Upon adoption deferred compensation of \$2,975,157 was eliminated against additional paid-in capital. Under this method, prior periods are not revised for comparative purposes. The provisions of SFAS No. 123R apply to new awards and to awards that are outstanding on the effective date that are subsequently modified or cancelled. Compensation expense for unvested awards at the effective date will be recognized over the remaining requisite service period using the compensation cost calculated for pro forma disclosure purposes under SFAS No. 123, "Accounting for Stock-Based Compensation" ("SFAS No. 123").

Prior to the adoption of SFAS No. 123R, the Company recorded compensation expense for employee stock options and restricted stock awards based on their intrinsic value on the date of grant pursuant to Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB No. 25"), and related interpretations and provided the pro forma disclosures required by SFAS No. 123. The pro forma effects of recognizing compensation expense under the fair value method required by SFAS No. 123 on net loss and net loss per common share were as follows (in thousands, except per share data):

	<u>2005</u>	<u>2004</u>
	<u>(In thousands, except per share amounts)</u>	
Net loss:		
Net loss, as reported	\$ (11,423)	\$ (12,620)
Add: Stock-based employee compensation expense included in reported net loss, net of any related tax effects	201	5,820
Less: Total stock-based employee compensation expense determined under the fair value based method for all awards, net of any related tax effects	(1,959)	(1,412)
Pro forma net loss.....	<u>\$ (13,181)</u>	<u>\$ (8,212)</u>
Basic and diluted net loss per share:		
As reported.....	\$ (0.33)	\$ (0.41)
Pro forma.....	(0.38)	(0.27)

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements
- Continued -

The fair value of each option granted to employees and consultants during 2005, 2004 was estimated on the date of grant using the Black-Scholes option pricing model. The following weighted-average assumptions were utilized for the Black-Scholes valuation: (1) expected volatility of 60% for 2005 and 70% for 2004; (2) expected life of three years; (3) risk-free interest rates at the date of grant ranging from 2.21% to 4.39%; and, (4) dividend yield of zero for each year.

During the second quarter of 2004, two of the Company's officers exercised options to acquire a total of approximately 650,000 shares of common stock at an exercise price of \$3.00 per share, by canceling options to purchase approximately 350,000 shares and applying the option equity to pay the exercise price on the options exercised. The ten-year options were due to expire during the second quarter. In connection with this cashless exercise, the Company recorded a stock compensation charge of approximately \$5.8 million, which is equal to the difference between the exercise price and fair value of the options on the date of exercise, and a corresponding increase in additional paid-in capital. This noncash transaction had no impact on the Company's working capital, cash flows or stockholders' equity.

New Accounting Standards

In June 2006, the Financial Accounting Standards Board issued FASB Interpretation Number 48, "Accounting for Uncertainty in Income Taxes – an interpretation of FASB Statement No. 109" ("FIN 48"), which clarifies the accounting for uncertainty in income taxes recognized in a company's financial statements in accordance with SFAS No. 109. The provisions of FIN 48 are effective as of the beginning of The Company's 2007 fiscal year, with the cumulative effect of the change in accounting principle recorded as an adjustment to opening retained earnings. The Company does not believe the adoption of this pronouncement will have any affect on its financial statements.

In September 2006, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 108 ("SAB 108"). SAB 108 was issued to provide interpretive guidance on how the effects of the carryover or reversal of prior year misstatements should be considered in quantifying a current year misstatement. The provisions of SAB 108 are effective for the Company for the December 31, 2006 year-end. The provisions of SAB 108 had no impact on the Company's consolidated financial position, results of operations or cash flows.

The Company has reviewed all other recently issued, but not yet adopted, accounting standards in order to determine their effects, if any, on its consolidated results of operations, financial position and cash flows. Based on that review, the Company believes that none of these pronouncements will have a significant effect on current or future earnings or operations.

Income Taxes

Deferred income taxes are provided for the differences between the tax bases of assets or liabilities and their reported amounts in the consolidated financial statements. Such differences may result in taxable or deductible amounts in future years when the asset or liability is recovered or settled, respectively.

Foreign Operations

The Company uses the U.S. dollar as its functional currency for its operations and investments in Poland.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Significant estimates with regard to the consolidated financial statements include the estimates of proved oil and gas reserve quantities and the related future net cash flows.

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements
- Continued -

Reclassification

Certain amounts in the Consolidated Financial Statements for 2005 and 2004 have been reclassified to conform to the 2006 presentation. These reclassifications had no impact on the Company's total assets, liabilities, stockholders' equity, net loss or cash flows.

Net Loss per Share

Basic earnings per share is computed by dividing the net loss applicable to common shares by the weighted average number of common shares outstanding. Diluted earnings per share is computed by dividing the net loss by the sum of the weighted average number of common shares and the effect of dilutive unexercised stock options, warrants, unvested restricted stock, and convertible preferred stock or debt.

Outstanding options, warrants and unvested restricted stock as of December 31, 2006, 2005 and 2004, were as follows:

	Options, Warrants and Unvested Restricted Stock	Price Range
Balance sheet date:		
December 31, 2006	6,859,106	\$0.00 - \$10.65
December 31, 2005	6,997,656	\$0.00 - \$10.65
December 31, 2004	7,405,106	\$2.40 - \$9.00

The Company had a net loss in 2006, 2005 and 2004. The above options, warrants and unvested restricted stock were not included in the computation of diluted earnings per share for the years presented because the effect would have been antidilutive.

Note 2: Asset Retirement Obligation

The Company accounts for future site restoration costs according to Statement No. 143, "Accounting for Asset Retirement Obligations" ("SFAS No. 143"). Under SFAS No. 143, the fair value of asset retirement obligations is recorded as a liability when incurred, which is typically at the time the assets are placed in service. Amounts recorded for the related assets are increased by the amount of these obligations. Over time, the liabilities are accreted for the change in their present value and the initial capitalized costs are depreciated over the useful lives of the related assets. The Company uses an expected cash flow approach to estimate its asset retirement obligations under SFAS No. 143. The Company recorded accretion expense of \$53,038, \$44,565 and \$41,000 in 2006, 2005 and 2004, respectively. At December 31, 2006, there were no assets legally restricted for purposes of settling asset retirement obligations.

Following is a reconciliation of the yearly changes in the asset retirement obligation at December 31, 2006 and 2005 (in thousands):

Year ended December 31	2006	2005
Asset retirement obligation at January 1	\$431	\$414
Current year additions	484	--
Liabilities settled	(7)	--
Adjustment to asset retirement obligation	--	(28)
Accretion expense	53	45
Asset retirement obligation as of December 31	<u>\$961</u>	<u>\$431</u>

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements
- Continued -

Note 3: Other Assets

As of December 31, 2006 and 2005, the Company had a replacement bond with a federal agency in the amount of \$463,000, which was collateralized by certificates of deposit totaling \$231,500. In addition, there are certificates of deposit totaling \$150,000 covering performance bonds in other states.

Note 4: Accrued Liabilities

The Company's accrued liabilities as of December 31, 2006 and 2005, were comprised of the following:

	December 31,	
	2006	2005
	(In thousands)	
Accrued liabilities:		
Exploratory dry hole costs		\$ 196
Drilling costs	\$ 439	387
Compensation related costs	568	867
Total	<u>\$ 1,007</u>	<u>\$ 1,450</u>

Note 5: Notes Payable

In November of 2006, the Company entered into a \$25 million Senior Facility Agreement (the Facility) with The Royal Bank of Scotland plc (RBS). The Facility is provided to FX Energy Poland Sp. z o.o., a wholly owned subsidiary. Funds from the facility, which became available to the Company in March, 2007, will cover infrastructure and development costs at a variety of the Company's Polish gas projects and are collateralized by its commercial wells and production in Poland.

Under the terms of the Facility, the initial commitment is for approximately \$18.6 million, which is based solely on the proved reserve values of the Wilga, Zaniemysl and Kleka wells. Once the Company achieves certain amounts of net cumulative production from these wells, the ongoing commitment amount will be based on proved plus probable reserves. The terms of the Facility call for interest payments only through the end of 2010. The principal amount of the Facility will begin to be reduced at that time, terminating at the end of 2012, unless the Company has been successful in adding additional properties and/or reserves to its borrowing base. Interest will be accrued at LIBOR plus an applicable margin, which is currently 1.25%, but which will be reduced to 0.625% upon the attainment of cumulative production thresholds.

In consideration for the Facility, the Company paid a 1% origination fee and issued warrants to purchase 110,000 shares of common stock, valid for 2 years at an exercise price of \$6.00 per share. The Black-Scholes value of these warrants (approximately \$305,000), along with the loan origination fee and associated legal fees, have been capitalized as deferred financing costs, and will be amortized over the 6 year term of the loan, beginning in 2007. An annual unused commitment fee of 1/2% will be charged quarterly based on the average daily unused portion of the Facility.

Note 6: Commitments and Contingencies

Fences I Project Area

On April 11, 2000, the Company agreed to spend \$16.0 million of exploration costs on the Fences I project area to earn a 49% interest. When expenditures exceeded \$16.0 million, POGC would be obligated to pay its 51% share of further costs.

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements
- Continued -

In early 2003, the Company entered into a settlement agreement with POGC to address the methods by which the Company would satisfy its then existing unpaid liability incurred in connection with meeting its spending commitment. Among other things, the Company agreed to assign to POGC all of its rights to prior production from the Kleka 11 well, and the liability was to be further offset by the value of the remaining gas reserves associated with the well. As of December 31, 2004, the Company's share of the Kleka 11 well had estimated reserves with a value of approximately \$1.3 million, equal to the accrued liability recorded in favor of POGC. Upon completion of the assignment of the Kleka 11 well, the Company's previously unpaid liability was to have been settled in full.

Through the end of 2004, exclusive of the Kleka 11 well assignment, the Company incurred qualifying costs in excess of the commitment amount, which meant the Company had earned its 49% interest, and POGC was obligated to pay its 51% share of all qualifying project costs. Due to the fact that the Company exceeded its \$16.0 million commitment through actual cash expenditures in 2004, the Company and POGC subsequently agreed that the Kleka 11 well would not be assigned to POGC, nor would POGC take credit for prior years' gas sales. In addition, during the first half of 2005, POGC applied approximately \$1.3 million in unused cash-call proceeds against the Company's outstanding accrued liability. Accordingly, as of December 31, 2005, by virtue of the various transactions related to the Company's Fences I exploration commitment, POGC now owed the Company an amount equal to the Company's prior overpayment and its share of gas sales from the Kleka 11 well from inception through the end of 2005 (\$1.4 million) and the Company owed POGC an amount attributable to prior costs and interest that were to have been settled against prior year gas sales from the Kleka 11 well (\$0.4 million). At December 31, 2005, the receivable from POGC was included in Joint Interest and Other Receivables in the Consolidated Balance Sheets. In connection with settling its accounts, the Company recorded a net charge of approximately \$55,000 which was included in Interest and Other Income in the Consolidated Statements of Operations in 2005.

During 2006, the Company collected this net receivable, a portion of which was paid to the Polish government in the form of value-added tax.

Note 7: Value Added Tax Refund

Throughout the Company's operating history in Poland, until October 2005, the Company had been unable to obtain a refund of most of the value-added taxes paid in connection with goods and services purchased (Input VAT). Polish tax laws have restricted the refund of Input VAT for exploration activities to concession holders. In the Company's case, the Polish Oil and Gas Company, or POGC, has traditionally been the concession holder, while the Company is a working interest owner by virtue of its agreements with POGC.

During 2004, Poland joined the European Union. This event caused changes to several tax laws, including the law that precluded the Company from obtaining refunds of Input VAT. In April 2005, the Company filed a refund application for approximately 13.7 million Polish zlotys, representing all Input VAT paid since the Company's inception in Poland through March of 2005. The Polish taxing authorities began their review of the refund application in October, 2005.

As part of the normal course of the review, and in order to prevent interest accruing on the refund amount, the taxing authorities deposited 13.7 million zlotys in the Company's bank account in Poland in October, 2005, equal to approximately \$4.2 million at then-current exchange rates. The Company has since received all requested Input VAT refunds, as monthly tax returns have been filed in accordance with Polish tax regulations.

A portion of the past Input VAT was related to capital costs, with the remainder attributed to 2005 and prior years' geological and geophysical costs, along with overhead and other expenses. Accordingly, for the \$4.2 million refund received in 2005, the Company reduced its capital costs by approximately \$1.9 million, 2005 expenses by \$0.1 million, with the remaining \$2.1 million related to prior years' expenses shown as a Recovery of Previously Expensed Input VAT in the Consolidated Statements of Operations. In addition, the Company recorded an Input VAT receivable at December 31, 2005 of approximately \$2.0 million, representing Input VAT paid since April 2005. This amount was collected in 2006. The Company expects to be Input VAT neutral from this point forward. The input VAT receivable at December 31, 2006 was \$709,858.

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements
- Continued -

Note 8: Income Taxes

The Company recognized no income tax benefit from the losses generated during 2006, 2005 and 2004. The components of the net deferred tax asset as of December 31, 2006 and 2005 are as follows:

	December 31,	
	2006	2005
	(In thousands)	
Deferred tax liability:		
Property and equipment basis differences	\$ (3,637)	\$ (1,126)
Deferred tax asset:		
Net operating loss carryforwards:		
United States	23,309	21,582
Poland.....	9,379	2,231
Oil and gas properties.....	1,855	1,855
Options issued for services.....	946	184
Asset retirement obligation	176	161
Valuation allowance.....	(32,028)	(24,887)
Total	<u>\$ --</u>	<u>\$ --</u>

The change in the valuation allowance during 2006, 2005 and 2004 is as follows:

	Year Ended December 31,		
	2006	2005	2004
	(In thousands)		
Valuation allowance:			
Balance, beginning of year	\$(24,887)	\$(23,209)	\$(19,766)
Change in property and equipment basis differences.....	2,511	(93)	881
Increase due to net operating loss	(8,875)	(1,538)	(4,747)
Other	(777)	(47)	423
Total	<u>\$(32,028)</u>	<u>\$(24,887)</u>	<u>\$(23,209)</u>

SFAS No. 109, "Accounting for Income Taxes," requires that a valuation allowance be provided if it is more likely than not that some portion or all of a deferred tax asset will not be realized. The Company's ability to realize the benefit of its deferred tax asset will depend on the generation of future taxable income through profitable operations and expansion of the Company's oil and gas producing activities. The risks associated with that growth requirement are considerable, resulting in the Company's conclusion that a full valuation allowance be provided at December 31, 2006 and 2005.

United States NOL

At December 31, 2006, the Company had net operating loss ("NOL") carryforwards in the United States of approximately \$62,489,000 available to offset future taxable income. The carryforwards begin to expire in 2008. The utilization of the NOL carryforwards against future taxable income in the United States may become subject to an annual limitation if there is a change in ownership. The NOL carryforwards in the United States include \$17,930,000 relating to tax deductions resulting from the exercise of stock options. The tax benefit from adjusting the valuation allowance related to this portion of the NOL carryforward will be credited to additional paid-in capital.

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements
- Continued -

Polish NOL

As of December 31, 2006, the Company had NOL carryforwards in Poland totaling approximately \$49,362,000, including \$13,679,000, \$6,874,000 and \$5,598,000 generated in 2006, 2005 and 2004, respectively. During 2006 the Company received a favorable ruling from the Polish tax authorities which allows for a ten year carryover of prior year's NOLs. This ruling allowed for the reinstatement of approximately \$24 million of NOLs which had previously expired under the normal carryover rules. The NOLs will begin to expire in 2008. The ruling allows a ten year carryover period for losses incurred from 1997 to 2007. The normal carryforward period in Poland is five years. However, no more than 50% of the NOL carryforward for any given year may be applied against Polish income in succeeding years.

The domestic and foreign components of the Company's net loss are as follows:

	Year Ended December 31,		
	2006	2005 (In thousands)	2004
Domestic	\$ (6,764)	\$ (5,199)	\$ (9,107)
Foreign	(7,003)	(6,224)	(3,513)
Total	<u><u>\$(13,767)</u></u>	<u><u>\$(11,423)</u></u>	<u><u>\$(12,620)</u></u>

Note 9: Stockholders' Equity

The Company received proceeds from the exercise of 668,066 stock options and warrants of \$4,054,646 during 2005.

The Company completed a registered offering during April of 2004 of 2,152,778 shares of common stock, resulting in proceeds of \$14,348,298, net of offering costs of \$1,151,704. In August of 2004, the Company placed privately an additional 950,000 shares of registered stock, resulting in proceeds of \$6,375,286, net of offering costs of \$464,714.

During 2004, warrant holders exercised warrants for 2,687,937 shares of common stock, resulting in proceeds to the Company of \$10,079,763. In addition, option holders paid cash to exercise 553,701 shares of common stock, resulting in proceeds of \$2,987,383.

Note 10: Stock Options and Warrants

Equity Compensation Plans

The Company's equity compensation consists of annual stock option and award plans that are each subject to approval by the board of directors and are subsequently presented for approval by the stockholders at the Company's annual meetings.

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements
- Continued -

The following table summarizes information regarding the Company's stock option and award plans as of December 31, 2006:

	Number of Shares Authorized Under Plan	Weighted Average Exercise Price of Outstanding Options	Number of Options Available for Future Issuance
Equity compensation plans approved by stockholders:			
1995 Stock Option and Award Plan	500,000	\$7.50	--
1996 Stock Option and Award Plan	500,000	3.97	--
1997 Stock Option and Award Plan	500,000	6.44	14
1998 Stock Option and Award Plan	500,000	6.37	43,320
1999 Stock Option and Award Plan	500,000	3.83	--
2000 Stock Option and Award Plan	600,000	2.51	10,667
2001 Stock Option and Award Plan	600,000	3.22	8,999
2003 Long Term Incentive Plan	800,000	6.64	74,000
2004 Long Term Incentive Plan	1,000,000	8.43	522,250
Total.....	<u>5,500,000</u>	<u>\$5.08</u>	<u>659,250</u>

The above table excludes 50,000 options that have been granted outside of stockholder approved option plans.

All stock option and award plans are administered by a committee (the "Committee") consisting of members of the board of directors. At its discretion, the Committee may grant stock, incentive stock options ("ISOs") or non-qualified options to any employee, including officers. The granted options have terms ranging from five to seven years and vest in three equal annual installments. Under terms of the stock option award plans, the Company may also issue restricted stock.

The following table summarizes option activity for 2006, 2005 and 2004:

	2006		2005		2004	
	Number of Options	Weighted Average Exercise Price	Number of Options	Weighted Average Exercise Price	Number of Options	Weighted Average Exercise Price
Options outstanding:						
Beginning of year.....	3,193,333	\$4.72	3,851,733	\$5.47	4,784,517	\$4.42
Granted.....	--	.00	35,000	9.89	1,040,000	8.38
Exercised.....	--	.00	(620,066)	6.95	(1,743,701)	4.16
Canceled.....	--	5.82	(73,334)	8.27	(53,083)	4.26
Expired.....	(356,500)	--	--	--	(176,000)	7.75
End of year.....	<u>2,836,833</u>	\$5.08	<u>3,193,333</u>	\$5.16	<u>3,851,733</u>	\$5.47
Exercisable at year-end	<u>2,497,177</u>	\$4.61	<u>2,270,685</u>	\$4.33	<u>2,124,731</u>	\$4.67

The weighted average fair value per share of options granted during 2005 and 2004 was \$9.72 and \$4.00, respectively.

In 2006, the Company recognized \$1,711,132 in expense related to unvested stock options granted prior to the adoption of FAS 123R. Total unamortized expense at December 31, 2006 related to unvested options was \$864,455.

In December of 2006, the Company issued 318,400 shares of restricted stock resulting in deferred compensation of \$2,053,680 which will be amortized ratably over the three year vesting period. Expense recognized during 2006 totaled \$18,756.

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements
- Continued -

In November of 2005, the Company issued 298,950 shares of restricted stock to employees resulting in deferred compensation of \$3,109,080 which will be amortized ratably over the three year vesting period. Expense recognized during 2006 and 2005 totaled \$1,028,633 and \$124,563 respectively.

The following table summarizes information about stock options outstanding as of December 31, 2006:

Exercise Price Range	Number of Options Outstanding	Outstanding	Weighted Average Exercise Price	Number of Options Exercisable	Exercisable
		Weighted Average Remaining Contractual Life (in years)			Weighted Average Exercise Price
\$2.40 - \$2.44.....	794,666	2.30	2.42	794,666	2.42
\$3.14 - \$3.20.....	51,000	3.69	3.19	51,000	3.19
\$3.98 - \$3.98.....	652,000	3.82	3.98	652,000	3.98
\$4.06 - \$6.06.....	367,667	0.86	4.10	364,334	4.08
\$8.37 - \$8.37.....	886,500	4.67	8.37	590,175	8.37
\$9.00 - \$10.65.....	85,000	4.66	9.37	45,002	9.23
Total	<u>2,836,833</u>	3.30	\$5.08	<u>2,497,177</u>	\$4.61

Warrants

The following table summarizes warrant activity for during 2006, 2005 and 2004:

	2006		2005		2004	
	Number of Shares	Price Range	Number of Shares	Price Range	Number of Shares	Price Range
Warrants outstanding and exercisable:						
Beginning of year	3,505,373	\$3.60--\$3.75	3,553,373	\$3.60--\$3.75	6,241,310	\$3.60--\$3.75
Issued	110,000	\$6.00	--	--	--	--
Exercised	--	--	(48,000)	\$3.75	(2,687,937)	\$3.75
End of year	<u>3,615,373</u>	\$3.60--\$6.00	<u>3,505,373</u>	\$3.60--\$3.75	<u>3,553,373</u>	\$3.60--\$3.75

The aggregate intrinsic value of exercisable and outstanding stock options at December 31, 2006 was \$5,325,320 and \$5,316,199, respectively. The aggregate intrinsic value of unvested restricted stock at December 31, 2006 was \$3,189,273. The aggregate intrinsic value represents the total pretax intrinsic value, based on the Company's stock price of \$6.17 as of December 31, 2006, which would have been received by the restricted stock award and stock option holders had all in-the-money restricted stock awards and options been exercised as of that date.

Note 11: Quarterly Financial Data (Unaudited)

Summary quarterly information for 2006 and 2005 is as follows:

	Quarter Ended			
	December 31	September 30	June 30	March 31
	(In thousands, except per share amounts)			
2006:				
Revenues	\$ 3,165	\$ 1,842	\$ 2,137	\$ 1,085
Net operating loss.....	(6,037)	(1,919)	(2,227)	(4,379)
Net loss.....	(5,795)	(1,728)	(2,054)	(4,190)
Basic and diluted net loss per common share.....	\$ (0.16)	\$ (0.05)	\$ (0.06)	\$ (0.12)

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements
- Continued -

	Quarter Ended			
	December 31	September 30	June 30	March 31
	(In thousands, except per share amounts)			
2005:				
Revenues	\$ 1,555	\$ 2,491	\$ 1,003	\$ 888
Net operating loss	(6,804)	(1,478)	(1,724)	(2,197)
Net loss	(6,576)	(1,386)	(1,570)	(1,891)
Basic and diluted net loss per common share	\$ (0.19)	\$ (0.04)	\$ (0.05)	\$ (0.05)

The net operating loss for the fourth quarter of 2006 includes \$3.4 million of impairment loss associated with the Rusocin well in Poland. The net operating loss for the fourth quarter of 2005 includes \$2.2 million of income associated with the recovery of previously expensed VAT and \$4.4 million in dry hole costs associated with the Sroda 5 and Lugi wells.

Note 12: Business Segments

The Company operates within two business segments of the oil and gas industry: exploration and production (“E&P”) and oilfield services. The Company’s revenues associated with its E&P activities are comprised of oil sales from its producing properties in the United States and oil and gas sales from its producing properties in Poland. Over 94% of the Company’s oil sales in the United States were to Cenex during 2006, 2005 and 2004. During 2006 all sales of oil and gas in Poland were made to POGC or its affiliated companies. There were no oil and gas sales in Poland during 2005 and 2004. The Company believes the purchasers of its oil production in the United States could be replaced, if necessary, without a loss in revenue. Gas sales in Poland are sold pursuant to long term sales contracts which obligate the buyer to purchase all gas produced. Individual oil sales are negotiated with POGC affiliated entities and are not subject to sales contracts.

E&P operating costs are comprised of: (1) exploration costs (geological and geophysical costs, exploratory dry holes, and proved property and non-producing leasehold impairments) and, (2) lease operating costs (lease operating expenses and production taxes). Substantially all exploration costs are related to the Company’s operations in Poland. The majority of lease operating costs are related to the Company’s domestic production.

The Company’s revenues associated with its oilfield services segment are comprised of contract drilling and well servicing fees generated by the Company’s oilfield servicing equipment in Montana. Oilfield servicing costs are comprised of direct costs associated with its oilfield services.

DD&A directly associated with a respective business segment is disclosed within that business segment. The Company does not allocate current assets, corporate DD&A, general and administrative costs, amortization of deferred compensation, interest income, interest expense, other income or other expense to its operating business segments for management and business segment reporting purposes. All material inter-company transactions between the Company’s business segments are eliminated for management and business segment reporting purposes.

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements
- Continued -

Information on the Company's operations by business segment for 2006, 2005 and 2004 is summarized as follows:

2006				
	Exploration & Production		Oilfield Services	Total (In thousands)
	U.S.	Poland		
Operations summary:				
Revenues	\$ 4,260	\$ 2,273	\$ 1,696	\$ 8,229
Operating costs	(3,144)	(8,748)	(1,245)	(13,137)
DD&A expense	(653)	(304)	(155)	(1,112)
Operating income (loss)	<u>\$ 463</u>	<u>\$ (6,779)</u>	<u>\$ 296</u>	<u>\$ (6,020)</u>
Identifiable net property and equipment:				
Unproved properties	\$ --	\$ 527	\$ --	\$ 527
Proved properties	3,124	15,283	--	18,407
Equipment and other	--	22	534	556
Total	<u>\$ 3,124</u>	<u>\$ 15,832</u>	<u>\$ 534</u>	<u>\$ 19,490</u>
Net Capital Expenditures:				
Property and equipment	<u>\$ 613</u>	<u>\$ 9,008</u>	<u>\$ 295</u>	<u>\$ 9,916</u>
Total	<u>\$ 613</u>	<u>\$ 9,008</u>	<u>\$ 295</u>	<u>\$ 9,916</u>
2005				
	Exploration & Production		Oilfield Services	Total (In thousands)
	U.S.	Poland		
Operations summary:				
Revenues	\$ 3,805	\$ --	\$ 2,132	\$ 5,937
Operating costs	(2,993)	(5,762)	(1,689)	(10,444)
DD&A expense	(511)	--	(243)	(754)
Operating income (loss)	<u>\$ 301</u>	<u>\$ (5,762)</u>	<u>\$ 200</u>	<u>\$ (5,261)</u>
Identifiable net property and equipment:				
Unproved properties	\$ 143	\$ 161	\$ --	\$ 304
Proved properties	3,139	10,465	--	13,604
Equipment and other	--	24	372	396
Total	<u>\$ 3,282</u>	<u>\$ 10,650</u>	<u>\$ 372</u>	<u>\$ 14,304</u>
Net Capital Expenditures:				
Property and equipment	<u>\$ 505</u>	<u>\$ 3,783</u>	<u>\$ 264</u>	<u>\$ 4,552</u>
Total	<u>\$ 505</u>	<u>\$ 3,783</u>	<u>\$ 264</u>	<u>\$ 4,552</u>

FX ENERGY, INC. AND SUBSIDIARIES
Notes to the Consolidated Financial Statements
- Continued -

	2004			
	Exploration & Production		Oilfield Services	Total (In thousands)
	U.S.	Poland		
Operations summary:				
Revenues	\$ 3,096	\$ --	\$ 710	\$ 3,806
Operating costs	(2,280)	(2,719)	(551)	(5,550)
DD&A expense	(259)		(290)	(549)
Operating income (loss)	<u>\$ 557</u>	<u>\$ (2,719)</u>	<u>\$ (131)</u>	<u>\$ (2,293)</u>
Identifiable net property and equipment:				
Unproved properties	\$ 47	\$ 308	\$ --	\$ 355
Proved properties	3,336	10,436	--	13,772
Equipment and other		4	375	379
Total	<u>\$ 3,383</u>	<u>\$ 10,748</u>	<u>\$ 375</u>	<u>\$ 14,506</u>
Net Capital Expenditures:				
Property and equipment	<u>\$ 628</u>	<u>\$ 8,885</u>	<u>\$ 99</u>	<u>\$ 9,612</u>
Total	<u>\$ 628</u>	<u>\$ 8,885</u>	<u>\$ 99</u>	<u>\$ 9,612</u>

A reconciliation of the segment information to the consolidated totals for 2006, 2005 and 2004 follows:

	2006	2005	2004
	(In thousands)		
Revenues:			
Reportable segments	\$ 8,229	\$ 5,937	\$ 3,806
Non-reportable segments	--	--	--
Total revenues	<u>\$ 8,229</u>	<u>\$ 5,937</u>	<u>\$ 3,806</u>
Net loss:			
Operating loss, reportable segments	\$ (6,020)	\$ (5,261)	\$ (2,293)
Expense or (revenue) adjustments:			
Corporate DD&A expense	(177)	(149)	(88)
General and administrative costs (G&A)	(5,606)	(6,592)	(4,909)
Amortization of deferred compensation (G&A)	(2,759)	(125)	--
Stock compensation (G&A)	--	(76)	(5,859)
Total net operating loss	(14,562)	(12,203)	(13,149)
Non-operating income	795	780	529
Net loss	<u>\$ (13,767)</u>	<u>\$ (11,423)</u>	<u>\$ (12,620)</u>
Net property and equipment:			
Reportable segments	\$ 19,490	\$ 14,304	\$ 14,506
Corporate assets	205	336	328
Net property and equipment	<u>\$ 19,695</u>	<u>\$ 14,640</u>	<u>\$ 14,834</u>
Property and equipment capital expenditures:			
Reportable segments	\$ 9,916	\$ 4,552	\$ 9,612
Corporate assets	59	158	296
Total property and equipment capital expenditures	<u>\$ 9,975</u>	<u>\$ 4,710</u>	<u>\$ 9,908</u>

FX ENERGY, INC. AND SUBSIDIARIES
Supplemental Information

Disclosure about Oil and Gas Properties and Producing Activities (unaudited)

Capitalized Oil and Gas Property Costs

Capitalized costs relating to oil and gas exploration and production activities as of December 31, 2006 and 2005, are summarized as follows:

	<u>United States</u>	<u>Poland</u> (In thousands)	<u>Total</u>
December 31, 2006:			
Proved properties	\$ 5,552	\$13,741	\$19,293
Unproved properties	--	2,912	2,912
Total gross properties	5,552	16,653	22,205
Less accumulated depreciation, depletion and amortization ..	(2,428)	(843)	(3,271)
	<u>\$ 3,124</u>	<u>\$15,810</u>	<u>\$18,934</u>
December 31, 2005:			
Proved properties	\$ 4,991	\$ 7,492	\$12,483
Unproved properties	143	3,596	3,739
Total gross properties	5,134	11,088	16,222
Less accumulated depreciation, depletion and amortization ..	(1,852)	(462)	(2,314)
	<u>\$ 3,282</u>	<u>\$10,626</u>	<u>\$13,908</u>

Results of Operations

Results of operations are reflected in Note 12, Business Segments. There is no tax provision as the Company is not likely to pay, nor has it received any benefit from, any federal or local income taxes due to its operating losses. Total production costs (in thousands) for 2006, 2005 and 2004 were \$2,647, \$2,462 and \$1,946, respectively.

Property Acquisition, Exploration and Development Activities

Costs incurred in property acquisition, exploration and development activities during 2006, 2005 and 2004, whether capitalized or expensed, are summarized as follows:

	<u>United States</u>	<u>Poland</u> (In thousands)	<u>Total</u>
Year ended December 31, 2006:			
Acquisition of unproved properties	\$ 4	\$ 366	\$ 370
Exploration costs	932	11,159	12,091
Development costs	580	5,762	6,342
Total	<u>\$1,516</u>	<u>\$17,287</u>	<u>\$18,803</u>
Year ended December 31, 2005:			
Acquisition of unproved properties	\$ 95	\$ 30	\$ 125
Exploration costs	683	9,809	10,492
Development costs	366	520	886
Total	<u>\$1,144</u>	<u>\$10,359</u>	<u>\$11,503</u>

FX ENERGY, INC. AND SUBSIDIARIES
Supplemental Information
--continued--

	<u>United States</u>	<u>Poland</u> (In thousands)	<u>Total</u>
Year ended December 31, 2004:			
Acquisition of unproved properties	\$ 40	\$ 141	\$ 181
Exploration costs	103	11,752	11,855
Development costs	490	--	490
Total	<u>\$633</u>	<u>\$11,893</u>	<u>\$12,526</u>

Impairment of Oil and Gas Properties

The Company recorded impairment charges in its E&P segment related to oil and gas properties as follows (in thousands):

	<u>2006</u>	<u>2005</u>	<u>2004</u>
Impairment of properties	<u>\$3,583</u>	<u>\$ --</u>	<u>\$ --</u>

Exploratory dry hole costs

During 2006, the Company plugged and abandoned the Drozdowice well in Poland, the Teton River well in Montana and the West Bacon Flat well in Nevada, incurring total dry hole costs of \$1,572,749. During 2005, the Company plugged and abandoned the Lugi, Sroda 5 and four wells in the Inselberg and Radio prospects in Nevada, incurring total dry hole costs of \$5,065,586. During 2004, the Company plugged and abandoned the Tuchola 108-2 well, incurring dry hole costs of \$471,883.

Summary Oil and Gas Reserve Data (Unaudited)

Estimated Quantities of Proved Reserves

Proved reserves are the estimated quantities of crude oil and natural gas that geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reserves under existing economic and operating conditions. The Company's proved oil and gas reserve quantities and values are based on estimates prepared by independent reserve engineers in accordance with guidelines established by the Securities and Exchange Commission. Operating costs, production taxes and development costs were deducted in determining the quantity and value information. Such costs were estimated based on current costs and were not adjusted to anticipate increases due to inflation or other factors. No price escalations were assumed and no amounts were deducted for general overhead, depreciation, depletion and amortization, and interest expense. The proved reserve quantity and value information is based on the weighted average price on December 31, 2006, of \$51.65 per bbl for oil in the United States and \$49.49 per bbl of oil and \$4.89 per Mcf of gas in Poland. The determination of oil and gas reserves is based on estimates and is highly complex and interpretive, as there are numerous uncertainties inherent in estimating quantities and values of proved reserves, projecting future rates of production and timing of development expenditures. The estimates are subject to continuing revisions as additional information becomes available or assumptions change.

FX ENERGY, INC. AND SUBSIDIARIES
Supplemental Information
--continued--

Estimates of the Company's proved domestic reserves were prepared by Larry Krause Consulting, an independent engineering firm in Billings, Montana. Estimates of the Company's proved Polish reserves were prepared by RPS Energy, an independent engineering firm in the United Kingdom. The following unaudited summary of proved developed reserve quantity information represents estimates only and should not be construed as exact:

	Crude Oil		Natural Gas	
	United States	Poland	United States	Poland
	(In thousand barrels of oil)		(In millions of cubic feet)	
Proved Developed Reserves:				
December 31, 2006	382	202	--	11,382
December 31, 2005	408	--	--	974
December 31, 2004	809	--	--	1,011

The following unaudited summary of proved developed and undeveloped reserve quantity information represents estimates only and should not be construed as exact:

	Crude Oil		Natural Gas	
	United States	Poland	United States	Poland
	(In thousand barrels of oil)		(In millions of cubic feet)	
December 31, 2006:				
Beginning of year	408	209	--	19,788
Revisions of previous estimates	50	2	--	(63)
Production	(76)	(9)	--	(461)
End of year	382	202	--	19,264
December 31, 2005:				
Beginning of year	809	111	--	10,198
Extensions or discoveries	--	--	--	7,882
Acquisition of minerals in place.....	--	98	--	2,199
Revisions of previous estimates	(322)	--	--	(491)
Production	(79)	--	--	--
End of year	408	209	--	19,788
December 31, 2004:				
Beginning of year	991	114	--	3,960
Extensions or discoveries	--	--	--	6,342
Revisions of previous estimates	(97)	(3)	--	(104)
Production	(85)	--	--	--
End of year	809	111	--	10,198

FX ENERGY, INC. AND SUBSIDIARIES
Supplemental Information
--continued--

Standardized Measure of Discounted Future Net Cash Flows ("SMOG") and Changes Therein Relating to Proved Oil Reserves

Estimated discounted future net cash flows and changes therein were determined in accordance with SFAS No. 69, "Disclosures about Oil and Gas Activities." Certain information concerning the assumptions used in computing the valuation of proved reserves and their inherent limitations are discussed below. The Company believes such information is essential for a proper understanding and assessment of the data presented. The assumptions used to compute the proved reserve valuation do not necessarily reflect the Company's expectations of actual revenues to be derived from those reserves nor their present worth. Assigning monetary values to the reserve quantity estimation process does not reduce the subjective and ever-changing nature of such reserve estimates. Additional subjectivity occurs when determining present values because the rate of producing the reserves must be estimated. In addition to errors inherent in predicting the future, variations from the expected production rates also could result directly or indirectly from factors outside the Company's control, such as unintentional delays in development, environmental concerns and changes in prices or regulatory controls. The reserve valuation assumes that all reserves will be disposed of by production. However, if reserves are sold in place, additional economic considerations also could affect the amount of cash eventually realized. Future development and production costs are computed by estimating expenditures to be incurred in developing and producing the proved oil reserves at the end of the period, based on period-end costs and assuming continuation of existing economic conditions. A discount rate of 10.0% per year was used to reflect the timing of the future net cash flows. The future net cash flows for the Company's Polish reserves are based on a gas and condensate sales contract the Company has with POGC.

The components of SMOG are detailed below:

	United States	Poland (In thousands)	Total
December 31, 2006:			
Future cash flows	\$ 19,719	\$103,903	\$123,622
Future production costs	(13,511)	(12,046)	(25,557)
Future development costs	--	(2,502)	(2,502)
Future income tax expense	--	(4,595)	(4,595)
Future net cash flows	6,208	84,760	90,968
10% annual discount for estimated timing of cash flows	(1,643)	(25,568)	(27,211)
Discounted net future cash flows	<u>\$ 4,565</u>	<u>\$ 59,192</u>	<u>\$ 63,757</u>
December 31, 2005:			
Future cash flows	\$ 20,833	\$ 73,114	\$ 93,947
Future production costs	(12,808)	(2,504)	(15,312)
Future development costs	--	(7,658)	(7,658)
Future income tax expense	--	(7,742)	(7,742)
Future net cash flows	8,025	55,210	63,235
10% annual discount for estimated timing of cash flows	(2,189)	(19,131)	(21,320)
Discounted net future cash flows	<u>\$ 5,836</u>	<u>\$ 36,079</u>	<u>\$ 41,915</u>
December 31, 2004:			
Future cash flows	\$ 29,670	\$ 24,145	\$ 53,815
Future production costs	(21,779)	(1,304)	(23,083)
Future development costs	(1)	(2,780)	(2,781)
Future income tax expense	--	--	--
Future net cash flows	7,890	20,061	27,951
10% annual discount for estimated timing of cash flows	(2,756)	(6,970)	(9,726)
Discounted net future cash flows	<u>\$ 5,134</u>	<u>\$ 13,091</u>	<u>\$ 18,225</u>

FX ENERGY, INC. AND SUBSIDIARIES
Supplemental Information
--continued--

The principal sources of changes in SMOG are detailed below:

	Year Ended December 31,		
	2006	2005	2004
		(In thousands)	
SMOG sources:			
Balance, beginning of year	\$ 41,915	\$18,225	\$ 9,856
Sale of oil and gas produced, net of production costs	(3,886)	(1,343)	(1,150)
Net changes in prices and production costs	16,111	14,423	3,816
Acquisition of minerals in place	--	4,391	--
Extensions and discoveries, net of future costs	--	16,243	4,135
Changes in estimated future development costs	3,953	(3,232)	(638)
Previously estimated development costs incurred during the year ..	580	886	588
Revisions in previous quantity estimates	(169)	(4,384)	(211)
Accretion of discount	4,192	1,823	986
Net change in income taxes	1,911	(5,131)	--
Changes in rates of production and other	(850)	14	843
Balance, end of year	<u>\$63,757</u>	<u>\$41,915</u>	<u>\$18,225</u>

INCORPORATED UNDER THE LAWS OF
THE STATE OF NEVADA

NUMBER [FX Energy, Inc. Logo] SHARES

CUSIP NO. 302695 10 1

FX ENERGY, INC.
100,000,000 AUTHORIZED SHARES \$.001 PAR VALUE NON-ASSESSABLE

THIS CERTIFIES THAT
IS THE RECORD HOLDER OF

****[SPECIMEN]****
****[SPECIMEN]****

shares of **FX ENERGY, INC.** *Common Stock*
transferable on the books of the Corporation in person or by duly authorized
attorney upon surrender of this Certificate properly endorsed. This Certificate is
not valid until countersigned by the Transfer Agent and registered by the Registrar.

*Witness the facsimile seal of the Corporation and the facsimile signatures of its
duly authorized officers.*

Dated:

Secretary

[FX ENERGY, INC. CORPORATE SEAL]

President

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	-	as tenants in common	UNIF GIFT MIN ACT	_____	Custodian	_____
TEN ENT	-	as tenants by the entireties			(Cust)	(Minor)
JT TEN	-	as joint tenants with right of survivorship and not as tenants in common			under Uniform Gifts to Minors Act	(State)

Additional abbreviations may also be used though not in the above list.

For Value Received _____ hereby sell, assign, and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

of the capital stock represented by the within Certificate, and do hereby irrevocably constitute and appoint _____ Shares

to transfer the said stock on the books of the within named Corporation with full power of substitution in the _____ Attorney
premises.

Dated

Signature

NOTICE: SIGNATURE MUST CORRESPOND TO THE NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE IN EVERY PARTICULAR WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER AND MUST BE GUARANTEED BY A BANK, BROKER OR ANY OTHER ELIGIBLE GUARANTOR INSTITUTION THAT IS AUTHORIZED TO DO SO UNDER THE SECURITIES TRANSFER AGENTS MEDALLION PROGRAM (STAMP) UNDER RULES PROMULGATED BY THE U.S. SECURITIES AND EXCHANGE COMMISSION.

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (this “Agreement”) is entered into effective as of [effective date], by and between FX ENERGY, INC., a Nevada corporation (the “Corporation”), and [name of indemnitee] (“Indemnitee”), based on the following:

PREMISES

A. The Restated Articles of Incorporation of the Corporation (the “Articles”) and the Bylaws (the “Bylaws”) provide for indemnification of the Corporation’s directors and officers to the fullest extent permitted by any applicable and controlling Nevada law, statute, rule, decision, or finding (collectively, “Nevada Law”) and contemplate that contracts and other arrangements may be entered into respecting indemnification of officers and directors.

B. The parties recognize the continued difficulty in obtaining liability insurance for the Corporation’s directors, officers, employees, stockholders, controlling persons, agents, and fiduciaries, the significant increases in the cost of such insurance, and the general reductions in the coverage of such insurance. Furthermore, the parties further recognize the substantial increase in corporate litigation in general, subjecting directors, officers, employees, controlling persons, stockholders, agents, and fiduciaries to expensive litigation risks at the same time as the availability and coverage of liability insurance have been severely limited.

C. Indemnitee does not regard the current protection available under the Articles, Bylaws, and insurance as adequate under the present circumstances, and Indemnitee and other directors, officers, employees, stockholders, controlling persons, agents, and fiduciaries of the Corporation may not be willing to serve in such capacities without additional protection. Moreover, the Corporation (i) desires to attract and retain the involvement of highly qualified persons, such as Indemnitee, to serve the Corporation and, in part, in order to induce Indemnitee to be involved with the Corporation, (ii) wishes to provide for the indemnification and advancing of expenses to Indemnitee to the maximum extent permitted by law, and (iii) wishes to assure Indemnitee that there will be increased certainty of adequate protection in the future.

D. In addition to any insurance purchased by the Corporation on behalf of Indemnitee, it is reasonable, prudent, and necessary for the Corporation to obligate itself contractually to indemnify Indemnitee so that he may remain free from undue concern that he will not be adequately protected both during his service as an executive officer and a director of the Corporation and following any termination of such service.

E. This Agreement is a supplement to and in furtherance of the Articles and Bylaws and shall not be deemed a substitute therefor or to abrogate any rights of Indemnitee thereunder.

F. The directors of the Corporation have duly approved this Agreement and the indemnification provided herein with the express recognition that the indemnification arrangements provided herein exceed that which the Corporation would be required to provide pursuant to Nevada Law.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Corporation and Indemnitee do hereby covenant and agree as follows:

1. Definitions. As used in this Agreement:

(a) The term “Indemnifiable Matter” means any event, occurrence, status, or condition that takes place either prior to or after the execution of this Agreement, including any threatened, pending, or completed action, suit, proceeding or alternative dispute resolution activity, whether brought by or in the right of the Corporation or otherwise and whether of a civil, criminal, administrative, or investigative nature, in which Indemnatee was, is, or believes might be involved as a party, witness, or otherwise (except any of the foregoing initiated by Indemnatee pursuant to section 17(a) to enforce Indemnatee’s rights under this Agreement), by reason of the fact, in whole or in part, that Indemnatee is or was actually or allegedly a director, officer, agent, or advisor of the Corporation; by reason of any action actually or allegedly taken by him or of any inaction or omission on his part while acting as a director, officer, agent, or advisor of the Corporation; by reason of the registration, offer, sale, purchase, or ownership of any securities of the Corporation; by reason of any duty owed to, respecting, or in connection with the Corporation; or by reason of the fact, in whole or in part, that he is or was actually or allegedly serving at the request of the Corporation as a director, officer, employee, agent, or advisor of another corporation, partnership, joint venture, trust, limited liability company, or other entity or enterprise, in each case whether or not he is acting or serving in any such capacity at the time any loss, liability, or expense is incurred for which indemnification or reimbursement can be provided under this Agreement and even though Indemnatee may have ceased to serve in such capacity.

(b) The term “Losses” means any and all losses, claims, damages, expenses, liabilities, judgments, fines, penalties and actions in respect thereof, as they are incurred, against Indemnatee in connection with an Indemnifiable Matter; amounts paid by Indemnatee in settlement of an Indemnifiable Matter; any indirect, consequential, or incidental damages suffered or incurred by Indemnatee; and all attorneys’ fees and disbursements, accountants’ fees and disbursements, private investigation fees and disbursements, retainers, court costs, payments of attachment, appeal or other bonds or security, transcript costs, fees of experts, fees and expenses of witnesses, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses reasonably incurred by or for Indemnatee in connection with prosecuting, defending, preparing to prosecute or defend, investigating, appealing, or being or preparing to be a witness in any threatened or pending Indemnifiable Matter or establishing Indemnatee’s right or entitlement to indemnification for any of the foregoing.

(c) Reference to “other enterprise” shall include employee benefit plans; references to “fines” shall include any excise tax assessed with respect to any employee benefit plan; references to “serving at the request of the Corporation” shall include any service as a director, officer, employee, agent, or advisor with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Agreement.

(d) The term “Indemnatee” shall include the Indemnatee named in the first paragraph of this Agreement and such Indemnatee’s actual or alleged alter egos, spouse, family members, and corporations, partnerships, limited liability companies, trusts, and other enterprises or entities of any form whatsoever under the control of any of the foregoing, and the property of all of the foregoing. The term “control” (including the terms “controlling,” “controlled by,” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise, as interpreted under the Securities Act of 1933 or the Securities Exchange Act of 1934.

(e) The term “substantiating documentation” shall mean copies of bills or invoices for costs incurred by or for Indemnitee, or copies of court or agency orders, decrees, or settlement agreements, as the case may be, accompanied by a declaration, which need not be notarized, from Indemnitee that such bills, invoices, court or agency orders, decrees, or settlement agreements represent costs or liabilities meeting the definition of “Losses” herein.

(f) Except as provided in section 15, the term “Independent Counsel” shall mean an attorney, law firm, or member of a law firm, who (or which) is licensed to practice law in the state of Nevada and is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent (i) the Corporation or Indemnitee in any other matter material to either such party; or (ii) any other party to the Indemnifiable Matter giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or Indemnitee in an action to determine Indemnitee’s rights under this Agreement. From time to time, the Corporation may select and preapprove the names of persons or law firms that it deems qualified as Independent Counsel under the foregoing criteria. Further, at the request of Indemnitee, the Corporation shall review the qualifications and suitability under the foregoing criteria of persons or law firms selected by Indemnitee and preapprove them as Independent Counsel if they meet the foregoing criteria. An Independent Counsel that has already been preapproved by the board of directors may be appointed as Independent Counsel without any further evaluation, so long as such prospective Independent Counsel continues, as determined by the board of directors, to remain independent.

(g) A “Change in Control” shall be deemed to have occurred if (i) any “person” (as such term is used in Section 13(d)(3) and 14(d)(2) of the Securities Exchange Act), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Corporation or a corporation owned directly or indirectly by the stockholders of the Corporation in substantially the same proportions as their ownership of stock of the Corporation, (1) that is or becomes the beneficial owner, directly or indirectly, of securities of the Corporation representing 20% or more of the combined voting power of the Corporation’s then-outstanding voting securities, increases its beneficial ownership of such securities by 5% or more over the percentage so owned by such person, or (2) becomes the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act), directly or indirectly, of securities of the Corporation representing more than 30% of the total voting power represented by the Corporation’s then-outstanding voting securities, (ii) during any period of two consecutive years, individuals who at the beginning of such period constitute the board of directors of the Corporation and any new director whose election by the board of directors or combination for election by the Corporation’s stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof, or (iii) the stockholders of the Corporation approve a merger or consolidation of the Corporation with any other corporation other than a merger or consolidation that would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least two-thirds of the total voting power represented by the voting securities of the Corporation or such surviving entity outstanding immediately after such merger or consolidation, or the stockholders of the Corporation approve a plan of complete liquidation of the Corporation or an agreement for the sale or disposition by the Corporation of (in one transaction or a series of transactions) all or substantially all of the Corporation’s assets.

2. Indemnity of Indemnitee. The Corporation hereby agrees to indemnify, protect, defend and hold harmless Indemnitee against any and all Losses incurred by reason of the fact that Indemnitee is or was a director, officer, agent, or advisor of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, agent or advisor of another corporation, partnership, joint venture, trust, limited liability company, or other entity or enterprise, to the fullest extent permitted by Nevada Law. The termination of any Indemnifiable Matter by judgment, order of the court, settlement, conviction, or upon a plea of *nolo contendere*, or its equivalent, shall not, of itself, create a presumption that Indemnitee is not entitled to indemnification, and with respect to any criminal proceeding, shall not create a presumption that such person believed that his conduct was unlawful. The indemnification provided herein shall be applicable whether or not the breach of any standard of care or duty, including a breach of a fiduciary duty, of the Indemnitee is alleged or proven, except as limited by section 3 herein. Notwithstanding the foregoing, in the case of any Indemnifiable Matter brought by or in the right of the Corporation, Indemnitee shall not be entitled to indemnification for any claim, issue, or matter as to which Indemnitee has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the Corporation or for amounts paid in settlement to the Corporation unless, and only to the extent that, the court in which the Indemnifiable Matter was brought or another court of competent jurisdiction determines, on application, that in view of all the circumstances, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

3. Limit on Indemnification. Notwithstanding any breach of any standard of care or duty, including breach of a fiduciary duty, by the Indemnitee, the Corporation shall indemnify Indemnitee except when a final adjudication establishes that Indemnitee's acts or omissions involved intentional misconduct, fraud, or a knowing violation of law and were material to the cause of action.

4. Choice of Counsel. Indemnitee shall be entitled to employ and be reimbursed for the fees and disbursements of counsel separate from that chosen by any other person or persons whom the Corporation is obligated to indemnify with respect to the same or any related or similar Indemnifiable Matter.

5. Advances of Losses. Losses (other than judgments, penalties, fines, and settlements) incurred by Indemnitee shall be paid by the Corporation, in advance of the final disposition of the Indemnifiable Matter, within 10 days after receipt of Indemnitee's written request accompanied by substantiating documentation.

6. Officer and Director Liability Insurance. The Corporation shall, from time to time, make the good faith determination whether or not it is practicable for the Corporation to obtain and maintain a policy or policies of insurance with reputable insurance companies providing the officers and directors of the Corporation with coverage for losses, or to ensure the Corporation's performance of its indemnification obligations under this Agreement. Among other considerations, the Corporation will weigh the costs of obtaining such insurance coverage against the protection afforded by such coverage. The Corporation shall consult with and be heard by Indemnitee in connection with the Corporation's actions hereunder. In all policies of director and officer liability insurance, (a) Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights and benefits as are accorded to the most favorably insured of the Corporation's directors, if Indemnitee is a director, or of the Corporation's officers, if Indemnitee is not a director of the Corporation but is an officer; and (b) the policy shall provide that it shall not be cancelled or materially modified without 30 days' prior written notice to Indemnitee. Notwithstanding the foregoing, the Corporation shall have no obligation to obtain or maintain such insurance if the Corporation determines in good faith that such insurance is not reasonably available, if the premium costs for such insurance are disproportionate to the amount of coverage provided, if the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit, or if Indemnitee is covered by similar insurance maintained by a subsidiary or parent of the Corporation.

7. Indemnification Trust Fund or Other Financial Arrangements. Pursuant to Nevada Revised Statutes § 78.752 or any successor Nevada Law, the Corporation may establish an indemnification trust fund or make other financial arrangements acceptable to Indemnatee for Indemnatee's benefit. Indemnatee shall be an intended third-party beneficiary of any such fund or arrangement, with the right, power, and authority of the Indemnitor to sue for, enforce, and collect the same, in the name, place, and stead of the Corporation or otherwise, for Indemnatee's benefit. Such fund or other arrangements shall be available to Indemnatee for payment of Losses upon the Corporation's failure, inability, or refusal to pay Losses incurred by the Indemnitor.

8. Right of Indemnitor to Indemnification upon Application; Selection of Independent Counsel; Procedure upon Application.

(a) Any application for indemnification under this Agreement, other than when Losses are paid in advance of any final disposition pursuant to section 5 hereof, shall be submitted to the board of directors. If a quorum of the board of directors were not parties to the action, suit, proceeding or other matter, a majority of the directors who were not parties to the action, suit, proceeding or other matter may determine whether indemnification of the applicant is not prohibited by law or may have such determination made by Independent Counsel in a written decision. If a quorum of the board directors who were not parties to the action cannot be obtained, the board of directors shall have such determination made by Independent Counsel in a written decision. Notwithstanding the foregoing, however, the board of directors may under any circumstances submit the determination of whether indemnification is proper in the circumstances to the stockholders. The board of directors shall respond to a request for indemnification or initiate the process of submitting the determination to the stockholders within 45 days after receipt by the Corporation of the written application for indemnification.

(b) If required, Independent Counsel shall be selected by the board of directors, and the Corporation shall give written notice to Indemnitor advising him of the identity of Independent Counsel so selected. Indemnitor may, within seven days after such written notice of selection shall have been given, deliver to the Corporation a written objection to such selection. Such objection may be asserted only on the ground that Independent Counsel so selected does not meet the requirements of "Independent Counsel," as defined in section 1, and the objection shall set forth with particularity the factual basis of such assertion. If such written objection is made, Independent Counsel so selected may not serve as Independent Counsel unless and until a court has determined that such objection is without merit. If, within 20 days after submission by Indemnitor of a written objection to the Independent Counsel selected, the Corporation has failed to identify a replacement Independent Counsel, the Indemnitor may petition any court of competent jurisdiction for resolution of any objection that shall have been made by Indemnitor to the Corporation's selection of Independent Counsel and for appointment as Independent Counsel of a person selected by such court or by such other person as such court shall designate, and the person with respect to whom an objection is so resolved or the person so appointed shall act as Independent Counsel. The Corporation shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with its fees and expenses incident to the procedures of this section 8 regardless of the manner in which such Independent Counsel was selected or appointed.

(c) The right to indemnification or advances as provided by this Agreement shall be enforceable by Indemnitee in any court of competent jurisdiction. The burden of proving that indemnification is not appropriate shall be on the Corporation. Neither the failure of the Corporation (including its board of directors or Independent Counsel) to have made a determination prior to the commencement of such action that indemnification is proper in the circumstances, nor an actual determination by the Corporation (including its board of directors or Independent Counsel) that indemnification is not proper in the circumstances, shall be a defense to the action, suit, proceeding, or other matter or create a presumption that indemnification is not proper in the circumstances.

9. Notice to Insurers. If, at the time of the receipt of an application for indemnification pursuant to section 2 hereof or a request for advances of Losses pursuant to section 5 hereof, the Corporation has director and officer liability insurance in effect, the Corporation shall give prompt notice of the commencement of such Indemnifiable Matter to the insurers in accordance with the procedures set forth in the respective policies. The Corporation shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Indemnifiable Matter in accordance with the terms of such policies.

10. Undertaking by Indemnitee. Indemnitee hereby undertakes to repay to the Corporation any advances of Losses pursuant to this Agreement to the extent that it is ultimately determined that Indemnitee is not entitled to indemnification.

11. Indemnification Hereunder Not Exclusive. The indemnification and advancement of Losses provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may be entitled under the Articles or Bylaws, the Nevada Law, any policy or policies of directors' and officers' liability insurance, any other agreement, any vote of stockholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office (together, "Other Indemnification"). However, Indemnitee shall reimburse the Corporation for amounts paid to him under Other Indemnification and not under this Agreement in an amount equal to any payments received pursuant to such Other Indemnification, to the extent such payments duplicate any payments received pursuant to this Agreement.

12. Continuation of Indemnity. All agreements and obligations of the Corporation contained herein shall continue during the period Indemnitee is a director, officer, employee, agent, or advisor of the Corporation (or is or was serving at the request of the Corporation as a director, officer, employee, agent, or advisor of another corporation, partnership, joint venture, trust, limited liability company, or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any possible Indemnifiable Matter.

13. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Corporation for some or a portion of Losses, but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify Indemnitee for the portion of such Losses to which Indemnitee is entitled.

14. Settlement of Claims. The Corporation shall not be liable to indemnify Indemnitee under this Agreement for any amounts paid in settlement of any Indemnifiable Matter effected without the Corporation's written consent. The Corporation shall not settle any Indemnifiable Matter in any manner that would impose any penalty or limitation on Indemnitee's rights under this Agreement without Indemnitee's written consent. Neither the Corporation nor Indemnitee will unreasonably withhold its consent to any proposed settlement. The Corporation shall not be liable to indemnify Indemnitee under this Agreement with regard to any judicial award if the Corporation was not given a reasonable and timely opportunity, at its expense, to participate in the defense of such action.

15. Change in Control. The Corporation agrees that if there is a Change in Control of the Corporation (other than a Change in Control that has been approved by a majority of the Corporation's board of directors who were directors immediately prior to such Change in Control) then, with respect to all matters thereafter arising concerning the rights of Indemnatee to payments of Losses under this Agreement or any other agreement, or under the Articles or Bylaws as now or hereafter in effect, independent counsel shall be selected by the Indemnatee and approved by the Corporation (which approval shall not be unreasonably withheld). Such counsel, among other things, shall render its written opinion to the Corporation and Indemnatee as to whether and to what extent Indemnatee would be permitted to be indemnified under Nevada Law as determined in accordance with section 18(d). The Corporation agrees to abide by such opinion and to pay the reasonable fees of the independent counsel referred to above and to fully indemnify such counsel against any and all expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

16. Termination of Previous Indemnification Agreement. Upon execution of this Agreement, the previous Indemnification Agreement dated _____, by and between the Corporation and Indemnatee shall terminate and be of no further force or effect, provided that Indemnatee shall be entitled to all of the benefits and rights under this Agreement respecting any Losses arising from, related to, or in connection with Indemnifiable Matters prior to the date of this Agreement.

17. Enforcement.

(a) The Corporation expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on the Corporation hereby in order to induce Indemnatee to serve as a director or officer of the Corporation, and acknowledges that Indemnatee is relying upon this Agreement in continuing as a director or officer. The Corporation shall be precluded from asserting in any action commenced pursuant to this section 17 that the procedures and presumptions in this section are not valid, binding and enforceable and shall stipulate in any such judicial proceedings that the Corporation is bound by all of the provisions of this Agreement.

(b) In any action commenced pursuant to this section 17, Indemnatee shall be presumed to be entitled to indemnification and advancement of Losses in accordance with section 5 under this Agreement, as the case may be, and the Corporation shall have the burden of proof in overcoming such presumption and must show by clear and convincing evidence that Indemnatee is not entitled to indemnification or advancement of Losses, as the case may be.

(c) The execution of this Agreement shall constitute the Corporation's stipulation by which it shall be irrevocably bound in any action by Indemnatee for enforcement of Indemnatee's rights hereunder that the Corporation's obligations set forth in this Agreement are unique and special, and that failure of the Corporation to comply with the provisions of this Agreement will cause irreparable and immediate injury to Indemnatee, for which a remedy at law will be inadequate. As a result, in addition to any other right or remedy Indemnatee may have at law or in equity respecting a breach of this Agreement, Indemnatee shall be entitled to injunctive or mandatory relief directing specific performance by the Corporation of its obligations under this Agreement.

(d) In the event that Indemnatee shall deem it shall be necessary or desirable to retain legal counsel and/or incur other costs and expenses in connection with the interpretation or enforcement of any or all of Indemnatee's rights under this Agreement, Indemnatee shall be entitled to recover from the Corporation, and the Corporation shall indemnify Indemnatee against, any and all fees, costs, and expenses (of the types described in the definition of Losses in section 1(b)) incurred by Indemnatee in connection with the interpretation or enforcement of said rights. The Corporation shall make payment to the Indemnatee at the time such fees, costs, and expenses are incurred by Indemnatee. If, however, the Indemnatee does not prevail in such action under this section 17, Indemnatee shall repay any and all such amounts to the Corporation. If it shall be determined in an action pursuant to this section 17 that Indemnatee is entitled to receive part but not all of the indemnification or advancement of fees, costs, and expenses or other benefit sought, the expenses incurred by Indemnatee in connection with an action pursuant to this section 17 shall be equitably allocated between the Corporation and Indemnatee. Notwithstanding the foregoing, if a Change in Control shall have occurred, Indemnatee shall be entitled to indemnification under this section 17 regardless of whether Indemnatee ultimately prevails in such judicial adjudication or arbitration. This section 17(b) is not subject to the provisions of section 8.

18. Governing Law; Binding Effect; Amendment and Termination; Construction.

(a) This Agreement shall be interpreted and enforced in accordance with Nevada Law.

(b) This Agreement shall be binding upon the Corporation, its successors and assigns, and shall inure to the benefit of Indemnatee such Indemnatee's actual or alleged alter egos, spouse, family members, and corporations, partnerships, limited liability companies, trusts, and other enterprises or entities of any form whatsoever under the control of any of the foregoing, the property of all of the foregoing, and the successors and assigns of all of the foregoing.

(c) No amendment, modification, termination, or cancellation of this Agreement shall be effective unless in writing signed by the Corporation and Indemnatee.

(d) This Agreement shall be construed liberally in favor of the Indemnatee to the fullest extent possible under Nevada Law, even if such indemnification is not specifically authorized by this Agreement or any other agreement, the Articles or Bylaws, or by Nevada Law. In the event Nevada Law is changed after the date of this Agreement, through statutory amendment, judicial interpretation, administrative regulations or otherwise, to allow additional indemnification or to remove or restrict current limitations on indemnification, this Agreement shall be deemed to be amended and reformed so that Indemnatee shall enjoy by this Agreement the greater benefits of such change. In the event of any change in Nevada Law that narrows or restricts the right of a Nevada corporation to indemnify Indemnatee, such change, to the extent not otherwise required by Nevada Law to be applied to Indemnatee in the relevant circumstances, shall have no effect on this Agreement or the rights and obligations of the parties hereunder.

19. Mutual Acknowledgement. Both the Corporation and Indemnatee acknowledge that in certain instances, federal law or applicable public policy may prohibit the Corporation from indemnifying its directors and officers under this Agreement or otherwise. Indemnatee understands and acknowledges that the Corporation has undertaken, or may be required in the future to undertake with the Securities and Exchange Commission, to submit the question of indemnification to a court in certain circumstances for a determination of the Corporation's right under public policy to indemnify Indemnatee.

20. Severability. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable:

(a) the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be in any way affected or impaired thereby; and

(b) to the fullest extent possible, the provisions of this Agreement shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal, or unenforceable.

Each section of this Agreement is a separate and independent portion of this Agreement. If the indemnification to which Indemnitee is entitled as respects any aspect of any claim varies between two or more sections of this Agreement, that section providing the most comprehensive indemnification shall apply.

21. Notice. Any notice, demand, request, or other communication permitted or required under this Agreement shall be in writing and shall be deemed to have been given as of the date so delivered, if personally served; as of the date so sent, if transmitted by facsimile and receipt is confirmed by the facsimile operator of the recipient; as of the date so sent, if sent by electronic mail and receipt is acknowledged by the recipient; one day after the date so sent, if delivered by overnight courier service; or three days after the date so mailed, if mailed by certified mail, return receipt requested, addressed as follows:

If to the Corporation: FX Energy, Inc.
3006 Highland Drive, Suite 206
Salt Lake City, UT 84106
Facsimile: (801) 486-5575
E-mail: davidpierce@fxenergy.com

If to Indemnitee, to: _____

Facsimile: (801) _____
E-mail: _____

or such other addresses, facsimile numbers, or electronic mail address as shall be furnished in writing by any party in the manner for giving notices hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on and as of the day and year first above written.

Corporation:

FX ENERGY, INC.

By: /s/ / David N. Pierce
David N. Pierce, President

Indemnitee:

[Individual Name]

Related Schedule

<u>Name of Indemnitee</u>	<u>Effective Date</u>
Scott J. Duncan	December 9, 2004
Dennis B. Goldstein	December 9, 2004
Arnold S. Grundvig, Jr.	December 9, 2004
Richard F.P. Hardman	December 9, 2004
Thomas B. Lovejoy	December 9, 2004
Jerzy B. Maciolek	December 9, 2004
Clay Newton	December 9, 2004
Andrew W. Pierce	December 9, 2004
David N. Pierce	December 9, 2004
David L. Worrell	December 9, 2004
H. Allen Turner	February 20, 2007

SUMMARY OF COMPENSATORY ARRANGEMENTS WITH DIRECTORS AND NAMED EXECUTIVE OFFICERS

Director Compensation. Each director who is not an employee or officer of the Company will receive the following compensation for his services as director in 2007:

- annual base compensation of \$20,000;
- \$1,500 per regularly-scheduled board meeting attended;
- \$5,000 per year for service (\$15,000 per year commencing June 2007) as the Audit Committee chairman;
- \$5,000 per year for service as the Compensation Committee chairman;
- \$20,000 per year for service as the Lead Director;
- an annual grant of 4,800 shares of restricted common stock (9,600 for the Lead Director);
- reimbursement of reasonable out-of-pocket expenses incurred in attending board meetings.

Mr. Hardman, who is the Technical Advisor to the board of directors, is also a consultant to the Company. In this capacity, he receives \$57,000 per year and is granted an additional 22,200 shares of restricted common stock as a consequence of his appointment to that position.

Mr. Turner received an initial one-time sign-on restricted stock grant of 10,000 shares under our current long-term incentive plan.

Named Executive Officer Compensation. The Company's executive compensation program has several elements, all determined by individual and Company performance.

Base Salary Compensation

Base salaries for the Chief Executive Officer and the other named executive officers in 2007 have been established by reviewing a number of factors, including responsibilities, experience, demonstrated performance, potential for future contributions, and the level of salaries associated with similar positions at businesses that compete with the Company and other competitive factors. Base salary levels for named executive officers in 2007 have been determined as follows:

David N. Pierce	\$350,000
Thomas B. Lovejoy	270,000
Andrew W. Pierce	270,000
Jerzy B. Maciolek	250,000
Clay Newton	185,000

Other Compensation

In addition to his base salary, each of the named executive officers is eligible to participate in the following:

- the Company's various stock option and incentive plans, under which stock options or other equity compensation may be granted from time to time as determined by the board of directors, and which may be based on factors such as the level of base pay and individual performance;
- short-term incentive compensation, which is determined from time to time by the board of directors, under which cash bonuses in varying amounts may be granted based on the Company and individual achieving predetermined goals;
- the Company's 401(k) profit-sharing plan and other health and benefit plans generally available to Company employees; and
- other compensation arrangements as determined by the board of directors.

EMPLOYMENT AGREEMENT
(Revised effective January 1, 2007)

THIS EMPLOYMENT AGREEMENT (Revised effective January 1, 2007) (this "Agreement") supplements and revises that certain Employment Agreement entered into May 17, 2006, (the "Effective Date"), by and between FX Energy, Inc., a Nevada corporation (the "Employer"), and [name of employee] (the "Employee").

RECITALS:

WHEREAS, the Employee desires employment as an employee of the Employer, and the Employer desires to employ the Employee, under the terms and conditions hereof.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

ARTICLE I
ASSOCIATION AND RELATIONSHIP

1.1 Nature of Employment. The Employer hereby employs the Employee and the Employee hereby accepts employment from the Employer upon the terms and conditions set forth herein.

1.2 Full Time Services. The Employee shall devote his full working time, attention, and services to the business and affairs of the Employer and shall not, without the Employer's written consent, be engaged during the term of this Agreement in any other substantial business activity other than normal investment activities, whether or not such business activity is pursued for gain, profit, or other pecuniary advantages, that significantly interferes or conflicts with the reasonable performance of his duties hereunder.

1.3 Duties. During the term of this Agreement, the Employee agrees to serve in such offices or positions with the Employer or any subsidiary of the Employer and such substitute or further offices or positions of substantially consistent rank and authority as shall, from time to time, be determined by the Employer's board of directors. The Employee agrees to perform such duties appropriate for an Employee officer of Employer as may be assigned to him from time to time by the Employer and as described in the Employer's bylaws. The Employer shall direct, control, and supervise the duties and work of the Employee.

1.4 Satisfaction of Employer. The Employee agrees that he will, at all times faithfully, promptly, and to the best of his ability, experience, and talent, perform all of the duties that may be required of him pursuant to the express and implicit terms hereof. Such duties shall be rendered at such place or places as the interests, needs, business, and opportunities of the Employer shall require or make advisable; provided, however, that Employee shall not be required to move his residence without the mutual consent of the Employer and the Employee.

1.5 Compliance with Rules. The Employee shall observe and comply with the rules and regulations of the Employer respecting its business and shall carry out and perform orders, directions, and policies of the Employer as they may be from time to time communicated to the Employee either orally or in writing. In the event of a conflict between this Agreement and the Company's Employee Handbook, this Agreement shall prevail. The Employee shall further observe and comply with all applicable rules, regulations, and laws governing the business of Employer.

1.6 Fees for Services. All income or other compensation generated by the Employee other than from the Employer for any services performed by him during the term of this Agreement in connection with the business of the Employer, including, but not limited to, management fees, consulting fees, advisory fees, commissions, or similar items, shall belong to the Employer whether paid to the Employer or to the Employee, either directly or indirectly, or an affiliate of the Employee. The Employee agrees to remit to the Employer any such income or other compensation received by him or his affiliates within ten (10) days after receipt of such income or other compensation. The Employee agrees, upon request by the Employer, to render an accounting of all transactions relating to his business endeavors related to the business of the Employer during the term of his employment hereunder.

ARTICLE II COMPENSATION AND BENEFITS

2.1 Compensation. For all services rendered by the Employee pursuant to this Agreement, the Employer shall compensate the Employee as follows:

(a) Salary. The Employee shall be paid in accordance with the normal payroll practice of the Employer annual compensation in an amount to be determined from time to time by the board of directors.

(b) Salary Escalation. From time to time, the annual salary payable to the Employee pursuant to Section 2.1(a) above may be changed as the board of directors or the designated compensation committee thereof may deem appropriate, but no change shall be effective with respect to the then-current term without consent of the employee.

(c) Bonus. The Employer may, in its absolute discretion, pay the Employee a bonus as determined in the sole discretion of the board of directors of the Employer or the designated compensation committee thereof taking into consideration the growth and profitability of the Employer, the relative contribution by the Employee to the business of the Employer, the economy in general, and such other factors as the board of directors or designated compensation committee deems relevant.

(d) Other Benefits. The Employer shall additionally provide to the Employee incentive, retirement, pension, profit sharing, stock option, health, medical, or other employee benefit plans which are consistent with and similar to such plans provided by the Employer to its employees generally. All costs of such plans shall be an expense of the Employer and shall be paid by Employer.

2.2 Continuation of Compensation during Disability. The intent of this agreement is to pay 2 years of base salary to an employee in the event of a long term disability. If the Employee is unable to perform his services by reason of disability due to illness or incapacity for a period of more than six consecutive months (during which time he will have continued to receive his regular monthly salary), the compensation thereafter payable to him during the next succeeding consecutive eighteen-month period shall be equal to the regular monthly salary provided for in Section 2.1(a) hereof, notwithstanding the termination of this Agreement during such eighteen month period. The Employee will continue to vest in his outstanding equity awards according to their terms. Notwithstanding the foregoing, if such illness or incapacity does not cease to exist within the 18 consecutive month period provided herein, the Employee shall not be entitled to receive any further compensation from the Employer and the Employer may thereupon terminate this Agreement. Upon termination of this agreement, except to the extent expressly prohibited by any applicable law or regulation, all unvested options, restricted stock purchase awards, and other equity awards whose vesting is not contingent on reaching any performance benchmarks in the

future, other than merely the passage of time, shall automatically vest and become immediately exercisable, and all forfeiture provisions pursuant to restricted stock or other awards shall automatically and immediately terminate. The vesting of any unvested options, restricted stock purchase awards, or other equity awards whose vesting is contingent on reaching any Employer or Employee performance benchmarks in the future, other than merely the passage of time shall not be accelerated

For purposes of this Agreement, the Employee is "disabled" when he is unable to continue his normal duties of employment, by reason of a medically determined physical or mental impairment. In determining whether or not the Employee is disabled, the Employer may rely upon the opinion of any doctor or practitioner of any recognized field of medicine or psychiatric practice selected jointly by the Employer and Employee and such other evidence as the Employer deems necessary.

2.3 Working Facilities. The Employer shall provide to the Employee at the Employer's principal Employee offices suitable Employee offices and facilities appropriate for his position and suitable for the performance of his responsibilities.

2.4 Vacations. The Employee shall be entitled each year to a paid vacation of at least four (4) weeks. Vacations shall be taken by the Employee at a time and with starting and ending dates mutually convenient to the Employer and the Employee. Vacations or portions of vacations not used in one employment year shall carry over to the succeeding employment year, but shall thereafter expire if not used within such succeeding year.

2.5 Expenses. The Employer will reimburse the Employee for expenses incurred in connection with the Employer's business, including expenses for travel, lodging, meals, beverages, entertainment, and other items in accordance with the Company's travel policies.

2.6 Dues and Memberships. The Employer shall pay reasonable dues of the Employee in local, state, and national societies and associations, and in such other organizations, as may be approved and authorized by the Employer.

2.7 Payroll Taxes. The Employer shall withhold from the Employee's compensation hereunder all federal and state payroll taxes and income taxes on compensation paid to the Employee and shall provide an accounting to the Employee for such amounts withheld.

2.8 Stock Options. The Employer may grant to the Employee from time to time non-qualified options to purchase shares of the Company's common stock, or such other stock-based compensation as determined by the Board, subject to customary terms and conditions of the Employer's option plans and practices. The Employer agrees that the Employee will receive option grants which are consistent with and similar to such grants provided by the Employer to its employees generally.

ARTICLE III COVENANT TO NOT DISCLOSE CONFIDENTIAL INFORMATION

3.1 Definition of Confidential Information. For purposes of this Agreement, the term "Confidential Information" does not apply to information generally available to the public or to businesses in the oil and gas exploration and development industry, but otherwise shall mean information in written or electronic form under the care or custody of Employee as a direct or indirect consequence of or through his employment with the Employer, including, but not limited to, the special proprietary and economic information regarding the business, methods, and operation of the Employer that is designated by the Employer as "Limited," "Private," or "Confidential" or similarly designated or for which there is any reasonable basis to be believed is, or which appears to be, treated by the Employer as confidential.

3.2 Protection of Goodwill. The Employee acknowledges that in the course of carrying out, performing, and fulfilling his responsibilities to the Employer, the Employee will be given access to and be entrusted with Confidential Information relating to the Employer's business. The Employee recognizes that (i) the goodwill of the Employer depends upon, among other things, its keeping the Confidential Information confidential and that unauthorized disclosure of the Confidential Information would irreparably damage the Employer; and (ii) disclosure of any Confidential Information to competitors of the Employer or to the general public would be highly detrimental to the Employer. The Employee further acknowledges that in the course of performing his obligations to the Employer he will be a representative of the Employer to many clients or other persons and, in some instances, the Employer's primary contact with such clients or other persons, and as such will be responsible for maintaining or enhancing the business and/or goodwill of the Employer with those clients or other persons.

3.3 Covenants Regarding Confidential Information. In further consideration of the employment of the Employee by the Employer and in consideration of the compensation to be paid to the Employee during his employment, the Employee hereby agrees as follows:

(a) Nondisclosure of Confidential Information. The Employee will not, during his employment with the Employer or at any time after termination of his employment, irrespective of the time, manner, or cause of termination, use, disclose, copy, or assist any other person or firm in the use, disclosure, or copying, of any Confidential Information.

(b) Return of Confidential Information. All files, records, documents, drawings, equipment, and similar items, whether in written or electronic form, relating to the business of the Employer, whether prepared by the Employee or otherwise coming into his possession, shall remain the exclusive property of the Employer and shall not be removed from the premises of the Employer, except where necessary in carrying out the business of the Employer, without the prior written consent of the Employer. Upon termination of the Employee's employment, the Employee agrees to deliver to the Employer all Confidential Information and all copies thereof along with any and all other property belonging to the Employer whatsoever.

ARTICLE IV ENFORCEMENT OF COVENANTS

4.1 Relief. The Employee agrees that a breach or threatened breach on his part of any covenant contained in this Agreement will cause such damage to the Employer as will be irreparable and for that reason, the Employee further agrees that the Employer shall be entitled as a matter of right to an injunction out of any court of competent jurisdiction restraining any further violation of such covenants by the Employee, his employers, employees, partners, or agents. The right to injunction shall be cumulative and in addition to whatever other remedies the Employer may have, including, specifically, recovery of damages.

4.2 Survival of Covenants. Subject to Article V below, in the event the Employee's employment relationship with the Employer is terminated, with or without cause, the covenants contained in Article III above shall survive for a period of one year after such termination.

ARTICLE V TERM AND TERMINATION

5.1 Term. Except as provided herein, the term of this Agreement shall be for a period of thirty (30) months commencing on the Effective Date hereof, provided, however, that this Agreement shall automatically renew for successive thirty (30) month terms at each anniversary date unless FX notifies Executive in writing at least 40 days prior to the expiration date that it does not desire to renew the Agreement for an additional term.

5.2 Termination. The Employee's employment hereunder may be terminated without any breach of this Agreement only under the following circumstances:

(a) Termination for Cause. The Employer shall have the right, without further obligation to the Employee other than for compensation previously accrued, to terminate this Agreement for cause ("Cause") by showing that (i) the Employee has materially breached the terms hereof; (ii) the Employee, in the determination of the board, has been grossly negligent in the performance of his duties; (iii) the Employee has substantially failed to meet written standards established by the Employer for the performance of his duties; (iv) the Employee has engaged in material willful or gross misconduct in the performance of his duties hereunder; or (v) a final non-appealable conviction of or a plea of guilty or nolo contendere by the Employee to a felony or misdemeanor involving fraud, embezzlement, theft, or dishonesty or other criminal conduct against the Employer. Notwithstanding the foregoing, the Employee shall not be deemed to have been terminated for Cause, without (x) reasonable notice to the Employee setting forth the reasons for the Employer's intention to terminate for Cause; and (y) delivery to the Employee of written notice of termination setting forth the finding that in the good faith opinion of the board of directors the Employee was guilty of Cause and specifying the particulars thereof in detail.

(b) Termination upon Death or Disability of the Employee. This Agreement shall terminate immediately upon the Employee's death or upon the disability of the Employee after termination of pay as set forth in Section 2.2.

(c) Termination by Employee for Cause. The Employee shall have the right to terminate this Agreement in the event of (i) the Employer's intentional breach of any covenant or term of this Agreement, but only if the Employer fails to cure such breach within twenty (20) days following the receipt of notice by Employee setting forth the conditions giving rise to such breach; (ii) an assignment to the Employee of any duties inconsistent with, or a significant change in the nature or scope of, the Employee's authorities or duties from those authorities and duties held by the Employee as of the date hereof and as increased from time to time; or (iii) the failure by the Employer to obtain the assumption of the commitment to perform this Agreement by any successor corporation. This paragraph does not apply in the event of a change in control, as defined in the Employee's separate Change in Control Compensation Agreement.

5.3 Termination Payments.

(a) Termination Other than for Cause. In the event that the Employee's employment is terminated by the Employer during the term hereof for reasons other than Cause as defined in Section 5.2(a) or the Employee terminates this Agreement in accordance with Section 5.2(c), the Employer shall (provided such payment does not duplicate a payment already made to Employee under the "Change in Control Compensation Agreement"):

(i) Pay to Employee all amounts accrued through the date of termination, any unreimbursed expenses incurred pursuant to Section 2.5 of this Agreement, and any other benefits specifically provided to the Employee under any benefit plan.

(ii) Pay to Employee an amount equal to two times the greater of (a) Employee's then current annual salary, or (b) Employee's salary plus bonus compensation for the year most recently ended as reportable on the applicable W-2.

(iii) Pay to Employee a lump sum payment equal to two years of health insurance premiums at the monthly rate in effect for the Employee at the time of termination. The amounts under Sections 5.3(a)(ii) and (iii) shall be payable to Employee on the first day of the seventh month following the date of termination of Employee's employment; provided, that such amounts may be paid earlier in the event of Employer's death after termination of employment.

(iv) In addition to the foregoing payments, in the event of termination as referred to above, except to the extent expressly prohibited by any applicable law or regulation, all unvested options, restricted stock purchase awards, and other equity awards whose vesting is not contingent on reaching any performance benchmarks in the future, other than merely the passage of time, shall automatically vest and become immediately exercisable, and all forfeiture provisions pursuant to restricted stock or other awards shall automatically and immediately terminate. The vesting of any unvested options, restricted stock purchase awards, or other equity awards whose vesting is contingent on reaching any Employer or Employee performance benchmarks in the future, other than merely the passage of time shall not be accelerated.

(b) Termination upon Death of the Employee. If the Employee dies during the term of this Agreement, the Employer shall pay to the estate of the Employee the following:

(i) All amounts accrued through the date of termination, any unreimbursed expenses incurred pursuant to Section 2.5 of this Agreement, and any other benefits specifically provided to the Employee under any benefit plan; and

(ii) An amount equal to two times the greater of (a) Employee's then current annual salary, or (b) Employee's salary plus bonus compensation for the year most recently ended as reportable on the applicable W-2.

(iii) A lump sum payment equal to two years of health insurance premiums at the monthly rate in effect for the Employee at the time to death.

(iv) In addition to the foregoing payments, in the event of the Employee's death, except to the extent expressly prohibited by any applicable law or regulation, all unvested options, restricted stock purchase awards, and other equity awards whose vesting is not contingent on reaching any performance benchmarks in the future, other than merely the passage of time, shall automatically vest and become immediately exercisable, and all forfeiture provisions pursuant to restricted stock or other awards shall automatically and immediately terminate. The vesting of any unvested options, restricted stock purchase awards, or other equity awards whose vesting is contingent on reaching any Employer or Employee performance benchmarks in the future, other than merely the passage of time shall not be accelerated.

(c) Termination for Cause or Termination by the Employee. If the Employee terminates this Agreement for any reason other than in accordance with the provisions of Section 5.2(c) of this Agreement, or if the Employer terminates this Agreement on account of Cause, the Employer shall deliver to the Employee, within ninety (90) days following the effective date of such termination, all amounts accrued through the date of termination, any unreimbursed expenses incurred pursuant to Section 2.5 of this Agreement, and any other benefits specifically provided to the Employee under any benefit plan. The Employer shall have no further obligation to Employee.

5.4 Resignation upon Termination. Upon the termination of this Agreement for any reason, the Employee hereby agrees to resign from all positions held in the Employer or an affiliate of the Employer, including without limitation any position as a director, officer, agent, trustee or consultant of the Employer or any affiliate of the Employer.

ARTICLE VI MISCELLANEOUS

6.1 Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity and enforceability of any other provisions hereof. Further, should any provisions within this Agreement ever be reformed or rewritten by a judicial body, those provisions as rewritten shall be binding upon the Employer and the Employee.

6.2 Right of Setoff. The Employer and Employee shall each be entitled, at its option and not in lieu of any other remedies to which it may be entitled, to set off any amounts due from the other or any affiliate of the other against any amount due and payable by such person or any affiliate of such person pursuant to this Agreement or otherwise.

6.3 Representations and Warranties of the Employee. The Employee represents and warrants to the Employer that (a) the Employee understands and voluntarily agrees to the provisions of this Agreement; (b) the Employee is not aware of any existing medical condition which might cause him to be or become unable to fulfill his duties under this Agreement; and (c) the Employee is free to enter into this Agreement and has no commitment, arrangement or understanding to or with any third party that restrains or is in conflict with this Agreement or that would operate to prevent the Employee from performing the services to the Employer that the Employee has agreed to provide hereunder.

6.4 Succession. This Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, and shall also bind and inure to the benefit of any successor of the Employer by merger or consolidation or any assignee of all or substantially all of its property.

6.5 Assignment. Except to any successor or assignee of the Employer as provided in Section 6.4, neither this Agreement nor any rights or benefits hereunder may be assigned by either party hereto without the prior written consent of the other party. Neither the Employee, the Employee's spouse, the Employee's designated contingent beneficiary, nor their estates shall have any right to anticipate, encumber, or dispose of any payment due under this Agreement. Such payments and other rights are expressly declared nonassignable and nontransferable, except as specifically provided herein.

6.6 Reimbursement of Expenses. In the event that it shall be necessary or desirable for the Employee to retain legal counsel and/or incur other costs and expenses in connection with the enforcement of any and all of the Employee's rights under this Agreement, the Employee shall be entitled to recover from the Employer reasonable attorneys' fees, costs, and expenses incurred by the Employee in connection with the enforcement of said rights if the Employee prevails in such enforcement action. However, in the event that it shall be necessary or desirable for the Employer to retain legal counsel and/or incur other costs and expenses in connection with the enforcement of any and all of the Employer's rights under this Agreement, the Employer shall be entitled to recover from the Employee reasonable attorneys' fees, costs, and expenses incurred by the Employer in connection with the enforcement of said rights if the Employer prevails in such enforcement action. Fees payable hereunder shall be in addition to any other damages, fees, or amounts provided for herein.

6.7 Officer and Director Indemnification. The Employer and Employee have entered into a separate indemnification agreement dated November 5, 1996.

6.8 Notices. Any notices or other communications required or permitted under this Agreement shall be sufficiently given if personally delivered, if sent by facsimile or telecopy transmission or other electronic communication confirmed by sending a copy thereof by United States mail, if sent by United States mail, registered or certified, postage prepaid, or if sent by prepaid overnight courier addressed as set forth on the signature page hereto or such other addresses as shall be furnished in writing by any party in the manner for giving notices hereunder, and any such notice or communication shall be deemed to have been given as of the date so delivered or sent by facsimile or telecopy transmission or other electronic communication, one day after the date so sent by overnight courier, or three days after the date of deposit in the United States mail.

6.9 Entire Agreement. This Agreement contains the entire Agreement between the parties hereto with respect to the subject matter contained herein. No change, addition, or amendment shall be made except by written agreement signed by the parties hereto.

6.10 Waiver of Breach. The failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or the failure to exercise any right or remedy consequent upon a breach hereof shall not constitute a waiver of any such breach or of any covenant, agreement, term, or condition and the waiver by either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

6.11 Multiple Counterparts. This Agreement has been executed in a number of identical counterparts, each of which for all purposes is to be deemed an original, and all of which constitute, collectively, one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

6.12 Descriptive Headings. In the event of a conflict between titles to articles and paragraphs and the text, the text shall control.

6.13 Governing Law. The laws of the state of Utah shall govern the validity, construction, enforcement, and interpretation of this Agreement.

6.14 Revised Agreement. This revision effective January 1, 2007, supplements and amends that certain Employment Agreement between the parties hereto effective as of May 17, 2006, which is hereby ratified and confirmed as revised pursuant hereto.

Signed and delivered to be effective as of the Effective Date set forth above.

EMPLOYER:

EMPLOYEE:

FX ENERGY, INC.

By: /s/
Name:
Title:

By: /s/

Schedule of Employees

Scott J. Duncan
Thomas B. Lovejoy
Jerzy B. Maciolek
Clay Newton
Andrew W. Pierce
David N. Pierce

CHANGE IN CONTROL COMPENSATION AGREEMENT
(Revised effective January 1, 2007)

This Change In Control Compensation Agreement, revised effective January 1, 2007, supplements and amends that certain Change In Control Compensation Agreement, dated as of the 16th day of November, 2004 between FX Energy, Inc. ("FX"), and [executive name] (the "Executive").

The Compensation Committee of the Board of Directors of FX has recommended, and the Board of Directors has approved, that FX enter into agreements, providing for compensation under certain circumstances after a change in control, with key executives of FX and its subsidiaries who are from time to time designated by the Compensation Committee;

Executive is a key executive of FX and has been selected by the Compensation Committee to enter into this Agreement;

Should FX become subject to any proposed or threatened Change in Control (as defined below), the Board of Directors of FX believes it imperative that FX and the Board of Directors be able to rely upon Executive to continue in his position, and that FX be able to receive and rely upon his advice, if requested, as to the best interests of FX and its stockholders without concern that he might be distracted by the personal uncertainties and risks created by such a proposal or threat; and

Should FX receive any such proposal, in addition to Executive's regular duties, he may be called upon to assist in the assessment of such proposals, advise management and the Board of Directors as to whether such proposal would be in the best interests of FX and its stockholders, and to take such other actions above and beyond his regular duties as the Board might determine to be appropriate;

NOW, THEREFORE, to assure FX that it will have the continued dedication of Executive and the availability of his advice and counsel notwithstanding the possibility, threat or occurrence of an effort to take over control of FX, and to induce Executive to remain in the employ of FX following a Change in Control (as defined below) to facilitate an orderly transition, and for other good and valuable consideration, FX and Executive agree as follows:

1. *Termination Following Change in Control.* Except as provided in Section 3 below, FX will provide or cause to be provided to Executive the rights and benefits described in Section 2 below in the event that Executive's employment is terminated at any time within two (2) years following a Change in Control (as such term is defined in this Section 2) under the circumstances stated in (a) or (b) below.

- (a) for reasons other than for "cause" (as such term is defined in Section 4 hereof) or other than as a consequence of Executive's death, permanent disability or voluntary retirement.
- (b) by Executive following the occurrence of any of the following events:
 - (i) a substantial reduction in Executive's duties or responsibilities;
 - (ii) the reduction of Executive's annual base salary, including any deferred portions of it;
 - (iii) the transfer of Executive to a location requiring a change in his residence or a material increase in the amount of travel normally required of Executive in connection with his employment; or

If a Change in Control shall occur prior to or during any renewal term, as set forth in Section 5 below, Executive shall be entitled to the rights and benefits provided for in Section 2 notwithstanding any other provisions to the contrary in this Agreement.

For purposes of this agreement, a “change in control of the company” means a change in control of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A promulgated under the Securities Exchange Act of 1934; provided that, without limitation, such a change in control shall be deemed to have occurred if:

(A) any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934) other than the company or any person who on the date hereof is a director or officer of the company is or becomes the beneficial owner (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) directly or indirectly, of securities of the company representing 20 percent of the combined voting power of the company’s then outstanding securities; or (B) there is a merger or consolidation of the Company in which the Company does not survive as an independent public company; or (C) the business or businesses of the Company for which your services are principally performed are disposed of by the Company pursuant to a partial or complete liquidation of the Company, a sale of assets of the Company, or otherwise.

2. *Rights and Benefits upon Termination.* In the event of the termination of Executive’s employment under any of the circumstances set forth in Section 1 hereof (“Termination”), FX agrees to provide or cause to be provided to Executive the following rights and benefits:

(a) *Salary and Other Payments at Termination.* In the event of termination as provided herein, Executive shall be entitled to receive payment in cash in the amount of two (2) times the greater of (a) Executive’s then current annual salary, or (b) Employee’s salary plus bonus compensation for the year most recently ended as reportable on the applicable W-2. Payment of such amount shall be payable to the Executive on the first day of the seventh month following the date of termination of the Executive’s employment; provided, that such payment may be paid earlier in the event of the Executive’s death after termination hereunder.

(b) *Plan Benefits under FX’s Profit Sharing Plan.* Except to the extent expressly prohibited by any applicable law or regulation, any and all restrictions, vesting schedules or Schedule of exercise provided in the FX Profit Sharing Retirement Plan (or any successor to it) shall immediately lapse and Executive shall be entitled immediately to receive all benefits previously granted him under that plan.

(c) *Plan Benefits under FX’s Stock and/or Incentive Plans.* Except to the extent expressly prohibited by any applicable law or regulation, all unvested options, restricted stock purchase awards, and other equity awards whose vesting is not contingent on reaching any performance benchmarks in the future, other than merely the passage of time, shall automatically vest and become immediately exercisable, and all forfeiture provisions pursuant to restricted stock or other awards shall automatically and immediately terminate. The vesting of any unvested options, restricted stock purchase awards, or other equity awards whose vesting is contingent on reaching any Employer or Employee performance benchmarks in the future, other than merely the passage of time shall not be accelerated.

(d) *Insurance and Other Special Benefits.* For a period of two (2) years, Executive shall continue to be covered by the life insurance, medical insurance, and accident and disability insurance plans of FX and its subsidiaries or any successor plan or program in effect at or after Termination for employees in the same class or category as was Executive prior to his Termination, subject to the terms of such plans and to Executive’s making any payments therefor required of employees in the same class or category as was Executive prior to his Termination. In the event Executive is ineligible to continue to be so covered under the terms of any such benefit plan or program, or, in the event Executive is eligible but the benefits applicable to Executive under any such plan or program after Termination are not substantially equivalent to the benefits applicable to Executive immediately prior to Termination, then, for a period of two (2) years, FX shall provide such substantially equivalent benefits, or such additional benefits as may be necessary to make the benefits applicable to Executive substantially equivalent to those in effect before Termination, through other sources; provided, however, that if during such period Executive should enter into the employ of another company or firm, Executive’s participation in the comparable benefit provided by FX either directly or through such other sources shall cease. Nothing contained in this paragraph shall be deemed to require or permit termination or restriction of any of Executive’s coverage under any plan or program of FX, or any of its subsidiaries or any successor plan or program thereto to which Executive is entitled under the terms of such plan.

(e) *Other Benefit Plans.* The specific arrangements referred to in this Section 2 are not intended to exclude Executive's Participation in other benefit plans in which Executive currently participates or which are or may become available to executive personnel generally in the class or category of Executive or to preclude other compensation or benefits as may be authorized by the Board of Directors from time to time.

(f) *No Duty to Mitigate.* Executive's entitlement to benefits under this plan shall not be governed by any duty to mitigate his damages by seeking further employment nor offset by any compensation which he may receive from future employment.

(g) *Payment Obligations Absolute.* Unless Section 3 is applicable, FX's obligation to pay or cause to be paid to Executive the benefits and to make the arrangements provided in this Section 2 shall be absolute and unconditional and shall not be affected by any circumstances, including without limitation, any counterclaim, or defense which FX may have against him or anyone else. All amounts payable by or on behalf of FX under this agreement shall, unless specifically stated to the contrary in this agreement, be paid without notice or demand. Each and every payment made hereunder by or on behalf of FX shall be final and FX and its subsidiaries shall not, for any reason whatsoever, seek to recover all or any part of such payment from Executive or from whomever shall be entitled thereto.

3. *Conditions to the Obligations of FX.* FX shall have no obligation to provide or cause to be provided to Executive the rights and benefits described in Section 2 hereof if either of the following events shall occur:

(a) *Termination for Cause.* If Executive engages in serious or willful misconduct which is detrimental to the Company or its shareholders or is convicted of a felony.

(b) *Resignation as Director or Officer.* If executive shall fail, promptly after Termination and upon receiving a written request to do so, to resign as a director and/or officer of FX and each subsidiary and affiliate of FX of which he is then serving as a director and/or officer.

4. *Cooperation.* Executive agrees that, at all times following Termination, he will furnish such information and render such assistance and cooperation as may reasonably be requested in connection with any litigation or legal proceedings concerning FX or any of its subsidiaries (other than any legal proceedings concerning Executive's employment). In connection with such cooperation, FX will pay or reimburse Executive for all reasonable expenses incurred in cooperating with such requests.

5. *Term of Agreement.* Subject to Section 1 hereof, this Agreement shall terminate on December 31, 2005; provided, however, that this Agreement shall automatically renew for successive one-year terms unless FX notifies Executive in writing at least 60 days prior to the expiration date that it does not desire to renew the Agreement for an additional term; and provided further, however, that such notice shall not be given and if given shall have no effect (i) within two (2) years after a Change in Control or (ii) during any period of time when FX has reason to believe that any third person has begun a tender or exchange offer, circulated a proxy to stockholders, or taken other steps or formulated plans to effect a Change in Control, such period of time to end when, in the opinion of the Compensation Committee, the third person has abandoned or terminated his efforts or plans to effect a Change in Control.

6. *Expenses.* FX shall pay or reimburse Executive for all costs and expenses, including, without limitation, court costs and attorneys' fees, incurred by Executive as a result of any claim, action or proceeding by Executive against FX arising out of, or challenging the validity or enforceability of, this Agreement or any provision of this agreement.

7. *Miscellaneous.*

(a) *Severability.* If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity and enforceability of any other provisions hereof. Further, should any provisions within this Agreement ever be reformed or rewritten by a judicial body, those provisions as rewritten shall be binding upon the Employer and the Employee.

(b) *Right of Setoff.* The Employer and Employee shall each be entitled, at its option and not in lieu of any other remedies to which it may be entitled, to set off any amounts due from the other or any affiliate of the other against any amount due and payable by such person or any affiliate of such person pursuant to this Agreement or otherwise.

(c) *Representations and Warranties of the Employee.* The Employee represents and warrants to the Employer that (i) the Employee understands and voluntarily agrees to the provisions of this Agreement; (ii) the Employee is not aware of any existing medical condition which might cause him to be or become unable to fulfill his duties under this Agreement; and (iii) the Employee is free to enter into this Agreement and has no commitment, arrangement or understanding to or with any third party that restrains or is in conflict with this Agreement or that would operate to prevent the Employee from performing the services to the Employer that the Employee has agreed to provide hereunder.

(d) *Succession.* This Agreement and the rights and obligations hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, and shall also bind and inure to the benefit of any successor of the Employer by merger or consolidation or any assignee of all or substantially all of its property.

(e) *Assignment.* Except to any successor or assignee of the Employer as provided in Section 7(d), neither this Agreement nor any rights or benefits hereunder may be assigned by either party hereto without the prior written consent of the other party. Neither the Employee, the Employee's spouse, the Employee's designated contingent beneficiary, nor their estates shall have any right to anticipate, encumber, or dispose of any payment due under this Agreement. Such payments and other rights are expressly declared nonassignable and nontransferable, except as specifically provided herein.

(f) *Reimbursement of Expenses.* In the event that it shall be necessary or desirable for the Employee to retain legal counsel and/or incur other costs and expenses in connection with the enforcement of any and all of the Employee's rights under this Agreement, the Employee shall be entitled to recover from the Employer reasonable attorneys' fees, costs, and expenses incurred by the Employee in connection with the enforcement of said rights if the Employee prevails in such enforcement action. However, in the event that it shall be necessary or desirable for the Employer to retain legal counsel and/or incur other costs and expenses in connection with the enforcement of any and all of the Employer's rights under this Agreement, the Employer shall be entitled to recover from the Employee reasonable attorneys' fees, costs, and expenses incurred by the Employer in connection with the enforcement of said rights if the Employer prevails in such enforcement action. Fees payable hereunder shall be in addition to any other damages, fees, or amounts provided for herein.

(g) *Indemnification.* The Employer and Employee have entered into a separate indemnification agreement dated [indemnification agreement date].

(h) *Notices.* Any notices or other communications required or permitted under this Agreement shall be sufficiently given if personally delivered, if sent by facsimile or telecopy transmission or other electronic communication confirmed by sending a copy thereof by United States mail, if sent by United States mail, registered or certified, postage prepaid, or if sent by prepaid overnight courier addressed as set forth on the signature page hereto or such other addresses as shall be furnished in writing by any party in the manner for giving notices hereunder, and any such notice or communication shall be deemed to have been given as of the date so delivered or sent by facsimile or telecopy transmission or other electronic communication, one day after the date so sent by overnight courier, or three days after the date of deposit in the United States mail.

(i) *Entire Agreement.* This Agreement contains the entire Agreement between the parties hereto with respect to the subject matter contained herein. No change, addition, or amendment shall be made except by written agreement signed by the parties hereto.

(j) *Waiver of Breach.* The failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or the failure to exercise any right or remedy consequent upon a breach hereof shall not constitute a waiver of any such breach or of any covenant, agreement, term, or condition and the waiver by either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

(k) *Multiple Counterparts.* This Agreement has been executed in a number of identical counterparts, each of which for all purposes is to be deemed an original, and all of which constitute, collectively, one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(l) *Descriptive Headings.* In the event of a conflict between titles to articles and paragraphs and the text, the text shall control.

(m) *Governing Law.* The laws of the state of Utah shall govern the validity, construction, enforcement, and interpretation of this Agreement.

(n) *Revised Agreement.* This revision effective January 1, 2007, supplements and amends that certain Change in Control Compensation Agreement between the parties hereto effective as of November 16, 2004, which is hereby ratified and confirmed as revised pursuant hereto.

IN WITNESS, the parties have executed this Agreement as of the day and year first above written.

Date: _____

Executive

FX ENERGY, INC.

Date: _____

Chairman, Compensation Committee of the
Board of Directors of FX Energy, Inc.

Schedule of Executives

Scott J. Duncan
Thomas B. Lovejoy
Jerzy B. Maciolek
Clay Newton
Andrew W. Pierce
David N. Pierce

17 NOVEMBER 2006
FX ENERGY POLAND SP. ZO.O
FX ENERGY, INC.
FX ENERGY NETHERLANDS PARTNERSHIP CV.
FX ENERGY NETHERLANDS BV.
and
THE ROYAL BANK OF SCOTLAND PLC
US\$25,000,000
SENIOR FACILITY AGREEMENT

THIS AGREEMENT is dated 17 November 2006 and made between:

- (1) FX POLAND SP. ZO.O., (the “Borrower”);
- (2) FX ENERGY, INC. (the “Parent”);
- (3) FX ENERGY NETHERLANDS PARTNERSHIP CV. (“FX Partnership”)
- (4) FX ENERGY NETHERLANDS BV. (“FX Netherlands”)
- (5) THE ROYAL BANK OF SCOTLAND PLC (the “Lender”).

IT IS AGREED as follows:

INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“Abandonment Date” means, in relation to each Borrowing Base Asset and each Projection, the date shown in such Projection on which it is reasonably anticipated that such Borrowing Base Asset and/or the relevant facilities relating thereto will be abandoned.

“Abandonment Liabilities” means the obligations and liabilities of the Group or any member(s) of the Group relating to the abandonment of any Borrowing Base Asset (including any such obligations and liabilities arising under any Joint Operating Agreement relating to such Borrowing Base Asset).

“Accession Letter” means a document substantially in the form set out in Schedule 14 (Form of Accession Letter).

“Accounts” means the Onshore Proceeds Accounts, the Liquidation and Royalty Accounts and the Insurances Account.

“Additional Cost Rate” has the meaning given in Schedule 5 (Mandatory Cost formulae).

“Additional Guarantor” means any person that, with the written agreement of the Lender and the Borrower, becomes a Guarantor of the Borrower’s obligations under this Agreement in accordance with Clause 23.6.

“Affiliate” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

“Aggregate Commitments” means, in relation to any Specified Period or any day falling in that Specified Period, the sum of the Lender’s Commitments for that Specified Period (which, as at the date of this Agreement and subject to any cancellation, reduction or transfer of any Lender’s Commitment in accordance with this Agreement, is the amount (in dollars) set opposite that Specified Period in the last column (headed “The Lender’s Commitments”) of the table in Schedule 1 (Aggregate Commitments)).

“Agreed Insurances” has the meaning given in Clause 21.10.3(A) (Insurance).

“Applicable Law” means all laws (including common or customary law), statutes, constitutions, by-laws, ordinances, regulations or any other legislative measure, judgments, decrees, decisions, writs, awards, orders, rules, directives, guidelines and policies of any Governmental Authority, treaties or any other agreements to which a Governmental Authority is a party, governing or applicable to the business and financial operations of any obligor or that otherwise relate to the Project or the exercise by the Lender of its rights under any Finance Document.

“Applicable Polish Licensing Authority” means the Minister of Environment Protection, National Resources and Forestry of the Republic of Poland whose legal successor is the Minister of the Environment of the Republic of Poland, and any other authority responsible for licensing of mining operations in Poland.

“Approved Bank Accounts” means those accounts more particularly set out in Schedule 9.

“Approved Capex Reimbursements” means \$6,000,000 on account of past capital expenditure on the Initial Borrowing Base Assets that may be used for either repayment of intercompany loans to the Parent by the Borrower or for the general corporate purposes (including exploration costs) by the Borrower.

“Assumptions” means the Economic Assumptions and the Technical Assumptions.

“Authorisation” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

“Availability Period” means the period from and including the date of this Agreement to and including the date falling one month prior to the Final Maturity Date.

“Borrower Update” means a report prepared by or on behalf of the Borrower which updates the information and/or evaluation(s) contained in the most recent Reserves Report and including any additional information and/or evaluation(s) as the Lender may reasonably require.

(A) “Borrowing Base amount” means, in relation to any Calculation Period, the amount (in dollars) reflected in each Projection which is the lesser of A and B where:

(A) “A” is the field life cover amount calculated by dividing the NPV (Field Life) relating to that Calculation Period by 1.5; and

(B) “B” is the loan life cover amount calculated by dividing the NPV (Loan Life) relating to that Calculation Period by 1.3.

“Borrowing Base Asset” means (A) the Petroleum Assets listed in Schedule 6 (Initial Borrowing Base Assets) and (B) any New Borrowing Base Asset but, in the case of (A) or (B), excluding any of the foregoing which has ceased to be designated a Borrowing Base Asset in accordance with Clause 6 (Projections).

“Break Costs” means the amount (if any) by which:

- (A) the interest which a Lender should have received for the period from the date of receipt of all or any part of a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;

exceeds:

- (B) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the London interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.

“Budget” means, in relation to each Borrowing Base Asset, a budget for that Borrowing Base Asset setting out all the costs that are to be incurred in connection with that Borrowing Base Asset for the period covered by the budget.

“Business Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in London and Warsaw and, in relation to any date for the payment or purchase of dollars, New York.

“Calculation End Date” means, in relation to each Projection, the last day of the last Calculation Period in which any item of Gross Expenditure and/or Gross Income is projected to arise.

“Calculation Period” means each period of six months commencing on 1 January or 1 July of each year.

“CEGHL” means CalEnergy Gas Holdings Ltd.

“Commitment” means at any time during a Specified Period, the amount (in dollars) set opposite that Specified Period in the second column (headed “The Lender’s Commitment”) of the table in Schedule 1 (Aggregate Commitments) to the extent not cancelled, reduced or transferred by it under this Agreement.

“Computer Model” means the computer model used to prepare the Initial Projection, as amended from time to time in accordance with Clause 6.8 (Computer Model) or as otherwise agreed between the Borrower and the Lender.

“Default” means an Event of Default or any event or circumstance specified in Clause 22 (Events of Default) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents, the fulfillment of any condition or any combination of any of the foregoing) be an Event of Default.

“Economic Assumption” means each of the following economic assumptions, and the values ascribed to such assumptions, upon which each Projection or draft Projection and, in each case, the calculations and information therein are, or are to be, based:

- (A) Petroleum prices;
- (B) currency exchange rates;
- (C) inflation rates;
- (D) discount rates;
- (E) interest rates; and
- (F) any other assumption that the Lender and the Borrower agree shall be treated as “Economic Assumptions.”

“Environmental and Mining Claim” means any claim by any person in connection with (i) a breach, or alleged breach, of Environmental and Mining Laws; (ii) any accident, fire, explosion or other event of any type involving an emission or substance which is capable of causing harm to any living organism or the environment; or (iii) any other environmental contamination or other infringement of third party rights resulting from the search for, exploration and/or exploitation of minerals.

“Environmental and Mining Laws” means any law or regulation concerning (i) the protection of health and safety; (ii) environment; (iii) any emission or substance which is capable of causing harm to any living organism or the environment, or (iv) geological works as well as search for, exploration and exploitation of minerals.

“Environmental and Mining Licences” means all Authorisations necessary under Environmental and Mining Laws for the ownership of an interest in any Petroleum Asset, the exploitation of such Petroleum Asset (or any aspect thereof), and/or the carrying out of the operations and activities relating to such Petroleum Asset (including in particular Mining Concessions).

“Environmental Consultant” means RPS Group plc or such other environmental expert approved by the Lender (in consultation with the Borrower).

“Environmental Impact Assessment” means:

- (A) in relation to each of the (A) Klęka East Field, Zaniemyśl Field and Wilga Field, the environmental impact assessment prepared by the Environmental Consultant which has been delivered to the Lender pursuant to Clause 4.1 (Initial conditions precedent); and
- (B) in relation to any Borrowing Base Asset that becomes a Borrowing Base Asset after the date of this Agreement, any environmental impact assessment relating to that Borrowing Base Asset required by the Lender in connection with the designation of the relevant Petroleum Asset as a Borrowing Base Asset pursuant to Clause 6 (Projections).

“Environmental Management Plan” means, in relation to any oil field or petroleum project, a management plan prepared by the operator of such field or project which sets out the steps to be taken for the purposes of (a) ensuring that such field or project complies with Polish Applicable Law and Polish Environmental Requirements and/or (b) implementing Polish Applicable Law and Polish Environmental Requirements.

“Equivalent Financings” means any secured borrowing based financings arranged in the London market relating to any oil and gas project in North West Europe (i) that are comparable to the credit facilities contemplated by this Agreement; and (ii) to which the Lender is a party as lender.

“Event of Default” means any event or circumstance specified as such in Clause 22 (Events of Default).

“Facility” means the credit facility described in Clause 2.1 (Facility).

“Facility Office” means the office or offices of the Lender through which it will perform its obligations under this Agreement.

“Fee Letter” means each of:

- (A) any letter dated on or about the date of this Agreement between the Parent, and/or the Borrower and the Lender relating to the payment of fees relating to the Facility by the Obligors to such Lender; and
- (B) any other letter designated as such by the Lender and the Borrower.

“Field Development Plan” means:

- (A) in relation to a specific Polish Field, the field development plan for the development of that Polish Field prepared by, or on behalf of, the Borrower and/or the parties having an interest therein which was or will be submitted to the Applicable Polish Licensing Authority for its approval and in the case of any such field development plan so submitted before the date of this Agreement such plan was approved by the Applicable Polish Licensing Authority (a copy of which has been initialed by each of the Lender and the Borrower on or about the date of this Agreement for identification purposes only);

“Final Maturity Date” means the earlier of 31 December 2012 and the Reserve Tail Date.

“Finance Document” means:

- (A) this Agreement;
- (B) any Security Documents;
- (C) the Subordination Deed;
- (D) any Fee Letter; and
- (E) any other document designated as such by the Borrower and the Lender.

“Financial Indebtedness” means any indebtedness for or in respect of:

- (A) moneys borrowed;
 - (B) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
 - (C) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
 - (D) the amount of any liability in respect of any lease or hire purchase contract which would be treated in the accounts of the relevant person as a finance or capital lease;
 - (E) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
 - (F) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
 - (G) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
 - (H) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
 - (I) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (A) to (H) above.
- (B) “Flat Fee” means a fee of \$187,500 payable in lieu of issuance of the Warrant Instrument by the Borrower on or before issuance of the first Utilisation Request.
- (C) “FLCR” means the field life cover ratio being, in relation to any Calculation Period, the ratio of N:D as shown in the then current Projection, where:

- (D) “N” is the NPV (Field Life) relating to that Calculation Period; and
- (E) “D” is the aggregate amount of the Utilisations outstanding or, as the case may be, projected to be outstanding on the first day of that Calculation Period.
- (F) “GAAP/IFRS” means in relation only to the Borrower, the Guarantors or any member of the Group that is not incorporated in the UK, generally accepted accounting principles in that person’s jurisdiction of incorporation, or, in each case, if IFRS has been implemented by the Group or the relevant member thereof, IFRS.
- (G) “Governmental Authority” means the government of any country, or of any political subdivision thereof, whether state, regional or local, and any agency, authority, branch, department, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government or any subdivision thereof (including any supra-national bodies), and all officials, agents and representatives of each of the foregoing.

“Gross Expenditure” means, in relation to any period and any Obligor, without double counting:

- (A) to the extent that the same is payable in that period by that Obligor in respect of any Borrowing Base Asset:
 - (1) all cash calls by the operator of that Borrowing Base Asset; and
 - (2) to the extent not covered by paragraph (1) above:
 - (a) all costs of producing, lifting, transporting, storing, processing and selling any Petroleum derived from that Borrowing Base Asset;
 - (b) all costs of reinstating any damaged facilities relating to that Borrowing Base Asset;
 - (c) all costs of satisfying any liability in respect of seepage, pollution and well control;
 - (d) all insurance premiums and all the fees, costs and expenses of insurance brokers;
 - (e) all exploration and appraisal expenditure on that Borrowing Base Asset;
 - (f) all costs of abandonment and any payments to make provision for abandonment costs in accordance with all relevant Project Documents relating to the whole or any part of that Borrowing Base Asset or any physical assets associated with it; and
 - (g) any royalties under any Petroleum production licence or other payments required by Applicable Law to be made to any Governmental Authority in Poland;
- (B) (if that Obligor holds any interests in any Borrowing Base Assets) any Taxes payable by that Obligor in that period;
- (C) any general and administrative expenditure not falling within paragraph (A) above which is payable by that Obligor in that period but only to the extent attributable to any Borrowing Base Asset;
- (D) any other expenses and payments not falling within the preceding paragraphs of this definition which are payable by that Obligor in that period in respect of any Borrowing Base Asset; and
- (E) any other expense or payment not falling in the preceding paragraphs of this definition which the Borrower elects (with the approval of the Lender) to treat as “Gross Expenditure.”

“Gross Income” means, in relation to any period and any Obligor, without double counting:

- (A) to the extent that the same is payable in that period to that Obligor in respect of any Borrowing Base Asset:
 - (1) the gross proceeds (without deductions whatsoever) of any disposal of any Petroleum derived from that Borrowing Base Asset paid or payable to that Obligor in that period;
 - (2) any gross proceeds (without any deductions whatsoever) payable to that Obligor in respect of the use or reservation of capacity of any pipeline forming part of, or relating to, that Borrowing Base Asset;
 - (3) any other amounts paid or payable to that Obligor in that period in respect of that Borrowing Base Asset (including any proceeds of insurance);
- (B) (if that Obligor holds any interests in any Borrowing Base Assets) any refunds of Taxes payable to that Obligor in that period; and
- (H) but excluding:
 - (i) any amount paid or payable by way of loan or contribution to the equity capital of that Obligor in that period;
 - (ii) any amount paid or payable to that Obligor by another member of the Group; and
 - (iii) any amount paid or payable to that Obligor in that period which does not relate to a Borrowing Base Asset (other than any amount referred to in paragraph (B) above).

“Group” means the Parent and its Subsidiaries for the time being, in each case as a separate legal entity and not as consolidated with any other member of the Group.

“Guarantor” means the Parent, FX Netherlands, FX Partnership and any Additional Guarantor.

“Holding Company” means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

“IFRS” means the International Financial Reporting Standards, International Accounting Standards and interpretations of those standards issued by the International Accounting Standards Board and the International Financial Reporting Interpretations Committee and their predecessor bodies.

“Independent Engineer” means RPS Group Plc or such other reputable independent petroleum engineer or other expert approved by the Lender (in consultation with the Borrower).

“Information Package” means any information supplied in writing or by way of a recordable compact disc, web site posting (or otherwise) by, or on behalf of, any Obligor to the Lender on or before the date of this Agreement in relation to the Borrowing Base Assets, the Obligors and/or any other member of the Group.

“Initial Approved Reserves” has the meaning given in Clause 6.10 (Initial Approved Reserves).

“Initial Borrowing Base Assets” means those assets specified in Schedule 6.

“Initial Projection” means:

- (A) in relation to each Polish Field and the Portfolio the relevant Projection described in paragraph 8.4.1 of Part 1 (CPs to First Utilisation) of Schedule 2 (Conditions precedent) in each case, is delivered to the Lender pursuant to Clause 4.1 (Initial conditions precedent).

“Insolvency Officer” means any liquidator, trustee in bankruptcy, judicial custodian or manager, compulsory manager, receiver, administrative receiver, administrator or other similar officer in each case, appointed in any jurisdiction, including a compulsory manager appointed pursuant to Article 27 of the Polish law dated December 6, 1996 (as amended) on registered pledge and pledge register or pursuant to Article 931 of the Polish Code of Civil Procedure.

“Insurances Account” means account referred to in Clause 21.10.3(H)(1) (Insurance).

“Insurance Consultant” means an insurance consultant chosen by the Lender in consultation with the Borrower.

“Insurance Schedule” means the schedule (in form and substance satisfactory to the Lender) setting out the insurances to be maintained with respect to the Borrowing Base Assets (as from time to time updated at the request and, with the approval of, the Lender) and which at the date of this Agreement is set out in Schedule 8.

“Interest Period” means, in relation to a Loan, each period determined in accordance with Clause 10 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 9.3 (Default interest).

“Interim Projection” means each Projection that is adopted or due to be adopted on each Interim Recalculation Date.

“Interim Recalculation Date” means any date nominated by the Lender pursuant to Clause 6.1.2 (Adoption).

“Joint Operating Agreement” means any contract, agreement, joint venture or other arrangement entered into by the Borrower and a third party regulating joint operations, physical facilities and profits in relation to a Borrowing Base Asset.

“Kłęka East Field” means the Borrowing Base Asset described in paragraph 1 of Schedule 6 (Initial Borrowing Base Assets).

“the Lender” means the Lender and any New Lender.

“Lender’s Available Commitment” means a Lender’s Commitment minus:

- (A) the amount of any outstanding Utilisations (other than that any Utilisations that are due to be repaid or prepaid on or before the proposed Utilisation Date); and
- (B) in relation to any proposed Utilisations, the amount of any Utilisations that are due to be made on or before the proposed Utilisation Date.

“LIBOR” means, in relation to any Loan:

- (A) the applicable Screen Rate; or
- (B) (if no Screen Rate is available for the currency or the Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Lender at its request by two leading banks in the London interbank market,

as of 11.00 a.m. (London time) on the Quotation Day for the offering of deposits in the currency of that Loan and for a period comparable to the Interest Period for that Loan.

“Liquidation and Royalty Accounts” means any bank accounts required to be established under Article 26 of the Polish Geological and Mining Law to fund the future liquidation of any Borrowing Base Asset or to be used for the purpose of paying any government production and/or royalty payments.

“LLCR” means the loan life cover ratio being, in relation to any Calculation Period, the ratio of N:D as shown in the then current Projection where:

“N” is the NPV (Loan life) relating to that Calculation Period; and

“D” is the aggregate amount of the Utilisations outstanding or, as the case may be, projected to be outstanding on the first day of that Calculation Period.

“Loan” means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

“Mandatory Cost” means the percentage rate per annum calculated by the Lender in accordance with Schedule 5 (Mandatory Cost formulae).

“Margin” means:

- (A) before the Portfolio Completion Date, 2.00 percent, per annum; and
- (B) on and from the Portfolio Completion Date, 1.25 percent, per annum.

“Market Disruption Event” means either or both of:

- (A) a material disruption to those payment or communication systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties:
or
- (B) the occurrence of any other event which results in a disruption (of a technical or systems related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Finance Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

and which, in either such case, is not caused by, and is beyond the control of, the Party whose operations are disrupted.

“Material Adverse Effect” means a material adverse effect on:

- (A) the financial condition of any Obligor;
- (B) the ability of any Obligor to perform (i) its obligations under any Finance Document to which it is a party or (ii) its material obligations under any Transaction Document (other than a Finance Document) to which it is a party;
- (C) the validity or enforceability of (i) any Finance Document (or any material provision thereof) or (ii) any Security purported to be created under any Security Document; or
- (D) the rights and remedies of the Lender under any Finance Document.

“Mining Concession” means a concession to search for, explore and/or exploit oil and gas issued by the Applicable Polish Licensing Authority.

“Mining Usufruct Agreement” means an agreement pursuant to which the Borrower and/or other persons hold the right of a mining usufruct.

“Month” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (A) (subject to paragraph (C) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (B) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (C) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

“New Borrowing Base Asset” means any Petroleum Asset not listed in Schedule 6 (Initial Borrowing Base Assets) and that has been designated as such in accordance with Clause 6 (Projections).

“New Lender” has the meaning set forth in Clause 23 (Changes to Parties).

“NPV (Field Life)” means, in relation to any Calculation Period, the amount (in dollars) calculated in accordance with the following formula:

$$NPV = A + B + C$$

where:

“A” is the net present value (as at the first day of that Calculation Period) of the aggregate (the “relevant amount”) of the Projected Net Revenues for that Calculation Period and for each Calculation Period occurring thereafter which ends on or before the Calculation End Date (being the discounted value of the relevant amount calculated, using the Computer Model, by applying the relevant discount rate agreed or determined in accordance with Clause 6 (Projections) to the relevant amount);

“B” is the aggregate amount of sums standing to the credit of the Proceeds Accounts on the first day of that Calculation Period; and

“C” is (to the extent that such capital expenditure (i) has been approved by the Lender; (ii) is to be incurred before the Project Completion Date or Portfolio Completion Date as the case may be; and (iii) is projected to be funded from loans under this Agreement and the Subordinated Loan Agreements) the net present value (as at the first day of that Calculation Period) of the aggregate amount of capital expenditure projected to be incurred by the Borrower in the period of twelve months commencing on the first day of that Calculation Period (being, the discounted value of that aggregate amount of capital expenditure calculated, using the Computer Model, by applying the relevant discount rate agreed or determined in accordance with Clause 6 (Projections) to that aggregate amount of capital expenditure).

“NPV (Loan Life)” means, in relation to any Calculation Period, the amount, in dollars, calculated in accordance with the following formula:

$$NPV = A + B + C$$

where:

“A” is the net present value (as at the first day of that Calculation Period) of the aggregate (the “relevant amount”) of the Projected Net Revenues for that Calculation Period and for each Calculation Period occurring thereafter which ends on or before the Final Maturity Date (being the discounted value of the relevant amount calculated, using the Computer Model, by applying the relevant discount rate agreed or determined in accordance with Clause 6 (Projections) to the relevant amount);

“B” is the aggregate amount of sums standing to the credit of the Accounts on the first day of that Calculation Period; and

“C” is (to the extent that such capital expenditure (i) has been approved by the Lender; (ii) is to be incurred before the Project Completion Date or Portfolio Completion Date as the case may be; and (iii) is projected to be funded from loans under this Agreement and the Subordinated Loan Agreements) the net present value (as at the first day of that Calculation Period) of the aggregate amount of capital expenditure projected to be incurred by the Borrower in the period of twelve months commencing on the first day of that Calculation Period (being, the discounted value of that aggregate amount of capital expenditure calculated, using the Computer Model, by applying the relevant discount rate agreed or determined in accordance with Clause 6 (Projections) to that aggregate amount of capital expenditure).

“Obligor” means a Borrower or a Guarantor.

“Onshore Accounts Agreement” means the accounts agreement dated on or about the date of this Agreement between, among others, the Onshore Accounts Bank, the Lender and the Borrower and pertaining to the Onshore Proceeds Account.

“Onshore Accounts Bank” means ING Bank acting in its capacity as account bank in relation to the Onshore Proceeds Account or any other person that replaces it in such capacity in accordance with Onshore Accounts Agreement.

“Onshore Proceeds Account” means each of the Borrower’s accounts specified in Schedule 9.

“Original Obligor” means the Borrower, the Parent, FX Partnership and FX Netherlands.

“P50 Reserves” means, in relation to any Petroleum Asset, those quantities of Petroleum which the Lender (acting reasonably (i) having regard to the guidelines of the Society of Petroleum Engineers and (ii) in consultation with the Borrower) determines have a 50% or greater probability of being recovered from that Petroleum Asset.

“P90 Reserves” means, in relation to any Petroleum Asset, those quantities of Petroleum which the Lender (acting reasonably (i) having regard to the guidelines of the Society of Petroleum Engineers and (ii) in consultation with the Borrower) determines have a 90% or greater probability of being recovered from that Petroleum Asset.

“Parent” means FX energy, Inc., a Nevada corporation, as a single corporate entity, excluding its Subsidiaries.

“Participating Member State” means any member state of the European Communities that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union.

“Party” means a party to this Agreement.

“Permitted Expenditure” means:

- (A) each item of Gross Expenditure other than any expenditure referred to in paragraph (D) of the definition of “Gross Expenditure” set out in this Clause 1.1 (Definitions);
- (B) any payment which the Borrower is required to make by law or as otherwise approved by the Lender into the Liquidation and Royalty Accounts; and
- (C) any other item of expenditure that the Lender and the Borrower agree to designate as “Permitted Expenditure.”

“Permitted Security” means:

- (A) any lien arising by operation of law and in the ordinary course of trading;
- (B) any Security constituted by any Security Document;
- (C) any Security comprising a netting or set-off arrangement entered into by an Obligor or any other member of the Group in the ordinary course of its banking and trading arrangements for the purpose of netting debit and credit balances;
- (D) any Security granted to any counterparty to any Project Document which is disclosed in writing by the Borrower under Schedule 7 or otherwise and approved in writing by the Lender;
- (E) any Security granted to secure bids, tenders, contracts, leases, statutory obligations, surety and appeal bonds, and other obligations of a similar nature arising in the ordinary course of trading up to an aggregate limit of \$1,000,000 and which Security may not continue for more than 24 months following its date of creation;
- (F) any other Security not falling within the preceding paragraphs disclosed in Schedule 7 or otherwise and approved in writing by the Lender.

“Petroleum” means any mineral, oil or relative hydrocarbon (including condensate and natural gas liquids) and natural gas existing in its natural condition in strata (but not including coal or bituminous shale or other stratified deposits from which oil can be extracted by destructive distillation).

“Petroleum Asset” means (i) any Petroleum field, pipeline transmission system or other Petroleum project, (ii) the facilities relating to such field, system or project and/or (iii) the interests in such field, system, project or facilities.

“POGC” means Polish Oil and Gas Company (i.e. Polskie Górnictwo Naftowe i Gazownictwo S.A.).

“Polish Environmental Requirements” means Polish regulatory requirements for oil and gas companies including in particular requirements under Environmental and Mining Laws relating to licences and / or other aspects of the Project approval and implementation processes.

“Polish Fields” means each of the Kłęka East Field, Zaniemyśl Field and Wilga Field and any new field located in Poland constituting a New Borrowing Base Asset.

“Portfolio” means those Polish Fields which constitute Initial Borrowing Base Assets.

“Portfolio Completion Date” means in respect of the Initial Borrowing Base Assets, the date(s) (as confirmed by the Lender to the Borrower in writing) on which the Lender is satisfied that the Portfolio Completion Test has been met.

“Portfolio Completion Test” means a test whereby the Portfolio and all related facilities have (without unremedied major or material malfunctions) demonstrated to the Lender’s satisfaction the ability to operate, in compliance with the terms of the respective Mining Concessions providing for the right to exploit Petroleum, at rates materially demonstrating mechanical capabilities by producing, processing and transporting and making available for sale the quantities of natural gas specified in the Technical Assumptions as of the date of such test including, without limitation, satisfaction of the following conditions:

- (a) the development, construction, completion and operation of all project facilities associated with the Zaniemysl and Wilga Fields has occurred in accordance with their Field Development Plans;
- (b) the project facilities associated with the Zaniemysl and Wilga Fields have, without unremedied major or material malfunctions, demonstrated their ability to operate at rates materially demonstrating their mechanical capabilities by
either
 - (i) producing, processing and transporting and making available for sale 2.2 bcf of gas and 29,000 barrels of condensate;
 - or
 - (ii) producing, processing and transporting and making available for sale gas at an average production rate of at least 12 MMscf of gas per day for a continuous period of 180 days with at least three periods of 14 consecutive days of production during this period;
- (c) invoices for gas and condensate sales have been issued in respect of the Zaniemysl and Wilga Fields and income received from these sales for three months.

“Project” means each of the following:

- (A) the development of the Klęka East Field in accordance with the Field Development Plan relating thereto that has been approved by the Applicable Polish Licensing Authority (including (i) the completion of all associated facilities and infrastructure required to exploit the Klęka East Field and (ii) any modification of any facilities relating to the Klęka East Field that are required to enable the off-take of Petroleum produced from the Klęka East Field) and the transportation, off-take and/or disposal of Petroleum derived from the Klęka East Field;
- (B) the development of the Zaniemyśl Field in accordance with the Field Development Plan relating thereto that has been approved by the Applicable Polish Licensing Authority (including (i) the completion of all associated facilities and infrastructure required to exploit the Zaniemyśl Field and (ii) any modification of any facilities relating to the Zaniemyśl Field that are required to enable the off-take of Petroleum produced from the Zaniemyśl Field) and the transportation, off-take and/or disposal of Petroleum derived from the Zaniemyśl Field;
- (C) the development of the Wilga Field in accordance with the Field Development Plan relating thereto that has been approved by the Applicable Polish Licensing Authority (including (i) the completion of all associated facilities and infrastructure required to exploit the Wilga Field and (ii) any modification of any facilities relating to the Wilga Field that are required to enable the off-take of Petroleum produced from the Wilga Field) and the transportation, off-take and/or disposal of Petroleum derived from the Wilga Field; and

- (D) the development of such other field as the Lender may agree (including the Środa Field) in accordance with the Field Development Plan relating thereto that has been approved by the Applicable Polish Licensing Authority (including (i) the completion of all associated facilities and infrastructure required to exploit the said field and (ii) any modification of any facilities relating to the said field that are required to enable the off-take of Petroleum produced from the said field) and the transportation, off-take and/or disposal of Petroleum derived from such field;

“Project Completion Date” means in respect of any New Borrowing Base Asset, the date (as confirmed by the Lender to the Borrower in writing) on which the Lender is satisfied that the Project Completion Test for the relevant New Borrowing Base Asset has been met.

“Project Completion Test” means a test whereby a New Borrowing Base Asset and all related facilities have (without unremedied major or material malfunctions) demonstrated to the Lender’s satisfaction the ability to operate at rates materially demonstrating mechanical capabilities by producing, processing and transporting and making available for sale the quantities of natural gas specified in the Projections and Technical Assumptions as of the date of such test. The test will consist of:

- (1) an average flow rate;
- (2) a total amount of production; and
- (3) a measure of the reliability of the facilities

over a period of time, as agreed in writing between the Borrower and the Lender.

“Project Documents” means:

- (A) in relation to each Borrowing Base Asset:

- (1) each Joint Operating Agreement and/ or unitisation and unit operating agreement relating to that Borrowing Base Asset;
- (2) each agreement relating to the transportation, processing and/or storage of production from that Borrowing Base Asset;
- (3) each agreement for the sale or marketing of production from that Borrowing Base Asset;
- (4) each material agreement relating to that Borrowing Base Asset and/or Petroleum produced therefrom (including any tariff and offtake contract, pipeline transmission contract, drilling contract, equipment supply contract, installation, construction, contract, maintenance and management contract), other than the agreements set forth in items (1) to (3) above;
- (5) any Authorisation required for the lawful construction, exploitation, development or operation of that Borrowing Base Asset or the production, transportation or sale of Petroleum therefrom (and including any Petroleum production or exploration licence and any particular Environmental and Mining Licenses);
- (6) any development plan filed with and/or approved by any relevant operating committee and/or any appropriate governmental or other regulatory authority relating to that Borrowing Base Asset;
- (7) such rights (if any) to geological documentation with respect to the Borrowing Base Assets which the Borrower may have;
- (8) any applicable Mining Usufruct Agreement;
- (9) agreements providing real property rights for the locations of the Borrowing Base Assets;

- (B) any documents relating to the acquisition by any member of the Group of any interests in any Borrowing Base Asset or of any entity holding the interest in such Borrowing Base Asset; and
- (C) any other document designated as such by the Borrower and the Lender.

“Projected Net Revenues” means, in relation to any period, an amount (which may be a negative or positive figure) calculated by deducting “B” from “A” where:

“A” is the aggregate of the Gross Incomes of the Borrower projected to be received in that period; and

“B” is the aggregate of the Gross Expenditure of the Borrower projected to be made in that period.

“Projection” means a consolidated cashflow and debt service projection prepared or to be prepared pursuant to this Agreement.

“Quotation Day” means, in relation to any period for which an interest rate is to be determined two Business Days before the first day of that period, unless market practice differs in the London interbank market for a currency, in which case the Quotation Day for that currency will be determined by the Lender in accordance with market practice in the London interbank market (and if quotations would normally be given by leading banks in the London interbank market on more than one day, the Quotation Day will be the last of those days).

“Recalculation Date” means any Scheduled Recalculation Date or Interim Recalculation Date.

“Reduction Date” means (i) each Recalculation Date and (ii) to the extent that the same does not coincide with a Recalculation Date, each date on which a Projection is adopted in accordance with Clause 6 (Projections).

“Relevant Obligor” means any Obligor (a) that has granted Security over all of its assets to the Lender under a Security Document and (b) whose Holding Company(ies) have granted Security over all of the shares in that Obligor to the Lender (in its capacity as such) or, as the case may be, the Lender under a Security Document.

“Remaining Reserves” means, in relation to each Borrowing Base Asset and any date, the quantities of Petroleum forecast in the then current Projection to be produced by that Borrowing Base Asset in the period from that date up to (and including) the Abandonment Date for such Borrowing Base Asset (which figure may vary from Projection to Projection).

“Repeating Representations” means each of the representations set out in Clause 19 (Representations) other than in sub-Clauses 19.7 (No proceedings pending or threatened), 19.9 (Environmental compliance), 19.10.2 (Security matters), 19.12 (Deduction of Tax), 19.14 (Governing law and enforcement), 19.15 (No filing or stamp taxes), 19.17.1 (Ownership).

“Reporting Period” means that period of time in respect of which progress reports on the Borrowing Base Assets are required to be provided by the Borrower to the Lender which shall be a period of a calendar quarter.

“Required Authorisation” means each Authorisation required by an Obligor or any other member of the Group:

- (A) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party;
- (B) to make the Transaction Documents to which it is a party admissible in evidence in its jurisdiction of incorporation; and/or
- (C) in connection with the ownership, development, construction, operation and/or exploitation of any Borrowing Base Asset.

“Reserve Tail Date” means the Reduction Date immediately preceding the date (reflected in the then current Projection) on which the aggregate Remaining Reserves for all Borrowing Base Assets is forecast to fall below 25% of the Initial Approved Reserves.

“Reserves Report” means a report prepared by an Independent Engineer containing such information and/or evaluation(s) (relating to each Borrowing Base Asset or, as the case may be, any other Petroleum Asset which the Borrower is seeking to have designated as a Borrowing Base Asset) as the Lender may reasonably require including evaluation(s) of the recoverable reserves and/or production profiles of such Borrowing Base Assets or, as the case may be, Petroleum Assets.

“Rollover Loan” means one or more Loans:

- (A) made or to be made on the same day that a maturing Loan is due to be repaid;
- (B) the aggregate amount of which is equal to or less than the maturing Loan; and
- (C) made or to be made to the Borrower for the purpose of refinancing a maturing Loan.

“Scheduled Projection” means each Projection that is adopted or due to be adopted on a Scheduled Recalculation Date.

“Scheduled Recalculation Date” means each 30 June and 31 December occurring on or after the Portfolio Completion Date and before the Final Maturity Date.

“Screen Rate” means in relation to LIBOR, the British Bankers’ Association Interest Settlement Rate for the relevant currency and period displayed on the appropriate page (being, as at the date of this Agreement, page 3750) of the Telerate screen. If the agreed page is replaced or service ceases to be available, the Lender may specify another page or service displaying the appropriate rate after consultation with the Borrower and the Lenders.

“Security” means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect and shall be deemed also to include:

- (i) any right providing a third party with an existing or future right to acquire, hold or use any assets;
- (ii) any right limiting the ability of an owner to use, dispose of, possess or encumber any assets, including, without limitation, rights of first refusal, collateral transfer of ownership, collateral transfer of rights, rights of use and any lease; and
- (iii) any instrument whereby the rights of the Lender to seek satisfaction of its claims from assets are subordinated in any way to the rights of the third parties;

“Security Document” means those documents specified in paragraphs 3.1 and 3.2 of Schedule 2, Part 1 and any other document designated as such by the Lender and the Borrower.

“Specified Period” means each period specified in the first column (headed “Specified Period”) of the table set out in Schedule 1 (Aggregate Commitments).

“Środa Field” means the Borrower’s 49% interest in the mining usufruct relating to Licence no. 32/96/p dated 19 July 1996 covering the area of “Kórnik-Środa” region and the Borrower’s 49% interest in Petroleum accumulation, known as the “Środa Field” (together with the Borrower’s interests in all related facilities and infrastructure).

“Subordinated Creditor” means the Parent and any Guarantor that makes or proposes to make loans to the Borrower under Subordinated Loan Agreements or equity contributions and which loans or contributions are subject to the Subordination Deed.

“Subordinated Loan Agreements” means any loan agreement (including, without limitation, those loan agreements referred to in Schedule 11 (Existing Financial Indebtedness) between a Subordinated Creditor and (i) the Borrower; and (ii) another Subordinated Creditor pursuant to which such Subordinated Creditor may make subordinated loans having an initial term of five (5) years with automatic rollover at maturity and interest roll up and which loans shall be subject to the Subordination Deed.

“Subordination Deed” means the subordination deed entered into between the Obligor, the Borrower and the Lender on or about the date of this Agreement as amended and acceded to from time to time by other Subordinated Creditors.

“Subsidiary” means, in relation to any person (a “parent entity”), any other person (the “relevant entity”) (a) in respect of which that parent entity holds or owns (directly or indirectly) more than 50% of the voting capital or similar ownership rights or (b) over which that parent entity has direct or indirect control (where, for the purposes of this definition, “control” means the power to direct the management and the policies of the relevant entity whether through the ownership of voting capital, by contract or otherwise).

“Target Completion Date” means 31 March 2007.

“Tax” means any tax, levy, impost, duty, social security charges or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to report, improper reporting, failure to pay or any delay in paying any of the same).

“Technical Assumption” means any assumptions (other than an Economic Assumption), and the values ascribed to such assumptions, upon which each Projection or draft Projection and, in each case, the calculations and information therein are, or are to be, based.

“Transaction Documents” means the Project Documents, the Finance Documents and any other document designated as such by the Borrower and the Lender.

“Unitisation” means any unitisation of, or affecting, any Borrowing Base Asset, or any adjustment of the relevant member of the Group’s interests in any Borrowing Base Asset and/or any Petroleum derived therefrom as a result of the pooling of production of that Borrowing Base Asset with that of another field or otherwise.

“Unpaid Sum” means any sum due and payable but unpaid by an Obligor under the Finance Documents.

“Utilisation” means a Loan.

“Utilisation Date” means the date of a Utilisation, being the date on which that Loan is made.

“Utilisation Request” means in relation to any Loan, a notice substantially in the form set out in Part I (Loans) of Schedule 4 (Utilisation Request).

“VAT” means value added tax as provided for in the Polish Value Added Tax Act dated March 11, 2004 (as amended) and any other tax of a similar nature imposed on any respective persons in any applicable jurisdiction.

“Warrant Instrument” means the instrument by which the Parent grants to the Lender 110,000 warrants to acquire ordinary voting stock of the Parent at US\$6.00 per share in lieu of the Flat Fee on or before the issuance of the first Utilisation Request and which warrants are exercisable for a period of two (2) years after issue.

“Wilga Field” means the Borrowing Base Asset described in paragraph 3 of Schedule 6 (Initial Borrowing Base Assets).

“Zaniemyśl Field” means the Borrowing Base Asset described in paragraph 2 of Schedule 6 (Initial Borrowing Base Assets).

1.2 Construction

1.2.1 Unless a contrary indication appears, any reference in this Agreement to:

- (A) the Lender, any Obligor or any Party shall be construed so as to include its successors in title, permitted assigns and permitted transferees (including any New Lender);
- (B) “assets” includes present and future properties, revenues and rights of every description;
- (C) a “Finance Document” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended or novated;
- (D) “indebtedness” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (E) a “person” includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (F) a “regulation” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (G) “disposal” means a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary, and “dispose” will be construed accordingly;
- (H) a provision of law is a reference to that provision as amended or re-enacted;
- (I) a time of day is a reference to London time;
- (J) any matter “including” specific instances or examples of such matter shall be construed without limitation to the generality of that matter (and references to “include” shall be construed accordingly);
- (K) the “winding-up”, “dissolution” or “administration” of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such person is incorporated or established, or any jurisdiction in which such person carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors;
- (L) “\$” or “dollars” is to the lawful currency for the time being of the United States of America.
- (M) references to a “Loan” include a Rollover Loan.

1.2.2 Clause, Section and Schedule headings are for ease of reference only.

1.2.3 Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

1.2.4 A Default is “continuing” if it has not been remedied or waived.

1.2.5 For the purposes of this Agreement:

- (A) subject to the first sentence in Clause 6.1.1 (Adoption), a reference to the then “current Projection” is a reference to the Projection most recently adopted pursuant to Clause 6.6 (Adoption of Projections); and
- (B) a reference to the date on which any Projection is “due” to be adopted is a reference to the Recalculation Date as of which that Projection is to be prepared and adopted under Clause 6.1.1 (Adoption).

1.2.6 For the purposes of this Agreement, a reference to the then “current Budget” for any Borrowing Base Asset is a reference to:

- (A) (until the adoption of an updated version of the relevant Budget in accordance with Clause 20.7 (Information: Budgets)), the version of the Budget for that Borrowing Base Asset provided to the Lender pursuant to Clause 4.1 (Initial conditions precedent); and, thereafter,
- (B) the version of the Budget for that Borrowing Base Asset most recently adopted pursuant to Clause 20.7 (Information: Budgets).

1.2.7 Any reference in this Agreement to the Borrowing Base amount which is “applicable” at any date or period is a reference to the Borrowing Base amount relating to that date or period as shown in the then current Projection.

1.2.8 Unless a contrary intention appears, the obligation(s) of each Obligor under this Agreement and/or the other Finance Documents shall remain in force for as long as any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

1.3 Third party rights

1.3.1 Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “Third Parties Act”) to enforce or to enjoy the benefit of any term of this Agreement.

1.3.2 Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

1.4 Language

1.4.1 Any notice given in connection with a Finance Document must be in English and, if required by the Security Documents, in Polish.

1.4.2 Any other document provided in connection with a Finance Document must be:

- (A) in English; or
- (B) (unless the Lender otherwise agrees) accompanied by a certified English translation. In this case, the English translation prevails unless the document is a statutory or other official document.

1.5 Foreign Currency Equivalent

1.5.1 A reference to an amount in dollars includes the foreign currency equivalent of such amount as calculated by the Lender.

THE FACILITY

2. THE FACILITY

2.1 Facility

Subject to the terms of this Agreement, the Lender agrees to make available to the Borrower a dollar revolving credit facility in an aggregate amount equal to the Aggregate Commitments from time to time to be disbursed by way of Loans and which may be re-borrowed by way of Rollover Loans in accordance with Clause 7.2 (Repayment of Loans) on or before the Final Maturity Date. Loans shall, for the avoidance of doubt, constitute portions of a single revolving credit facility and the claims with respect to repayment of Loans constitute portions of a single claim relating to the repayment of the said revolving credit facility.

3. PURPOSE

3.1 Purpose

3.1.1 The Borrower shall apply the proceeds of the Loans borrowed by it under the Facility in or towards:

- (A) (to the extent provided for in the then current Budgets) the payment of any items of Permitted Expenditure;
- (B) the payment of all fees and transactions costs relating to the Finance Documents;
- (C) Approved Capex Reimbursements; and
- (D) (if the Portfolio Completion Test has been satisfied) its general corporate purposes which for the avoidance of doubt do not include exploration expenditure (apart from Approved Capex Reimbursements).

3.2 Monitoring

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4. CONDITIONS OF UTILISATION

4.1 Initial conditions precedent

The Borrower may not deliver a Utilisation Request unless the Lender has received all of the documents and other evidence listed in Part I (CPs to first Utilisation) of Schedule 2 (Conditions precedent) in form and substance satisfactory to the Lender. The Lender shall notify the Borrower promptly upon being so satisfied. If the Borrower is not able to deliver all of the documents and evidence referred to above, the Lender may decide to accept the Utilization Request but reduce the amount of the requested utilization conditionally or otherwise. The Lender's decision to reduce the amount of the utilization shall be communicated to the Borrower. The utilization will be made if the Borrower, within 2 Business Days following such communication, requests in writing the utilization to be made in the decreased amount. To the extent the Lender agrees to waive delivery certain documents or evidence as a condition precedent to a utilization, the Lender may require the Borrower to deliver such documents or evidence within a certain period of time following the utilization. The Borrower shall be obliged to deliver such documents within such timeframe.

4.2 Further conditions precedent

The Lender will only be obliged to make a Loan if:

4.2.1 on the date of the Utilisation Request and on the proposed Utilisation Date:

- (A) in the case of a Rollover Loan, no Event of Default is continuing or would result from the proposed Utilisation and, in the case of any other Utilisation, no Default is continuing or would result from the proposed Utilisation; and
- (B) the Repeating Representations to be made by each Obligor are true in all material respects;

4.2.2 other than in the case of a Rollover Loan, any Projection which is due to be adopted by a Recalculation Date has been adopted in accordance with Clause 6 (Projections) by such Recalculation Date unless:

- (A) it has not been so adopted as a result of any failure on the part of the Lender to perform its obligations under this Agreement; or
- (B) the Lender (acting reasonably) is of the opinion that if such a Projection were to be adopted, the applicable Borrowing Base amount that would be generated by such a Projection would exceed the aggregate amount of (i) all the outstanding Utilisations and (ii) all the Utilisations proposed to be made on the proposed Utilisation Date;

4.2.3 other than in the case of a Rollover Loan, the aggregate of:

- (A) the amount of the Utilisation proposed to be made on the proposed Utilisation Date; and
- (B) the aggregate amount of all outstanding Utilisations on the proposed Utilisation Date less the aggregate amount of all outstanding Utilisations due to be repaid or prepaid on the proposed Utilisation Date,

does not exceed the lesser of (i) the Aggregate Commitments applicable on the proposed Utilisation Date and (ii) the Borrowing Base amount applicable on the proposed Utilisation Date.

4.3 Maximum number of Utilisations

A Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation six (6) or more Loans would be outstanding.

UTILISATION

5. UTILISATION - LOANS

5.1 Delivery of a Utilisation Request for Loans

The Borrower may request a Loan to be made by delivery to the Lender of a duly completed Utilisation Request not later than 11.00 a.m. on the third Business Day prior to the proposed Utilisation Date (or such later date as the Lender may agree).

5.2 Completion of a Utilisation Request for Loans

5.2.1 Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:

- (A) it specifies that it is for a Loan;
- (B) the proposed Utilisation Date is a Business Day within the Availability Period;

- (C) the currency and amount of the Loan complies with Clause 5.3 (Currency and amount);
- (D) the proposed Interest Period complies with Clause 10 (Interest Periods);
- (E) it has been duly signed by an authorised signatory of the Borrower; and
- (F) in the case of any Utilisation Request for a Loan to be made before the Portfolio Completion Date, it includes a certificate in the form set out in paragraph 6 of Part I (Loans) of Schedule 4 (Utilisation Request) confirming that the Borrower has sufficient funds available to it in order to achieve the Portfolio Completion Date.

5.2.2 Only one Loan may be requested in each Utilisation Request delivered under this Clause 5 (Utilisation – Loans).

5.3 Currency and amount

5.3.1 The currency specified in a Utilisation Request for a Loan must be dollar.

5.3.2 The proposed Loan must not exceed the maximum amount of the Facility that may be utilised for such Loan under Clause 4.2 (Further conditions precedent) and, except for an initial Loan equal to the total amount of fees and expenses associated with the Facility, the amount of the proposed Loan must be an amount which is a minimum of \$1,000,000 and an integral multiple of \$1,000,000 or, if less, that maximum amount.

PROJECTIONS

6. PROJECTIONS

6.1 Adoption

6.1.1 Until the adoption of the first new Projection in accordance with this Clause 6 (Projections), the Initial Projection shall be the current Projection for the purposes of this Agreement. A new Projection shall be prepared in accordance with this Clause 6 (Projections) and adopted as of:

- (A) subject to Clause 6.1.3, each Scheduled Recalculation Date; and
- (B) each Interim Recalculation Date:
 - (1) if the Lender so requests at any time before the Portfolio Completion Date:
 - (a) following the occurrence of any event or circumstance which in the reasonable opinion of the relevant Party making such request might result in a delay in the achievement of the Portfolio Completion Date such that the Portfolio Completion Date might not occur on or before the Target Completion Date;
 - (b) following any proposal to vary, or the making of any variation, to the Project (or any aspect thereof) or the occurrence of any other event or circumstance, in each case, which has resulted or which in the reasonable opinion of the relevant Party making such request may result in the then current Budget for any Borrowing Base Asset being increased by 15% or more;
 - (c) following the occurrence of any event or circumstance which, in the reasonable opinion of the relevant Party making such request has, or is likely to have, a Material Adverse Effect;
 - (d) following any Unitisation; or

- (2) subject to Clause 6.1.4, if the Borrower or the Lender so requests at any time on or after the Portfolio Completion Date:
 - (a) following the occurrence of any event or circumstance which, in the reasonable opinion of the relevant Party making such request has, or is likely to have, a Material Adverse Effect;
 - (b) where the relevant Party making such request is of the reasonable opinion that if a new Projection were to be adopted, it would or is likely to:
 - (i) generate a Borrowing Base amount (relating to the Calculation Period in which such new Projection is expected to be adopted) which is less than the aggregate amount of the outstanding Utilisations; or
 - (ii) demonstrate that the Obligors will not be able to meet their liabilities as they fall due in the period up to and including the Final Maturity Date;
 - (c) following any Unitisation;
- (3) if the Lender so request following any change in the operator of any Borrowing Base Asset;
- (4) if the Borrower so requests following the occurrence of the Portfolio Completion Date (provided that (i) only one such request may be made; (ii) the Portfolio Completion Date occurs three months or more before the first Scheduled Recalculation Date that occurs after the Portfolio Completion Date; and (iii) a Reserves Report is delivered pursuant to Clause 20.6.1(F) (Information: Projections and Reserves Report));
- (5) following any request by the Borrower:
 - (a) for any Petroleum Asset to be designated a Borrowing Base Asset; or
 - (b) for any Borrowing Base Asset to cease to be designated a Borrowing Base Asset.

6.1.2 Promptly following any request for a new Projection pursuant to Clause 6.1.1(B), the Lender shall specify and notify the Borrower of the date as of which such Projection is to be prepared and adopted.

6.1.3 If, following the Portfolio Completion Date, any Interim Projection is adopted not more than two months prior to any Scheduled Recalculation Date or is in preparation not more than two months prior to any Scheduled Recalculation Date with the intention of adopting the same by that Scheduled Recalculation Date, the Scheduled Projection that was scheduled to be prepared pursuant to Clause 6.1.1(A) for adoption by that Scheduled Recalculation Date shall not be prepared.

6.1.4 No more than one request for an Interim Projection may be made pursuant to Clause 6.1.1(B)(2) in any period between two consecutive Scheduled Recalculation Dates.

6.2 Content

6.2.1 Each Projection and draft Projection prepared pursuant to this Clause 6 (Projections) must:

- (A) be prepared using the Computer Model;
- (B) be in a form similar to the Initial Projection (or such other form as the Lender may approve) and include the same type of information (and in the same level of detail) as that included in the Initial Projection;

- (C) be prepared on the basis of the Assumptions that are proposed, approved, agreed and/or determined in accordance with this Clause 6 (Projections);
- (D) without prejudice to Clause 6.2.1(B), include:
 - (1) details of all the Assumptions on which it is based;
 - (2) calculations of:
 - (a) the Projected Net Revenues for each Calculation Period ending on or before the Calculation End Date;
 - (b) the NPV (Field Life) and the NPV (Loan Life) relating to each Calculation Period ending on or before the Calculation End Date;
 - (c) the FLCR and LLCR for each Calculation Period ending on or before the Calculation End Date; and
 - (d) the Borrowing Base amount for each Calculation Period commencing on or before the Final Maturity Date.

6.2.2 The first Calculation Period shown in each Projection and draft Projection prepared pursuant to this Clause 6 (Projections) shall be:

- (A) in the case of any Scheduled Projection, the Calculation Period that commences on the day after the Scheduled Recalculation Date on which that Scheduled Projection is due to be adopted; and
- (B) in the case of any Interim Projection, the Calculation Period in which the relevant Interim Recalculation Date occurs or such other Calculation Period as may be specified by the Lender (where, for these purposes, the “relevant Interim Recalculation Date” means the Interim Recalculation Date on which that Interim Projection is due to be adopted).

6.3 Key principles

In (i) proposing, agreeing and/or determining Assumptions, (ii) preparing and/or approving any Projection or draft Projection or (iii) otherwise carrying out their obligations, and exercising their rights, under this Clause 6 (Projections), the Parties shall have regard to and comply with the following principles:

6.3.1 Each Projection shall be based on:

- (A) the P50 Reserves of each Borrowing Base Asset that has demonstrated a continuous history of production at a level (satisfactory to the Lender) for at least six months; and
- (B) the P90 Reserves of any other Borrowing Base Asset, or

such other reserves basis as may be agreed between the Lender and the Borrower.

6.3.2 Each Projection must disregard any income or expenditure of any Obligor that is not Gross Income or Gross Expenditure.

6.3.3 Each Projection must disregard any VAT or similar Tax which is payable in respect of any Gross Income or Gross Expenditure except to the extent that such VAT or similar Tax will be payable by any Obligor and is not effectively recoverable by it.

6.3.4 All figures for Taxes included in any Projection must be based on tax legislation in force on the relevant Recalculation Date on which that Projection is due to be adopted and on any official announcements or publications in force as at such date stating that such legislation is to be altered, supplemented or replaced in whole or in part.

6.3.5 For the purposes of determining the opening cash balance(s) and the closing cash balance(s) for each Calculation Period shown in any Projection, all amounts standing to the credit of accounts that are not Onshore Proceeds Accounts shall be disregarded.

6.3.6 The Technical Assumptions to be used for any Projection relating to any Borrowing Base Asset shall be based upon:

- (A) the Reserves Report and Borrower Update that has most recently been delivered to the Lender under this Agreement; or
- (B) if the Lender and the Borrower agree, information generated by the Borrower and supported by evidence in all respects satisfactory to the Lender.

6.3.7 Each Projection must reflect the then current Budgets and all relevant circumstances (including Abandonment Liabilities).

6.3.8 Any proceeds of insurance paid or payable to any Obligor in respect of any Borrowing Base Asset shall only be included as an item of Gross Income to the extent that:

- (A) the Borrower can demonstrate to the reasonable satisfaction of the Lender that such proceeds will be received by that Obligor when projected; and
- (B) such proceeds are not paid or payable to that Obligor in respect of any third party liability.

6.3.9 If following any disposal referred to in Clause 21.14.1 (Disposals) the Borrowing Base Assets comprise only one Polish Field, projections shall henceforth, thereafter, be based on P90 Reserves of such Borrowing Base Asset.

6.4 Preparatory steps

6.4.1 No later than 40 Business Days before each Recalculation Date or, in relation to any Interim Projection, such later date as the Lender may specify:

- (A) the Lender shall submit to the Borrower its proposals for the Economic Assumptions; and
- (B) the Borrower shall submit to the Lender its proposals for the Technical Assumptions,

to be used, in each case, for the Projection due to be adopted on such Recalculation Date.

6.4.2 The Borrower and the Lender shall seek to agree the Assumptions to be used for each Projection based on the proposals submitted in accordance with Clause 6.4.1 by (i) the date falling 30 Business Days before the Recalculation Date on which that Projection is due to be adopted or (ii) in relation to any Interim Projection, such later date as the Lender may specify.

6.5 Draft Projections

6.5.1 The Lender shall prepare a draft Projection using:

- (A) all the Assumptions that have been agreed between the Borrower and the Lender pursuant to Clause 6.4.2 (Preparatory steps); and

- (B) to the extent that the Borrower and the Lender have not been able to reach agreement on any such Assumptions by the date referred to in Clause 6.4.2 (Preparatory steps) such Assumptions as determined by the Lender (provided that, in the case of any Economic Assumptions, such Assumptions are (from the Borrower's perspective) no less favourable than the corresponding economic assumptions which are then being used for the production of forecasts and projections on Equivalent Financings).

6.5.2 If the Borrower has made a request under Clause 6.7 (Asset base) and/or the Projection in question is being prepared pursuant to Clause 6.1.1(B)(5) (Adoption) then, at the Lender's option:

- (A) the draft Projection shall be prepared on the basis that the relevant Petroleum Asset(s) have been designated as Borrowing Base Asset(s) and/or as the case may be, the relevant Borrowing Base Asset(s) have ceased to be so designated; or
- (B) the Lender shall prepare:
 - (1) a draft Projection on the basis that the relevant Petroleum Asset(s) have been designated as Borrowing Base Asset(s) and/or, as the case may be, the relevant Borrowing Base Asset(s) have ceased to be so designated; and
 - (2) a further draft Projection on the basis that no new Petroleum Asset(s) will be designated as Borrowing Base Asset(s) and no current Borrowing Base Asset(s) will cease to be so designated.

6.5.3 The Lender will endeavour to ensure that each draft Projection is delivered to the Borrower no later than (i) 25 Business Days prior to the Recalculation Date on which such Projection is due to be adopted or (ii) in the case of any draft Interim Projection, such later date as the Lender may specify.

6.5.4 Each draft Projection must be accompanied by details of the conditions ("CPs") (if any) that the Lender (acting reasonably) considers necessary to be satisfied in order for (if the Borrower has made a request under Clause 6.7.1 (Asset base) or the draft Projection is being prepared pursuant to Clause 6.1.1(B)(5) (Adoption)), the relevant Petroleum Asset(s) to be designated as Borrowing Base Asset(s) and/or, as the case may be, the relevant Borrowing Base Asset(s) to cease to be so designated. The CPs for the designation of a Petroleum Asset as a Borrowing Base Asset may include (i) the completion of satisfactory economic, legal and technical due diligence relating to that Petroleum Asset and creation of Security Interests relating thereto in favour of the Lender and/or (ii) the production of satisfactory evidence that all Authorisations required for the development and/or exploitation of that Petroleum Asset have been obtained.

6.6 Adoption of Projection

6.6.1 Each draft Projection prepared pursuant to Clause 6.5 (Draft Projection) will not be adopted as the current Projection for the purposes of this Agreement until the latest of:

- (A) the relevant Recalculation Date on which the relevant Projection is due to be adopted;
- (B) the date on which any relevant CPs (together with any additional conditions that the Lender may require in accordance with the preceding provisions of this Clause 6 (Projections)) are satisfied; and
- (C) the date on which the Lender confirms that it has verified that the relevant draft Projection has been prepared to its satisfaction in accordance with the requirements of this Clause 6 (Projections).

6.6.2 Upon such adoption of the Projection, the Lender shall inform the Borrower accordingly and shall send a copy of that Projection to the Borrower.

6.7 Asset base

6.7.1 On or before the date falling 10 Business Days before the date on which the Lender and the Borrower are due to submit their proposals in respect of the Assumptions to be used for any Projection pursuant to Clause 6.4 (Preparatory steps), the Borrower may submit a request to the Lender, for any Petroleum Asset to be designated a Borrowing Base Asset and/or for any existing Borrowing Base Asset to cease to be designated a Borrowing Base Asset.

6.7.2 If the Borrower has made a request under Clause 6.7.1 for any Petroleum Asset to be designated a Borrowing Base Asset or a Projection is being prepared pursuant to Clause 6.1.1(B)(5) (Adoption), the Borrower must deliver to the Lender (at the same time it makes the relevant request for such Petroleum Asset to be designated a Borrowing Base Asset) all such information, documentation and evidence as the Lender may require with respect to such Petroleum Asset.

6.8 Computer Model

6.8.1 The Lender may, with the prior consent of the Borrower make amendments to the Computer Model from time to time (such consent not to be unreasonably withheld or delayed) to correct any deficiencies in such Computer Model (including any conflict between the Computer Model and any Project Document) or otherwise to reflect any changes in circumstance since the date of this Agreement.

6.9 The Independent Expert

6.9.1 Where an Assumption or any other matter is required to be referred to an independent expert for determination under this Agreement, such independent expert shall be appointed by agreement between the Borrower and the Lender or, in default of such agreement within two Business Days, appointed by the President for the time being of the Energy Institute in London.

6.9.2 If any question is referred to an independent expert, he shall be appointed on terms that:

- (A) he shall act as an expert and not as arbitrator and shall be required to determine which of the submissions made pursuant to Clause 6.9.4 he believes to be the more appropriate having regard to the contents of such submissions, any evidence supporting the same and such other information as he thinks fit in the context of syndicated secured oil and gas financings in North West Europe arranged in the London market;
- (B) his determination shall be made in writing in the form set out in Schedule 13 (Form of Independent Expert's Determination) and shall be delivered to the Lender and the Borrower within 10 Business Days following his appointment; and
- (C) his fees and other charges in respect of such appointment shall be borne by the Borrower.

6.9.3 Upon appointing an independent expert the Lender and the Borrower shall deliver to him written submissions setting out details of their respective opinions of how the question in dispute should be resolved together with such supporting evidence in writing as they consider appropriate. The Lender and the Borrower will also supply to the independent expert such other information as he may require for the purposes of his determination.

6.9.4 The decision of the independent expert on any such question referred to him shall be final and binding on all the Parties and the question in dispute shall, accordingly, be resolved by adopting the proposed resolution set out in the submission which the independent expert determines to be the more appropriate.

6.10 Initial Approved Reserves

6.10.1 Subject to the remaining provisions of this Clause 6.10 (Initial Approved Reserves), the “Initial Approved Reserves” shall be the aggregate quantities of Petroleum forecast in the Initial Projection to be produced from the Borrowing Base Assets.

6.10.2 If any Projection has been adopted in accordance with this Clause 6 (Projections) either in connection with (a) the designation of any Petroleum Asset as a new Borrowing Base Asset or (b) any Borrowing Base Asset ceasing to be so designated, the Lender (having regard to that Projection and after consulting the Borrower) shall adjust the Initial Approved Reserves to reflect (as the case may be):

(A) any increase in the aggregate quantities of Petroleum forecast to be produced by the Borrowing Base Assets by reason of a Petroleum Asset being designated as a new Borrowing Base Asset; or

(B) any decrease in the aggregate quantities of Petroleum forecast to be produced by the Borrowing Base Assets by reason of a Borrowing Base Asset ceasing to be so designated.

6.10.3 The Lender shall promptly after making any adjustment pursuant to Clause 6.10.2, notify the Borrower of the same and until the next adjustment is made pursuant to Clause 6.10.2, the adjusted figure so notified by the Lender shall be the “Initial Approved Reserves” for the purposes of this Agreement.

REPAYMENT, PREPAYMENT AND CANCELLATION

7. REPAYMENT

7.1 Reduction of Facility

The Aggregate Commitments shall reduce to zero on the Final Maturity Date.

7.2 Repayment of Loans

7.2.1 The Borrower which has drawn a Loan shall repay that Loan on the last day of its Interest Period.

7.2.2 Subject to compliance with the other terms of this Agreement the Borrower may borrow a Rollover Loan on the last day of the Interest Period pertaining to a Loan after serving a Utilisation Request in accordance with Section 5 (Utilisation – Loans) and if the Borrower so serves a Utilisation Request, as specified in this Clause 7.2.2, then the relevant Loan shall be deemed to have been repaid to the Lender on the last day of the relevant Interest Period and to have been immediately reborrowed as a Rollover Loan by the Borrower from the Lender for the Interest Period selected in the relevant Utilisation Request.

7.2.3 Notwithstanding any other provision of this Agreement, all Utilisations and other amounts outstanding under the Facility shall be repaid on the Final Maturity Date.

7.3 Reduction

7.3.1 The Borrower shall repay such amount of the Utilisations as is required to ensure that at all times the aggregate amount of the Utilisations does not exceed the Aggregate Commitments at that time.

7.3.2 In addition, subject to Clause 22.1.2 (Non-payment), on each Reduction Date, the Borrower shall repay such amount of the Utilisations as is required to reduce the aggregate amount of the Utilisations to the Borrowing Base amount applicable on the day after such Reduction Date.

7.3.3 Any repayments under Clause 7.3.1 or Clause 7.3.2 of Utilisations shall be applied towards such Utilisations as the Lender (acting in consultation with the Borrower) shall determine.

8. PREPAYMENT AND CANCELLATION

8.1 Illegality

8.1.1 If it becomes unlawful in any applicable jurisdiction for the Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Utilisation:

- (A) that Lender shall promptly notify the Borrower upon becoming aware of that event;
- (B) upon the Lender notifying the Borrower, the Commitment of the Lender in respect of each Specified Period will be immediately cancelled; and
- (C) the Borrower shall repay the Lender in the Utilisations made to that Borrower on the last day of the Interest Period for each Utilisation occurring after the Lender has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

8.2 Mandatory prepayment - Change of Control Event

8.2.1 For the purpose of this Clause: a Change of Control Event occurs if:

- (A) Parent does not or ceases to hold, directly or indirectly and both legally and beneficially, and have the right to vote as it sees fit, more than 50 percent, of the share capital of the Borrower or any Guarantor (other than Parent); or
- (B) Parent does not or ceases to have the right to direct, indirectly, management of the Borrower or any Guarantor (other than Parent) to comply with the types of obligations imposed by this Agreement or to determine the composition of a majority of the board of directors of the Borrower or any Guarantor other than Parent;
- (C) any person or two or more persons acting in concert shall have acquired beneficial ownership, directly or indirectly, of, or shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of or control over, voting stock of Parent (or other securities convertible into such voting stock) representing 50% or more of the combined voting power of all voting stock of Parent; or
- (D) during any period of up to 12 consecutive months, individuals who at the beginning of such 12-month period were directors of Parent (together with any new director whose election by Parent's board of directors or whose nomination for election by Parent's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the directors of Parent then in office.

acting in concert means acting together pursuant to an agreement or understanding (whether formal or informal); and

control means the power to direct the management and policies of the relevant entity whether by virtue of ownership of share capital, contract or otherwise.

8.2.2 If any Change of Control Event occurs:

- (A) the Borrower shall promptly notify the Lender upon becoming aware of that event;
- (B) the Lender shall not be obliged to fund a Utilisation (except for a Rollover Loan);
- (C) the Lender may by not less than ten days notice to the Borrower, cancel the Facility and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable.

8.3 Refinancing

8.3.1 If this Facility is refinanced at any time in whole or in part, then on the date on which the first drawing is made under the credit facility or any other funding arrangement entered into for the purposes of such refinancing:

- (A) the Facility and the Commitments of the Lender for each Specified Period shall be cancelled; and
- (B) the Borrower must repay all Utilisations and other amounts outstanding under the Finance Documents.

8.4 Disposal of Borrowing Base Assets

8.4.1 Subject to Clause 21.14.2, if the Borrower at any time (i) disposes of or creates any security over (other than pursuant to a Security Document) any of its participatory interests in the Polish Fields including mining usufruct rights held by the Borrower, contractual entitlements entered into with an operator of a given Polish Field or arising under another legal basis) or (ii) disposes of or creates any security over (other than pursuant to any Security Document) any of its entitlements to receive Petroleum in connection with the operation of the Polish Fields, then:

- (A) the Facility and the Commitments of the Lender for each Specified Period shall be cancelled; and
- (B) the Borrower must repay all Utilisations and other amounts outstanding under the Finance Documents.

8.5 Voluntary cancellation

8.5.1 Subject to Clause 8.5.3, the Borrower may, if it gives the Lender not less than ten Business Days' (or such shorter period as the Lender may agree) prior notice, cancel the whole or any part (being a minimum amount of \$1,000,000 and an integral multiple of \$1,000,000) of the unutilised Aggregate Commitments relating to the then current Specified Period.

8.5.2 On the date of the cancellation of any unutilised Aggregate Commitments relating to any Specified Period pursuant to Clause 8.5.1:

- (A) the Commitment of the Lender for that Specified Period shall be reduced rateably; and
- (B) if, as a result of the reduction of the Lender's Commitment for that Specified Period (the "relevant Specified Period") pursuant to Clause 8.5.2(A), the Lender's Commitment for any subsequent Specified Period exceeds that reduced Commitment for the relevant Specified Period, the Lender's Commitment for each such subsequent Specified Period shall be reduced to an amount equal to that reduced Commitment for the relevant Specified Period.

8.5.3 Before the Portfolio Completion Date, the Borrower may only cancel the whole or any part of the unutilised Aggregate Commitments pursuant to Clause 8.5.1 if the Lender consents to such cancellation (such consent not to be withheld if the Borrower can demonstrate to the reasonable satisfaction of the Lender that (after taking into account, and notwithstanding, the proposed cancellation of the unutilised Aggregate Commitments) the Borrower has sufficient funds available to it to enable it to achieve the Portfolio Completion Date by the Target Completion Date).

8.6 Voluntary prepayment of Loans

The Borrower may, if it gives the Lender not less than ten Business Days' (or such shorter period as the Lender may agree) prior notice, prepay the whole or any part of a Loan (but if in part, being an amount that reduces the amount of the amount of the Loan by a minimum amount of \$1,000,000 and an integral multiple of \$1,000,000).

8.7 Restrictions

8.7.1 Any notice of cancellation or prepayment given by any Party under this Clause 8 (Prepayment and cancellation) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

8.7.2 Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

8.7.3 Any part of the Facility which is prepaid under Clause 8.6 (Voluntary prepayment of Loans) may be reborrowed in accordance with the terms of this Agreement.

8.7.4 The Borrower shall not repay or prepay all or any part of the Utilisations or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

8.7.5 No amount of the Commitments cancelled under this Agreement may be subsequently reinstated.

COSTS OF UTILISATION

9. INTEREST

9.1 Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable:

9.1.1 Margin;

9.1.2 LIBOR; and

9.1.3 Mandatory Cost, if any.

9.2 Payment of interest

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six monthly intervals after the first day of the Interest Period).

9.3 Default interest

9.3.1 If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to Clause 9.3.2, is one percent higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Lender (acting reasonably). Any interest accruing under this Clause 9.3 (Default interest) shall be immediately payable by the Obligor on demand by the Lender.

9.3.2 If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

(A) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

(B) the rate of interest applying to the overdue amount during that first Interest Period shall be one percent higher than the rate which would have applied if the overdue amount had not become due.

9.3.3 Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

9.4 Notification of rates of interest

The Lender shall promptly notify the Borrower of the determination of a rate of interest under this Agreement.

10. INTEREST PERIODS

10.1 Selection of Interest Periods

10.1.1 The Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan.

10.1.2 Subject to this Clause 10 (Interest Periods), the Borrower may select an Interest Period of one, two, three or six Months or any other period agreed between the Borrower and the Lender.

10.1.3 The Borrower may, in relation to any Loan, select an Interest Period of less than six Months which does not coincide with the periods specified in Clause 10.1.2 for the purpose of ensuring that (a) the last day of such Interest Period coincides with a Reduction Date and (b) there are sufficient Loans (with an aggregate amount equal to or greater than the amount required to be repaid under Clause 7.3 (Reduction) on such Reduction Date) which have an Interest Period ending on such Reduction Date.

10.1.4 An Interest Period for a Loan shall not extend beyond the Final Maturity Date.

10.1.5 Each Interest Period for a Loan shall start on the Utilisation Date.

10.1.6 A Loan may have one Interest Period only.

10.2 Changes to Interest Periods

10.2.1 Prior to determining the interest rate for a Loan in accordance with Clause 9 (Interest), the Lender may shorten an Interest Period for any Loan to ensure that (a) the last day of such Interest Period coincides with a Reduction Date and (b) there are sufficient Loans (with an aggregate amount equal to or greater than the amount required to be repaid under Clause 7.3 (Reduction) on such Reduction Date) which have an Interest Period ending on such Reduction Date.

10.2.2 If the Lender makes any change to an Interest Period referred to in this Clause 10.2 (Changes to Interest Periods), it shall promptly notify the Borrower.

10.3 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

11. CHANGES TO THE CALCULATION OF INTEREST

11.1 Market disruption

11.1.1 If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:

(A) the Margin;

(B) the rate notified to the Borrower by the Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the Lender of funding that Loan from whatever source it may reasonably select; and

(C) the Mandatory Cost, if any, applicable to that Loan.

11.1.2 In this Agreement “Market Disruption Event” means at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available.

11.2 Alternative basis of interest or funding

11.2.1 If a Market Disruption Event occurs and the Lender or the Borrower so requires, the Lender and the Borrower shall enter into negotiations (for a period of not more than seven days) with a view to agreeing a substitute basis for determining the rate of interest.

11.2.2 Any alternative basis agreed pursuant to Clause 11.2.1 shall, with the prior consent of the Lender and the Borrower, be binding on them.

11.3 Break Costs

11.3.1 The Borrower shall, within three Business Days of demand by the Lender, pay to the Lender its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

12. FEES

12.1 Commitment fee

The Borrower shall pay to the Lender in respect of each Fee Period a commitment fee computed at the applicable Commitment Rate on the daily amount (if any) by which the Aggregate Commitments exceeds the aggregate amount of all outstanding Utilisations.

12.2 Computation and payment

12.2.1 Any commitment fee, payable under this Clause 12 (Fees) must be paid by the Borrower or another Obligor on behalf of the Borrower within two Business Days after receipt by the Borrower of the calculation of such commitment fee from the Lender under Clause 12.2.3.

12.2.2 Any such commitment fee must be paid in dollars.

12.2.3 The Lender shall calculate the commitment fee payable for each Fee Period and shall notify the Borrower of the same within five Business Days after the end of the relevant Fee Period. Each such calculation shall, in the absence of manifest error, be conclusive evidence of the amount thereof.

12.3 Definitions

For the purposes of this Agreement:

12.3.1 “Applicable Margin” means, in relation to any day in any Fee Period, the Margin that would apply to any Loans on that day.

12.3.2 “Commitment Rate” means, in relation to any day in any Fee Period, the percentage rate per annum calculated by multiplying the Applicable Margin on that day by 0.5.

12.3.3 “Fee Period” means in relation to the commitment fee payable under Clause 12.1 (Commitment fee):

- (1) the period commencing on the earlier of 31st December 2006 or the date of the satisfaction of the initial conditions precedent, pursuant to Clause 4.1 and ending on the first quarter date to occur thereafter; and thereafter,
- (2) each successive period of three months (or, in the case of the last such period, less) commencing on the day after a quarter date and ending on the first quarter date to occur thereafter (or, in the case of the last such period, on the last day of the Availability Period),

where, for these purposes, “quarter date” means 31 March, 30 June, 30 September or 31 December.

12.4 Flat Fee, Other fees and costs

12.4.1 The Borrower will pay to the Lender or otherwise settle the relevant fees and other costs and expenses (including the Flat Fee) in the amounts, manner and at the times set out in the Fee Letter.

12.4.2 It is acknowledged and agreed that the Flat Fee may be satisfied by either payment of that fee or issuance of the Warrant Instrument on or before the date of first Utilisation of the Facility.

12.5 Advisers’ fees

12.5.1 The Lender may (in consultation with the Borrower and the Lender) appoint any legal adviser, insurance adviser, environmental consultant, engineering consultant or other independent expert or adviser (each, a “Lenders’ Adviser”) in connection with the exercise of the Lender’s rights and discretions, or the performance of its or their duties and obligations, under the Finance Documents.

12.5.2 The Borrower shall, within five Business Days of demand by the Lender referred to in Clause 12.5.1, pay, or reimburse the Lender for any payments that it has made in relation to, the fees, costs and expenses of any Lenders’ Adviser appointed by the Lender.

ADDITIONAL PAYMENT OBLIGATIONS

13. TAX GROSS UP AND INDEMNITIES

13.1 Definitions

“Tax Credit” means a credit against, relief or remission for, or repayment of any Tax.

“Tax Deduction” means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

“Tax Payment” means either the increase in a payment made by an Obligor to the Lender under Clause 13.2 (Tax gross-up) or a payment under Clause 13.3 (Tax indemnity).

13.1.1 Unless a contrary indication appears, in this Clause 13 (Tax gross-up and indemnities) a reference to “determines” or “determined” means a determination made in the absolute discretion of the person making the determination.

13.2 Tax gross-up

13.2.1 Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

13.2.2 The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Lender accordingly.

13.2.3 If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

13.2.4 If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

13.2.5 Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Lender entitled to the payment evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

13.3 Tax indemnity

13.3.1 The Borrower shall (within three Business Days of demand by the Lender) pay to the Lender an amount equal to the loss, liability or cost which that Lender determines will be or has been (directly or indirectly) suffered for or on account of Tax in relation to a payment received or receivable in respect of a Finance Document.

13.3.2 Clause 13.3.1 shall not apply:

(A) with respect to any Tax assessed on the Lender:

- (1) under the law of the jurisdiction in which the Lender is incorporated or, if different, the jurisdiction (or jurisdictions) in which the Lender is treated as resident for tax purposes; or
- (2) under the law of the jurisdiction in which the Lender's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by the Lender; or

(B) to the extent a loss, liability or cost is compensated for by an increased payment under Clause 13.2 (Tax gross-up).

13.3.3 If the Lender makes or intends to make a claim under Clause 13.3.1 above it shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

13.4 Tax Credit

If an Obligor makes a Tax Payment and the Lender (acting reasonably in accordance with its normal business practices) determines that:

13.4.1 a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and

13.4.2 the Lender has obtained, utilised and retained that Tax Credit,

the Lender shall pay an amount to the Obligor which the Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor.

13.5 Stamp taxes

The Borrower shall pay and, within three Business Days of demand, indemnify the Lender against any cost, loss or liability the Lender incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

13.6 Value added tax

13.6.1 All amounts set out, or expressed to be payable under a Finance Document by any Obligor which (in whole or in part) constitute the consideration for VAT purposes shall be deemed to be exclusive of any VAT or any other Tax of a similar nature which is chargeable in connection with that amount, and accordingly, subject to Clause 13.6.2, if VAT is chargeable the Obligor shall pay to the Lender (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT (and such Lender shall promptly provide an appropriate VAT invoice to such Obligor).

13.6.2 Where a Finance Document requires any Party to reimburse the Lender for any costs or expenses, that Party shall also at the same time pay and indemnify the Lender against all VAT incurred by the Lender in respect of the costs or expenses to the extent that the Lender reasonably determines that neither it nor any other member of any group of which it is a member for VAT purposes is entitled to credit or repayment from the relevant tax authority in respect of the VAT.

14. INCREASED COSTS

14.1 Increased costs

14.1.1 Subject to Clause 14.3 (Exceptions), the Borrower shall, within three Business Days of a demand by the Lender, pay the amount of any Increased Costs incurred by that Lender or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.

14.1.2 In this Agreement “Increased Costs” means:

- (A) a reduction in the rate of return from the Facility or on the Lender’s (or its Affiliate’s) overall capital;
- (B) an additional or increased cost; or
- (C) a reduction of any amount due and payable under any Finance Document,

which is incurred or suffered by the Lender or any of its Affiliates to the extent that it is attributable to the Lender having entered into its Commitment or funding or performing its obligations under any Finance Document.

14.2 Increased cost claims

14.2.1 The Lender shall notify the Borrower of the event giving rise to the claim.

14.2.2 The Lender shall, as soon as practicable, provide a certificate confirming the amount of its Increased Costs.

14.3 Exceptions

14.3.1 Clause 14.1 (Increased costs) does not apply to the extent any Increased Cost is:

- (A) attributable to a Tax Deduction required by law to be made by an Obligor;
- (B) compensated for by Clause 13.3 (Tax indemnity) (or would have been compensated for under that Clause 13.3 (Tax indemnity));

- (C) compensated for by the payment of the Mandatory Cost; or
- (D) attributable to the wilful breach by the Lender or its Affiliates of any law or regulation.

14.3.2 In this Clause 14.3 (Exceptions), a reference to a “Tax Deduction” has the same meaning given to the term in Clause 13.1 (Definitions).

15. OTHER INDEMNITIES

15.1 Currency indemnity

15.1.1 If any sum due from an Obligor under the Finance Documents (a “Sum”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “First Currency”) in which that Sum is payable into another currency (the “Second Currency”) for the purpose of:

- (A) making or filing a claim or proof against that Obligor;
- (B) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Lender against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (a) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (b) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

15.1.2 Without prejudice to Clause 15.1.1, each Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Lender against any cost, loss or liability which the Lender incurs as a result of the Lender receiving an amount in respect of that Obligor’s liability under any Finance Document in a currency other than the currency in which that liability is expressed to be payable under that Finance Document.

15.1.3 Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

15.2 Other indemnities

The Borrower shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Lender against any cost, loss or liability incurred by the Lender as a result of:

- 15.2.1 the occurrence of any Event of Default;
- 15.2.2 a failure by an Obligor to pay any amount due under a Finance Document on its due date;
- 15.2.3 investigating any event which it reasonably believes is a Default; or
- 15.2.4 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

16. MITIGATION BY THE LENDER

16.1 Mitigation

16.1.1 The Lender shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 8.1 (Illegality), Clause 13 (Tax gross-up and indemnities), Clause 14 (Increased costs) or paragraph 3 of Schedule 5 (Mandatory Cost formulae) including transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

16.1.2 Clause 16.1.1 does not in any way limit the obligations of any Obligor under the Finance Documents.

16.2 Limitation of liability

16.2.1 The Borrower shall indemnify the Lender for all costs and expenses reasonably incurred by the Lender as a result of steps taken by it under Clause 16.1 (Mitigation).

16.2.2 The Lender is not obliged to take any steps under Clause 16.1 (Mitigation) if, in the opinion of the Lender (acting reasonably), to do so might be prejudicial to it.

17. COSTS AND EXPENSES

17.1 Transaction expenses

17.1.1 Subject to Clause (D), the Borrower shall within five Business Days of demand pay the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with:

- (A) the negotiation, preparation, printing and execution of:
 - (1) this Agreement and any other documents referred to in this Agreement; and
 - (2) any other Finance Documents executed after the date of this Agreement;
- (B) the designation or de-designation of any Petroleum Assets as Borrowing Base Assets; and
- (C) the perfection of the Security intended to be created pursuant to the Security Documents.
- (D) The amount payable by the Borrower under Clause 17.1.1 in connection with the negotiation, preparation, printing and execution of (i) this Agreement and (ii) any other document relating thereto which is, or to be, executed on or before the date of the first Utilisation Date shall be paid on or before the first Utilisation Date.

17.2 Amendment costs

If (a) a relevant party requests an amendment to, a waiver of, or a consent under, any provision of any Finance Document or (b) an amendment is required pursuant to Clause 24.5 (Change of currency), the Obligors shall, within five Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender in responding to, evaluating, negotiating or complying with that request or requirement. For the purposes of this Clause, “relevant party” means any Obligor or any other party (other than the Lender) to a Finance Document.

17.3 Enforcement costs

The Borrower shall, within five Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees and expenses) incurred by the Lender in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

17.4 No internal management costs

Any amount payable under this Clause 17 (Costs and expenses) shall exclude all internal costs that may be incurred by the Lender arising out of the utilisation by the Lender of its internal management time and other internal resources and nothing in this Clause 17 (Costs and expenses) shall require the Borrower to meet such internal costs.

GUARANTEE

18. GUARANTEE AND INDEMNITY

18.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

18.1.1 guarantees to the Lender punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;

18.1.2 undertakes with the Lender that whenever an Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and

18.1.3 indemnifies the Lender immediately on demand against any cost, loss or liability suffered by the Lender if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which the Lender would otherwise have been entitled to recover.

18.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Obligor under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

18.3 Reinstatement

If any payment by an Obligor or any discharge given by the Lender (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

18.3.1 the liability of each Obligor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and

18.3.2 the Lender shall be entitled to recover the value or amount of that security or payment from each Obligor, as if the payment, discharge, avoidance or reduction had not occurred.

18.4 Waiver of defences

The obligations of each Guarantor under this Clause 18 (Guarantee and indemnity) will not be affected by an act, omission, matter or thing which, but for this Clause 18.4 (Waiver of defences) would reduce, release or prejudice any of its obligations under this Clause 18 (Guarantee and indemnity) (without limitation and whether or not known to it or the Lender) including:

18.4.1 any time, waiver or consent granted to, or composition with, any Obligor or other person;

18.4.2 the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor or other person;

18.4.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

18.4.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;

18.4.5 any amendment (however fundamental) or replacement of a Finance Document or any other document or security;

18.4.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

18.4.7 any insolvency or similar proceedings.

18.5 Immediate recourse

Each Guarantor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 18 (Guarantee and indemnity). This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

18.6 Appropriations

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, the Lender (or any trustee or agent on its behalf) may:

18.6.1 refrain from applying or enforcing any other moneys, security or rights held or received by the Lender (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and

18.6.2 hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 18 (Guarantee and indemnity).

18.7 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

18.7.1 to be indemnified by an Obligor;

18.7.2 to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents; and/or

18.7.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by the Lender.

18.8 Release of Guarantors' right of contribution

If any Guarantor (a "Retiring Guarantor") ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Guarantor that is expressly permitted under the terms of the Finance Documents, then on the date such Retiring Guarantor ceases to be a Guarantor:

18.8.1 that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents; and

18.8.2 each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents to take the benefit (in whole or in part and whether by way of

subrogation or otherwise) of any rights of the Lender under any Finance Document or of any other security taken pursuant to, or in connection with, any Finance Document where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

18.9 Additional security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Lender.

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

19. REPRESENTATIONS

19.1 Timing of representations

19.1.1 Each Obligor makes the representations and warranties set out in this Clause 19 (Representations) (other than the representation and warranty set out in Clause 19.20 (Information Package)) to the Lender on the date of this Agreement.

19.1.2 Each Obligor makes the representations and warranties set out in Clause 19.10 (Security matters) on the date on which each Security Document is entered into.

19.1.3 The Repeating Representations are deemed to be made by each Obligor by reference to the facts and circumstances then existing on:

- (A) the date of each Utilisation Request and the first day of each (i) Interest Period and (ii) Term;
- (B) each Reduction Date.

19.2 Non-conflict with other obligations

The entry into and performance by it of, or any member of the Group of, and the transactions contemplated by, the Transaction Documents to which it, or such member of the Group, is a party do not and will not conflict with:

19.2.1 any law or regulation applicable to it or any member of the Group;

19.2.2 its constitutional documents or the constitutional documents of any member of the Group; or

19.2.3 any agreement or instrument binding upon (i) it or any of its assets or (ii) any member of the Group or any assets of any member of the Group.

19.3 Status

19.3.1 It is duly incorporated and validly existing under the law of its jurisdiction of incorporation or, in the case of FX Partnership, duly organised and validly existing under the laws of the Netherlands.

19.3.2 It has the power to own its assets and carry on its business as it is being conducted.

19.4 Power and authority

It, and each member of the Group has, or as the case may be, had at the relevant time, the power to enter into, perform and deliver, and has, or as the case may be, had at the relevant time, taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents.

19.5 Binding obligations

The obligations expressed to be assumed by it, and each member of the Group, in each Transaction Document are, subject to any general principles of law limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to Clause 4.1 (Initial conditions precedent), legal, valid, binding and enforceable obligations.

19.6 Pari passu ranking

Its indebtedness and obligations, and indebtedness and obligations of each member of the Group, under the Finance Documents rank at least pari passu with the claims of all its or, as the case may be, that Group member's, other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

19.7 No proceedings pending or threatened

Save as disclosed to the Lender in writing prior to the date of this Agreement, no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, would, or would be reasonably likely to, have a Material Adverse Effect, have (to the best of its knowledge and belief) been started or threatened against it or any member of the Group.

19.8 Financial statements, Taxes

19.8.1 The audited financial statements, or as the case may be, the audited consolidated financial statements, most recently delivered to the Lender:

- (A) were prepared in accordance with GAAP/IFRS consistently applied; and
- (B) fairly represent the financial condition and operations (consolidated if applicable) of the relevant entity(ies) to which those financial statements relate during the relevant financial year,

except, in each case, as disclosed to the contrary in those financial statements and, in the case of the Borrower, until it is required by Applicable Law or requested by the Lender to produce audited financial statements.

19.8.2 There has been no change in its business or financial condition (or the business or consolidated financial condition of the Group) since the date as of which the most recent financial statements were prepared which would, or would be reasonably likely to, have a Material Adverse Effect (where, for these purposes, the "most recent financial statements" means the financial statements, or as the case may be, the consolidated financial statements, most recently delivered to the Lender under this Agreement).

19.8.3 All members of the Group have duly complied with their obligations in relation to Taxes.

19.9 Compliance with Environmental and Mining Laws

19.9.1 It, and each member of the Group, has obtained (or has no reason to believe it will not obtain) all Environmental and Mining Licences required by it (or such member of the Group) in connection with the Borrowing Base Assets and/or their exploitation and has at all times complied with all those Environmental and Mining Licences and all other applicable Environmental and Mining Laws.

19.9.2 There is no material environmental contamination on any site connected with any Borrowing Base Asset.

19.9.3 There are no Environmental and Mining Claims current, or to its knowledge, pending or threatened, against or connected with it, any member of the Group or any Borrowing Base Asset which have or may have a Material Adverse Effect.

19.9.4 Members of the Group are in material compliance with all laws and regulations applicable to them.

19.10 Security matters

19.10.1 No Security (or agreement to create the same) exists over any of its assets or the assets of any other member of the Group, in each case, save for any Permitted Security. As at the date hereof any Permitted Security currently existing is described in Schedule 7.

19.10.2 Subject to (i) any qualifications as to matters of law set out in any legal opinion delivered pursuant to Clause 4.1 (Initial conditions precedent) or (ii) any required registration of any Security Documents, each Security Document to which it, or any member of the Group, is a party:

- (A) confers the Security of the type it purports to create over the assets over which the Security is purported to be given by that Security Document and each such Security is (subject to any Permitted Security which may be prior ranking) first ranking; and
- (B) is valid and enforceable against (i) it or, as the case may be, that member of the Group, and (ii) its Insolvency Officers and its creditors or, as the case may be, the Insolvency Officers and creditors of that member of the Group; and
- (C) is not capable of being avoided or set aside, whether in the winding up, administration or dissolution or otherwise of it or any of its assets or, as the case may be, that member of the Group or any of that Group member's assets.

19.10.3 Each member of the Group that has entered into any Security Document for the purposes of granting Security over all or any of its assets is the legal and beneficial owner of all of the assets (the "charged assets") secured, or purported to be secured, under such Security Document free from any Security (other than the relevant Security created pursuant to that Security Document or any Permitted Security); and where the charged assets comprise shares held by that member of the Group in another member of the Group, such charged assets are free from any restrictions as to transfer or registration and are not subject to any calls or other liability to pay money.

19.10.4 With respect to the Initial Borrowing Base Assets the Borrower is co-owner and/or co-venturer with the following parties and holds the following interests:

<u>Borrowing Base Asset</u>	<u>Borrower's Interest</u>	<u>Other Interests</u>	<u>Nature of Interests</u>
Kłęka East Field	49%	POGC 51%	Offtake contract
Wilga Field	81.82%	POGC 18.18%	Mining Usufruct
Zaniemysl Field	24.5%	POGC 51% CalEnergy 24.5%	Offtake contract and Mining Usufruct

19.11 Required Authorisations

19.11.1 All Required Authorisations have been obtained or effected and are in full force and effect or will be obtained or effected and will be in full force and effect by the date on which they are required.

19.11.2 No steps have been taken for the revocation, variation or refusal of any Required Authorisation which has been granted.

19.12 Deduction of Tax

Neither it nor any member of the Group that is a party to any Finance Document is required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

19.13 No default

19.13.1 No Default is continuing or would be reasonably likely to result from the making of any Utilisation.

19.13.2 To the best of its knowledge and belief, no other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which would, or would be reasonably likely to, have a Material Adverse Effect.

19.14 Governing law and enforcement

Subject to any qualifications as to matters of law set out in any legal opinion delivered pursuant to Clause 4.1 (Initial conditions precedent):

19.14.1 the relevant law chosen as the governing law of each Finance Document to which it, or any member of the Group, is a party will be recognised and enforced in its or, as the case may be, that Group member's, jurisdiction of incorporation; and

19.14.2 any judgment obtained in England in relation to a Finance Document to which it, or any member of the Group, is a party will be recognised and enforced in its or, as the case may be, that Group member's, jurisdiction of incorporation.

19.15 No filing or stamp taxes

Except as specifically referred to in any legal opinion delivered pursuant to Clause 4.1 (Initial conditions precedent), under the law of its jurisdiction of incorporation or the jurisdiction of incorporation of any member of the Group, it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

19.16 Borrowing Base Assets and Project Documents

19.16.1 The Project Documents are in full force and effect in all material respects and contain no restrictions, covenants and conditions that would, in any material respect, adversely affect the use, ownership, possession or exploitation of any Borrowing Base Asset in the manner contemplated by the Transaction Documents, the then current Projection, each then current Budget and/or any Field Development Plan. A complete list of Project Documents existing on the date of the execution of this agreement is set out in Schedule 10 hereto.

19.16.2 No member of the Group that is a party to a Project Document is in material default under any Project Document and, to the best of its knowledge and belief, no other party to a Project Document is in material default under any Project Document.

19.16.3 It, or a member of the Group, owns, or has sufficient access to and the right to use, all assets necessary for the exploitation of each Borrowing Base Asset as contemplated by the Transaction Documents, the then current Projection, each then current Budget and/or any Field Development Plan.

19.16.4 The Borrower and other members of the Group have rights to all assets, which are required in order to allow the Borrower to own, operate and exploit the Borrowing Base Assets as set out in Clause 19.10.4 and as contemplated in the Projections and Technical Assumptions in order to achieve the Portfolio Completion Date by the Target Completion Date. Additionally, the Borrower is the absolute legal and beneficial owner (or, subject to Clause 19.10.4), co-owner and/or co-venturer together with other parties holding interests with respect to the Polish Fields) of each Borrowing Base Asset free from any Security or other interest of any kind other than (i) the Security under the Security Documents, (ii) the Security permitted under Clause 21.11 (Negative pledge) (including, for the avoidance of doubt, Permitted Security) and (iii) the interests (if any) of any co-venturers under the Project Documents relating to that Borrowing Base Asset (where, for these purposes, a “relevant member of the Group” means any member of the Group that has granted Security over all of its assets to the Lender (in its capacity as such)).

19.16.5 No member of the Group is under any obligation to create any Security over any Borrowing Base Asset except by virtue of any Security Document or as permitted under Clause 21.11 (Negative pledge).

19.16.6 Each copy of a Project Document delivered to the Lender by it is, at the time it is delivered, a correct and complete copy of the relevant document as in force at that time.

19.17 Ownership

19.17.1 As at the date of this Agreement, the only member of the Group that holds any interests in any Borrowing Base Assets is the Borrower.

19.17.2 As at the date of this Agreement, the ownership structure of the Group is as set out in Schedule 3 (Group Structure).

19.17.3 Each member of the Group that holds any interest in any Borrowing Base Assets is a Relevant Obligor.

19.18 Insurances

All insurances which are at any time required to be maintained or effected by it, or any member of the Group, pursuant to the Finance Documents are in full force and effect at that time, and to the best of its knowledge and belief, no event or circumstance has occurred, nor has there been any omission to disclose a fact, which would in either case entitle any insurer under those insurances to avoid its liability or otherwise reduce its liability.

19.19 Projections

19.19.1 All information provided by, or on behalf of, it or any member of the Group for the purposes of preparing the current Projection:

- (A) in the case of any factual information, was true in all material respects as at the date it was provided; and
- (B) have been prepared and provided in good faith and with due care on the basis of recent historical information and assumptions it considers to be reasonable.

19.19.2 The current Projection:

- (A) is based on reasonable assumptions;
- (B) is consistent with the provisions of the Transaction Documents in all material respects;
- (C) (to the extent prepared by any Obligor or other member of the Group) has been prepared in good faith and with due care; and

(D) fairly represents the expectations of the members of the Group,

except, in the case of paragraph (A) and (D) above, to the extent the assumptions and expectations of the members of the Group differ from those of the Lender or any independent expert appointed pursuant to Clause 6.9 (The Independent Expert).

19.20 Information Package

19.20.1 The factual information prepared by it and contained in the Information Package was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated to be given; and to the best of its knowledge and belief, any other factual information contained in the Information Package was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated to be given.

19.20.2 The Information Package contains all information regarding each Obligor, each member of the Group and the Borrowing Base Assets which is material as at its date or as at the date (if any) at which it is stated to be given.

19.20.3 The estimates, forecasts and financial projections contained in the Information Package that have been prepared by, or on behalf of, any member of the Group have been prepared, in good faith and with due care on the basis of recent historical information and assumptions it considers to be reasonable.

19.20.4 Each expression of opinion or intention made by, or on behalf of, any member of the Group and contained in the Information Package has been made in good faith, with due care and after careful consideration and enquiry and on the basis of assumptions it considers to be reasonable.

19.20.5 The Information Package did not, when provided, omit any information which, if disclosed, would make the Information Package untrue or misleading in any material respect.

19.20.6 As at the date of this Agreement, nothing has occurred which, if disclosed, would make the Information Package untrue or misleading in any material respect.

19.20.7 Schedule 11 lists all agreements to which the Borrower is a party relating to Financial Indebtedness.

19.20.8 Schedule 12 lists all agreements to which the Borrower is a party with any Affiliate.

19.20.9 All agreements entered into by the Borrower with any Affiliate or third party have been entered into in the ordinary course of business and are on terms no less favourable to the Borrower than would result from arm's length negotiations.

20. INFORMATION UNDERTAKINGS

20.1 Financial statements

The Borrower shall supply to the Lender:

20.1.1 as soon as the same become available, but in any event within 120 days after the end of each of its financial years, the audited financial statements, or (where relevant) the audited consolidated financial statements, of each Obligor for that financial year; and

20.1.2 as soon as the same become available, but in any event within 90 days after the end of each of its financial quarters, the financial statements (consolidated where relevant) of each Obligor for that quarter.

20.2 Requirements as to financial statements

20.2.1 Each Obligor shall procure that each set of financial statements relating to it delivered pursuant to Clause 20.1 (Financial statements), fairly represents its financial condition (or, as the case may be, consolidated financial position) as at the date as at which those financial statements were drawn up.

20.2.2 The Obligors shall procure that each set of financial statements delivered pursuant to Clause 20.1 (Financial statements) is prepared using GAAP/IFRS.

20.3 Information: Project

The Borrower must supply to the Lender:

20.3.1 by the 15th day of the subsequent Reporting Period, and at any other time promptly upon the request of the Lender, a progress report (in a form approved by the Lender (acting reasonably)) relating to the relevant Borrowing Base Asset comprised in the Project which includes (i) a reconciliation of the budgeted and planned costs for the Project in that quarter against the actual costs for the Project incurred in that calendar month and (ii) any other information that the Lender may reasonably require for the purposes of enabling the Lender to monitor the progress being made with respect to the Project or any aspect thereof;

20.3.2 promptly upon receipt of the same from the operators of the Polish Fields and, in any event, no later than 30 days after such receipt, copies of any development reports, budgets (or updates thereof), development programmes, production data and/or other reports that it or any other member of the Group receives from such operator;

20.3.3 by the 15th day of the subsequent Reporting Period:

- (A) copies of development reports, budgets (or updates thereof), development programmes, production data and/or other reports (each, a “relevant report”) prepared by it in its capacity as operator of any of the Polish Fields or on its behalf in such capacity which have not previously been provided to the Lender (in each case a form approved by the Lender, acting reasonably) or, if it ceases to be the operator of any of the Polish Fields, promptly upon receipt of the same from the operator of any of the Polish Fields (or, as the case may be) and, in any event, no later than 30 days after such receipt, copies of each relevant report that it or any other member of the Group receives from such operator;
- (B) a progress report (in a form approved by the Lender, acting reasonably) which (1) describes (in such level of detail as the Lender may reasonably require) the then current status of the Borrower’s discussions with its co-venturers in the Polish Fields with respect to the development of the Polish Fields and (2) includes copies of minutes of any meetings of the operating committee held in that calendar month;
- (C) a list of all Project Documents executed in such month, as well as a list of all Project Documents which expired, were terminated or amended in such month, and, upon request of the Lender, it shall provide any copies of any requested documents set forth above; and
- (D) a list of any Permitted Security created in such month.

20.3.4 promptly upon submitting the same, a copy of the final version of the Field Development Plan for any Polish Field which is submitted to the Applicable Polish Licensing Authority for its approval;

20.3.5 promptly upon receipt of the same, a copy of the Applicable Polish Licensing Authority’s approval of such Field Development Plan for any Polish Field; and

20.3.6 promptly upon request from the Lender, such other technical, commercial or other information as the Lender may reasonably request with respect the Project or any aspect thereof.

20.4 Information: miscellaneous

The Obligors must supply to the Lender:

20.4.1 all documents dispatched by it to its shareholders (or any class of them) or its creditors generally at the same time as they are dispatched;

20.4.2 copies of all documents filed publicly by, or on behalf of, the Guarantors with the relevant stock exchange at the same time as they are filed (where for these purposes, “relevant stock exchange” means the Nasdaq National Market);

20.4.3 promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which, if adversely determined, would have a Material Adverse Effect;

20.4.4 promptly upon becoming aware of the same, details of any event or circumstance or any new information which results in any material information previously provided to the Lender by it or its advisors being misleading or inaccurate in any material respect;

20.4.5 information regarding any decisions concerning registration of (or refusal to register) any Security required to be registered in the applicable registers, promptly after such information; and

20.4.6 promptly, such further information regarding its financial condition, business, assets and operations as the Lender may reasonably request.

20.5 Information: Borrowing Base Assets

Save to the extent that the same has been supplied pursuant to Clause 20.3 (Information: Project), the Obligors must supply to the Lender:

20.5.1 promptly upon receipt by it of the same, a copy of any notice of default (howsoever called) served upon it under any Project Document;

20.5.2 promptly upon becoming aware of the same, the details of any claims and/or proceedings which are current, threatened or pending in relation to any Borrowing Base Asset which, if adversely determined, would have a Material Adverse Effect;

20.5.3 promptly upon becoming aware of the same, the details of any event or circumstance which has resulted in the production, recovery or transportation of Petroleum with respect to any Borrowing Base Asset being suspended or interrupted for a period of 30 days or more;

20.5.4 promptly upon becoming aware of the same, details of any potential or actual warranty claim or any other material dispute under the then current Project Document which may result in a liability equal to an increase of at least 15% of the Budget in respect of any Borrowing Base Asset;

20.5.5 promptly upon becoming aware of the same, details of (i) any incident involving any material physical damage to a Borrowing Base Asset and (ii) any proposal for reinstatement;

20.5.6 promptly upon request by the Lender, a copy of any reports or budgets in respect of each Borrowing Base Asset prepared by the operator or operating committee thereof;

20.5.7 promptly upon becoming aware of the same, any other information relating to a Borrowing Base Asset or Obligor that could reasonably be expected to change any Assumption in the current Projection (in a material respect) or impose any additional material liability on any Obligor;

20.5.8 promptly upon request by the Lender:

- (A) a copy of any Project Document and
- (B) such information as the Lender may reasonably require in respect of a Borrowing Base Asset or a member of the Group;

20.5.9 promptly upon such document being entered into or otherwise executed or issued, a copy of any Project Document, copies of which have not previously been provided to the Lender;

20.5.10 no later than seven days prior to the date on which any member of the Group proposes to enter into, execute or file for any new Project Document or make a material amendment or request a material amendment to the terms of any existing Project Document, a copy of the then current draft of the relevant new Project Document that any member of the Group proposes to enter into after the date of this Agreement or, as the case may be, details of the proposed material amendment;

20.5.11 at the same time as the same is submitted, copies of any information provided by any member of the Group to, or any application made by any member of the Group to, the Applicable Polish Licensing Authority or any other governmental agency or body in relation to any Borrowing Base Asset; and

20.5.12 promptly upon becoming aware of the same, the details of any Unitisation or potential Unitisation or any steps that have been, or are being, taken with respect to any Unitisation or potential Unitisation.

20.6 Information: Projections and Reserves Reports

20.6.1 The Borrower shall commission, at the expense of the Obligors, the Independent Engineer to prepare a Reserves Report:

- (A) on an annual basis for the purposes of the Scheduled Projections to be adopted in accordance with Clause 6 (Projections);
- (B) if at any time the Borrower makes a request for a Petroleum Asset to be designated a Borrowing Base Asset or for a Borrowing Base Asset to cease to be so designated;
- (C) if any request for an Interim Projection is made pursuant to Clause 6.1.1(B) (Adoption) by the Lender;
- (D) if the Lender so requests following any acquisition of any asset by the Borrower or any member of the Group that, in the reasonable opinion of the Lender, has a material effect on the risk profile of the Group;
- (E) if at any time the Borrower notifies the Lender that an event has happened or a circumstance has arisen that will have a material impact on the NPV (Loan Life) or the NPV (Field Life) attributable to any Borrowing Base Asset and that it wishes for such event or circumstance to be taken into account for the purposes of the next Scheduled Projection; and
- (F) following the occurrence of the Portfolio Completion Date unless the Borrower procures the delivery to the Technical Agent of a written confirmation (in form and substance satisfactory to the Lender, acting reasonably) from the Independent Engineer confirming that having regard to, and taking into account, the occurrence of the Portfolio Completion Date, all the information specified in the most recent Reserves Report delivered to the Lender under this Agreement remains up to date.

20.6.2 The Borrower shall use its reasonable endeavours to ensure that each Reserves Report which is commissioned and prepared:

- (A) pursuant to Clause 20.6.1(A), is delivered to the Lender no later than 45 Business Days before 30 June of each year;

- (B) pursuant to Clause 20.6.1(B), is delivered to the Lender within 30 days of the relevant request being made by the Borrower;
- (C) pursuant to Clause 20.6.1(C), is delivered to the Lender within 30 days of the relevant request being made by the Lender or the Lender;
- (D) pursuant to Clause 20.6.1(D), is delivered to the Lender within 30 days of the relevant request being made by the Lender;
- (E) pursuant to Clause 20.6.1(E), is delivered to the Lender no later than 40 Business Days before the relevant Scheduled Recalculation Date on which the relevant Scheduled Projection is due to be adopted;
- (F) pursuant to Clause 20.6.1(F), is delivered to the Lender no later than 40 Business Days before the first Recalculation Date following the Portfolio Completion Date on which a Projection is due to be adopted.

20.6.3 The Borrower shall:

- (A) ensure that each Reserve Report that is prepared pursuant to this Clause 20.6 (Information: Projections and Reserves Reports) is addressed to the Lender in a manner which ensures that the Independent Engineer owes a duty of care to the Lender;
- (B) instruct the Independent Engineer to include in each Reserve Report prepared by it the operating costs and capital expenditure profiles that it takes into consideration for each Borrowing Base Asset; and
- (C) ensure that any Reserves Report delivered pursuant to Clause 20.6.2(F) takes into account and reflects the occurrence of the Portfolio Completion Date.

20.6.4 The Borrower must supply to the Lender on the last day of each Calculation Period, a reconciliation report (in a form approved by the Lender (acting reasonably)) which reconciles (i) the projected costs and revenues set out in the then current Projection and the then current Budgets for that Calculation Period with (ii) the actual costs incurred and revenues received in that period.

20.6.5 The Borrower shall, at the expense of the Obligor, prepare or procure the preparation of Borrower Updates and deliver each such Borrower Update to the Lender no later than 45 Business Days before 31 December of each year (unless a Reserves Report is scheduled pursuant to Clause 20.6.2 to be delivered to the Lender within one month of such date).

20.6.6 The Obligors must supply, and the Borrower must procure that each member of the Group supplies, promptly upon request made by the Lender, in connection with the procedures provided for in Clause 6 (Projections) and the preparation and/or adoption of the Projections, all such information and documents as the Lender may reasonably request.

20.7 Information: Budgets

20.7.1 The Borrower must supply to the Lender:

- (A) a Budget for each Borrowing Base Asset referred to in Schedule 6 (Initial Borrowing Base Assets) pursuant to Clause 4.1 (Initial conditions precedent); and
- (B) a Budget for each other Borrowing Base Asset on or before the date on which that Borrowing Base Asset becomes designated as such pursuant to Clause 6 (Projections).

20.7.2 Thereafter, the Borrower must supply the Lender a draft Budget for each Borrowing Base Asset which updates the information contained in the then current Budget:

- (A) no later than 45 Business Days before 30 June of each year; and
- (B) if any circumstance or event has arisen which results, or might reasonably be expected to result, in any information contained in the then current Budget being inaccurate in any material respect.

20.7.3 The Borrower shall:

- (A) in the case of any Budget or any draft Budget supplied by it pursuant to this Agreement for any Borrowing Base Asset the operator of which is in a form satisfactory to the Lender (acting reasonably and in consultation with the Borrower) and contains all such information as the Lender may reasonably require; and
- (B) in the case of any Budget or any draft Budget supplied by it pursuant to this Agreement for any other Borrowing Base Asset, use its reasonable endeavours to ensure that the same contains all such information as the Lender may reasonably require.

20.7.4 As soon as reasonably practicable after the receipt by it of each draft Budget supplied by the Borrower pursuant to Clause 20.7.2, the Lender will (subject to Clause 20.7.6) either:

- (A) confirm its approval of the draft Budget; or
- (B) acting reasonably and in consultation with the Borrower, make, or require the Borrower to make, such modifications to the draft Budget as the Lender considers necessary.

20.7.5 If:

- (A) the Lender approves any draft Budget for any Borrowing Base Asset pursuant to Clause 20.7.4(A), then on the date on which the Lender confirms its approval of the same, the draft Budget so approved by the Lender shall be adopted as the then current Budget for that Borrowing Base Asset; or
- (B) the Lender makes, or requires the Borrower to make, any modifications to any draft Budget for any Borrowing Base Asset pursuant to Clause 20.7.4(B), then the draft Budget (as modified) shall be adopted as the then current Budget for that Borrowing Base Asset on the date on which the Lender confirms that all relevant modifications have been made to its satisfaction.

20.7.6 After the Portfolio Completion Date, the Lender will not withhold its approval to any draft Budget for any Borrowing Base Asset supplied by the Borrower pursuant to Clause 20.7.2 or require any modifications to be made to such draft Budget, in each case, save to the extent that such draft Budget contains any manifest error. For these purposes, “completion date” means:

- (A) in relation to the each Budget relating to any Borrowing Base Asset referred to in Schedule 6 (Initial Borrowing Base Assets), the Project Completion Date; and
- (B) in relation to each Budget for any other Borrowing Base Asset, the date on which such Borrowing Base Asset has demonstrated a continuous history of production over a period of no more than six months which is satisfactory to the Lender (acting reasonably).

20.8 Notification of default

20.8.1 Each Obligor shall notify the Lender of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).

20.8.2 Promptly upon a request by the Lender, the Borrower shall supply to the Lender a certificate signed by two of its directors or senior officers on its behalf (and not in their personal capacities) certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

20.9 Inspection of data

Each Obligor shall allow any representative of the Lender, upon reasonable notice following the occurrence of a Default, to have access to and to inspect any and all books, records and other relevant data or information in the possession of or available to each Obligor during regular business hours.

20.10 Additional due diligence

If the Lender so requires following the Lender becoming aware of any event, circumstance or any matter which in the reasonable opinion of such Lender has, or would have, a material and adverse impact on (i) any Assumption in the current Projection, (ii) any Budget, (iii) any Field Development Plan, (iv) on the progress of the Project; or (v) otherwise on the operation and/or exploitation of any Borrowing Base Asset, then the Lender may carry out, or appoint expert(s) or adviser(s) to carry out, such due diligence with regard to any Borrowing Base Asset as it considers necessary and the Borrower shall (1) take all such steps as may reasonably be necessary to facilitate the same and (2) be responsible for all reasonable costs (including legal and other advisory fees) that may be incurred by the Lender in connection with such due diligence.

20.11 “Know your customer” checks

20.11.1 If:

- (A) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (B) any change in the status, or the composition of the shareholders, of an Obligor after the date of this Agreement; or
- (C) a proposed assignment or transfer by the Lender of any of its rights and obligations under this Agreement to a party that is not the Lender prior to such assignment or transfer,

obliges the Lender to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, each Obligor shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender in order for the Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

20.11.2

- (A) The Borrower shall, by not less than 10 Business Days’ prior written notice to the Lender, notify the Lender of its intention to request that one of its Subsidiaries becomes an Additional Guarantor pursuant to Clause 23.6 (Additional Guarantors).

- (B) Following the giving of any notice pursuant to paragraph (A) above, if the accession of such Additional Guarantor obliges the Lender to comply with “know your customer” or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Lender (for itself or on behalf of any prospective new Lender) in order for the Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary “know your customer” or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Guarantor.

21. GENERAL UNDERTAKINGS

21.1 Corporate existence

21.1.1 Each Obligor shall maintain its corporate or other existence (as the case may be) under the laws of its jurisdiction of incorporation or establishment and no Obligor may change its corporate or other domicile, or attempt to resolve to do so.

21.1.2 No Obligor may enter into any amalgamation, demerger, merger or corporate reconstruction without the prior written consent of the Lender.

21.2 Compliance with documents

Each Obligor shall duly and properly perform, and comply with, its obligations under the Transaction Documents if any failure to do so would, or would be reasonably likely to, have a Material Adverse Effect.

21.3 Compliance with laws

Each Obligor shall, and shall ensure that each member of the Group that is a party to any Finance Document will, comply in all respects with all laws and regulations applicable to it or its assets or activities for the time being, if failure so to comply would, or would be reasonably likely to, have a Material Adverse Effect.

21.4 Required Authorisations

Each Obligor shall, and shall ensure that each member of the Group will, promptly:

21.4.1 obtain, comply with and do all that is necessary to maintain in full force and effect; and

21.4.2 supply certified copies to the Lender of,

any Required Authorisations.

21.5 Taxes

21.5.1 Each Obligor shall:

- (A) not change its tax residence;
- (B) procure that all Taxes payable by, or assessed upon, it are paid when due save to the extent that such payment is being contested in good faith and being lawfully withheld and a sufficient reserve has been set aside for the purposes of meeting such payment;
- (C) to the fullest extent it is able to do so, apply any and all tax credits, losses, reliefs or allowances taken into account any Projection at any time in the manner, at the time and to the extent that they were so taken into account;

- (D) not surrender or dispose of any tax credit, loss, relief or allowance to any person other than a Relevant Obligor; and
- (E) file all tax returns required to be filed by it in any jurisdiction within the period required by law.

21.5.2 The Guarantors shall file all tax returns required to be filed by it in any jurisdiction within the period required by law.

21.6 Security Documents

Save for any registration of any Security Document which is undertaken by the Lender's legal counsel, each Obligor shall, and shall ensure that each member of the Group will, take all steps (including the making or delivery of filings and the payment of fees) which are within its power and reasonably necessary for the purposes of ensuring that each Security Document to which it, or member of the Group, is a party:

21.6.1 confers the Security of the type it purports to create over the assets over which the Security is purported to be given by that Security Document and each such Security is (subject to any Permitted Security that may be prior ranking) first ranking; and

21.6.2 is valid and enforceable against (i) it or, as the case may be, that member of the Group, and (ii) its Insolvency Officers and its creditors or, as the case may be, the Insolvency Officers and creditors of that member of the Group; and

21.6.3 is not capable of being avoided or set aside, whether in the winding up, administration or dissolution or otherwise of it or any of its assets or, as the case may be, that member of the Group or any of that Group member's assets.

21.7 Pari passu ranking

Each Obligor shall, and shall ensure that each member of the Group will, procure that at all times its indebtedness and obligations under the Finance Documents rank at least pari passu with the claims of all its, or as the case may be, that Group member's, other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

21.8 Borrowing Base Assets

21.8.1 Each Obligor shall, and shall ensure that each member of the Group will:

- (A) exercise such votes and other rights as it may have under the Project Documents for the purposes of ensuring that each Borrowing Base Asset is at all times developed, operated, maintained and/or exploited in a reasonable and prudent manner and in accordance with good oil industry practice, all applicable laws and regulations, any Environmental Impact Assessment, any applicable Environmental Management Plan, and the provisions of the Transaction Documents;
- (B) not abandon all or any material part of any Borrowing Base Asset in which it has an interest;
- (C) not concur in any proposal or decision to abandon all or any material part of the any Borrowing Base Asset in which it has an interest; and vote against any such proposal or decision;
- (D) not exercise its rights on any operating or similar committee in a manner that would be materially prejudicial to the interests of the Lender under the Finance Documents; and
- (E) maintain full and proper technical and financial records in relation to each Borrowing Base Asset in which it has an interest, and ensure (so far as it is able) that the Lender (and/or any person nominated by it) is afforded reasonable access to each of such Borrowing Base Asset and all such records during normal business hours on reasonable notice.

21.8.2 Without prejudice to Clause 21.8.1, the Guarantors shall exercise such votes and other rights as it may have under all agreements to which it is a party for the purposes of ensuring that all Petroleum Assets (other than the Borrowing Base Assets) in which it has an interest are at all times developed, operated, maintained and exploited in a reasonable and prudent manner and in accordance with good oil industry practice.

21.9 Project Documents

21.9.1 Each Obligor shall, and shall ensure that each member of the Group will:

- (A) ensure that none of its rights under or in respect of any of the Project Documents are at any time terminated, suspended or limited in any material way;
- (B) not agree to any material waiver, material amendment, termination or cancellation of any of the Project Documents without the prior consent of the Lender;
- (C) duly and properly perform, in all material respects, its obligations under the Project Documents (except to the extent, if any, they are inconsistent with its obligations under the Finance Documents);
- (D) exercise its rights, and (so far as within its power) ensure that others exercise their respective rights, under and in respect of the Project Documents consistently with its obligations under the Finance Documents;
- (E) not enter into any Project Document the entry into, performance, termination or breach of which would, or would be reasonably likely to, result in a Material Adverse Effect;
- (F) ensure that all rights of the Borrower under any Project Document are assigned to the Lender or are otherwise subject to a Security under a Security Document for the benefit of the Lender in accordance with the Lenders instructions, pursuant to the Security Documents in a manner which is in form and substance satisfactory to the Lender.

21.10 Insurance

21.10.1 Each Obligor shall, and shall ensure that each member of the Group will, take out and maintain, or cause to be taken out and maintained, with respect to the Borrowing Base Assets and all activities relating thereto:

- (A) insurances in such amounts and against such risks as set out in the Insurance Schedule;
- (B) any other insurances in such amounts and on such terms and against such risks as would be taken out by prudent owners and/or operators (acting in accordance with good oil industry practice) of comparable assets and/or carrying out comparable activities in the region in which the relevant Borrowing Base Assets are located or the relevant activities are taking place; and
- (C) any other insurances against any other risks which the Lender may reasonably require as a result of any material change(s) in circumstances or risks (unless such insurance is not available at reasonable commercial rates).

21.10.2 Each Obligor shall, and shall ensure that each member of the Group will, take out and maintain, or cause to be taken out and maintained, with respect to all its other assets and activities, insurances in such amounts and on such terms and against such risks as would be taken out by prudent owners and/or operators (acting in accordance with good oil industry practice) of comparable assets and/or carrying out comparable activities in the region in which the relevant assets are located or the relevant activities are taking place.

21.10.3 Each Obligor shall, and shall ensure that each member of the Group will:

- (A) procure that all insurances that are required to be effected and maintained by it under Clause 21.10.1 (the “Agreed Insurances”) are so maintained:
 - (1) with insurers or underwriters acceptable to the Lender; and
 - (2) on terms consistent with the insurances maintained by prudent owners and/or operators (acting in accordance with good oil industry practice) of assets comparable to those of the Group and/or whose activities are comparable to those of the Group;
- (B) procure that all moneys received or receivable by it under any insurances relating to third party liability are applied directly to the person to whom the liability to which the sum relates was incurred, or to the relevant insured party in reimbursement of moneys expended in satisfaction of such liability;
- (C) procure that the Lender is named as co-insured party and loss payee;
- (D) not do, or knowingly permit anything to be done, which may make any Agreed Insurance void, voidable, unavailable or unenforceable or render any sums which may be paid out under any Agreed Insurance repayable in whole or in part;
- (E) promptly pay all premiums, calls and contributions and do all other things necessary to keep each Agreed Insurance maintained in full force and effect;
- (F) on demand by the Lender, produce to the Lender (a) the policy, certificate or cover note relating to any Agreed Insurance (b) the receipt for the payment of any premium for any Agreed Insurance or (c) such other details of any Agreed Insurance as the Lender may reasonably request;
- (G) ensure that (unless the same is not available at reasonable commercial rates) every policy relating to an Agreed Insurance contains a non-vitiating clause and any other lender endorsements that the Lender may reasonably request, in each case, in such form as the Lender (acting reasonably) may approve (where, for these purposes, “lender endorsements” means any endorsements or clauses relating to the protection of the Lender with respect to its interests in any Agreed Insurances);
- (H) if the Lender so requires:
 - (1) enter into a Security Document (in form and substance satisfactory to the Lender) for the purposes of granting Security over any Agreed Insurances and the proceeds thereof and a bank account into which such proceeds are to be paid in favour of the Lender unless such Security has been granted under an existing Security Document; and
 - (2) deliver to the Lender, or procure the delivery to the Lender of, any legal opinion or other document that the Lender may reasonably require in connection with the entry into such Security Document.

21.10.4 No Lender shall have any liability for the payment of premiums or any other amount owing in respect of any insurances.

21.10.5 If any Obligor or any member of the Group fails to pay any premium or other costs relating to any Agreed Insurances when due, the Lender may, at its sole discretion, pay any such premium or costs and the Obligors shall immediately on demand reimburse the Lender for all such payments made by it.

21.11 Negative pledge

21.11.1 Subject to Clause 21.11.3, no Obligor may, and each Obligor shall ensure that no member of the Group will, create or permit to subsist any Security over any of its assets, other than Security established under the Security Documents.

21.11.2 Subject to Clause 21.11.3, no Obligor may, and each Obligor shall ensure that no member of the Group will,

- (A) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any other person;
- (B) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
- (C) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts (apart from mandatory rights of set-off under any Mining Usufruct or Joint Operating Agreement); or
- (D) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

21.11.3 Clauses 21.11.1 and 21.11.2 do not apply to any (i) Permitted Security or (ii) any member of the Group that is not a party to any Finance Document.

21.12 Financial Indebtedness

21.12.1 No Obligor may, and each Obligor shall ensure that no member of the Group will, incur any Financial Indebtedness other than:

- (A) Financial Indebtedness specifically referred to in the Projections;
- (B) Permitted Expenditure;
- (C) any Financial Indebtedness incurred by any member of the Group that is not a party to any Finance Document;
- (D) Financial Indebtedness which is subject to the Subordination Deed (including any guarantee of such Financial Indebtedness);
- (E) Financial Indebtedness under finance or capital leases of vehicles, plant, equipment or computers provided that the aggregate capital value of all such items so leased under outstanding leases by Obligors do not exceed \$750,000 at any time;
- (F) other Financial Indebtedness of any one or more Obligors not otherwise permitted by this paragraph which, in aggregate, does not exceed \$500,000; and
- (G) any other Financial Indebtedness incurred with the prior consent of the Lender.

21.13 No loans and guarantees

21.13.1 No Obligor may, and each Obligor shall ensure that no member of the Group will:

- (A) be a creditor in respect of any Financial Indebtedness or provide any other form of credit or financial accommodation to any person, other than intercompany loans and/or advances made for financing purposes by the Parent to its Subsidiaries from its own financial resources and not from proceeds from the Loans or Financial Indebtedness and, in the case of any Financial Indebtedness provided by an Obligor to the Borrower, on terms that such Financial Indebtedness is subordinated and subject to the Subordination Deed;
- (B) give any guarantee or indemnity in respect of any contractual obligation of any other person;

and the Borrower undertakes that it will not maintain any bank accounts apart from the Approved Bank Accounts.

21.13.2 Clause 21.13.1 does not apply to:

- (A) credit extended on normal trade terms by the Guarantors to its trading counterparties in the ordinary course of its oil and gas trading including advances of operating costs under any Mining Usufruct Agreement and Joint Operating Agreement and compliance with gas balancing provisions under gas sales agreements;
- (B) any guarantee or indemnity given by any member of the Group in the ordinary course of its business in respect of any contractual obligation of any other member of the Group which is incurred in accordance with the Finance Documents; or
- (C) any member of the Group that is not a party to any Finance Document.

21.14 Disposals

21.14.1 No Obligor may, and each Obligor shall ensure that no member of the Group will, enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any Borrowing Base Asset or any interests therein or any of its shareholding in any person holding any interest in any Borrowing Base Asset, without the prior written consent of the Lender, which shall not be unreasonably withheld if:

- (A) at the time of and immediately after such transaction or series of transactions no Event of Default shall subsist or occur (as the case may be); and
- (B) such disposal is for fair value on terms resulting from arm's length negotiations independently verified by valuers acceptable to the Lender; and
- (C) following such disposal the Lender will not or does not consider that an unreasonable concentration of risk will arise in connection with the remaining Borrowing Base Assets; and
- (D) the proceeds of any such disposal are applied towards repaying the Loans.

21.14.2 Clause 21.14.1 does not apply to:

- (A) any sale of Petroleum on terms no less favourable to the Borrower than would result from arm's length negotiations of cash-only consideration in the ordinary course of trading;
- (B) any disposal for cash not otherwise prohibited under the terms of any Finance Document;
- (C) any disposal of surplus materials or of materials that are forthwith replaced with materials of equivalent utility;
- (D) any disposal arising solely by virtue of a Unitisation;

- (E) any disposal of materials used in the course of a Group member's operations where such disposal is made in the ordinary course of business and on terms no less favourable to the Borrower than would result from arm's length negotiations; and
- (F) any disposals of a Petroleum Asset which has ceased to be designated as a Borrowing Base Asset in accordance with Clause 6 (Projections) where the amount of all Utilisations are reduced in accordance with Clause 7.3 (Reduction), in each case, following the adoption of the new Projection which takes account of such Petroleum Asset ceasing to be designated a Borrowing Base Asset.

21.15 Change of business

No Obligor may, and each Obligor shall ensure that no member of the Group will, carry on any business other than the ownership, development and exploitation of the Borrowing Base Assets and the exploration for, and development and production of, Petroleum.

21.16 Distributions

21.16.1 For the purposes of this Agreement, "Distribution" means, in relation to any person:

- (A) any payment, dividend or other distribution (whether in cash or in kind) in relation to any of its share capital;
- (B) any redemption, reduction, repayment, or retirement of any of its share capital or any other payments resulting in a reduction of the payer's own funds (including, in particular, reserve and supplementary capital);
- (C) any payments in respect of, or any repayment, prepayment, redemption, retirement, discharge or purchase of, or sub-participation in, any loans or other financial accommodation made available to it by any Affiliate (including any such payments under the Subordinated Loan Agreement or Financial Indebtedness subject to the Subordination Deed);
- (D) any other payments (including any management, advisory or other fees) or distributions to any of its shareholders or its Affiliates,

in each case, whether in cash or in kind and whether by way of actual payment, set-off, counter-claim or otherwise.

21.16.2 No Obligor (other than the Parent) may make or pay, or permit to be made or paid, any Distribution unless such Distribution is made within 10 Business Days after a Reduction Date and at the time of and immediately after making such Distribution no Event of Default shall subsist or occur (as the case may be).

21.16.3 No Obligor may, and each Obligor shall ensure that no member of the Group will, agree to any arrangement (other than the Security Documents) which may restrict its ability to declare, make or pay any Distribution.]

21.17 Transactions with Affiliates

Save for any intercompany loans or equity contributions made by the Parent or any of its Affiliates to the Borrower in accordance with the terms of the Finance Documents and which are subject to the Subordination Deed, the Parent or any of its Affiliates will not enter into any transaction with any Affiliate (other than transactions on terms no less favourable than would result from arm's length negotiations for cash-only consideration in the ordinary course of trading) without the consent of the Lender (such consent not to be unreasonably withheld or delayed).

21.18 Acquisitions

21.18.1 The Borrower may not make any acquisitions or investments without the consent of the Lender (which consent, in the case of any acquisitions or investments made after the Portfolio Completion Date, shall not be unreasonably withheld).

21.18.2 Clause 21.18.1 does not apply to:

- (A) any Permitted Expenditure incurred by the Borrower;
- (B) any acquisitions or investments made by the Parent or any member of the Group that is not a party to any Finance Document from its own financial resources and not from proceeds from the Loans or other Financial Indebtedness.
- (C) any acquisitions or investments in the ordinary course of trading and/or which have a value which is less than a sum equal to an increase of 15% of the then current Budget for any Borrowing Base Asset; and
- (D) any acquisitions or investments by the Borrower from its own financial resources and not from proceeds from the Loans or other Financial Indebtedness of oil and gas assets for cash or shares where the applicable reserves and purchase consideration are audited by engineers and/or valuers acceptable to the Lender.

21.19 Expenditure

21.19.1 No Obligor may, and each Obligor shall ensure that no member of the Group will, incur any expenditure other than as may be set out in the Projections (in the case of the Borrower) or from its own financial resources and not from proceeds from the Loans or Financial Indebtedness (in the case of other Obligors).

21.19.2 Clause 21.19.1 does not apply to:

- (A) any expenditure incurred by the Parent or any other member of the Group that is not a party to any Finance Document;
- (B) (to the extent that the same is permitted to be met from withdrawals from any Onshore Proceeds Accounts pursuant to the Accounts Agreements) any item of Permitted Expenditure and the payment of any sums due under the Security Documents, in each case, when the same falls due for payment;
- (C) any item of appraisal well expenditure and comprised with Permitted Expenditure;
- (D) any item of exploration well expenditure funded by Parent or any other Obligor from its own resources and not from Financial Indebtedness;
- (E) any other expenditure approved by the Lender.

21.20 Environmental matters

21.20.1 Each Obligor shall, and shall ensure that each member of the Group will, comply in all material respects with all Environmental and Mining Laws and Environmental and Mining Licences applicable to it and/or any of its assets.

21.20.2 Each Obligor shall, and shall ensure that each member of the Group will, promptly upon becoming aware of the same notify the Lender of:

- (A) any Environmental and Mining Claim current, or to its knowledge, pending or threatened;

- (B) any circumstances reasonably likely to result in an Environmental and Mining Claim; or
- (C) any material environmental contamination on any site connected with any Borrowing Base Asset.

21.20.3 Each Obligor shall, and shall ensure that each member of the Group will, comply in all material respects with any Environmental Management Plan that is applicable to it and/or any of its assets.

22. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clauses 22.1 (Non-payment) is an Event of Default.

22.1 Non-payment

22.1.1 An Obligor or any other member of the Group that is a party to any Finance Document does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless its failure to pay is caused by:

- (1) administrative or technical error; and
- (2) payment is made within three Business Days of its due date.

22.1.2 No Event of Default will occur under Clause 22.1.1 by reason of the Borrower failing to repay the Utilisations in accordance with Clause 7.3.2 (Reduction) on any Reduction Date save where a new Projection has been adopted in accordance with Clause 6 (Projections) in connection with any Borrowing Base Asset ceasing to be so designated and on the Reduction Date which is the date of the adoption of that Projection, the Borrower fails to repay the Utilisations in accordance with Clause 7.3.2 (Reduction).

22.2 Breach of key covenants

An Obligor does not comply with any provision set out in any of Clauses 21.1 (Corporate existence), 21.11 (Negative pledge), 21.12 (Financial Indebtedness), 21.13 (No loans and guarantees), 21.14 (Disposals), 21.16 (Distributions), 21.18 (Acquisitions) or 21.18.2(B) (Expenditure).

22.3 Other obligations

22.3.1 An Obligor, or any other member of the Group that is a party to a Finance Document, does not comply with any provision of the Finance Documents (other than those referred to in Clause 22.1 (Non-payment) and Clause 22.2 (Breach of key covenants)).

22.3.2 No Event of Default under Clause 22.3.1 will occur if the failure to comply is capable of remedy and is remedied to the reasonable satisfaction of the Lender within 21 days of the Lender giving notice to the Borrower or, if earlier, the Borrower becoming aware of the failure to comply.

22.4 Misrepresentation

Any representation or statement made or deemed to be made by an Obligor, or any member of the Group that is a party to any Finance Document, in the Finance Documents or any other document delivered by or on behalf of any Obligor, or any member of the Group that is a party to any Finance Document, under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made unless the circumstances giving rise to the misrepresentation:

22.4.1 are capable of remedy; and

22.4.2 are remedied to the reasonable satisfaction of the Lender within 21 days of the date on which the relevant representation or statement was made or deemed to be made.

22.5 Cross default

22.5.1 Any Financial Indebtedness of any Obligor or any other member of the Group that is a party to any Finance Document is not paid when due nor within any originally applicable grace period.

22.5.2 Any Financial Indebtedness of any Obligor or any other member of the Group that is a party to any Finance Document is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

22.5.3 Any commitment for any Financial Indebtedness of any Obligor or any other member of the Group that is a party to any Finance Document is cancelled or suspended by a creditor of any Obligor or any other member of the Group that is a party to any Finance Document as a result of an event of default (however described).

22.5.4 Any creditor of any Obligor or any other member of the Group that is a party to any Finance Document becomes entitled to declare any Financial Indebtedness of any Obligor or any other member of the Group that is a party to any Finance Document due and payable prior to its specified maturity as a result of an event of default (however described).

22.5.5 No Event of Default will occur under this Clause 22.5 (Cross default) if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within Clauses 22.5.1 to 22.5.4 above is less than \$250,000 (or its equivalent in any other currency or currencies).

22.6 Insolvency

22.6.1 Any Obligor or any other member of the Group that is a party to any Finance Document is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

22.6.2 A moratorium is declared in respect of any indebtedness of any Obligor or any other member of the Group that is a party to any Finance Document.

22.7 Insolvency proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

22.7.1 the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor or any other member of the Group that is a party to any Finance Document;

22.7.2 a composition, compromise, assignment or arrangement with any creditor of any Obligor or any other member of the Group that is a party to any Finance Document;

22.7.3 the appointment of an Insolvency Officer of any Obligor or any other member of the Group that is a party to any Finance Document or any of the assets of any Obligor or any other member of the Group that is a party to any Finance Document; or

22.7.4 enforcement of any Security over any assets of any Obligor or any other member of the Group that is a party to any Finance Document.

or any analogous procedure or step is taken in any jurisdiction.

22.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of any Obligor or any other member of the Group that is a party to any Finance Document having an aggregate value of \$250,000 and is not discharged within 14 days.

22.9 Analogous proceedings

There occurs, in relation to any Obligor or any other member of the Group that is a party to any Finance Document, any event anywhere which, in the reasonable opinion of the Lender, corresponds with, or is analogous to, any of those mentioned in Clauses 22.6 (Insolvency) to 22.8 (Creditors' process).

22.10 Effectiveness

22.10.1 It is or becomes unlawful for any Obligor or any other member of the Group that is a party to any Finance Document to perform any of its obligations under the Finance Documents or any Finance Document otherwise ceases to be valid, binding or enforceable in whole or in part.

22.10.2 The guarantee provided by any Guarantor, or any Security constituted, or purported to be constituted, by the Security Documents, is not or ceases to be effective or is alleged by any Obligor or the grantor of such Security to be ineffective or any Security Document otherwise ceases to confer the Security it purports to create.

22.10.3 Any Obligor or any other member of the Group that is a party to any Finance Document repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

22.10.4 The Borrower fails to ensure that all of the registered pledges, which are to be established pursuant to the Security Documents, are registered within 6 months from the date of the execution of this Agreement, unless provided that the Borrower has exercised due care in preparing the respective filings and/or participating in proceedings relating to the registration of such pledges.

22.11 Cessation of business

Any Obligor or any member of the Group that is a party to any Finance Document ceases, or threatens to cease, to carry on all or a substantial part of its business.

22.12 Borrowing Base Assets

22.12.1 All or any part of any Borrowing Base Asset, or any Petroleum or revenues derived from any Borrowing Base Asset is nationalised, expropriated, compulsorily acquired or seized by any government or other governmental or public sector agency or body or any government or other governmental or public sector agency, takes, or officially announces that it will take, any step with a view to such nationalisation, expropriation, compulsory acquisition or seizure.

22.12.2 Any of the following occurs:

- (A) any decision is taken to abandon any Borrowing Base Asset; or
- (B) there has been a material interruption or suspension of the production or recovery of any Petroleum derived from or relating to any Borrowing Base Asset (i) for a continuous period of 60 days (or more) or (ii) on 90 days or more in any period of six months,

and the Lender are of the opinion (acting reasonably) that if a Projection (which takes account of the effects of the same) were to be adopted, that Projection would demonstrate that the Obligors will not be able to meet their liabilities as they fall due or that:

- (1) the LLCR relating to any Calculation Period is less than 1.1:1; or
- (2) the FLCR relating to any Calculation Period is less than 1.5:1.

22.13 Project Documents

22.13.1 Any Authorisation relating to any Borrowing Base Asset (including in particular any Environmental and Mining License) is refused, suspended, revoked, rescinded or terminated or not obtained within a timeframe required to duly operate the Borrowing respective Base Assets and comply with the respective Projections.

22.13.2 It is or becomes unlawful for any party to perform any of its obligations under any Project Document or any Project Document otherwise ceases to be valid, binding or enforceable in whole or in part and the same, in each case, in the reasonable opinion of the Lender has, or is likely to have, a Material Adverse Effect.

22.13.3 Any party to a Project Document repudiates, or evidences an intention in writing to repudiate, a Project Document and the repudiation of such Project Document in the reasonable opinion of the Lender has, or is likely to have, a Material Adverse Effect.

22.13.4 There has been a default by a party to any Project Document and the same, in the reasonable opinion of the Lender has, or is likely to have, a Material Adverse Effect.

22.13.5 Any Project Document is amended, modified or subject to the grant of any waiver having the effect of an amendment or modification of such Project Document the same, in each case, in the reasonable opinion of the Lender has, or is likely to have, a Material Adverse Effect.

22.14 Material adverse change

Any event or series of events occurs which, in the reasonable opinion of the Lender, has or would be likely to have a Material Adverse Effect unless the effects of such event or series of events are capable of remedy and:

22.14.1 the Borrower (i) commences consultations with the Lender (as to the possible steps that need to be taken to remedy and/or mitigate those effects) within 5 Business Days of the date of issue of a notice from the Lender or, if earlier, of the date of the occurrence of the relevant event or series of events and (ii) continues with such consultations for such period as the Lender may reasonably request; and

22.14.2 the relevant effects are remedied or mitigated to the satisfaction of the Lender within the remedy period (where, for these purposes, “remedy period” means (i) the period of ten Business Days commencing on the date of the relevant notice from the Lender, or if earlier, the date of occurrence of the relevant event or series of events or (ii) such longer period as may be approved by the Lender pursuant to the consultations referred to in Clause 22.14.1).

22.15 Unitisation

Any Unitisation occurs and the Projection which is adopted in accordance with Clause 6 (Projections) following such Unitisation demonstrates that the Obligors will not be able to meet their liabilities as they fall due.

22.16 Ownership

The Parent ceases to hold indirectly or directly the entire issued share capital of the Borrower.

22.17 Insurances

The Obligor fails to take out or maintain, or cause to be taken out and maintained, any Agreed Insurances or any Agreed Insurance is vitiated, becomes invalid or void or otherwise ceases to be in full force and effect and, in any case, the same is not remedied to the reasonable satisfaction of the Lender within ten Business Days of the Lender giving notice to the Borrower or, if earlier, the Borrower becoming aware of the same.

22.18 Adverse proceedings

Any litigation, arbitration or administrative proceedings (the “relevant proceedings”) of or before any court, arbitral body or agency have been started against any Obligor or any other member of the Group that is a party to any Finance Document; and such relevant proceedings, if adversely determined, would (in the reasonable opinion of the Lender) have or be reasonably likely to have a Material Adverse Effect; and it is reasonably likely that such relevant proceedings will be adversely determined.

22.19 Increase in capital costs

22.19.1 The Aggregate Remaining Project Costs exceeds the Available Funding amount at any time and the same is not remedied by way of an increase in the Available Funding amount to the satisfaction of the Lender within ten Business Days of the Lender giving notice to the Borrower.

22.19.2 For these purposes:

- (A) “Aggregate Remaining Project Costs” means, at any time, the sum of:
- (1) (to the extent that the same have not already been paid at such time) the aggregate amount of all Permitted Expenditure and other costs (if any) required to achieve the Portfolio Completion Date (as determined by the Lender (acting reasonably and having regard to the then current Projection and the then current Budgets)); and
 - (2) the aggregate amount of all interest, fees and all other costs and expenses payable by the Obligors under the Finance Documents (as determined by the Lender);

- (B) “Available Funding amount” means, at any time, an amount calculated in accordance with the following formula:

$$A + B + C$$

where:

- (1) “A” is an amount determined by the Lender (acting reasonably) as being the maximum unutilised amount of the Facility that the Borrower would be entitled to utilise for the purposes of meeting the Permitted Expenditure and other costs (if any) required to achieve Portfolio Completion Date;
- (2) “B” is the amount of funding that the Parent and/or any member of the Group has committed to make available to the Borrower under the Subordinated Loan Agreements or by way of equity contributions and which the Lender (acting reasonably) is satisfied will be available to the Borrower when required; and
- (3) “C” is the amount standing to the credit of the Project Accounts at such time (determined by the Lender (acting reasonably and in consultation with the Borrower) which the Borrower is entitled under the Accounts Agreement to withdraw from such Project Accounts for the purposes of meeting the Permitted Expenditure and other costs (if any) required to achieve Project Completion Date.

22.20 Qualification of accounts

The auditors of the Group adversely qualify their report(s) on any audited financial statements, or (as the case may be) any audited consolidated financial statements, of any Obligor or any other member of the Group that is a party to any Finance Document in any way save where such qualification is technical in nature or related to Section 404 of the Sarbanes-Oxley Act and immaterial in the context of the Facility and any weakness or deficiency does not impair the ability of the Borrower to make full and timely payments to the Lender as and when required under the Facility.

22.21 Cover ratios

Any Projection adopted pursuant to Clause 6 (Projections) demonstrates that:

22.21.1 the LLCR relating to any Calculation Period is less than 1.1.1; or

22.21.2 the FLCR relating to any Calculation Period is less than 1.5.1.

22.22 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Lender may, by notice to the Borrower:

22.22.1 cancel the Aggregate Commitments whereupon they shall immediately be cancelled; and/or

22.22.2 declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or

22.22.3 declare that all or part of the Utilisations payable on demand, whereupon they shall immediately become payable on demand by the Lender on the instructions of the Lender;

CHANGES TO PARTIES

23. CHANGES TO THE PARTIES

23.1 Assignments and transfer by Obligors

23.2 No Obligor may assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

23.3 Assignments and transfers by the Lenders

Subject to this Clause 23 (Changes to the Parties), the Lender may:

23.3.1 assign any of its rights; or

23.3.2 transfer by novation any of its rights and obligations,

to:

(a) another bank, or

(b) financial institution; or

(c) any other person

provided that in the case of (c) no Security Interest under the Security Documents is jeopardised (the "New Lender").

23.4 Conditions of assignment or transfer

23.4.1 An assignment or transfer will only be effective on receipt by the Borrower of written confirmation from the New Lender that the New Lender will assume the same obligations to the Obligors as it would have been under if it were the Lender.

23.4.2 If:

(A) the Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and

- (B) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 13 (Tax gross-up and indemnities) or Clause 14 (Increased Costs),

then the New Lender or the Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

23.4.3 A Lender may not assign or transfer any of its Commitment for any Specified Period without also assigning or transferring an equal proportion of the amount of its Commitment for each of the other Specified Periods.

23.5 Disclosure of information

23.5.1 The Lender may disclose to any prospective New Lender any information supplied to it by or on behalf of the Borrower in connection with the Finance Documents, including:

- (A) a copy of any Finance Document; and
- (B) any information which the Lender has acquired under or in connection with any Transaction Document.

23.5.2 In addition and without limiting Clause 23.5.1, the Lender is entitled to disclose any information referred to in Clause 23.4.1 and any other information:

- (A) where such information is publicly available, other than as a result of a breach by the Lender of this Clause;
- (B) in connection with any legal or arbitration proceedings;
- (C) if required to do so under any law or regulation;
- (D) to a governmental, banking, taxation or other regulatory authority;
- (E) to its professional advisers;
- (F) to any rating agency; or
- (G) with the agreement of the Borrower.

23.5.3 This Clause supersedes any previous confidentiality undertaking given by the Lender in connection with this Agreement.

23.6 Additional Guarantors

23.6.1 Subject to compliance with the provisions of Clause 20.11.2 (“Know your customer” checks), the Borrower may request that any of its Subsidiaries become an Additional Guarantor. That Subsidiary shall become an Additional Guarantor if:

- (A) the Borrower delivers to the Lender a duly completed and executed Accession Letter; and
- (B) the Lender has received all of the documents and other evidence listed in Part II of Schedule 2 (Conditions precedent) in relation to that Additional Guarantor, each in form and substance satisfactory to the Lender.

23.6.2 The Lender shall notify the Borrower promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (Conditions precedent).

24. PAYMENTS

24.1 Partial payments

24.1.1 If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Lender shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:

- (A) first, in or towards payment of any unpaid fees, costs and expenses of the Lender under the Finance Documents;
- (B) secondly, in or towards payment of any accrued interest, commitment fees or commission due but unpaid under the Finance Documents;
- (C) thirdly, in or towards payment of any principal; and
- (D) fourthly, in or towards payment of any other sum due but unpaid under the Finance Documents.

24.1.2 The Lender may at its sole discretion, vary the order set out in Clauses 24.1.1(B) to 24.1.1(D) above.

24.1.3 Clauses 24.1.1 and 24.1.2 above will override any appropriation made by an Obligor.

24.2 No set-off by Obligors

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

24.3 Business Days

24.3.1 Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

24.3.2 During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

24.4 Currency of account

24.4.1 Subject to Clause 24.4.5, dollars is the currency of account and payment for any sum due from an Obligor under any Finance Document.

24.4.2 A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated on its due date.

24.4.3 Each payment of interest shall be made in the currency in which the sum in respect of which the interest is payable was denominated when that interest accrued.

24.4.4 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

24.4.5 Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency.

24.5 Change of currency

24.5.1 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

- (A) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender (after consultation with the Borrower); and
- (B) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).

24.5.2 If a change in any currency of a country occurs, this Agreement will, to the extent the Lender (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

25. SET-OFF

The Lender may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

26. NOTICES

26.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

26.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

26.2.1 in the case of each Obligor, that identified with its name below;

26.2.2 in the case of the Lender, that identified with its name below

or any substitute address, fax number or department or officer as the Party may notify to the other Parties by not less than five Business Days' prior notice.

The Borrower

Address:

FX Energy Poland Sp. ZO.O
ul. Chalubinskiego 8 00-613
Warsaw
Poland
+48 22 630 6632
Country Manager

Fax:

Attention:

The Parent

Address: FX Energy, Inc.
3006 Highland Drive, Suite 206
Salt Lake City, Utah 84106
United States of America
Fax: +1 801 486 5575
Attention: Chief Financial Officer

FX Partnership

Address: FX Energy C.V.
3006 Highland Drive, Suite 206
Salt Lake City, Utah 84106
United States of America
Fax: +1 801 486 5575
Attention: Chief Financial Officer

FX Netherlands

Address: FX Energy B.V.
3006 Highland Drive, Suite 206
Salt Lake City, Utah 84106
United States of America
Fax: +1 801 486 5575
Attention: Chief Financial Officer

The Lender

Address: The Royal Bank of Scotland plc
Project Finance
135 Bishopsgate
London EC2M 3UR
Fax: +44 (0)20 7085 5578
Attention: Colin Bousfield / Jonathan Verlander

26.3 Delivery

26.3.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

- (A) if by way of fax, when received in legible form; or
- (B) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 26.2 (Addresses), if addressed to that department or officer.

26.3.2 Any communication or document to be made or delivered to any Lender will be effective only when actually received by that Lender and then only if it is expressly marked for the attention of the department or officer identified with that Lender's name above (or any substitute department or officer as that Lender shall specify for this purpose).

26.4 English language

26.4.1 Any notice given under or in connection with any Finance Document must be in English.

26.4.2 All other documents provided under or in connection with any Finance Document must be:

- (A) in English; or
- (B) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

27. CALCULATIONS AND CERTIFICATES

27.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are prima facie evidence of the matters to which they relate.

27.2 Certificates and Determinations

Any certification or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

27.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of (in the case of dollars) 360 days or (in the case of sterling) 365 days or, in any case where the practice in the London interbank market differs, in accordance with that market practice.

28. PARTIAL INVALIDITY

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

29. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

30. AMENDMENTS AND WAIVERS

30.1 Procedure

30.1.1 Any term of the Finance Documents may be amended or waived with the agreement of the Borrower and the Lender.

30.1.2 The Guarantors agree to any amendment or waiver allowed by this Clause which is agreed to by the Borrower. This includes any amendment or waiver which would, but for this paragraph, require the consent of the Guarantor if the guarantee under the Finance Documents is to remain in full force and effect.

30.2 Change of Currency

If a change in any currency of a country occurs (including where there is more than one currency until recognised at the same time as the lawful currency of a country), the Finance Documents will be amended to the extent the Lender (acting reasonably and after consultation with the Borrower) determines is necessary to reflect the change.

30.3 Waivers and remedies cumulative

30.3.1 The rights of the Lender under the Finance Documents:

- (A) may be exercised as often as necessary;
- (B) are cumulative and not exclusive of its rights under the general law; and
- (C) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any right is not a waiver of that right.

31. COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

GOVERNING LAW AND ENFORCEMENT

32. GOVERNING LAW

This Agreement is governed by English law.

33. ENFORCEMENT

33.1 Jurisdiction

33.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a “Dispute”).

33.1.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

33.1.3 This Clause 33.1 (Jurisdiction) is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

33.2 Service of process

33.2.1 Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):

- (A) irrevocably appoints Law Debenture Corporate Services Limited, currently at Fifth Floor, 100 Wood Street, London, EC2V, England 7EX as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (B) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

33.3 Waiver of immunity

Each Obligor irrevocably and unconditionally:

33.3.1 agrees not to claim any immunity from proceedings brought by the Lender against that Obligor in relation to a Finance Document and to ensure that no such claim is made on its behalf;

33.3.2 consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and

33.3.3 waives all rights of immunity in respect of it or its assets.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1

AGGREGATE COMMITMENTS

Specified Period	Lender
From the date of this Agreement up to and including 30 December 2010 (the " first reduction date ")	\$25,000,000
From 31 December 2010 up to and including 29 June 2011	\$20,000,000
From 30 June 2011 up to and including 30 December 2011	\$15,000,000
From 31 December 2011 up to and including 29 June 2012	\$10,000,000
From 30 June 2012 up to and including 30 December 2012	\$5,000,000
On and from 31 December 2012	0

SCHEDULE 2

CONDITIONS PRECEDENT

Part I

CPs to first Utilisation

1. ORIGINAL OBLIGORS

1.1 A copy of the constitutional documents of each Original Obligor (including a unified copy of the Borrower's Articles of Association).

1.2 A copy of a resolution of the board of directors and, if necessary, of other corporate organs of each Obligor:

- 1.2.1 approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
- 1.2.2 authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
- 1.2.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- 1.3 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2.
- 1.4 A certificate of each Obligor (signed by a director or, in the case of the Parent, an officer) confirming that the borrowing or guaranteeing, as appropriate, contemplated by the Finance Documents would not cause any borrowing, guaranteeing or similar limit binding on that Obligor to be exceeded.
- 1.5 A certificate of each Obligor (signed by a director) confirming its solvency.
- 1.6 A certificate of an authorised signatory of each Obligor certifying that each copy document relating to it specified in this Part I (CPs to first Utilisation) of Schedule 2 (Conditions precedent) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- 1.7 Consent of the State Treasury for the pledge of the mining usufruct rights held by the Borrower pursuant to the Mining Usufruct Agreements referred to in items 1.2.1, 2.2.2 and 3.2.2 of Schedule 10 as well as their transfer upon the Lender.
- 1.8 Execution of Project Documents listed in Schedule 10 in the form and substance which are satisfactory to the Lender, as well as assignment of the rights of the Borrower under such Project Documents executed pursuant to Security Documents, which are in the form and substance satisfactory to the Lender.
- 1.9 Entry into effect of all Project Documents (for the avoidance of doubt those entered into on or before the date hereof as well as those referred to in paragraph 1.8 above).
- 1.10 Delivery by the Borrower to the Lender of evidence satisfactory to the Lender that: (i) POGC unconditionally recognizes the amount of its monetary obligations, which are connected with the Fences Settlement Agreement, as well as Fences Gas Sale Agreement (net of VAT and including of VAT) and confirms the date by which such receivables will be paid in full to the Borrower, and (ii) recognizes its obligation to purchase and pay to FX for its share of natural gas produced from the Klęka East Field.
- 1.11 Acquisition by the Borrower of interest in the mining usufruct rights, as well as interest in the right of the geological documentation with respect to Środa Field and Klęka East Field.
- 1.12 Consents of POGC and CEGHL (as may be applicable) for the collateral assignment of the rights under agreements constituting Project Documents (including assignment of such rights upon the Lender and a subsequent assignment of such rights by the Lender).
- 1.13 Excerpt from the share register and the partnership register (if applicable) of respectively, the Borrower, FX Netherlands and FX Partnership, confirming that the shares in the Borrower and FX Netherlands, as well as partnership interests in FX Partnership were not subjected to any Security;
- 1.14 Evidence that the agent for service of process referred to in Clause 33.2.1(A) has accepted the appointments referred to therein.
- 1.15 Any other document relating to any Obligor which any legal counsel may require for the purposes of any legal opinion referred to in paragraph 2 below.

2. LEGAL OPINIONS

- 2.1 A legal opinion of Chadbourne & Parke as to English law.
- 2.2 A legal opinion of Chadbourne & Parke LLP as to Polish law.
- 2.3 A legal opinion of Cameron McKenna as to Polish law including as to the legal status and legal effectiveness of the Project Documents.
- 2.4 A legal opinion of Chadbourne & Parke LLP as to New York law.
- 2.5 A legal opinion of Kruse Landa Maycock & Ricks, LLC, as to Nevada law.
- 2.6 A legal opinion of Van Doorne N.V. as to the law of the Netherlands.

3. FINANCE DOCUMENTS

- 3.1 An original (duly executed by each of the parties thereto), together with any document, recording, filing, notification, notarisation or other evidence required in the opinion of the Lender for the creation, validity, perfection or priority of:
 - 3.1.1 the guarantee between the Guarantors and the Lender set out in Clause 18 herein;
 - 3.1.2 a financial and registered pledge over the shares in the Borrower (governed by the laws of Poland) granted by FX Netherlands to the Lender;
 - 3.1.3 a shares pledge (governed by the laws of the Netherlands) granted by Frontier Exploration, Inc. and FX Drilling Company, Inc. as General Partners of FX Partnership to the Lender over the shares in FX Energy;
 - 3.1.5 a registered pledge over the enterprise of the Borrower (governed by the laws of Poland) granted by the Borrower to the Lender;
 - 3.1.6 financial and registered pledges over accounts (governed by the laws of Poland) granted by the Borrower to the Lender, accompanied by an irrevocable authorization to use the funds deposited on the accounts to satisfy claims arising under this Agreement;
 - 3.1.7 ordinary and registered pledge of the mining usufruct rights held by the Borrower and described in items 1.2.1, 2.2.2 and 3.2.2 of Schedule 10;
 - 3.1.8 collateral assignment of the rights to obtain Petroleum produced with the use of the Borrowing Base Assets;
 - 3.1.9 collateral assignment of rights under the agreements constituting Project Documents as set out in Schedule 10;
 - 3.1.10 an assignment of insurances relating to the Polish Fields (governed by English law) granted by the Borrower to the Lender;
 - 3.1.11 the Warrant Instrument;
 - 3.1.12 Notarial statement of the Borrower regarding submission to execution executed in accordance with Article 777 of the Polish Code of Civil Procedure;
 - 3.1.13 the Subordination Deed;

3.1.14 Deed of Assignment of Subordinated Debt.

3.2 An original (duly executed by each of the parties thereto) of:

3.2.1 the Accounts Agreements;

3.2.2 each Fee Letter to be entered into on or about the date of this Agreement.

4. PROJECT DOCUMENTS

4.1 A copy of each Project Document to which any Obligor is a party (including, for the avoidance of doubt, the agreement referred to in item 2.2.2 of Schedule 10 following the execution of such document) as at the proposed first Utilisation Date (together with evidence that any conditions relating to the effectiveness of each such Project Document has been satisfied or waived and that, accordingly, each such Project Document is in full force and effect).

5. SECURITY MATTERS

5.1 Certified copies of: all notices of assignment and/or charge required to be delivered pursuant to the Security Documents.

5.2 All share and/or stock certificates, any other evidence of title, powers of attorney, executed blank stock powers and executed stamped stock transfer forms as required pursuant to the Security Documents.

5.3 An original (duly executed by the Borrower) of the letter to be submitted by the Borrower to the POGC in relation to the Security being taken over the Borrower's assets.

5.4 Evidence that all filings with respect to registered pledges to be established pursuant to the respective Security Documents were duly paid for and filed with the respective courts in compliance with the Applicable Law.

6. REPORTS

6.1 A copy of a Reserves Report relating to each Polish Field.

6.2 A letter from the Insurance Consultant confirming that the Obligors are in compliance with their obligations under this Agreement with respect to the insurances that they are required to maintain.

6.3 A copy of an environmental impact assessment relating to each of the Polish Fields that has been prepared by the Environmental Consultant.

6.4 A legal due diligence report /memorandum from Chadbourne & Parke LLP (Warsaw).

8. OTHER DOCUMENTS AND EVIDENCE

8.1 Evidence that any process agent that is required to be appointed by any Obligor under any Finance Document has been so appointed and has accepted its appointment.

8.2 A copy of:

8.2.1 the audited consolidated financial statements for the Group for the financial year ended 31 December 2005;

8.2.2 the unaudited financial statements for each of the Original Obligors for the financial quarter ended 30 September 2006.

8.3 A copy of the most recent Budget for each of the Polish Fields.

- 8.4 A copy of a Projection which takes account of, and reflects, the aggregate projected Petroleum reserves of the Portfolio and which the Borrower and the Lender have designated as the “Portfolio Projection”.
- 8.5 A copy of the Field Development Plan for each Polish Field together with a certified copy of the approval given by Applicable Polish Licensing Authority for that Field Development Plan.
- 8.7 Evidence that the fees, costs and expenses then due from the Obligors pursuant to the Finance Documents have been paid or will be paid by the first Utilisation Date.
- 8.8 Evidence that each of the Project Accounts that are required to be maintained have been opened.
- 8.9 A copy of all relevant Subordinated Loan Agreements.
- 8.10 A certified copy of each Environmental Management Plan (if any) that has been produced with respect to the Borrowing Base Assets (together with confirmation from the Environmental Consultant that such Environmental Management Plan complies with Polish Applicable Law and Polish Environmental Requirements) or (where no Environmental Management Plan has been produced with respect to any Borrowing Base Asset) confirmation from the Environmental Consultant that no such Environmental Management Plan is required pursuant to Polish Applicable Law and Polish Environmental Requirements.
- 8.11 A copy of all the insurance policies specified in the Insurance Schedule.

Part II

Conditions Precedent Required to be Delivered By An Additional Guarantor

1. An Accession Letter, duly executed by the Additional Guarantor and the Company.
2. A copy of the constitutional documents of the Additional Guarantor.
3. A copy of a resolution of the board of directors of the Additional Guarantor:
 - (a) approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute the Accession Letter;
 - (b) authorising a specified person or persons to execute the Accession Letter on its behalf; and
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents.
4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.
5. A copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
6. A certificate of the Additional Guarantor (signed by a director) confirming that borrowing or guaranteeing, as appropriate, the Lender’s Available Commitments would not cause any borrowing, guaranteeing or similar limit binding on it to be exceeded.

7. A certificate of an authorised signatory of the Additional Guarantor certifying that each copy document listed in this Part II of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Letter.
8. A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by the Accession Letter or for the validity and enforceability of any Finance Document.
9. If available, the latest audited financial statements of the Additional Guarantor.
10. A legal opinion of Chadbourne & Parke, legal advisers to the Lender in England.
11. If the Additional Guarantor is incorporated in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Lender in the jurisdiction in which the Additional Guarantor is incorporated.
12. If the proposed Additional Guarantor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 33.2 (Service of process), if not an Guarantor, has accepted its appointment in relation to the proposed Additional Guarantor.

SCHEDULE 3

GROUP STRUCTURE

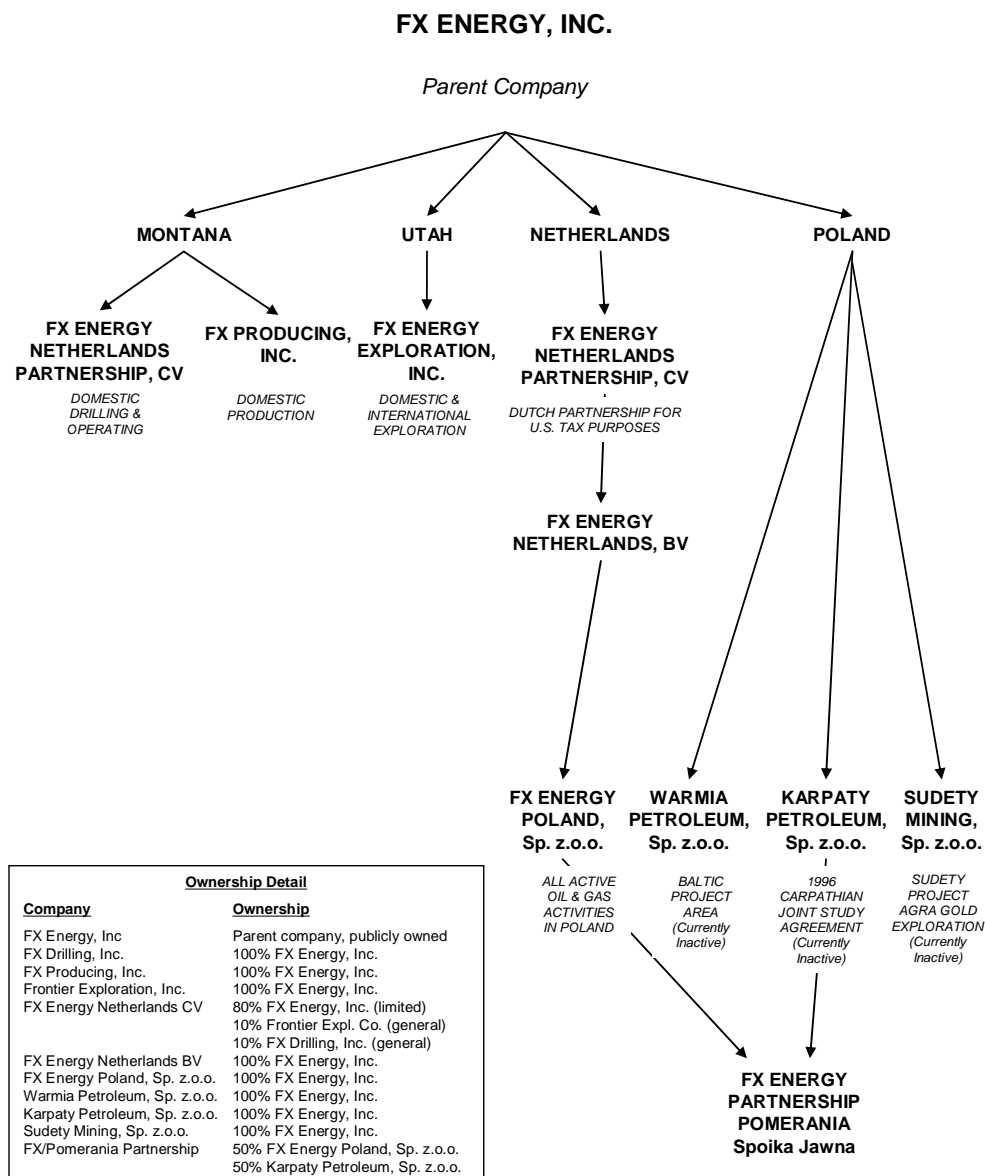
Part I

1. FX Energy, Inc. (a company incorporated under the laws of Nevada with SEC Commission File Number 000-25 386) is the sole limited partner of FX Energy Netherlands Partnership, CV, (a partnership established under the laws of the Netherlands) which in turn owns the entire issued share capital of FX Energy Netherlands, BV, (a corporation established under the laws of the Netherlands) which in turn owns the entire issued share capital of FX Energy Poland Sp. Z.O.O., (a limited liability company incorporated under the laws of Poland with its seat in Warsaw, Poland at ul. Jana Pawla II 29, 00-867, entered into the Commercial Register maintained by the District Court in Warsaw under the RHB no. 50620).]

GROUP STRUCTURE

Part II

1. The various direct and indirect interests of the Obligor are set out in the Company Ownership Chart below.



#97971.01

SCHEDULE 4
UTILISATION REQUEST

Part I

Loans

From: FX Energy Poland Sp. Z.O.O.

To: The Royal Bank of Scotland plc

Dated:

Dear Sirs

\$25,000,000 Senior Facility Agreement dated [] between, among others, FX Energy Poland Sp. Z.O.O., and The Royal Bank of Scotland plc as amended from time to time (the “Agreement”)

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2. We wish to borrow a Loan on the following terms:

Proposed Utilisation Date: [] (or, if that is not a Business Day, the next Business Day)

Currency: dollar

amount: []

Purpose: []

Interest Period: []

3. We confirm that each condition specified in Clause 4.2 (Further conditions precedent) is satisfied on the date of this Utilisation Request.

4. The proceeds of this Loan should be credited to [NB Specify relevant Onshore Proceeds Account].

5. This Utilisation Request is irrevocable.

[6. This Utilisation pertains to a Rollover Loan.]

[6. We set out in the appendix to this Utilisation Request our computations for determining the Total Available Funds and the Total Unpaid Costs and we hereby certify that the Total Available Funds are more than or equal to the Total Unpaid Costs.]²

Yours faithfully

.....
authorised signatory for
FX Energy Poland Sp. Z.O.O.

.....
authorised signatory for
authorised signatory for

² Include in all Utilisation Requests for Loans to be made before the Portfolio Completion Date

Appendix to Utilisation Request dated [insert date] (the “Relevant Date”)³

(1)	Total costs required to achieve the Portfolio Completion Date (including any such costs already paid on or before the Relevant Date)	[]
(2)	Total costs actually incurred and paid as at the Relevant Date for the purposes of achieving the Portfolio Completion Date	[]
(3)	Total costs yet to be incurred and paid but which will be required to be met in order to achieve the Portfolio Completion Date (" Total Unpaid Costs ")	<i>[Insert amount which is equal to (1) minus (2)]</i>
(4)	Total of the unutilised amount of the Facility which we would be entitled as at the Relevant Date to utilise for the purposes of achieving the Portfolio Completion Date ⁴	[]
(5)	Total amount of funding from other sources (specified below) which we would be entitled as at the Relevant Date to utilise for the purposes of achieving the Portfolio Completion Date	[]
(6)	Total funds available to us for the purposes of achieving the Portfolio Completion Date (" Total Available Funds ")	<i>[Insert amount which is equal to (4) plus (5)]</i>

We hereby confirm that:

(a) The sources of funding referred to in (5) above are as follows:

[Insert details including provider of funds and amounts available.]

(b) The amounts available to us from each of the above sources are freely available to us as the Relevant Date and no conditions need to be fulfilled in order for us to access and utilise such amounts.

³ This appendix must be included and filled in for all Utilisation Requests for Utilisations to be made before the Portfolio Completion Date. After the Portfolio Completion Date references in this Utilisation Request to "Portfolio Completion Date" should read "Portfolio Completion Date and Project Completion Date."

⁴ This figure should include that part of the Facility which is proposed to be utilised pursuant to the relevant Utilisation Request.

SCHEDULE 5

MANDATORY COST FORMULAE

1. The Mandatory Cost is an addition to the interest rate to compensate lenders for the cost of compliance with (a) the requirements of the Bank of England and/or the Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions) or (b) the requirements of the European Central Bank.
2. On the first day of each Interest Period (or as soon as possible thereafter) the Lender shall calculate, as a percentage rate, a rate (the “Additional Cost Rate”) for each Lender, in accordance with the paragraphs set out below. The Mandatory Cost will be calculated by the Lender as a weighted average of the Lenders’ Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the relevant Loan) and will be expressed as a percentage rate per annum.
3. The Additional Cost Rate for any Lender lending from a Facility Office in a Participating Member State will be the percentage notified by that Lender to the Lender. This percentage will be certified by that Lender in its notice to the Lender to be its reasonable determination of the cost (expressed as a percentage of that Lender’s participation in all Loans made from that Facility Office) of complying with the minimum reserve requirements of the European Central Bank in respect of loans made from that Facility Office.
4. The Additional Cost Rate for any Lender lending from a Facility Office in the United Kingdom will be calculated by the Lender as follows:

in relation to a sterling Loan:

$$\frac{AB + C(B-D) + E \times 0.01}{100 - (A + C)} \quad \text{percent, per annum}$$

in relation to a Loan in any currency other than sterling:

$$\frac{E \times 0.01}{300} \quad \text{percent, per annum}$$

Where:

- A is the percentage of Eligible Liabilities (assuming these to be in excess of any stated minimum) which that Lender is from time to time required to maintain as an interest free cash ratio deposit with the Bank of England to comply with cash ratio requirements.
- B is the percentage rate of interest (excluding the Margin and the Mandatory Cost and, if the Loan is an Unpaid Sum, the additional rate of interest specified in Clause 9.3.1 (Default interest)) payable for the relevant Interest Period on the Loan.
- C is the percentage (if any) of Eligible Liabilities which that Lender is required from time to time to maintain as interest bearing Special Deposits with the Bank of England.
- D is the percentage rate per annum payable by the Bank of England to the Lender on interest bearing Special Deposits.
- E is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the Lender as being the average of the most recent rates of charge supplied by the Reference Banks to the Lender pursuant to paragraph 7 below and expressed in pounds per £1,000,000.

5. For the purposes of this Schedule:

5.1 “Eligible Liabilities” and “Special Deposits” have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;

5.2 “Fees Rules” means the rules on periodic fees contained in the FSA Supervision Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;

5.3 “Fee Tariffs” means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and

5.4 “Tariff Base” has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.

6. In application of the above formulae, A, B, C and D will be included in the formulae as percentages (i.e. 5 per cent. will be included in the formula as 5 and not as 0.05). A negative result obtained by subtracting D from B shall be taken as zero. The resulting figures shall be rounded to four decimal places.

7. If requested by the Lender, each Reference Bank shall, as soon as practicable after publication by the Financial Services Authority, supply to the Lender, the rate of charge payable by that Reference Bank to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by that Reference Bank as being the average of the Fee Tariffs applicable to that Reference Bank for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of that Reference Bank.

8. Each Lender shall supply any information required by the Lender for the purpose of calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply the following information on or prior to the date on which it becomes a Lender:

- (a) The jurisdiction of its Facility Office; and
- (b) Any other information that the Lender may reasonably require for such purpose.

Each Lender shall promptly notify the Lender of any change to the information provided by it pursuant to this paragraph.

9. The percentages of each Lender for the purpose of A and C above and the rates of charge of each Reference Bank for the purpose of E above shall be determined by the Lender based upon the information supplied to it pursuant to paragraphs 7 and 8 above and on the assumption that, unless a Lender notifies the Lender to the contrary, each Lender’s obligations in relation to cash ratio deposits and Special Deposits are the same as those of a typical bank from its jurisdiction of incorporation with a Facility Office in the same jurisdiction as its Facility Office.

10. The Lender shall have no liability to any person if such determination results in an Additional Cost Rate which over or under compensates any Lender and shall be entitled to assume that the information provided by any Lender or Reference Bank pursuant to paragraphs 3, 7 and 8 above is true and correct in all respects.

11. The Lender shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender and each Reference Bank pursuant to paragraphs 3, 7 and 8 above.

12. Any determination by the Lender pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all Parties.

13. The Lender may from time to time, after consultation with the Borrower and the Lenders, determine and notify to all Parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all Parties.

SCHEDULE 6

INITIAL BORROWING BASE ASSETS

1. The Borrower's 49% interest in the Petroleum accumulation in accordance with Licence no. 7/2003 dated 7 October 2003 covering the area of Jarocin commune, Wielkopolskie voivodeship, known as the "Kłęka East Field" (together with the Borrower's interests in all related facilities and infrastructure).

2. The Borrower's 24.5% interest in the mining usufruct relating to Licence no. 29/2001/p dated 28 September 2001 covering the area of Zaniemyśl commune, Wielkopolskie voivodeship and the Borrower's 24.5% interest in Petroleum accumulation, known as the "Zaniemyśl Field" (together with the Borrower's interests in all related facilities and infrastructure).

3. The Borrower's 100% interest in Licence no. 33/97/L for Block 255 dated 8 August 1997 on the area which borders are indicated by latitudes and longitudes between the following points: (i) 52o N, 21o E, (ii) 52o N, 21o 30' E, (iii) 51o 45' N, 21o 30' E, (iv) 51o 45' N, 21o E to the extent that Licence covers the Sobienie-Jeziory commune, Mazowieckie voivodeship, and the Borrower's 81.82% interest in the Petroleum accumulation, known as the "Wilga Field" (together with the Borrower's interests in all related facilities and infrastructure)."

SCHEDULE 7

PERMITTED SECURITY

No other Permitted Security

SCHEDULE 8

INSURANCE SCHEDULE

1. All risk Property Insurance

Insurance subject, amount, system and contribution.

Insurance subject	Insurance amount in PLN	Insurance system
Fixed assets including: - developed mine output hole - mine infrastructure above ground including 18.6 km gas pipeline - office facilities - Cash	20,000,000 20,640,000 160,000 5,000	Permanent amounts 1 risk

Liability limitations:

Risk	Liability limitation in PLN
Burglary and robbery	1,000,000
Overvoltage	250,000
Cash Insurance against:	
Stealing with burglary inside	5,000
Robbery inside	5,000
Robbery during transportation	5,000

Reduction franchise – 10% of the damages payment value and not more than 500,000 PLN.

Contribution at quarterly payment: 45,731 PLN

Contribution paid once a year: 44,359 PLN

In case of insurance both all risk property insurance and civil liability insurance, contribution for all risk property insurance would be:

Contribution at quarterly payment: 36,775 PLN

Contribution paid once a year: 35,672 PLN

2. Third Party Liability Insurance

Guarantee amount	
- for a single insured event	2,500,000.00 PLN
- for all insured events	5,000,000.00 PLN
Clause no. 6	limitation
- for a single insured event	2,500,000.00 PLN
- for all insured events	5,000,000.00 PLN

Own contribution: 10%, but not less than 3,000 PLN

Integral franchise: 400.00 PLN

Advance contribution - 43,872 PLN

Contribution paid twice a year: 46,066 PLN

Contribution at quarterly payment: 48,259 PLN

SCHEDULE 9

LIST OF APPROVED BANK ACCOUNTS

The following bank accounts maintained by the Borrower with ING Bank, Poland:

Account Number							
PL	83	1050	0086	1000	0022	7363	1859
	29	1050	0086	1000	0022	7363	2055 USD
PL	08	1050	0086	1000	0022 9	2944	648
PL	54	1050	0086	1000	0022	7509	7760

SCHEDULE 10

SCHEDULE OF PROJECT DOCUMENTS

1. WILGA FIELD

1.1 Licences

1.1.1 license no. 33/97/L for 255 block issued by the Minister of Environment dated 8 August 1997 as amended by a Decision of the Minister of Environment DGe-4770-31/5885/06/AP dated August 8 2006;

1.2 Mining usufruct

1.2.1 mining usufruct agreement between Lubex Petroleum Co. Sp. z o.o. and the State Treasury dated 20 December 1996;

1.2.2 transfer agreement dated 20 January 2005 between Apache Poland Sp. z o.o. in liquidation and the Borrower;

1.3 Existing agreements to be subjected to collateral assignment

1.3.1 joint operating agreement covering Block 255 between: POGC, Apache Poland Sp. z o.o. in liquidation and the Borrower dated 29 October 1999;

1.3.2 general contractor agreement with respect to Wilga field between PBG S.A. and the Borrower dated 30 September 2005;

1.3.3 agreement for the sale of natural gas between Mazowiecka Spółka Gazownictwa Sp. z o.o. and the Borrower dated 29 December 2005;

1.3.4 Operator Agreement with POGC Sanok Branch dated August 1, 2006;

1.4 Other existing agreements

1.4.1 lease agreement with Tadeusz Wirtek valid till 29 September 2025;

1.4.2 lease agreement with Waław Tomaszewski valid till 28 September 2025;

1.4.3 lease agreement with Jarosław Strosz valid December 1, 2006.

2. KLĘKA EAST FIELD

2.1 Licences

2.1.1 license No. 7/2003 issued by the Minister of Environment to POGC dated 7 October 2003;

2.2 Mining usufruct

2.2.1 mining usufruct agreement between POGC and the State Treasury dated 7 October 2003;

2.2.2 agreement regarding acquisition by the Borrower of interest in mining usufruct from POGC;

2.3 Existing agreements to be subjected to collateral assignment

2.3.1 the joint operating agreement covering areas in the Foresudetic Monocline between POGC and the Borrower, dated 12 May 2000;

2.3.2 the fences settlement agreement between POGC, the Parent and the Borrower dated 8 January 2003;

2.3.3 the gas sale agreement within the Fences area between POGC and the Borrower, dated 18 December 2000;

3. ZANIEMYŚL FIELD

3.1 Licences

3.1.1 license No. 29/2001/p issued by the Minister of Environment to POGC dated 28 September 2001;

3.2 Mining usufruct

3.2.1 a mining usufruct agreement was executed by and between POGC and the State Treasury on 28 September 2001;

3.2.2 agreement dated 8 January 2003 between POGC and the Borrower transferring 49% interest in the mining usufruct to the Borrower;

3.2.3 agreement dated 29 August 2003 between the Borrower and CalEnergy Resources Poland Sp. z o.o. transferring 24.5% interest in the mining usufruct to CalEnergy Resources Poland Sp. z o.o.;

3.3 Existing agreements to be subjected to collateral assignment

3.3.1 the mining usufruct holders operating agreement covering Greater Zaniemyśl Area between POGC, CalEnergy and the Borrower, dated 26 October 2005;

3.3.2 the gas sale agreement between POGC and the Borrower, dated 8 December 2005.

4. ŚRODA FIELD

4.1 mining usufruct agreement was executed between POGC and the State Treasury dated 16 July 2003;

4.2 agreement transferring 49% in the mining usufruct between POGC and the Borrower (not dated);

4.3 license No. 32/96/p issued by the Minister of Environment to POGC dated 19 July 1996;

4.4 the cooperation agreement within the Poznań area dated 8 January 2003 between POGC and Borrower; and

4.5 the joint operating agreement covering Poznań area dated 1 June 2004 between POGC and Borrower.

SCHEDULE 11

EXISTING FINANCIAL INDEBTEDNESS

1. Financial Indebtedness incurred pursuant to a loan agreement between the Borrower and FX Netherlands having an effective date of 12:01 am on January 1, 2006 which, as of such date, amounted to \$39,860,997 of outstanding principal and \$11,791,463 of outstanding interest. The said loan agreement permits further advances at an interest rate of 9.005% per annum.

2. The loans made to the Borrower and referred to in paragraph 1 above, were borrowed by FX Netherlands from FX Partnership pursuant to a loan agreement between those parties having an effective date of 12:01am on January 1, 2006 which, as of such date, amounted to \$39,860,997 of outstanding principal and \$11,603,297 of outstanding interest. The said loan agreement permits further advances at an interest rate of 8.875% per annum.

3. The loan agreements referred to in paragraphs 1 and 2 are Subordinated Loan Agreements subject to the Subordination Deed.

SCHEDULE 12

AGREEMENTS WITH AFFILIATES

1. the fences settlement agreement between POGC, the Parent and the Borrower dated 8 January 2003;
2. loan agreement dated 2 January 2003 between the Borrower and FX Netherlands,
3. loan agreement dated 2 January 2002 between the Borrower and FX Netherlands,
4. loan agreement dated 2 January 2001 between the Borrower and FX Netherlands,
5. loan agreement dated 2 January 2000 between the Borrower and FX Netherlands.

SCHEDULE 13

FORM OF INDEPENDENT EXPERT'S DETERMINATION

FORM OF INDEPENDENT EXPERT'S DETERMINATION

To: The Royal Bank of Scotland Plc (the "Lender")

And

FX Energy Poland SP. ZO.O(the "Borrower")

Date: []

Dear Sirs

Senior Facility Agreement dated [17] November 2006 between, among others, FX Energy Poland SP. ZO.O and The Royal Bank of Scotland plc as amended from time to time (the "Agreement")

We refer to the Agreement and to your instructions dated [] to make a determination in accordance with Clause 6.9 of the Agreement.

We have considered the separate submissions prepared respectively by:

- (i) [Insert name of party to dispute e.g. the Lender] ("Party A"); and
- (ii) [Insert name of other party to dispute e.g. the Borrower] ("Party B")

concerning the question in dispute and the evidence provided to us supporting those submissions.

We have also considered such other information as we believe appropriate in the context of syndicated secured oil and gas financings in North West Europe arranged in the London market.

We hereby confirm our determination that it is more appropriate for the question in dispute to be resolved in the manner proposed in the submission prepared by [Party A] [Party B].

Yours faithfully,

.....

[name of independent expert]

SCHEDULE 14

FORM OF ACCESSION LETTER

To: The Royal Bank of Scotland PLC as Lender

From: [Subsidiary] and FX Energy Poland SP. ZO.O

Dated:

Dear Sirs

FX Energy Poland SP. ZO.O – Senior Facility Agreement dated 17 November 2006 (the “Agreement”)

1. We refer to the Agreement. This is an Accession Letter. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.

2. [Subsidiary] agrees to become an Additional Guarantor and to be bound by the terms of the Agreement as an Additional Guarantor pursuant to Clause 23.6 (Additional Guarantors) of the Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction].

3. [Subsidiary’s] administrative details are as follows:

Address:

Fax No:

Attention:

4. This Accession Letter is governed by English law.

This Guarantor Accession Letter is entered into by deed.

FX Energy Poland SP. ZO.O [Subsidiary]

The Original Obligor

FX ENERGY POLAND SP. ZO.O.,

By: /s/ David N. Pierce

FX ENERGY, INC.,

By: /s/ Clay Newton

FX ENERGY NETHERLANDS PARTNERSHIP, CV, David Pierce, for and on behalf of FX Drilling Company, Inc., which in turn acts in its capacity of general partner of FX Energy Netherlands Partnership, CV

By: /s/ David N. Pierce

FX ENERGY NETHERLANDS, BV,

By: /s/ Clay Newton

The Lender

THE ROYAL BANK OF SCOTLAND PLC

(in its capacity as Lender)

By: /s/ Colin Bousfield

THIS WARRANT, AND THE SHARES ISSUABLE UPON EXERCISE OF THIS WARRANT, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE APPLICABLE SECURITIES LAWS OF ANY STATE, AND MAY NOT BE PLEDGED, SOLD, ASSIGNED OR OTHERWISE TRANSFERRED UNLESS REGISTERED UNDER THE ACT AND UNDER APPLICABLE STATE SECURITIES LAWS, OR UNLESS SUCH PLEDGE, SALE, ASSIGNMENT OR TRANSFER IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE ACT AND SUCH STATE SECURITIES LAWS.

18 December 2006

Void After Warrant Expiration Date

FX ENERGY, INC.

Common Stock Purchase Warrant

FX Energy, Inc., a Nevada corporation (the "Corporation"), hereby certifies that for value received Royal Bank Project Investments Limited or its assigns, is entitled to purchase, subject to the terms and conditions hereinafter set forth, an aggregate of 110,000 (one hundred and ten thousand) shares (subject to adjustment as hereinafter provided) of Common Stock, par value \$.001 per share (the "Common Shares"), of the Corporation at a purchase price of \$6.00 per share (subject to adjustment as set forth herein, the "Exercise Price"), payable as hereinafter provided.

SECTION 1. WARRANT EXPIRATION DATE.

As used herein, the term "Warrant Expiration Date" shall mean 5:00 p.m., New York City time, on 18 December 2008 provided that if such date shall in the State of New York be a holiday or a day on which banks are authorized to close, then "Warrant Expiration Date" shall mean 5:00 p.m., New York City time, on the next following day which in the State of New York is not a holiday or a day on which banks are authorized to close. Notwithstanding the foregoing, the Corporation shall deliver notice to the registered holder, by first class mail, postage prepaid, addressed to the registered holder at the address of such registered holder as shown on the books of the Corporation, of the expiration of this Warrant at least 20 business days prior to the Warrant Expiration Date. If such notice is not given, the Warrant Expiration Date shall be 20 business days after such notice is received by the registered holder.

SECTION 2. NOTICE.

In case at any time:

- (a) the Corporation shall pay any dividend or make any distribution (other than regular cash dividends from earnings or earned surplus paid at an established rate) to the holders of its Common Shares;
- (b) the Corporation shall offer for subscription pro rata to the holders of its Common Shares any additional shares of stock of any class or other rights;
- (c) there shall be any capital reorganization or reclassification of the capital stock of the Corporation or consolidation or merger of the Corporation with or sale of all or substantially all of its assets to another corporation; or
- (d) there shall be a voluntary, involuntary or deemed dissolution, liquidation or winding-up of the Corporation; then, in any one or more of such cases, the Corporation shall give written notice, by first class mail, postage prepaid, addressed to the registered holder at the address of such registered holder as shown on the books of the Corporation of the date on which:
 - (i) the books of the Corporation shall close or a record date shall be fixed for determining the shareholders entitled to such dividend, distribution or subscription rights, or

- (ii) such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation, winding-up, conversion, redemption or other event shall take place, as the case may be. Such notice shall also provide reasonable details of the proposed transaction and specify the date as of which the holders of record of the Common Shares shall participate in such dividend, distribution or subscription rights, or shall be entitled to exchange their Common Shares for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation, winding-up, conversion, redemption or other event, as the case may be. Such written notice shall be given at least 10 business days prior to the action in question and not less than 10 business days prior to the record date or the date on which the Corporation's transfer books are closed in respect thereto.

SECTION 3. EXERCISE.

(a) Manner of Exercise.

This Warrant may be exercised at any time or from time to time, on any day which is not a Saturday, Sunday or holiday under the laws of the State of New York, for all or any part of the number of Common Shares purchasable upon its exercise; provided, however, that this Warrant shall be void and all rights represented hereby shall cease unless exercised before the Warrant Expiration Date. In order to exercise this Warrant, in whole or in part, the holder hereof shall deliver to the Corporation at its principal place of business, or at such other office as the Corporation may designate by notice in writing:

- (i) this Warrant and
- (ii) a written notice of such holders election to exercise its Warrant substantially in the form of Exhibit A attached hereto and shall pay to the Corporation by check made payable to the order of the Corporation or wire transfer of funds to an account designated by the Corporation an amount equal to the aggregate purchase price for all Common Shares as to which this Warrant is exercised. In lieu of such exercise of this Warrant, the holder may from time to time convert this Warrant, in whole or in part, into a number of Common Shares determined by dividing (a) the aggregate fair market value of Common Shares or other securities otherwise issuable upon exercise of this Warrant minus the aggregate Exercise Price of such Common Shares by (b) the fair market value of one Common Share. The fair market value of the Common Shares shall be determined pursuant to Section 11 hereof.

(b) Issuance of Common Shares.

Upon receipt of the documents and payments described in Section 3(a), the Corporation shall, as promptly as practicable, and in any event within 3 business days thereafter, execute or cause to be executed, and deliver to such holder a certificate or certificates representing the aggregate number of Common Shares issuable upon such exercise, together with an amount in cash in lieu of any fraction of a share, as hereinafter provided. The stock certificate or certificates so delivered shall be in the denomination specified in said notice and shall be registered in the name of the holder hereof. This Warrant shall be deemed to have been exercised and a certificate or certificates for Common Shares shall be deemed to have been issued, and the holder hereof or any other person so designated to be named therein shall be deemed to have become a holder of record of such shares for all purposes as of the date said notice, together with this Warrant and the documents and payments described in Section 3(a), is received by the Corporation as aforesaid. If this Warrant shall have been exercised in part, the Corporation shall, at the time of delivery of said certificate or certificates, deliver to the holder hereof a new Warrant evidencing the rights of such holder to purchase the unpurchased Common Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

SECTION 4. RESERVATION OF COMMON SHARES; STATE SECURITIES LAWS.

- (a) The Corporation covenants that it will at all times until the Warrant Expiration Date reserve and keep available out of its authorized and unissued Common Shares, solely for the purpose of issue upon exercise of this Warrant, such number of Common Shares as shall then be issuable upon the exercise of this Warrant.
- (b) If any securities to be reserved for the purpose of exercise of this Warrant require approvals or registrations under applicable state "blue sky" or federal securities laws, or any such approval or registration is required for the exercise of this Warrant, then the Corporation will use its best efforts to obtain such approvals or registrations as may be appropriate as soon as reasonably practicable.

SECTION 5. NEGOTIABILITY.

This Warrant is issued upon the following terms, to all of which each holder or owner hereof by the taking hereof consents and agrees:

- (a) Title to this Warrant may be transferred by the holder by endorsement (by the holder hereof executing the form of assignment attached hereto as Exhibit B) and delivery in the same manner as in the case of a negotiable instrument transferable by endorsement and delivery; and
- (b) Until this Warrant is transferred on the books of the Corporation, the Corporation may treat the registered holder hereof as the absolute owner hereof for all purposes, notwithstanding any notice to the contrary.

SECTION 6. LOSS OR MUTILATION.

Upon receipt of evidence satisfactory to the Corporation of the loss, theft, destruction or mutilation of this Warrant (including a reasonably detailed affidavit with respect to the circumstances of any loss, theft or destruction of such Warrant) and, if requested in the case of any such loss, theft or destruction, upon delivery of an indemnity bond or other agreement or security reasonably satisfactory to the Corporation, or, in the case of any such mutilation, upon surrender and cancellation of this Warrant, the Corporation at its expense will execute and deliver, in lieu hereof, a new Warrant of like tenor.

SECTION 7. SUBDIVISION OR COMBINATION OF COMMON SHARES.

If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) its outstanding Common Shares into a greater number of Common Shares, the number of Common Shares issuable upon exercise of this Warrant will be proportionately increased, and if the Corporation at any time combines (by reverse stock split, recapitalization or otherwise) its outstanding Common Shares into a smaller number of Common Shares, the number of Common Shares issuable upon exercise of this Warrant will be proportionately decreased.

SECTION 8. CONSOLIDATION, MERGER, ETC.

If any consolidation or merger of the Corporation with another corporation, or the sale of all or substantially all of its assets to another corporation (each an "Extraordinary Event") shall be effected, then, as a condition of such Extraordinary Event, the Corporation shall cause lawful and adequate provision to be made whereby the registered holder of this Warrant shall thereafter have the right to purchase and receive, upon exercise hereof and the payment of the Exercise Price, in lieu of the Common Shares of the Corporation immediately theretofore purchasable and receivable upon the exercise of this Warrant, such shares of stock, securities or property (including cash) as may be issued or payable with respect to or in exchange for a number of Common Shares of the Corporation immediately theretofore purchasable and receivable upon the exercise of this Warrant had such Extraordinary Event not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of the holder of this Warrant to the end that the provisions hereof (including, without limitation, provisions for adjustments of the number of shares purchasable upon the exercise of this Warrant) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or property thereafter deliverable upon the exercise hereof. The foregoing provisions shall similarly apply to successive Extraordinary Events. The Corporation shall not effect any such consolidation, merger or sale unless, prior to the consummation thereof, the successor corporation (if other than the Corporation) resulting from such consolidation or merger or the corporation purchasing such assets shall assume by written instrument executed and mailed to the registered holder at the last address of such registered holder appearing on the books of the Corporation, the obligation to deliver to such registered holder such shares of stock, securities or property as, in accordance with the foregoing provisions, such registered holder may be entitled to purchase or receive.

SECTION 9. ANTIDILUTION PROTECTION.

- (a) If at any time or from time to time after the date hereof, the Corporation issues or sells, or is deemed by the express provisions of this subsection (a) to have issued or sold, Additional Common Shares (as defined in subsection (d) below), other than as a dividend or other distribution on any class of stock as provided in Section 7 above, and other than a subdivision or combination of Common Shares as provided in Section 7 above, for an Effective Price (as defined in subsection (d) below) less than the then effective Exercise Price, the then effective Exercise Price shall be reduced, as of the opening of business on the date of such issue or sale (or deemed issuance or sale), to the price at which such additional shares are issued or sold or deemed to have been issued or sold, as the case may be. Upon any such reduction in the Exercise Price, the total number of shares issuable upon exercise of this Warrant shall be proportionately increased so that the total amount payable upon exercise in whole of this Warrant shall not be modified.
- (b) For the purpose of making any adjustment required under this Section 9, the consideration received by the Corporation for any issue or sale of securities shall (i) to the extent it consists of cash, be computed at the net amount of cash received by the Corporation after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Corporation in connection with such issue or sale but without deduction of any expenses payable by the Corporation, (ii) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors of the Corporation (the "Board"); provided, however, that if the Board cannot reach such a determination, the fair market value shall be determined by an independent third party appraiser selected by the Board, and (iii) if Additional Common Shares, Convertible Securities (as defined in subsection (c) below) or rights or options to purchase either Additional Common Shares or Convertible Securities are issued or sold together with other stock or securities or other assets of the Corporation for a consideration which covers both, be computed as the portion of, the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Common Shares, Convertible Securities or rights or options; provided, however, that if the Board cannot reach such a determination, the fair market value shall be determined by an independent third party appraiser selected by Board.

- (c) For the purpose of the adjustment required under this Section 9, if the Corporation issues or sells any (i) stock or other securities convertible into Additional Common Shares (such convertible stock or securities being herein referred to as "Convertible Securities") or (ii) rights or options for the purchase of Additional Common Shares or Convertible Securities, and if the Effective Price of such Additional Shares is less than the Exercise Price, the Corporation shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Common Shares issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Corporation for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Corporation upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; provided, that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Corporation shall be deemed to have received the minimum amounts of consideration without reference to such clauses; provided, further, that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; provided, further, that if the minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Corporation upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Exercise Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Common Shares on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Exercise Price, as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Exercise Price which would have been in effect had an adjustment been made on the basis that the only Additional Common Shares so issued were the Additional Common Shares, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Common Shares, if any, were issued or sold for the consideration actually received by the Corporation upon such exercise, plus the consideration, if any, actually received by the Corporation for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Corporation (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities.
- (d) "Additional Common Shares" shall mean all Common Shares issued by the Corporation or deemed to be issued pursuant to this Section 9 (whether or not subsequently reacquired or retired by the Corporation), other than: (i) Common Shares issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the date hereof; and (ii) Common Shares issued pursuant to a transaction for which an adjustment is made pursuant to Section 7 or 8 hereof. The "Effective Price" of Additional Common Shares shall mean the quotient determined by dividing the total number of Additional Common Shares issued or sold, or deemed to have been issued or sold by the Corporation under this Section 9, into the aggregate consideration received, or deemed to have been received by the Corporation for such issue under this Section 9, for such Additional Common Shares.

SECTION 10. NOTICE OF ADJUSTMENT.

Upon any adjustment or other change relating to the securities purchasable upon the exercise of this Warrant, then, and in each such case, the Corporation shall give written notice thereof, by first class mail, postage prepaid, addressed to the registered holder at the address of such registered holder as shown on the books of the Corporation, which notice shall state the increase or decrease in the number or other denominations of securities purchasable upon the exercise of this Warrant setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

SECTION 11. FRACTIONAL SHARES.

If the number of Common Shares purchasable upon the exercise of this Warrant is adjusted pursuant to provisions hereof, the Corporation shall nevertheless not be required to issue fractions of shares, upon exercise of this Warrant or otherwise, or to distribute certificates that evidence fractional shares. Whether or not fractional shares are issuable upon exercise of this Warrant shall be determined on the basis of the total number of Common Shares the holder is at the time acquiring and the number of Common Shares issuable upon such aggregate exercise. With respect to any fraction of a share called for upon any exercise hereof, the Corporation shall pay to the holder hereof an amount in cash equal to such fraction multiplied by the current fair market value of such fractional share, determined as follows:

- (a) If the Common Shares are listed on a national securities exchange or admitted to unlisted trading privileges on such exchange the current fair market value shall be the last reported sale price of the Common Shares on such exchange on the last business day prior to the date of exercise of this Warrant or, if no such sale is made on such day, the average closing bid and asked price for such day on such exchange;
- (b) If the Common Shares are not listed or admitted to unlisted trading privileges, the current fair market value shall be the mean of the last reported bid and asked prices reported by the National Quotation Bureau, on the last business day prior to the date of the exercise of this Warrant; or
- (c) If the Common Shares are not so listed or admitted to unlisted trading privileges and bid and asked prices are not so reported, the current fair market value shall be an amount determined in good faith by the Board; provided, however, that if the Board cannot reach such a determination, the fair market value shall be determined by an independent third party appraiser selected by the Corporation and the holder.

SECTION 12. INFORMATION.

Each holder of this Warrant, and each holder of Common Shares acquired upon the exercise of this Warrant, by acceptance hereof and thereof, agrees to furnish to the Corporation such information concerning such holder as may be reasonably requested by the Corporation which is necessary in connection with any registration or qualification of the Common Shares purchasable hereunder.

SECTION 13. WARRANT HOLDER NOT DEEMED STOCKHOLDER.

The holder of this Warrant shall not, as such, be entitled to vote or to receive dividends or be deemed the holder of the Common Shares that may at any time be issuable upon exercise of this Warrant for any purpose whatsoever, nor shall anything contained herein be construed to confer upon the holder of this Warrant, as such, any of the rights of a stockholder of the Corporation or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to receive dividends or subscription rights, until such holder shall have exercised this Warrant and paid the Exercise Price in accordance with the provisions hereof.

SECTION 14. RIGHTS OF ACTION; REMEDIES.

All rights of action with respect to this Warrant are vested in the holder of this Warrant, and the holder may enforce against the Corporation its right to exercise this Warrant for the purchase of Common Shares in the manner provided in this Warrant. The Corporation stipulates that the remedies at law of the holder of this Warrant in the event of any default or threatened default by the Corporation in the performance of or compliance with any of the terms of this Warrant are not and will not be adequate, and that such terms may be specifically enforced by a decree for the specific performance of any agreement contained herein or by an injunction against a violation of any of the terms hereof or otherwise.

SECTION 15. MODIFICATION OF WARRANT.

This Warrant shall not be modified, supplemented or altered in any respect except with the consent in writing of the holder hereof and the Corporation; and no change in the number or nature of the securities purchasable upon the exercise of this Warrant, or the Exercise Price therefor, or the acceleration of the Warrant Expiration Date, shall be made without the consent in writing of the holder hereof, other than such changes as are specifically prescribed by this Warrant as originally executed.

SECTION 16. MISCELLANEOUS.

This Warrant shall be governed by, and construed and enforced in accordance with, the laws of State of New York, without regard to its principles of conflicts of laws. The headings in this Warrant are for purposes of reference only, and shall not limit or otherwise affect any of the terms hereof. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF, the Corporation has caused this Warrant to be duly executed as of the date first written above.

FX ENERGY, INC.

By: /s/ Clay Newton

Name: Clay Newton

Title: Treasurer

EXHIBIT A

EXERCISE FORM

(To be signed only on exercise of Warrant)

FX ENERGY, INC.

3006 Highland Drive

Suite 206

Salt Lake City, Utah 84106

United States of America

The undersigned hereby irrevocably elects to exercise the right to purchase represented by the within Warrant for, and to purchase thereunder, _____ shares of the Common Stock, par value \$.0001 per share (the "Common Shares"), provided for therein, and requests that certificates for such Common Shares be issued in the name of:

(Please print name, address, and social security number)

and, if said number of Common Shares shall not be all the Common Shares purchasable thereunder, that a new Warrant for the balance remaining of the Common Shares purchasable under the within Warrant be registered in the name of the undersigned holder of the within Warrant or his Assignee as below indicated and delivered to the address stated below.

NAME OF HOLDER OR ASSIGNEE: _____
(Please print)

ADDRESS OF HOLDER OR ASSIGNEE: _____

SIGNATURE OF HOLDER: _____

DATED: _____

Note: The above signature must correspond with the name exactly as written upon the face of the within Warrant, unless the within Warrant has been assigned.

EXHIBIT B

FORM OF ASSIGNMENT

(To be signed only on transfer of Warrant)

For value received, the undersigned hereby sells, assigns, and transfers unto _____ the right represented by the within Warrant to purchase _____ Common Shares of FX Energy, Inc. to which the within Warrant relates, and appoints _____ to transfer such rights on the books of FX Energy, Inc. with full power of substitution in the premises.

NAME OF HOLDER: _____
(Please print)

ADDRESS: _____

SIGNATURE OF HOLDER: _____

DATED: _____

Note: The above signature must correspond with the name exactly as written upon the face of the within Warrant, unless the within Warrant has been assigned.

SIGNED IN THE PRESENCE OF:

18 DECEMBER 2006
FX ENERGY NETHERLANDS B.V.
and
THE ROYAL BANK OF SCOTLAND PLC

AGREEMENT FOR PLEDGES
OVER SHARES IN FX ENERGY POLAND SP. Z O.O.

This Agreement is made in Warsaw on 18 December 2006 between:

- (1) **FX ENERGY NETHERLANDS B.V.**, with its seat in Utrecht and the place of business at Drentestraat 24 BG, 1083HK Amsterdam, registered in the Chamber of Commerce and Industries in Amsterdam under number 30132757, ("**Pledgor**"), having no REGON number granted pursuant Polish law, and
- (2) **THE ROYAL BANK OF SCOTLAND PLC**, with its seat in Edinburgh, address: 36 St Andrew Square, Edinburgh EH2 2YB, the United Kingdom, registered in Scotland under number 90312, ("**Pledgee**"), having no REGON number granted pursuant Polish law.

each hereinafter referred to as a **Party** and jointly, as the **Parties**.

WHEREAS:

- (A) Pursuant to English law governed Senior Facility Agreement dated 17 November 2006 ("**Facility Agreement**") between, among others, the Company (as defined below) as the borrower, the Pledgor as the guarantor and the Pledgee as the lender, the Pledgee has agreed to advance to the Company, subject to the terms and conditions of the Facility Agreement, a facility in an aggregate amount not exceeding USD 25,000,000.
- (B) The establishment of the security contemplated by this Agreement is one of the conditions to draw down under the Facility Agreement.
- (C) The Pledgee is a bank duly organized under the laws of Scotland.

NOW, THEREFORE THE PARTIES AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Articles of Association**" means the articles of association (*akt założycielski*) of the Company as amended from time to time.

"**Bankruptcy Law**" means the Act on Bankruptcy and Restructuring of 28 February 2003 (Dz. U. No. 60 item 535, as amended).

"Catalogue" means the Catalogue of description of the object of registered pledge as attached to the Ordinance of the Minister of Justice on the detailed organisation and maintenance of the register of pledges of 15 October 1997 (Dz. U. No. 134 item 982, as amended).

"CCC" means Polish Commercial Companies Code of 15 September 2000 (Dz.U. No. 94, item 1037, as amended).

"Civil Code" means Polish Civil Code of 23 April 1964 (Dz.U. No.16 item 93, as amended).

"Civil Procedure Code" means Polish Civil Procedure Code of 17 November 1964 (Dz. U. No 43, item 296, as amended).

"Company" means FX Energy Poland Spółka z ograniczoną odpowiedzialnością with its seat in Warsaw, at ul Chałubińskiego 8, registered in the register of entrepreneurs kept by the District Court for the capital city of Warsaw in Warsaw, XII Commercial Division of the National Court Register under no. KRS 0000052459, REGON 012659847.

"Distributions" means the shareholders' rights to all dividends and other distributions, whether in cash or in kind (including, but not limited to, the proceeds of redemptions or liquidation, return of additional payments to the share capital (*dopłaty*)), in respect of the Shares.

"Enforcement Event" means the occurrence of an Event of Default (as defined in the Facility Agreement) which is continuing.

"Enforcement Notice" means a notice substantially in the form of Schedule 1.

"Facility" means a facility up to USD 25,000,000 advanced by the Pledgee to the Company pursuant to the Facility Agreement.

"Financial Collateral Law" means Polish Law of 2 April 2004 on the Certain Financial Collateral (Dz.U. No. 91, item 871, as amended).

"Financial Pledge" means a financial pledge over Shares established pursuant to Clause 3.1 (*Establishment of the Financial Pledge*).

"Indemnifiable Person" means the Pledgee and any of its directors and employees, and/or any of its agents or representatives.

"National Court Register" or **"KRS"** means a register of entrepreneurs maintained by the relevant district court, as determined in the Act on the National Court Register of 20 August 1997 (Dz.U. No. 121, item 769, as amended).

"New Pledges" means new financial pledges and new registered pledges to be established over the New Shares pursuant to Clause 5.1 (*Establishment of New Pledges*).

"New Shares" means any shares of the Company acquired or purchased by, or otherwise transferred to, the Pledgor after the date of this Agreement.

"Pledge Register" means the register of pledges maintained by the relevant district court, as determined under the Registered Pledge Law.

"Pledges" means the Financial Pledge and the Registered Pledge jointly.

"Power of Attorney for New Pledges" as defined in Clause 5.3 (*Power of Attorney for New Pledges*).

"Registered Pledge Law" means Polish Law of 6 December 1996 on the Registered Pledge and Pledge Register (Dz. U. No. 149 item 703, as amended) and all applicable rules and regulations enacted in relation thereto from time to time.

"Registered Pledge" means a registered pledge over Shares established pursuant to Clause 2.1 (*Establishment of Registered Pledge*).

"Secured Claim" means all present and future pecuniary claims of the Pledgee against the Company under the Facility Agreement.

"Security Period" means the period from the date of this Agreement to the date on which the Secured Claim is satisfied in full.

"Seized Shares" as defined in Clause 10.2.1 (*Taking Title to the Shares*).

"Shares" means 100 shares of the Company of a nominal value of 500 PLN each and which represent 100 percent of the share capital of the Company at the date of this Agreement.

"Voting Rights" means the right to exercise (personally or by proxy) the voting rights and any other corporate rights under Polish law or under the Articles of Association attached to the Shares or any of the Shares, whether at a meeting of the shareholders of the Company or otherwise.

"Voting Rights Power of Attorney" as defined in Clause 9.2 (*Voting Rights Power of Attorney*).

1.2 Construction

1.2.1 Unless otherwise defined in this Agreement, terms defined in the Facility Agreement shall have the same meaning when used in this Agreement.

1.2.2 Unless a contrary indication appears, any reference in this Agreement to:

- (i) a "person" includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (ii) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (iii) "disposal" means a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary, and "dispose" will be construed accordingly; and
- (iv) a provision of law is a reference to that provision as amended or re-enacted.

1.2.3 An Event of Default is "continuing" if it has not been remedied or waived.

1.2.4 The words and expressions in plural shall include singular and vice versa.

1.2.5 Clause, Section and Schedule headings are for ease of reference only.

2. REGISTERED PLEDGE

2.1 Establishment of Registered Pledge

In order to secure the Secured Claim, the Pledgor hereby establishes in favour of the Pledgee a first ranking registered pledge over the Shares up to the maximum secured amount of USD 50,000,000 ("**Registered Pledge**"). The Pledgee hereby consents to the establishment of Registered Pledge.

2.2 Registration

2.2.1 The Pledgor shall file or procure filing of the application for entry of the Registered Pledge into the Pledge Register maintained by the competent registration court within five (5) Business Days of the date of this Agreement and shall provide the Pledgee with a copy of the application within two (2) Business Days of its filing together with evidence of its filing and evidence of payment of all the required court fees.

2.2.2 Application for registration of the Registered Pledge shall be submitted to the competent registration court on the official form and the Shares shall be classified as *share in a limited liability company* in accordance with Catalogue (item G1 of the Catalogue) and shall have the following features:

Feature A - Name, registered office and address of the limited liability company: FX Energy Poland Spółka z ograniczoną odpowiedzialnością with its seat in Warsaw, ul Chałubińskiego 8

Feature B - Commercial register number: 0000052459

Feature C - Registry court designation: District Court for the city of Warsaw in Warsaw, XII Commercial Division of the National Court Register

Feature D - Number of shares pledged: 100

Feature E - Nominal value of one share: 500 PLN

Feature F - Share capital and number of shares subscribed for by the shareholders: 50,000 PLN; 100 shares

Method of marking the object: entry in the share register

2.2.3 The court fees connected with proceedings for entry of the Registered Pledge in the Pledge Register and all other costs connected with registration of the Registered Pledge in the Pledge Register shall be borne by the Pledgor.

3. FINANCIAL PLEDGE

3.1 Establishment of Financial Pledge

In order to secure the Secured Claim the Pledgor hereby establishes in favour of the Pledgee a financial pledge over the Shares up to the maximum secured amount of USD 50,000,000 in accordance with the relevant provisions of the Financial Collateral Law ("**Financial Pledge**"). The Pledgee hereby consents to the establishment of the Registered Pledge.

3.2 Expiry of Financial Pledge

The Financial Pledge shall expire upon the earlier of (i) the expiry of the Security Period or (ii) 31 December 2014.

4. NOTICE OF ESTABLISHMENT OF PLEDGES

4.1 Notice of Financial Pledge

The Pledgor shall notify the Company of the establishment of the Financial Pledge within three (3) Business Days of the date of this Agreement by sending to the Company, with a copy to the Pledgee, a notification, substantially in the form set out in Schedule 2, together with one copy of this Agreement.

4.2 Notice of Registered Pledge

The Pledgor shall notify the Company of entry of the Registered Pledge into the Pledge Register within three (3) Business Days of the date of receipt by the Pledgor of the court decision on entry of the Registered Pledge into the Pledge Register by sending to the Company, with a copy to the Pledgee, a notification, substantially in the form set out in Schedule 2, together with one copy of such court decision.

4.3 Entry of the Pledges into the Company's share register

4.3.1 The Pledgor shall procure that the Company's management board will register in the Company's share register:

- (i) the establishment of the Financial Pledge together with the Pledgee's right to exercise the Voting Rights within two (2) Business Days of the date hereof; and
- (ii) the establishment of the Registered Pledge within two (2) Business Days of the date of receipt of notification referred to in Clause 4.2 (*Notice of Registered Pledge*) above.

4.3.2 The Pledgor shall provide the Pledgee with an extract of the Company's share register certified by the Company's management board confirming the entries referred to in Clause 4.3.1 above within three (3) Business Days of the date of each entry being made.

4.4 Severability of the Pledges

Rights and obligations arising exclusively under the Registered Pledge Law shall not apply to the Financial Pledge and rights and obligations arising exclusively under the Financial Collateral Law shall not apply to the Registered Pledge.

5. NEW SHARES

5.1 Establishment of New Pledges

In order to secure the Secured Claim, the Pledgor hereby undertakes to establish in favour of the Pledgee a first ranking registered pledge and a financial pledge over the New Shares on substantially the same terms as set out in this Agreement within ten (10) Business Days from the date of (i) receipt by the Company of a competent court's decision on registration of the increase of the Company's share capital or (ii) transfer to the Pledgor of any New Shares.

5.2 Notification of acquisition of New Shares

The Pledgor shall notify (or ensure that the Company notifies) the Pledgee of acquisition or transfer, as applicable, of any New Shares within three (3) Business Days of receipt by the Company of any decision of a competent court on registration of increase of the Company's share capital in KRS or transfer to the Pledgor of any New Shares.

5.3 Power of Attorney for New Pledges

On the date hereof, the Pledgor shall grant to the Pledgee a power of attorney substantially in a form set out in Schedule 3 for the purpose of establishing the New Pledges ("**Power of Attorney for New Pledges**"). The Pledgee is authorized to use the Power of Attorney for New Pledges if the Pledgor fails to perform its obligations under Clause 5.1 (*Establishment of New Pledges*). The Power of Attorney for New Pledges is irrevocable during the Security Period.

6. REPRESENTATIONS AND WARRANTIES OF THE PLEDGOR

6.1 The Pledgor hereby represents and warrants to the Pledgee that:

- (i) it is a limited liability company incorporated and acting in accordance with the Dutch law;
- (ii) the Company's share capital amounts to PLN 50,000 and is divided into 100 shares of a nominal value of PLN 500 each;
- (iii) it is the sole owner of 100 shares in the Company representing 100% of the Company's share capital;
- (iv) the Shares are fully paid up and free from any pledges and other encumbrances and third party rights;
- (v) the Pledgor has taken all necessary actions (corporate or otherwise) and has all necessary consents and authorisations to enter into and perform this Agreement, as well as to grant the Power of Attorney for New Pledges and the Voting Rights Power of Attorney;
- (vi) it has the authority to enter into and perform this Agreement and has obtained all necessary authorisations required for entry into, and performance of, this Agreement;
- (vii) this Agreement creates the Security it purports to create under Polish law in favour of the Pledgee and in respect of the Registered Pledge - it will create such a Security upon registration of the Registered Pledge in the Pledge Register; and
- (viii) this Agreement constitutes the valid and legally binding obligation of the Pledgor enforceable in accordance with its terms.

6.2 The above representations are made on the date of this Agreement and are deemed to be repeated by the Pledgor on each date during the Security Period on which any of the representations and warranties set out in Clause 19 (*Representation*) of the Facility Agreement are repeated, with reference to the facts and circumstances then existing.

7. DISTRIBUTIONS

Subject to Clause 21.16 (*Distributions*) of the Facility Agreement, the Pledgor continues to be entitled to receive all Distributions, unless at the time of and immediately after making such Distributions an Enforcement Event subsists or occurs (as the case may be).

8. PLEDGOR'S UNDERTAKINGS

8.1 Negative covenants

Subject to the provisions of the Facility Agreement, the Pledgor shall not, without the prior written consent of the Pledgee:

- 8.1.1 sell, assign or otherwise dispose of any of the Shares;
- 8.1.2 encumber the Shares with any third party rights except as contemplated by the Finance Documents;
- 8.1.3 make or permit any changes to the Articles of Association; and/or
- 8.1.4 permit any increase of the Company's share capital (whether through the change of Articles of Association or otherwise).

8.2 Obligations under the Shares

The Pledgor shall remain liable to observe and perform all obligations assumed by it in respect of the Shares and the Pledgee shall not be under any obligation or liability arising out of the Shares.

8.3 Shareholders' Meetings and Records

The Pledgor shall ensure that:

- 8.3.1 the Pledgee receives a copy of each notice (and the corresponding agenda) convening a shareholders' meeting of the Company at least ten (10) Business Days prior to the date of the meeting, unless the Pledgee and the Company agree otherwise;
- 8.3.2 the Pledgee receives a draft copy of each resolution proposed to be adopted by shareholders of the Company without a meeting at least five (5) Business Days before the proposed date of signing the resolution, unless the Pledgee and the Company agree otherwise;
- 8.3.3 the Pledgee is allowed entry (as an observer) to each shareholders' meeting of the Company;
- 8.3.4 the Pledgee is allowed at any time on reasonable notice to inspect (i) the minutes of any shareholders' meeting of the Company and (ii) the share register of the Company; and
- 8.3.5 not later than fifteen (15) Business Days after the date of this Agreement, the resolution to allow the Pledgee to exercise the Voting Rights (independently of the Voting Rights Power of Attorney) is adopted and application to register the amendment of the Articles of Association is filed with a competent court.

9. VOTING RIGHTS

9.1 Exercising of the Voting Rights by the Pledgor

The Pledgor shall not, without the prior written consent of the Pledgee, exercise the Voting Rights in a manner which would:

- 9.1.1 adversely affect the scope of rights attached to the Shares;
- 9.1.2 adversely affect the scope of the Pledgee's rights under this Agreement;
- 9.1.3 exclude or limit the Pledgee's right to take part in the shareholders' meeting and vote in accordance with article 187 § 2 of the Companies Code;
- 9.1.4 result in limitation of the Pledgor's right to dispose of the Shares or providing for the requirement of the Company's consent to dispose of the Shares;
- 9.1.5 diminish the proportion of the Shares in the Company's share capital; or
- 9.1.6 result in a merger, takeover or transformation of the Company except as it is permitted by the Finance Documents.

9.2 Voting Rights Power of Attorney

On the date of this Agreement, the Pledgor shall grant to the Pledgee a power of attorney in the form set out in Schedule 4 ("*Voting Rights Power of Attorney*"). The Voting Rights Power of Attorney is irrevocable during the Security Period.

9.3 Exercising of the Voting Rights and other non-property rights by the Pledgee

As from the occurrence of an Enforcement Event, the Pledgee shall be entitled to exercise the Voting Rights and exercise other non-property rights to which the Pledgor is entitled as a shareholder of the Company, in particular a right to demand the convening of an extraordinary Company's shareholders' meeting.

10. ENFORCEMENT OF PLEDGES

10.1 Enforcement of Registered Pledge

If an Enforcement Event occurs, the Pledgee may (at its discretion) deliver an Enforcement Notice to the Pledgor. The Pledgee may enforce its rights under this Agreement seven (7) days after delivery of the Enforcement Notice or at any time thereafter by any of the following methods (at its discretion) in order to satisfy the Secured Claim:

- 10.1.1 taking title to all or any part of the Shares in accordance with Article 22 of the Registered Pledge Law, at the value of the Shares, for that purpose being agreed at PLN 1,000;
- 10.1.2 selling all or any part of the Shares by public tender conducted by a notary or a court bailiff in accordance with Article 24 of the Registered Pledge Law; or
- 10.1.3 instituting court enforcement proceedings in accordance with the provisions of the Civil Procedure Code.

10.2 Taking title to the Shares

10.2.1 Within 10 (ten) Business Days following seizure by the Pledgee of any or all Shares ("Seized Shares"), the Pledgor may request the Seized Shares to be sold in a public tender on the terms and conditions set forth by the Pledgee, subject to Clause 10.2.2 below.

10.2.2 Should the Pledgor request the Seized Shares to be sold in a public tender, the following shall apply:

- (a) the bidding price for the shares shall be 75% of the estimated valuation of the Shares made at the cost of the Pledgor by a reputable property valuer appointed by the Pledgee;
- (b) information on public tender shall be announced twice in a Polish national daily newspaper; and
- (c) the offers may be submitted within 1 (one) month following the date of the last announcement.

10.2.3 If as a result of a tender an offer is chosen pursuant to Clause 10.2.2.(c) above and a share sale agreement is not concluded within 30 (thirty) days following commencement of negotiations, the Pledgee may freely dispose of the Seized Shares.

10.2.4 The Pledgee may suspend any and all actions relating to the tender until the Pledgor secures to the Pledgee's satisfaction the reasonable costs and expenses which may be borne in connection with such a tender.

10.3 Sale of the Shares in a public auction

The public auction shall be carried out by a notary or a court bailiff pursuant to Article 24 of the Registered Pledge Law within fourteen (14) days of the Pledgee's application for such auction, and, if not, otherwise as provided for by law:

10.3.1 such public auction shall be carried out in Warsaw;

10.3.2 costs of such public auction shall be entirely borne by the Pledgor;

10.3.3 the Pledgor and the Pledgee agree that the estimated valuation of the Shares shall be made at the cost of the Pledgor by a reputable property valuer appointed by the Pledgee;

10.3.4 the bidding price for the Shares will be equal to 75% of the estimate valuation referred to in Clause 10.3.4 above; and

10.3.5 the Pledgee shall be entitled to specify, at its own discretion, the method and terms of payment of the purchase price for the Shares, in particular to agree for payment in installments or for deferred payment.

10.4 Enforcement of Financial Pledge

If an Enforcement Event occurs, the Pledgee may deliver an Enforcement Notice to the Pledgor in its absolute discretion and, without prejudice to the Pledgee's other rights and enforcement methods available to the Pledgee under the Financial Collateral Law, it may enforce the Financial Pledge by sale or appropriation of the Shares by the Pledgee pursuant to Article 10 of the Financial Collateral Law, on any terms and conditions determined by the Pledgee in its absolute discretion.

10.5 Right to enforce the Security

10.5.1 The Pledgee is not obliged - before enforcing the Security constituted by this Agreement - to proceed against or enforce any other rights or Security or claim payment from any person.

10.5.2 The Pledges constituted by this Agreement are in addition to and are not in any way prejudiced by any other Securities now or subsequently held by the Pledgee in respect of obligations resulting from the Finance Documents (as defined in the Facility Agreement).

10.6 Expenses of Sale

If, by virtue of Article 314 of the Polish Civil Code, any expenses of selling the Shares and any other expenses incurred in connection with enforcement of the Pledges are not secured by the Pledges, the Pledgee is entitled to deduct these expenses either from (i) Distributions or (ii) a surplus of the kind referred to in Clause 10.7 (*Application of Funds*).

10.7 Application of Funds

The net proceeds of sale of the Shares shall be applied towards satisfaction of any Secured Claim in the manner specified in Clause 24.1 of the Facility Agreement. If the net proceeds of sale of the Shares exceed the amount of Secured Claim and the costs and expenses of such sale borne by the Pledgee, the surplus shall be paid to the Pledgor within fourteen (14) days of the Pledgee receiving those net proceeds.

10.8 Settlement in Foreign Currency

For the purpose of Article 28 of the Registered Pledge Law, the Secured Claim of the Pledgee, which is a foreign bank, must be satisfied by the Pledgor in the relevant foreign currency in which the respective portion of the Secured Claim is denominated on its due date.

11. SCOPE AND DURATION OF SECURITY

11.1 Scope of Security

Each Security created hereunder is a continuing security and extends to the ultimate balance of the Secured Claim and remains in force notwithstanding any intermediate payment or increase or amendment of the Secured Claim or an effective transfer by the Pledgee of any of its rights and claims under the Facility Agreement to any third party.

11.2 Limit on Liability of the Pledgee

The Pledgee is not liable by reason of, except in the case of wilful default or negligence upon its part, (i) taking any action permitted by this Agreement in accordance with mandatory provisions of Polish law, or failing to take any action permitted but not required under this Agreement or (ii) the enforcement of any part of the Security over the Shares in accordance with mandatory provisions of Polish law.

11.3 Expiry of Security

Following the expiry of the Security Period, at the request and expense of the Pledgor, the Pledgee shall:

11.3.1 deliver to the Pledgor a written statement certifying that the Secured Claim has been discharged in full and this Agreement has expired; and

11.3.2 produce any other document necessary to evidence the expiry of this Agreement in the form reasonably requested by the Pledgor.

11.4 Ineffective Performance

The Pledgee is not obliged to release the Shares from the Security established by this Agreement if the satisfaction of a Secured Claim could in its reasonable opinion be considered as ineffective or invalid under the Bankruptcy Law or under the Civil Code.

12. FURTHER ASSURANCES

The Pledgor shall (at its own expense) promptly sign any document and do any act that the Pledgee reasonably requests from time to time in order to perfect the Security granted or intended to be granted by this Agreement and to enable the Pledgee to obtain the full benefit of that Security.

13. INDEMNITY

13.1 The Pledgor shall indemnify each Indemnifiable Person and keep it at all times (whether during or after the Security Period) harmless from and against all liabilities and reasonable expenses incurred by it in connection with the execution and/or enforcement of this Agreement and/or any rights vested in it pursuant hereto except that an Indemnifiable Person shall not be indemnified in respect of liabilities and expenses incurred by it as a result of its own gross negligence or wilful misconduct.

13.2 Any Indemnifiable Person shall not be liable for any losses arising in connection with the exercise of any of its rights hereunder except where such losses arise as a result of its own gross negligence or wilful misconduct.

14. EXCLUSION OF SUBROGATION

The Pledgor hereby irrevocably and unconditionally waives all its rights and claims it has or may have against the Company resulting from the seizure of title to the Shares by the Pledgee provided that such actions have been undertaken in compliance with the provisions of this Agreement. The Pledgor shall immediately pay or transfer to the Pledgee any payment or distribution it receives by virtue of any subrogation.

15. COSTS AND EXPENSES

The Pledgor shall, on the written demand of the Pledgee, reimburse the Pledgee all costs and expenses (including legal fees) reasonably incurred in connection with (i) the execution of this Agreement or otherwise in relation to it, (ii) the perfection or enforcement of the Security created by this Agreement and (iii) the exercise of any right of the Pledgee resulting from an Enforcement Event and in accordance with the provisions of the Facility Agreement.

16. NOTICES

Any communication to be made under or in connection with this Agreement and the other Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

17. ADDRESSES

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement and the other Finance Documents is:

(a) in the case of the Pledgor, that identified with its name below; and

(b) in the case of the Pledgee, that identified with its name below,

or any substitute address, fax number or department or officer as the Party may notify to the other Party by not less than five Business Days' prior notice.

The Pledgor

Address: FX Energy Poland Sp. z o.o.
ul. Chałubińskiego 8
00-613 Warsaw, Poland
Fax: +48 22 630 6632
Attention: Country Manager

The following address is the mailing address of the Pledgor in Poland for the purpose of registration proceedings:

Address: CMS Cameron McKenna Dariusz Greszta Sp. k.
ul. Emilii Plater 53
00-113 Warsaw, Poland
Attention: Antoni Minkiewicz

The Pledgee

Address: The Royal Bank of Scotland plc
Project Finance
135 Bishopsgate
London EC2M 3UR
Fax: +44 (0)20 7085 5578
Attention: Colin Bousfield / Jonathan Verlander

The following address is the mailing address of the Pledgee in Poland for the purpose of registration proceedings:

Address: Radzikowski, Szubielska i Wspólnicy. Sp. k.
ul. Emilii Plater 53
00-113 Warsaw, Poland
Attention: Agnieszka Piasecka

18. ASSIGNMENT

The Pledgor undertakes not to assign or transfer any of its rights, benefits and obligations under this Agreement without written consent of the Pledgee.

19. GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of Poland.

20. JURISDICTION

The courts of Poland have jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement).

21. LANGUAGE, AMENDMENTS AND COUNTERPARTS

21.1 Language of this Agreement

This Agreement is executed in English and Polish language versions. In case of any discrepancies between the English and Polish versions, the English language version shall prevail.

21.2 Amendments

All amendments to this Agreement are null and void unless approved by the parties in writing and with notarised signatures if so required by Polish law for the purposes of definite transactions.

21.3 Counterparts

This Agreement is executed in 3 counterparts in Polish and 2 counterparts in English, one of each language version for each party and one Polish version for the court for the purpose of registration of the Registered Pledge in the Pledge Register.

SCHEDULE 1 ENFORCEMENT NOTICE

To: FX Energy Netherlands B.V. ("**Pledgor**")
And to: FX Energy Poland Sp. z o.o. ("**Company**")
From: The Royal Bank of Scotland plc ("**Pledgee**")
Date: []
Subject: Enforcement of the rights of the Pledgee under the Agreement for Pledges over Shares in FX Energy Poland Sp. z o.o. between the Pledgee and the Pledgor dated [] ("**Agreement**")

Dear Sirs,

In accordance with [Clause 10.1 (*Enforcement of Registered Pledge*)]/[Clause 10.2 (*Enforcement of Financial Pledge*)] of the Agreement, we give you notice that an Enforcement Event is continuing and we intend to enforce our rights under the Agreement [seven (7) days after delivery of this notice to you / immediately] by [_____] [*specify procedure and methods of enforcement selected by the Pledgee*].

Expressions defined in the Agreement have the same meaning when used in this notice.

This notice is governed by Polish law.

For and on behalf of The Royal Bank of Scotland plc

SCHEDULE 2 NOTICE OF THE ESTABLISHMENT OF PLEDGE

To: FX Energy Poland Sp. z o.o. ("**Company**")
From: FX Energy Netherlands B.V. ("**Pledgor**")
Copy to: The Royal Bank of Scotland plc ("**Pledgee**")
Date: []
Subject: Establishment of [financial pledge / registered pledge] over shares of the Company under the Agreement for pledges over shares between the Pledgee and the Pledgor dated [] 2006 ("**Agreement**").

Dear Sirs,

Pursuant to Article 187 § 1 of the CCC, we hereby give you notice that, under the Agreement, we have pledged the Shares by way of a [Financial Pledge / Registered Pledge].

We hereby instruct you to:

- (1) disclose the establishment of the [Financial Pledge / the Registered Pledge] and the Pledgee as beneficiary of the [Financial Pledge / Registered Pledge] in your share register pursuant to Article 188 of the CCC;
- (2) make an entry in the share register that the Pledgee is authorised to exercise Voting Rights if an Enforcement Event is continuing;
- (3) provide us within two (2) Business Days with a copy of the Company's share register showing the above requested entries; and
- (4) submit to the National Court Register, in accordance with Article 188 § 3 of the CCC, a revised list of shareholders in the Company evidencing establishment of [the Financial Pledge / the Registered Pledge].

We also inform you that we have granted an irrevocable power of attorney to the Pledgee ("**Voting Rights Power of Attorney**") to exercise all rights that we have as a shareholder in your company, including the Voting Rights. The Pledgee is authorised to use the Voting Rights Power of Attorney if the Enforcement Event is continuing, and when the amendments to the Articles of Association are made in accordance with Clause 8.3.5 of this Agreement, to exercise voting rights pursuant to Clause 9.3 (*Exercising of the Voting Rights and other non-property rights by the Pledgee*) of this Agreement.

Expressions defined in the Agreement have the same meaning when used in this notice

This notice is governed by Polish law.

We attach a copy of the signed Agreement.

For and on behalf of

[]

SCHEDULE 3 FORM OF POWER OF ATTORNEY FOR NEW PLEDGES

POWER OF ATTORNEY

THIS POWER OF ATTORNEY is granted on [] by FX Energy Netherlands B.V. with its seat in Utrecht and the place of business at Drentestraat 24 BG, 1083HK Amsterdam ("**Pledgor**"), a shareholder of FX Energy Poland Sp. z o.o. with its seat in Warsaw at ul. Chałubińskiego 8, 00-613 Warsaw, registered in the register of entrepreneurs kept by the District Court for the capital city of Warsaw in Warsaw, XII Commercial Division of the National Court Register under No. KRS 0000052459 ("**Company**") to The Royal Bank of Scotland plc ("**Pledgee**").

This Power of Attorney is granted pursuant to Clause 5.3 (*Power of Attorney for New Pledges*) of the agreement for pledges over shares of FX Energy Poland Sp. z o.o. between the Pledgor and the Pledgee dated [] ("**Agreement**"). Expressions defined in the Agreement have same meaning when used in this power of attorney.

The Pledgor hereby grants to the Pledgee this irrevocable power of attorney with full power of substitution to establish over any and all New Shares, in favour of the Pledgee, the new registered pledges and the new financial pledges on substantially the same terms and conditions as provided for in the Agreement.

The Pledgee may appoint qualified attorneys to institute and conduct registration proceedings on behalf of Pledgor on the basis of this power of attorney.

The Pledgor hereby declares that everything that the Pledgee does under this power of attorney is valid and effective as if done by the Pledgor itself. In particular, the Pledgee shall be irrevocably authorized to enter with itself, on behalf of the Pledgor, into the agreements creating Security referred to in this power of attorney.

The Pledgor renounces its right to revoke and/or change this power of attorney without the prior written consent of the Pledgee. The Pledgor declares that its renunciation of the right of revocation is justified by the nature of the legal relationship created by the Agreement, on which this power of attorney is based.

This power of attorney is governed by Polish law.

This power of attorney shall expire as of expiry of the Security Period, and no further action of the Pledgor would be required to that effect.

Signed by: _____

/notarized signatures /

SCHEDULE 4
FORM OF VOTING RIGHTS POWER OF ATTORNEY
POWER OF ATTORNEY

THIS POWER OF ATTORNEY is granted on [] by FX Energy Netherlands B.V. with its seat in Utrecht and the place of business at Drentestraat 24 BG, 1083HK Amsterdam ("**Pledgor**"), a shareholder of FX Energy Poland Sp. z o.o. with its seat in Warsaw at ul. Chałubińskiego 8, 00-613 Warsaw, registered in the register of entrepreneurs kept by the District Court for the capital city of Warsaw in Warsaw, XII Commercial Division of the National Court Register under No. KRS 0000052459 ("**Company**") to The Royal Bank of Scotland plc ("**Pledgee**").

This Power of Attorney is granted pursuant to Clause 9.2 (*Voting Rights Power of Attorney*) of the Agreement for pledges over shares of FX Energy Poland Sp. z o.o. between the Pledgor and the Pledgee dated [] December 2006 ("**Agreement**"). Expressions defined in the Agreement have same meaning when used in this power of attorney.

The Pledgor hereby grants to the Pledgee this irrevocable power of attorney with full power of substitution to exercise (personally or by proxy, at a shareholders' meeting or otherwise), or abstain from exercising, the voting rights and any other corporate rights under Polish law or under the Articles of Association of the Company attached to all or any of the shares in the share capital of the Company held by the Pledgor and subject to the Security created by the Agreement as the Pledgee thinks fit, whether at a shareholders' meeting of the Company or otherwise. In particular, but without limitation, the Pledgee has the following rights:

- (1) the right to demand that the management board of the Company convenes an extraordinary or ordinary general meeting of shareholders of the Company; and
- (2) the right to give any consent or authorisation that is required under Polish law from the Pledgor as a shareholder of the Company.

The Pledgor hereby declares that everything that the Pledgee does under this power of attorney is valid and effective as if done by the Pledgor itself.

The Pledgor renounces its right to revoke and/or change this power of attorney without the prior written consent of the Pledgee. The Pledgor declares that its renunciation of the right of revocation is justified by the nature of the legal relationship created by the Agreement, on which this power of attorney is based.

This power of attorney is governed by Polish law.

This power of attorney shall expire as of expiry of the Security Period, and no further action of the Pledgor would be required to that effect.

Signed by: _____

SIGNATURES

The Pledgor:

FX ENERGY NETHERLANDS B.V.

By: /s/ Tomasz Minkiewicz
Name: Tomasz Minkiewicz
Title: Attorney-in-fact

The Pledgee:

THE ROYAL BANK OF SCOTLAND PLC

By: /s/ Agnieszka Piasecka
Name: Agnieszka Piasecka
Title: Attorney-in-fact

FX ENERGY POLAND SP. ZO.O

FX ENERGY, INC.

FX ENERGY NETHERLANDS PARTNERSHIP CV

FX ENERGY NETHERLANDS BV

and

THE ROYAL BANK OF SCOTLAND PLC

SUBORDINATION DEED

SUBORDINATION DEED

SUBORDINATION DEED, dated 21 December 2006 ("**Deed**") by:

- (1) **FX POLAND SP. ZO.O., ("Borrower");**
- (2) **FX ENERGY, INC., ("Parent");**
- (3) **FX ENERGY NETHERLANDS PARTNERSHIP CV., ("FX Partnership");**
- (4) **FX ENERGY NETHERLANDS BV., ("FX Netherlands"); and**
- (4) **THE ROYAL BANK OF SCOTLAND PLC, ("Lender").**

WHEREAS:

- (a) The Parent, FX Partnership, FX Netherlands, the Borrower and the Lender entered into a senior facility agreement dated 17 November 2006 (the "**Senior Facility Agreement**") pursuant to which the Lender has agreed to make Loans (as such term is defined in the Senior Facility Agreement) to the Borrower, subject to and on the terms and conditions set forth in the Senior Facility Agreement; and
- (b) It is a condition precedent to the disbursement of Loans under the Senior Facility Agreement that the Parent, FX Partnership, FX Netherlands and the Borrower enter into this Deed.

NOW, THEREFORE, the parties agree as follows:

1 INTERPRETATION

1.1 Definitions

Wherever used in this Deed, unless otherwise defined herein, terms defined in the Senior Facility Agreement shall have the same meanings herein. The following additional terms shall have the meanings opposite them:

"Acceleration Event" means any event of default or other event entitling a creditor of the Borrower to accelerate the due date of any liability;

"Accession Undertaking" means each accession undertaking, in the form set out in Annex A, entered into by an Additional Subordinated Creditor;

"Additional Subordinated Creditor" means any Affiliate of the Parent, FX Partnership, FX Netherlands or the Borrower that executes an Accession Undertaking and provides Subordinated Debt to the Borrower;

"FX Netherlands Subordinated Loan Agreement" means a loan agreement with an effective date of 1 January 2006, between FX Netherlands and the Borrower;

"FX Partnership Subordinated Loan Agreement" means a loan agreement with an effective date of 1 January 2006, between FX Partnership and FX Netherlands;

"Insolvency Event" means the occurrence of any of the events described in Clauses 22.6 to 22.9 of the Senior Facility Agreement;

"Interest" means interest at the rate referred to in Clause 9.3 (*Default Interest*) of the Senior Facility Agreement;

"Loans" has the meaning given in the Recitals;

"Obligors" means the Borrower and the Subordinated Creditors;

"Senior Debt" means all or any of the obligations and liabilities of the Borrower and the Subordinated Creditors to the Lender under or connected with the Senior Facility Agreement;

"Senior Facility Agreement" has the meaning given in the Recitals;

"Subordinated Creditor" means (i) each of the Parent, FX Partnership and FX Netherlands, and (ii) any Additional Subordinated Creditor;

"Subordinated Debt" means (i) all of the Borrower's obligations and liabilities to the Subordinated Creditors or any of their Affiliates (including, for the avoidance of doubt, pursuant to the FX Netherlands Subordinated Loan Agreement) (ii) all of FX Netherlands' obligations and liabilities to the Parent and FX Partnership or any of their Affiliates (including, for the avoidance of doubt, pursuant to the FX Partnership Subordinated Loan Agreement), and in any currency (whether present or future, actual or contingent and whether as principal or surety or incurred alone or jointly with another), including interest, fees, banking charges, commission and expenses;

"Subordinated Debt Documentation" means all present and future documents and agreements relating to the Subordinated Debt (including, for the avoidance of doubt, the Subordinated Loan Agreements), the terms of which shall be acceptable to the Lender; and

"Subordinated Loan Agreements" means the FX Netherlands Subordinated Loan Agreement and the FX Partnership Subordinated Loan Agreement and any other loan agreement creating or acknowledging Subordinated Debt.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) each reference to: "Subordinated Debt" or "Senior Debt" or "Subordinated Debt Documentation" is deemed to include a reference to any part of it;
- (b) headings are for convenience only and do not affect the interpretation of this Deed;
- (c) except where the context requires otherwise, words importing the singular include the plural and vice versa;
- (d) a reference to an Annex, Article, party, Schedule or Clause is a reference to that article or section of, or that party, annex or schedule to, this Deed;
- (e) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document, but does not include any amendment, supplement, replacement or novation made in breach of this Deed;
- (f) a reference to a party to any document includes that party's successors and permitted assigns;
- (g) a provision of a statute, rule, or regulation is, unless otherwise indicated, deemed to include a reference to such provision as amended, modified, or re-enacted;
- (h) the term "including" (and forms thereof) means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- (i) a reference to any condition or representation by any person being to such person's knowledge shall be deemed to be to such person's knowledge after due inquiry;
- (j) covenants and undertakings given by two or more persons bind those persons jointly and severally; and
- (k) no part of this Deed is intended to or shall create a registrable Security.

2 SUBORDINATED DEBT PAYMENTS

2.1 Permitted Payments

Subject to Clause 2.2, the Borrower and FX Netherlands shall be entitled to pay in cash, and each Subordinated Creditor shall be entitled to receive, payments and repayments of the Subordinated Debt on their regularly scheduled due dates and prepayments of the Subordinated Debt, but only when each such payment, repayment or prepayment is permitted under Clause 21.16 (*Distribution*) of the Senior Facility Agreement or has otherwise been permitted by the Lender in writing.

2.2 Payments upon Default

Without limiting any other restrictions in the Senior Facility Agreement, if any Default under the Senior Facility Agreement has occurred and is continuing or would result from the making of any payment, neither the Borrower nor FX Netherlands shall make, and no Subordinated Creditor shall demand or accept any payment (whether such payment is by actual payment, set-off, combination of accounts, counterclaim or otherwise, and whether in respect of principal, interest, fees or otherwise) on any Subordinated Debt (including any payment under Clause 2.1), unless and until (i) such Default is cured or expressly waived in writing by the Lender or (ii) the date on which all amounts owed to the Lender under the Senior Facility Agreement have been unconditionally and irrevocably paid in full.

3 SUBORDINATION COVENANTS

3.1 Subordination Covenants by the Borrower and FX Netherlands

Except as expressly permitted in Clause 0, so long as any Senior Debt is or may become outstanding, neither the Borrower nor FX Netherlands will (except with the Lender's prior consent in writing, such consent not to be unreasonably withheld or delayed):

- (a) pay, prepay or repay, or make any distribution in respect of, or purchase or acquire, the Subordinated Debt, in cash or kind (provided that for avoidance of doubt, if the conditions specified in Clause 0 are satisfied, the Borrower and FX Netherlands may make such payments);
- (b) permit any Affiliate to purchase or acquire the Subordinated Debt;
- (c) set off any amount against the Subordinated Debt;
- (d) create or permit to subsist Security over any of the Borrowing Base Assets except for the Security created by the Security Documents;
- (e) permit the Subordinated Debt to be evidenced by a negotiable instrument, unless the instrument is legended with this subordination and is deposited with the Lender;
- (f) convert the Subordinated Debt into share capital of the Borrower or FX Netherlands or any other Subordinated Creditor unless, simultaneously with such conversion and as a condition to the effectiveness thereof, the Lender receives a valid, first ranking and perfected Security interest over all of the shares issued in connection with such conversion;
- (g) take or omit to take any action whereby the subordination achieved by this Deed may be impaired;
- (h) amend or grant any waiver with respect to any provision of any Subordinated Debt Documentation; or
- (i) incur any Financial Indebtedness from any member of the Group unless and until such member of the Group becomes a party to this Subordination Deed as a Subordinated Creditor by executing an Accession Undertaking.

3.2 Subordination Covenant by the Subordinated Creditors

So long as any Senior Debt is or may become outstanding, each Subordinated Creditor will not (except with the Lender's prior consent in writing):

- (a) demand or receive payment of, or any distribution in respect or on account of, the Subordinated Debt, in cash or kind, from the Borrower or FX Netherlands or any other source, or apply any money or assets in discharge of Subordinated Debt (provided that for avoidance of doubt, if the conditions specified in Clause 2.1 are satisfied, a Subordinated Creditor may receive such payments);
- (b) set off the Subordinated Debt against any amount owed by it to the Borrower or FX Netherlands;
- (c) permit to subsist or receive the benefit of a Security, guarantee, indemnity or assurance against loss from the Borrower, FX Netherlands or any other person as security for the Subordinated Debt;
- (d) permit the Subordinated Debt to be evidenced by a negotiable instrument, unless the instrument is legended with this subordination and is deposited with the Lender;
- (e) convert the Subordinated Debt into share capital of the Borrower or FX Netherlands or any other Subordinated Creditor unless, simultaneously with such conversion and as a condition to the effectiveness thereof, the Lender receives a valid, first ranking and perfected Security interest over all of the shares (or in the case of FX Partnership, all of the partnership interest) issued in connection with such conversion;
- (f) subject to Clause 0, accelerate the Subordinated Debt or otherwise declare the Subordinated Debt prematurely payable on the occurrence of an Acceleration Event or otherwise;
- (g) subject to Clause 0, enforce the Subordinated Debt by execution or otherwise;
- (h) subject to Clause 0, initiate, support or take any steps which would cause an Insolvency Event; or
- (i) amend or grant any waiver with respect to any provision of any Subordinated Debt Document.

4 SUBORDINATION OF THE SUBORDINATED CREDITORS ON THE BORROWER'S INSOLVENCY

4.1 Subordination

If an Insolvency Event occurs:

- (a) the Subordinated Debt will be subordinate in right of payment to the Senior Debt;
- (b) the Lender may and is irrevocably authorized on behalf of each Subordinated Creditor to:
 - (i) claim, enforce and prove for the Subordinated Debt or take any analogous action anywhere;

- (ii) file claims and proofs, give receipts and take all such proceedings and do all such things as the Lender sees fit to recover the Subordinated Debt or take any analogous action anywhere; and
 - (iii) receive all distributions on the Subordinated Debt for application towards the Senior Debt;
- (c) if and to the extent that the Lender is not entitled to do any of the things mentioned in Clause 4.1(b), each Subordinated Creditor will do so immediately or as directed by the Lender;
- (d) each Subordinated Creditor will hold all payments and distributions in cash or in kind received or receivable by it in respect of the Subordinated Debt from the Borrower or its estate or from any other source in trust for the Lender to the extent of the Senior Debt and will pay and transfer them to the Lender for application towards the Senior Debt until the Senior Debt is irrevocably paid in full;
- (e) the trustee in bankruptcy, liquidator, assignee or other person distributing the assets of the Borrower or their proceeds is, pursuant to any provision of any insolvency law, directed to make all payments and distributions on the Subordinated Debt direct to the Lender until the Senior Debt is irrevocably paid in full, and each Subordinated Creditor will give all such notices and do all such things as the Lender may direct to give effect to this Clause 4.1(e).

4.2 Failure of Trust

If for any reason a trust in favour of, or a holding of property for, the Lender under this Deed is invalid or unenforceable for any reason whatsoever, each Subordinated Creditor will pay and deliver to the Lender an amount equal to the payment, receipt or recovery in cash or in kind (or its value, if in kind) that such Subordinated Creditor otherwise would have been bound to hold on trust for or as property of the Lender.

5 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

5.1 Representations and Warranties of the Subordinated Creditors

Each of the Subordinated Creditors represents and warrants to the Lender that:

- (a) it is a company (or in the case of FX Partnership, a limited partnership) duly organized and validly existing under the laws of its jurisdiction of incorporation, and it has the corporate or other power and has obtained all required Authorizations to own its assets, conduct its business as presently conducted and to enter into and comply with its obligations under this Deed and each other Transaction Document to which it is a party;
- (b) its execution and delivery of this Deed and each other Transaction Document to which it is a party and the performance of its obligations under this Deed and each such Transaction Document have been duly authorized;
- (c) its execution and delivery of this Deed and each other Transaction Document to which it is a party and the performance of its obligations under this Deed will not cause it to be in breach of any other agreement to which it is a party;

- (d) it has duly executed this Deed and each other Transaction Document to which it is a party, and this Deed and each such Transaction Document constitute its valid and legally binding obligations enforceable in accordance with their terms;
- (e) neither its execution and delivery of this Deed and each other Transaction Document to which it is a party nor its performance of its obligations under this Deed and each such Transaction Document will (i) conflict with or result in a material breach of any of the terms, conditions or provisions of, or constitute a material default or require any consent under, any indenture, mortgage, agreement or other instrument or arrangement to which it is a party or that is binding or purports to be binding upon it or (ii) violate any judgment, decree or order or any statute, rule or regulation or any of the terms or provisions of its constitutive documents;
- (f) all Authorisations required for the execution and delivery by it of this Deed and each other Transaction Document to which it is a party and the performance by it of its obligations under this Deed and each such Transaction Document have been duly obtained or granted and are in full force and effect;
- (g) neither it nor any of its property enjoys any right of immunity from set-off, suit or execution in respect of its assets or its obligations under this Deed;
- (h) all tax returns and reports of it required by law to be filed have been duly filed and all Tax, obligations, fees and other governmental charges upon it, or its properties, or its income or assets, which are due and payable or to be withheld, have been paid or withheld, other than those presently payable without penalty or interest;
- (i) to the best of its knowledge and belief, it is not in violation of any statute or regulation of any Governmental Authority and no judgment or order has been issued that has or is likely to have any materially adverse effect on its business prospects or financial condition or to make it improbable that it will be able to observe or comply with its obligations under this Deed;
- (j) it has not taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against it for its winding-up, dissolution, administration or re-organization or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues;
- (k) neither it nor any Affiliates, nor any person acting on its or their behalf, has made, with respect to the Project or any transaction contemplated by this Deed, any payment that would be prohibited by the Applicable Law, including any offer, gift, payment, promise to pay or authorization of the payment of any money or anything of value, directly or indirectly to any person for the purpose of influencing any act or decision or omission of any person in order to obtain, retain or direct business to, or secure improper benefit or advantage for the Borrower or any of its Affiliates; and
- (l) none of the representations and warranties in this Clause 5.1 omits any matter the omission of which makes any of such representations and warranties misleading.

5.2 Representations and Warranties of the Borrower

The Borrower confirms the representations and warranties set forth in Clauses 19 (*Representations*) to 21 (*General Undertakings*) of the Senior Facility Agreement.

5.3 Legal Opinion

Each of the Borrower and each Subordinated Creditor undertakes that it will, on demand, obtain or pay to the Lender the reasonable costs incurred by the Lender in obtaining at any time a written opinion from lawyers acceptable to the Lender confirming that the representations and warranties in Clause 5.1 or Clause 5.2 are correct and as to any other matters relevant, in the Lender's opinion, to the Borrower or to each Subordinated Creditor or this Deed.

5.4 Power of Attorney

Each Subordinated Creditor, by way of security, irrevocably appoints the Lender to be the attorney for such Subordinated Creditor (with full power of substitution and delegation) in such Subordinated Creditor's name and on such Subordinated Creditor's behalf and as such Subordinated Creditor's act and deed to sign or execute all such deeds, instruments and documents and do all such acts and things as may be required by the Lender pursuant to this Deed or the exercise of any of its powers.

5.5 Consent of the Subordinated Creditors

Notwithstanding anything to the contrary contained in this Deed, each of the Subordinated Creditors, jointly and severally, acknowledges and consents to all of the actions being taken in and pursuant to the Senior Facility Agreement and the Security Documents and hereby consents to the Borrower incurring Financial Indebtedness pursuant to the Senior Facility Agreement.

5.6 Lender Reliance

Each of the Borrower and each Subordinated Creditor acknowledges that it makes the representations in this Clause 0 with the intention of inducing the Lender to enter into this Deed and the other Transaction Documents and that the Lender enters into this Deed and such other Transaction Documents on the basis of, and in full reliance on, each such representation.

6 PROTECTION OF SUBORDINATION

6.1 Action or Inaction by the Lender

The Lender may, without the consent of or notice to the Subordinated Creditors and without releasing, reducing or otherwise affecting the subordination provisions of this Deed or any Subordinated Creditor's obligations under this Deed to the Lender:

- (a) discontinue, increase, reduce or otherwise vary in any way any credit or financial accommodation to the Borrower, any other Subordinated Creditor, or any other person or grant to the Borrower or any other person any new or increased facility or accommodation;
- (b) increase or otherwise vary the rate of interest, commission, fees or banking charges payable by the Borrower, any other Subordinated Creditor, or any other person to the Lender;

- (c) allow to the Borrower or to any other person any time, consideration or indulgence or make any concession to or compound with the Borrower, any other Subordinated Creditor, or any other person;
- (d) enter into, renew, vary or terminate any agreement or arrangement with or liability of the Borrower, any other Subordinated Creditor, or any other person or enter into, renew, vary, release or refrain from taking, perfecting or enforcing any present or future security, guarantee, indemnity or other assurance against loss or right which the Lender now or in the future holds from the Borrower or any other person;
- (e) release or discharge in whole or in part any Subordinated Creditor from this Deed; or
- (f) do or neglect to do anything or delay in doing anything that (but for this Clause 6.1(f)) might operate to release or reduce any Subordinated Creditor's obligations under this Deed.

6.2 Other Circumstances

Each Subordinated Creditor's obligations to the Lender under this Deed shall not be affected by:

- (a) the absence of or any defective, excessive or irregular exercise of the powers of the Borrower or any other Subordinated Creditor, including lack of authority of any person purporting to be acting for the Borrower or any other Subordinated Creditor;
- (b) any security given or payment made to the Lender by the Borrower, any other Subordinated Creditor, or any other person being avoided or reduced under any law (English, Dutch, Polish or other applicable law) relating to bankruptcy, liquidation or analogous circumstances in force from time to time;
- (c) any change in the Lender's, any Subordinated Creditor's or the Borrower's constitutive documents or composition (if a partnership or unincorporated body);
- (d) the insolvency of any Subordinated Creditor or the Borrower or any Subordinated Creditor or the Borrower not being a legal entity;
- (e) any guarantee, indemnity, other assurance against loss or security present or future held by the Lender being defective, void or unenforceable or not binding or not completed or perfected or the failure of the Lender to take any guarantee, indemnity or other assurance against loss or security;
- (f) this Deed or any of its terms not being or ceasing to be binding upon any other Subordinated Creditor, whether or not by agreement with the Lender the failure of any prospective Subordinated Creditor to execute or to perfect or to be bound by this Deed or any of its terms for any reason; or any of the subordinations intended to be established by this Deed being or becoming void, invalid or unenforceable;
- (g) any compromise or arrangement under any applicable insolvency law;

- (h) the existence or non-existence of any document (other than this Deed) or any fact, circumstance or mistake (whether or not known to each Subordinated Creditor, the Borrower, the Lender or any other person) or the construction or interpretation of any document, fact or circumstance that could or might at common law or in equity make the Senior Debt void, invalid, voidable or unenforceable; or
- (i) anything that would, in the absence of this Clause 6.2(i), release or reduce any Subordinated Creditor's obligations to the Lender.

6.3 Fluctuations in Subordinated Debt

This Deed shall not be affected by any fluctuations in the amount of the Subordinated Debt from time to time and shall continue in effect, despite the existence at any time of a credit balance on any current or other account.

7 PRESERVATION OF THE LENDER'S RIGHTS

7.1 Preservation of Security and Rights

This Deed is in addition to any guarantee or indemnity or other assurance against loss or rights or security held currently or in the future by the Lender from each Subordinated Creditor, the Borrower or any other person for the Senior Debt and shall not merge with or prejudice or be prejudiced by any such guarantee, indemnity, other assurance against loss, rights or security or any other contractual or legal rights of the Lender.

7.2 Release Conditional on No Subsequent Avoidance

Any release, settlement, discharge or arrangement relating to each Subordinated Creditor's liability under this Deed shall be conditional upon no payment, assurance or security received by the Lender in respect of the Senior Debt being avoided or reduced under any applicable law (English, Polish, Dutch or other foreign) relating to insolvency or analogous circumstances in force from time to time. The Lender may, after any such avoidance or reduction, exercise all or any of its rights under this Deed and/or any other rights that it would have been entitled to exercise, but for such release, settlement, discharge or arrangement. Following the discharge of all of the Senior Debt, the Lender may retain any security held by the Lender for such Subordinated Creditor's liability under this Deed until the Lender is satisfied that it will not have to make any repayment under any law referred to in this Clause 7.2.

7.3 The Lender's Exercise of Other Remedies

The Lender may, but shall not be obliged to:

- (a) resort, for its own benefit, to any other means of payment at any time and in any order it thinks fit without releasing or reducing the obligations of any Subordinated Creditor under this Deed; and
- (b) claim the benefit of or enforce this Deed either before or after resorting to other means of payment and, if after, without entitling any Subordinated Creditor to any benefit from the other means of payment for so long as the Senior Debt remains due, owing or payable (whether actually or contingently).

7.4 Subrogation

At any time during when the Senior Debt is outstanding and after a claim has been made under this Deed or by virtue of any payment or performance by a Subordinated Creditor under this Deed, a Subordinated Creditor:

- (a) will not be subrogated to any rights, security or monies held, received or receivable by the Lender;
- (b) will not be entitled to any right of contribution or indemnity in respect of any payment made or monies received on account of a Subordinated Creditor's liability under this Deed;
- (c) may not claim, rank, prove or vote as a creditor of any Obligor or its estate in competition with the Lender; or
- (d) may not receive, claim or have the benefit of any payment, distribution or security from or on account of the Lender, or exercise any right of set off as against the Lender.

A Subordinated Creditor must hold in trust for and immediately pay or transfer to the Lender any payment or distribution or benefit of security received by it contrary to this Clause or in accordance with any directions given by the Lender under this Clause as directed by the Lender.

8 APPROPRIATION

8.1 Appropriation

The Lender may at any time while the Senior Debt is outstanding:

- (a) withhold affecting the liability of a Subordinated Creditor under this Deed:
 - (i) refrain from applying or enforcing any other monies, security or rights held or received by the Lender in respect of those amounts; or
 - (ii) apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise); and
- (b) hold in an interest-bearing suspense account any monies received from any Subordinated Creditor or on the account of the liability of any Subordinated Creditor under this Deed.

9 MERGER OR AMALGAMATION

9.1 Merger or Amalgamation

The Senior Debt shall extend to all liabilities of the Borrower or Subordinated Creditor to the Lender, notwithstanding any change of name of the Lender and/or the Lender's absorption by or in or amalgamation with any other bank or entity or the acquisition of all or part of its undertaking by any other bank or entity and to all sums in respect of advances and other banking facilities from such other bank or entity.

10 ASSIGNMENT AND TRANSFER

10.1 Consent to Assignment/Transfer by the Lender

By this Deed, each of the Subordinated Creditors and the Borrower gives its irrevocable consent and continuing agreement to the assignment and/or transfer by the Lender of any one or more of its rights and/or obligations under this Deed on the terms and conditions set out in Clause 23 (*Changes to the Parties*) of the Senior Facility Agreement which terms and conditions are incorporated herein by reference *mutatis mutandis*.

10.2 Effect of Assignment by the Lender of Rights

Upon receipt by each Subordinated Creditor or the Borrower of written notice of any assignment of rights against it under this Deed, such assignment shall take effect as an absolute assignment and the assignee shall accordingly be entitled to sue each Subordinated Creditor or the Borrower without joining the assignor as a party to the proceedings. For the avoidance of doubt, the assignor shall be entitled to sue each Subordinated Creditor or the Borrower pursuant to any right not assigned without joining the assignee as a party to the proceedings.

10.3 Effect of Transfer by the Lender of Obligations

Each of the Subordinated Creditors and the Borrower irrevocably agrees that, if it receives written notice of any transfer of obligations owed to it under this Deed and the transferee confirms in such notice that it will perform such transferred obligations, then upon receipt of such notice such obligations shall be novated and, after that, shall be owed to such Subordinated Creditor or the Borrower by the transferee and not by the transferor.

10.4 No Assignment or Transfer by the Subordinated Creditors or the Borrower

Neither the Borrower nor any Subordinated Creditor may assign or transfer any one or more of its rights (if any) or obligations under this Deed.

10.5 Assignment of Subordinated Debt

So long as any Senior Debt is or may become outstanding, each Subordinated Creditor will not:

- (a) assign or dispose of, or create or permit to subsist any Security over, the Subordinated Debt or any interest in the Subordinated Debt or its proceeds to or in favour of any person;
- (b) subordinate any of the Subordinated Debt or its proceeds to any sums owing by the Borrower to any person other than the Lender; or
- (c) transfer by novation or otherwise any of its rights or obligations under any Subordinated Debt Documentation or in respect of any Subordinated Debt to any person.

10.6 Endorsement of Subordinated Debt Documentation

Each Subordinated Creditor will (1) endorse a memorandum of this Deed on all Subordinated Debt Documentation and (2) include a note in its published balance sheets or other financial statements indicating the subordination effected by this Deed.

11 GOVERNING LAW AND ENFORCEMENT

11.1 Governing Law

This Deed is governed by English law.

11.2 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a "**Dispute**").
- (b) The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- (c) This Clause 11.2 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

11.3 Service of process

Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in England and Wales):

- (a) irrevocably appoints Law Debenture Corporate Services Limited, currently at Fifth Floor, 100 Wood Street, London, EC2V, England 7EX as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed and/or any Finance Document; and
- (b) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

11.4 Waiver of immunity

Each Obligor irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by the Lender against that Obligor in relation to this Deed and/or any Finance Document and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- (c) waives all rights of immunity in respect of it or its assets.

12 MISCELLANEOUS

12.1 Interest

Any amounts due to the Lender by a Subordinated Creditor that are not paid upon a demand by the Lender shall accrue Interest. After such a demand, Interest will be calculated on the amount demanded, together with accrued interest as at the date of the demand. Interest payable by each Subordinated Creditor to the Lender will accrue both before and after judgment on a daily basis and on the basis of a 360 or 365 day year according to the usual practice of the Lender and shall be compounded (both before and after judgment) according to the usual practice of the Lender or, if there is no such practice, quarterly.

12.2 More Than One Subordinated Creditor

In this Deed:

- (a) the liability of each Subordinated Creditor under this Deed shall, unless the context otherwise requires, be joint and several;
- (b) any communication under this Deed shall be deemed to be served on every Subordinated Creditor if served on any Subordinated Creditor; and
- (c) if any person is admitted as a partner of such firm the other partners shall procure that such new partner undertakes to adopt and be bound by this Deed as if he had originally been a party to it.

12.3. Prohibited Recoveries by the Subordinated Creditors

If, contrary to Clauses 0 or 0, any Subordinated Creditor receives any monies or benefit from any source in relation to the Subordinated Debt, it shall pay an amount equal to (or to the value of) such monies or the benefit to the Lender for application towards the Senior Debt until the Senior Debt is irrevocably paid in full.

12.4 No Rights for the Borrower

The Borrower does not have any rights under or by virtue of this Deed.

12.5 Perpetuity

The perpetuity period for the trusts in this Deed is 80 years.

12.6 Amendments

No amendment of the terms of this Deed shall be valid unless in writing signed by each Subordinated Creditor and the Borrower and confirmed in writing by the Lender.

12.7 Counterparts

This Deed may be executed in several counterparts, each of which is an original, but all of which together constitute one and the same Deed.

12.8 Currency Indemnification

- (a) The Obligors' obligations hereunder to make payments in Dollars shall not be discharged or satisfied by any tender or any recovery pursuant to any judgment that is expressed in, paid in, or converted into any currency other than Dollars.
- (b) If the Lender receives an amount in respect of any Obligor's liability under this Deed or any other Transaction Document or if that liability is converted into a claim, proof, judgment or order in a currency other than Dollars:
 - (i) such Obligor shall indemnify the Lender as an independent obligation against any loss or liability arising out of or as a result of the conversion;
 - (ii) if the amount received by the Lender, when converted into Dollars at a market rate in the usual course of its business is less than the amount owed in Dollars, such Obligor shall forthwith on demand pay to the Lender an amount in Dollars equal to the deficit;
 - (iii) such Obligor shall pay to the Lender on demand any exchange costs and taxes payable in connection with any such conversion; and
 - (iv) such Obligor waives any right it may have in any jurisdiction to pay any amount under this Deed in a currency other than that in which it is expressed to be payable.
- (c) The foregoing indemnity shall constitute a separate obligation of each Obligor distinct from its other obligations hereunder and shall survive the giving or making of any order or judgment in relation to any of such other obligations.
- (d) To the extent that the undertaking in the preceding paragraphs of this Clause 12.8 may be unenforceable because it is violative of any law or public policy, each Obligor will contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction at such undertaking.

12.9 English Language

- (a) All documents to be provided or communications to be given or made under this Deed shall be in the English language;
- (b) All other documents provided under or in connection with any Finance Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

12.10 Notices

Any communication to be made under or in connection with this Deed and the other Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

12.11 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Deed and the other Finance Documents is:

- (a) in the case of each Obligor, that identified with its name below;
- (b) in the case of the Lender, that identified with its name below

or any substitute address, fax number or department or officer as the party may notify to the other parties by not less than five Business Days' prior notice.

The Borrower

Address: FX Energy Poland Sp. ZO.O
ul. Chalubinskiego 8
00-613 Warsaw, Poland
Fax: +48 22 630 6632
Attention: Country Manger

The Parent

Address: FX Energy, Inc.
3006 Highland Drive, Suite 206
Salt Lake City, Utah, 84106
United States of America
Fax: +1 801 486 5575
Attention: Chief Financial Officer

FX Partnership

Address: FX Energy C.V.
3006 Highland Drive, Suite 206
Salt Lake City, Utah, 84106
United States of America
Fax: +1 801 486 5575
Attention: Chief Financial Officer

FX Netherlands

Address: FX Energy B.V.
3006 Highland Drive, Suite 206
Salt Lake City, Utah, 84106
United States of America
Fax: +1 801 486 5575
Attention: Chief Financial Officer

The Lender

Address: The Royal Bank of Scotland plc
Project Finance
135 Bishopsgate
London EC2M 3UR
Fax: +44 (0)20 7085 5578
Attention: Colin Bousfield / Jonathan Verlander

12.12 Waivers and remedies cumulative

The rights of the Lender under this Deed and the other Finance Documents:

- (a) may be exercised as often as necessary;
- (b) are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically.

Delay in exercising or non-exercise of any right is not a waiver of that right.

12.13 Rights of Third Parties

A person who is not a party to this Deed has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

12.14 Saving of Rights

- (a) The rights and remedies of the Lender in relation to any misrepresentation or breach of warranty on the part of each of the Obligors shall not be prejudiced by any investigation by or on behalf of the Lender into the affairs of the Obligors, by the execution or the performance of this Deed or by any other act or thing which may be done by or on behalf of the Lender in connection with this Deed and which might, apart from this Clause 12.14, prejudice such rights or remedies; and
- (b) No course of dealing and no failure or delay by the Lender in exercising, in whole or in part, any power, remedy, discretion, authority or other right under this Deed or any other agreement shall waive or impair, or be construed to be a waiver of or an acquiescence in, such or any other power, remedy, discretion, authority or right under this Deed, or in any manner preclude its additional or future exercise; nor shall the action of the Lender with respect to any default, or any acquiescence by it therein, affect or impair any right, power or remedy of the Lender with respect to any other default. All waivers or consents given under this Deed shall be in writing.

12.15 Partial Invalidity

If, at any time, any provision of this Deed or any other Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

12.16 Successors and Assigns

This Deed binds and benefits the respective successors and permitted assigns of its parties. However, no Obligor may assign, transfer or delegate any of its rights or obligations under this Deed without the prior written consent of the Lender. The rights and obligations of the Lender under this Deed may be freely and unconditionally assigned, transferred or otherwise disposed of, in whole or in part, by the Lender to any person, corporate or otherwise, that is an assignee of the Loans on the terms and conditions set out in Clause 23 (*Changes to the Parties*) of the Senior Facility Agreement which terms and conditions are incorporated herein by reference *mutatis mutandis*. An assignment, transfer or disposal by the Lender of any of its rights, benefits and obligations under this Deed shall release the Lender from applicable obligations. Any aforesaid assignee/transferee of the Lender shall be deemed to be a party to this Deed as the Lender. Any purported assignment, transfer or disposal in violation of this Clause 12.16 shall be void.

12.17 Survival

All indemnities set forth herein shall survive the execution and delivery of this Deed and the repayment of the Loans and all other amounts payable hereunder.

12.18 Term of Deed

This Deed shall come into effect on the date of this Deed (except with respect to the Parent, in which case it shall come into effect on the earlier of the date of first Disbursement or the date on which the Parent receives all necessary approvals for this Agreement) and shall continue in force until the Senior Debt is irrevocably and unconditionally paid and discharged in full and the Lender confirms thereof to the Borrower in writing.

(The remainder of this page was left blank intentionally.)

ANNEX A

FORM OF ACCESSION UNDERTAKING

This Accession Undertaking, dated [_____] ("**Accession Undertaking**"), is made as a deed by [_____] a [_____] ("**Additional Subordinated Creditor**"), to [The Royal Bank of Scotland PLC] ("**Lender**"). Whenever used in this Accession Undertaking, unless otherwise defined herein or unless the context otherwise requires, terms defined in the Subordination Deed, ("**Subordination Deed**"), dated November [____], 2006 by [FX Energy Poland SP. Z O.O.], [FX Energy, Inc.], FX Energy Netherlands Partnership CV and FX Energy Netherlands BV to the Lender shall have the same meanings when used in this Accession Undertaking.

WHEREAS:

- (A) The Additional Subordinated Creditor has proposed to provide a credit facility to [the Borrower] in the principal amount of [_____] US Dollars (US\$[____]) pursuant to the documents listed on Annex A to this Accession Undertaking ("**Subordinated Debt Documentation**"); and
- (B) It is a requirement of the Subordination Deed that the Additional Subordinated Creditor become a party to the Subordination Deed by executing and delivering this Accession Undertaking to the Lender.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

- (1) The Additional Subordinated Creditor hereby adopts and agrees to the terms and conditions of, to be bound by and to perform and comply with all of the obligations under the Subordination Deed as if it were a named Subordinated Creditor therein.
- (2) The Additional Subordinated Creditor confirms that the representations and warranties set forth in Clause 0 of the Subordination Deed as applicable to a Subordinated Creditor are true and correct as of the date hereof and each subsequent Utilisation Date with respect to the Additional Subordinated Creditor.

- (3) Any notice, request or other communication to be given or made to the Additional Subordinated Creditor under this Accession Undertaking or the Subordination Deed shall be delivered to the address specified below or at such other address as it may notify the other parties to the Subordination Deed from time to time.

[_____]

[_____]

[_____]

Attention: [_____]

Facsimile: [_____]

Telephone: [_____]

- (4) By their signatures below, the Lender and each of the existing Subordinated Creditors hereby acknowledge the addition of the Additional Subordinated Creditor as a Subordinated Creditor under the Subordination Agreement.
- (5) This Accession Undertaking shall be governed by and construed in accordance with the laws of England.
- (6) This Accession Undertaking may be executed in one or more counterparts and by one or more parties to any counterpart, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, have caused this Accession Undertaking to be executed in their respective names on the day and year first written above.

Executed and Delivered as a Deed by
[Additional Subordinated Creditor]

Acting By: _____

Name: _____

Title: _____

***Executed and Delivered as a Deed by
FX ENERGY POLAND SP. ZO.O.***

Acting By: _____

Name: _____

Title: _____

***Executed and Delivered as a Deed by
FX ENERGY INC***

Acting By: _____

Name: _____

Title: _____

***Executed and Delivered as a Deed by
FX ENERGY NETHERLANDS PARTNERSHIP CV***

Acting By: _____

Name: _____

Title: _____

***Executed and Delivered as a Deed by
FX ENERGY NETHERLANDS BV***

Acting By: _____

Name: _____

Title: _____

***Executed and Delivered as a Deed by
THE ROYAL BANK OF SCOTLAND PLC***

Acting By: _____

Name: _____

Title: _____

ANNEX B

SUBORDINATED DEBT LOAN DOCUMENTATION

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives, have caused this Subordination Deed to be executed as a Deed in their respective names on the day and year first written above.

Executed and Delivered as a Deed by

FX ENERGY POLAND SP. ZO.O.

Acting By: /s/ David N. Pierce

Name: David N. Pierce

Title: Director

Executed and Delivered as a Deed by

FX ENERGY INC

Acting By: /s/ Clay Newton

Name: Clay Newton

Title: Director

Executed and Delivered as a Deed by

FX ENERGY NETHERLANDS PARTNERSHIP CV

David Pierce, for and on behalf of FX Drilling Company, Inc., which in turn acts in its capacity of general partner of FX Energy Netherlands Partnership CV.

Acting By: /s/ David N. Pierce

Name: David N. Pierce

Title: Director

Executed and Delivered as a Deed by

FX ENERGY NETHERLANDS BV

Acting By: /s/ Clay Newton

Name: Clay Newton

Title: Director

Executed and Delivered as a Deed by

THE ROYAL BANK OF SCOTLAND PLC

Acting By: /s/ C. Bousfield

Name: C. Bousfield

Title: _____

FX ENERGY, INC.
401(k) STOCK BONUS PLAN
RESTATED EFFECTIVE JANUARY 1, 2002
Prepared for
FX ENERGY, INC.
by
CALLISTER NEBEKER & McCULLOUGH

ARTICLE I ESTABLISHMENT AND RESTATEMENT

1.01 Establishment: This Plan is an amendment and restatement of the FX Energy, Inc. 401(k) Profit Sharing Plan ("Prior Plan") and is signed and executed on the day set forth at the end of this Plan, effective for all purposes (except as specifically set forth hereafter) as of January 1, 2002. This Plan is established and maintained by FX Energy, Inc., a corporation organized and existing under the laws of Nevada, with its principal offices located at Salt Lake City, Utah, hereinafter referred to as the "Plan Sponsor." With the consent of FX Energy, Inc., this Plan may be adopted by other Employers affiliated with FX Energy, Inc.

1.02 History: Effective as of January 1, 1999, FX Energy, Inc. established the FX Energy, Inc. 401(k) Profit Sharing Plan ("Original Plan") and executed as part of the Original Plan a Trust Agreement to provide retirement benefits for eligible Employees of FX Energy, Inc. and its affiliated companies. The Original Plan was subsequently restated and amended effective January 1, 2004, to comply with all requirements of the legislation known collectively as "GUST" and to include amendments to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") (the "GUST Plan").

1.03 Intent: FX Energy, Inc. intends by this Plan to amend, restate and supersede the GUST Plan for the benefit of its Employees and those Employees of its affiliated companies who shall meet the eligibility requirements hereinafter set forth and for the benefit of the beneficiaries of such Employees, respectively, as hereinafter provided. FX Energy, Inc., also intends that this Plan shall permit FX Energy, Inc. to make contributions of Employer Securities and shall permit Participants to invest in additional shares of Employer Securities. FX Energy, Inc. further intends that this Plan shall meet all the requirements of the Internal Revenue Code of 1986 ("Code") and the Employee Retirement Income Security Act of 1974 ("ERISA"). In addition to the 401(k) provisions herein, FX Energy, Inc., intends that this Plan be a stock bonus plan and hold Employer Securities as contributed. The Plan shall be interpreted, wherever possible, to comply with the terms of the Code and ERISA and all formal regulations and rulings issued thereunder.

1.04 EGTRRA Provisions: This Plan incorporates certain provisions intended to comply in good faith with of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). These provisions are to be construed in accordance with EGTRRA and guidance issued thereunder. Unless otherwise indicated provisions included in this Plan in compliance with EGTRRA shall be effective as of the first day of the first plan year beginning after December 31, 2001. Provisions included in this Plan that conform to EGTRRA shall supersede all other provisions of the Plan to the extent those provisions are inconsistent therewith.

1.05 Limitation on Applicability: The provisions of this Plan shall apply only to persons who are or who become Participants in this Plan on or after the Effective Date. Except as specifically provided in this Plan, the provisions of the Prior Plan will continue to apply to persons who are former Employees on the Effective Date, unless and until such time as such persons may again become Participants in this Plan.

ARTICLE II DEFINITIONS OF TERMS

As used in this Plan and Trust Agreement, the following words and phrases shall have the meanings indicated, unless the context clearly requires another meaning.

2.01 "Account" shall mean the Account established and maintained by the Plan Administrator for a Participant with respect to any interest in the Investment Fund. Each Participant's Account shall be credited or charged with contributions, distributions, earnings and losses as provided herein. The following separate sub-accounts shall be established for each Participant, as applicable, and in the aggregate they shall constitute the Participant's Account:

- (a) **“Participant Elective Deferral Account”** shall mean the Account that is attributable to the contributions made by the Employer pursuant to an election by the Participant under Section 5.01.
- (b) **“Participant Rollover Account”** shall mean the Account that is attributable to contributions received pursuant to Section 5.05.
- (c) **“Employer Matching Contribution Account”** shall mean the Account that is attributable to matching contributions made by the Employer pursuant to Sections 5.06 and 5.06A.
- (d) **“Employer Profit-Sharing Contribution Account”** shall mean the Account that is attributable to the Profit-Sharing contributions made by the Employer pursuant to Section 5.07.
- (e) **“Employer Securities Account”** shall mean the Account maintained for each Participant to hold the Participant's share of Employer Securities (including fractional shares) contributed in kind by the Employer to the Trust, forfeitures of Employer Securities, stock dividends on Employer Securities and Employer Securities acquired by the Trust pursuant to Participant investment direction.
- (f) **“General Investments Account”** shall mean the Account that is attributable to all contributions made to the Plan for the benefit of the Participant that are not comprised of Employer Securities, together with all forfeitures, earnings and accruals thereon.
- (g) **“Predecessor Plan Account”** shall mean the Account that is attributable to assets transferred from a Predecessor Plan (“Transferred Benefits”).

Certain sub-accounts may include or incorporate assets from other sub-accounts. The maintenance of separate sub-accounts is for accounting purposes only and segregation of the assets of the Plan shall not be required.

2.02 “Accrued Benefit” shall mean, as of any date, the sum of the values in each of a Participant's Accounts as of the most recent preceding Valuation Date, plus any contributions to and minus any distributions from the Accounts since the Valuation Date, plus the cash surrender value of all Insurance Contracts and allocated annuity contracts purchased for a Participant.

2.03 “Administratively Feasible” shall mean, when determining the date by which a Participant may receive a distribution of his or her Accrued Benefit from the Plan, a date that reasonably follows the final determination by the Plan Administrator of all factors that affect the value or amount of the balance in the Participant's Account. Such factors shall include the valuation of the assets attributable to the Account and the determination of all costs and expenses associated with the Account and the assets attributable thereto that must be paid prior to or in connection with the distribution. The Plan Administrator shall not make any distribution prior to the time the Plan Administrator shall have determined, within its sole and reasonable discretion, that a correct and complete valuation of the Account has been accomplished and that all attributable costs and expenses have been determined and applied, or in the alternative, provision for their application has been made. In regard to providing for application of costs and expenses, whenever any attributable cost or expense has not or cannot be determined within a reasonable time following a request for distribution, the Plan Administrator may establish a reasonable maximum percentage that can be distributed from the Participant's Account until such time as the Plan Administrator has determined (and applied, as appropriate) all additional costs applicable to the Participant's Account. If so elected by the Participant, he or she shall receive distribution of that percentage portion of his or her Account that the Plan Administrator has confirmed as distributable. The remainder shall be distributed once the Plan Administrator has determined and applied all additional costs deductible from the Participant's Account. The Plan Administrator shall provide any required notice to the Participant and comply with all applicable laws and regulations when determining and setting the maximum distribution percentage.

With respect to any distribution to a Participant that the Plan may or would be entitled to offset by application of ERISA §206(d)(4), no such distribution shall be Administratively Feasible prior to the date on which a final order or judgment is entered or could be entered, or a settlement agreement is executed, with respect to the circumstances giving rise to the possible application of that Section.

2.04 “Administrator” or “Plan Administrator” shall mean the person, persons, or corporation administering this Plan, as provided in Article XIII hereof, and any successor or successors thereto.

2.05 “Affiliated Group” shall mean a group of corporations, trades or businesses that constitute a controlled group of corporations, trades or businesses as defined in Code §§414(b) and (c) and shall also include a group of corporations, partnerships or other organizations that constitute an affiliated service group as defined in Code §414(m) or is treated as a single employer under Code §414(o) and the regulations thereunder.

2.06 “Age” shall mean a person's attained age in completed years and months as of the date determined.

2.07 “Anniversary Date” shall be the first day of each Plan Year.

2.08 “Beneficiary” shall mean any person, persons, or trust designated by a Participant on a form as the Plan Administrator may prescribe to receive any death benefit that may be payable hereunder if such person or persons survive the Participant. This designation may be revoked at any time in similar manner and form. In the event of the death of the designated Beneficiary prior to the death of the Participant, the Contingent Beneficiary shall be entitled to receive any death benefit.

2.09 “Board of Directors” shall mean:

- (a) In the case of a corporation, its Board of Directors; or
- (b) In the case of a partnership or joint venture, its controlling partners.

2.10 “Code” shall mean the Internal Revenue Code of 1986, as amended.

2.11 “Compensation” or “Annual Compensation” shall mean the amount of all base salary payments and wages for personal services rendered that is paid to an Employee during the Plan Year by an FX Employer, including overtime pay, commissions, bonuses and lump sum severance payments, unless such amounts are specifically excluded from consideration as Compensation under an employment agreement between the Employee and the FX Employer. Compensation shall be determined before deductions for federal income taxes, state income taxes and Social Security (FICA) taxes, before deductions for contributions by salary reduction to this Plan or any other plan that meets the requirements of Code §§401(k) or 125 and are sponsored by an FX Employer, before deductions for Participant contributions to any insurance program sponsored by an FX Employer and before deferral pursuant to any written contract of deferred compensation between the Participant and an FX Employer. Compensation shall not include director's fees, allowances or reimbursements for expenses, relocation payments, merchandise and service discounts, the value of insurance coverage, automobile or mileage allowances, parking or public transportation payments not includable in gross income by reason of Code §132(f)(4), amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by a Participant either becomes freely transferable or is no longer subject to a substantial risk of forfeiture, amounts realized from the sale, exchange, or other disposition of stock acquired under a qualified stock option, benefits in the form of property or the use of property, or other fringe benefits and amounts deferred pursuant to a written contract of deferred compensation between the Participant and an FX Employer. Unless specifically included by this Section, payments or contributions to or for the benefit of a Participant under any deferred compensation plan, pension, profit sharing, group life or health insurance, hospitalization or other employee benefit plan or any payments from such a plan and any amounts paid at or after Termination of Employment (on account of such termination), such as installment severance payments, vacation and sick leave cash-outs, shall not be included in Compensation. For purposes of a contribution or an allocation under the Plan based on compensation, Annual Compensation shall only include amounts actually paid an Employee during the period the Employee is a Participant in the Plan.

Effective for Plan Years commencing on and after January 1, 2002, Annual Compensation of each Participant taken into account in determining allocations for any Plan Year shall not exceed Two Hundred Thousand Dollars (\$200,000), as adjusted for cost-of-living increases in accordance with Code §401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to Annual Compensation for the Plan Year that begins with or within such calendar year. Prior to January 1, 2002, the Participant's Annual Compensation taken into account for any Plan Year shall not exceed One Hundred Fifty Thousand Dollars (\$150,000), or such greater or lesser amount, adjusted as provided in Code §401(a)(17)(B). Aggregation of family members' compensation shall not be required or allowed when determining Annual Compensation.

2.12 “Contingent Beneficiary” shall mean the person, persons, or trust duly designated by the Participant to receive any death benefit from the Plan in the event the designated Beneficiary does not survive the Participant.

2.13 “Disability” shall mean a mental or physical disease or condition that can be expected to result in death or that can be expected to last for a continuous period of at least six (6) months. In making this determination, the Administrator may employ a doctor who is licensed and qualified to practice medicine in any State to examine the Participant and then issue an opinion as to the disability of the Participant involved. Notwithstanding the foregoing, a Participant who is eligible to receive Social Security disability payments shall be deemed to be disabled without further proof.

2.14 “Distribution Date” shall mean the first day of the first month for which an amount is payable, or the date on which a benefit is actually paid or begins to be paid.

2.15 “Effective Date” shall mean generally January 1, 2002, or such alternate date with respect to any provision as may be specified herein. All provisions of this Plan as restated and amended shall be effective as of that date except to the extent this Plan provides for an alternate date. The original effective date of the Prior Plan was January 1, 1999. The Plan was restated for GUST effective January 1, 2004. This document replaces and supersedes the GUST Plan retroactive to January 1, 2002.

2.16 “Elective Deferral” shall mean a contribution to the Plan under a cash or deferred arrangement as defined in Code §401(k) to the extent not includable in gross income, which is made pursuant to an election and authorization by a Participant through a Salary Reduction Agreement consistent with the provisions of Section 5.01.

2.17 “Eligible Employee” shall mean any Employee who is not an Excluded Employee.

2.18 “Employee” shall mean any person who is employed by an FX Employer in any capacity other than solely as a director.

2.19 “Employer” or “FX Employer” shall mean the Plan Sponsor and any other entity who, with the authorization of the Plan Sponsor, may adopt this Plan. Solely for purposes of determining Eligibility Service, Years of Vesting Service and One Year Breaks in Service, any entity not adopting this Plan that, together with the Plan Sponsor, is a member of an Affiliated Group shall also be treated as an Employer for the period of time during which such entity was a member of such group. FX Employers may, at the option of the Plan Sponsor, be identified by a list attached as an addendum to this Plan, or through separate participation agreements, that reflect adoption by the FX Employer of this Plan.

2.20 “Employer Contribution” shall mean any contribution made to this Plan on behalf of an Employee by the Employer. For purposes of the investment provisions in Section 18.07 Elective Deferrals shall not be considered to be Employer Contributions, regardless of any other characterization of such Deferrals under the Plan or the Code.

2.21 “Employer Securities” shall mean common stock issued by the Employer (or by a corporation that is a member of an Affiliated Group of which the Employer is a member) that is readily tradeable on an established securities market. If there is no stock that meets this requirement, then “Employer Securities” shall mean common stock issued by the Employer (or by a corporation that is a member of an Affiliated Group of which the Employer is a member) having a combination of voting power and dividend rights equal to or in excess of --

- (a) that class of common stock of the Employer (or of any other such corporation) having the greatest voting power; and
- (b) that class of common stock of the Employer (or of any other such corporation) having the greatest dividend rights.

Noncallable preferred stock shall be deemed “Employer Securities” if it is convertible at any time into stock that constitutes “Employer Securities” hereunder and if the conversion is at a price that is reasonable on its date of acquisition by the Trust.

2.22 “Entry Date” shall mean, solely for purposes of participation under Article IV, the date an Employee became or becomes a Participant in the Plan. Entry Dates occur on each January 1, April 1, July 1 and October 1.

2.23 “ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

2.24 “Excluded Employee” shall mean a member of that class of Employees who are not eligible to participate in the Plan or accrue any benefit under the Plan, regardless of employment status or the number of hours worked by the Employee. The class of such Employees includes:

- (a) Employees whose employment is governed by the terms of a collective bargaining agreement between Employee representatives and the Employer under which retirement benefits were the subject of good faith bargaining between said Employee representatives and the Employer.
- (b) Employees who are designated by the Employer to be in any of the following classifications:
 - (i) consultant,
 - (ii) independent contractor, or
 - (iii) Leased Employee.

It is expressly intended that an individual identified or determined by the Employer to be in one of the above classifications shall be ineligible to participate in the Plan without regard to whether a court, administrative agency or other fact-finder subsequently determines that the individual was not or is not in fact in that classification.

- (c) Employees who are employed by an entity that is part of an Affiliated Group with an FX Employer, but that entity has not adopted and does not participate in this Plan.

2.25 “Fiduciary” shall mean and include the Trustee, Plan Administrator, Plan Sponsor, Investment Manager, and any other person or corporation who:

- (a) Exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control respecting management or disposition of its assets;
- (b) Renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of the Plan, or has any authority or responsibility to do so;
- (c) Has any discretionary authority or discretionary responsibility in the administration of the Plan; or
- (d) Is described as a “fiduciary” in Sections 3(14) or (21) of ERISA or is designated to carry out fiduciary responsibilities pursuant to this agreement to the extent permitted by Section 405(c)(1)(B) of ERISA.

2.26 “Highly Compensated Employee” or “HCE” shall mean an Employee, other than a non-resident alien receiving no earned income from the Employer from sources within the United States, who:

- (a) was at any time during the Plan Year or the Look-back Year a Five Percent Owner (as defined in Section 19.02(c)); or
- (b) received Compensation from the Employer in the Look-back Year in excess of Ninety Thousand Dollars (\$90,000) and was in the Top Paid Group for the Look-back Year.

“Look-back Year” means the Plan Year immediately preceding the Plan Year for which the determination is being made. An Employee is in the “Top Paid Group” if the Employee is in the group consisting of the top twenty percent (20%) of Employees when ranked on the basis of Compensation paid during the Look Back Year. When calculating the number of Employees in the Top Paid Group the following Employees shall be excluded: (i) Employees who have not completed 6 months of service; (ii) Employees who normally work less than 17½ hours per week; (iii) Employees who normally work not more than six months during any year; (iv) Employees who have not attained Age 21; and (v) Employees who are Excluded Employees by reason of Section 2.24(a). The Ninety Thousand Dollar (\$90,000) amount in (b) above shall be adjusted for cost of living as provided under Code §415(d), except that the base period shall be the calendar quarter ending September 30, 1996.

A former Employee who was a Highly Compensated Employee upon Termination of Employment or at any time after attaining Age fifty-five (55) shall be treated as a Highly Compensated Employee. No family aggregation rules shall apply when determining who is a Highly Compensated Employee and no Employee who is a family member of any Highly Compensated Employee shall be required or considered to be a single Employee with the Highly Compensated Employee. For purposes of this Section Compensation is defined as in Section 7.01(b) of this Plan, but shall include contributions made by the Employer to a plan of deferred compensation otherwise excluded in Section 7.01(b).

2.27 “Inactive Participant” shall mean an individual who retains and is entitled to receive a distribution of an Accrued Benefit from the Plan, but who is not currently eligible to make Elective Deferral Contributions or receive an allocation of Employer Contributions or forfeitures, without regard to whether the individual has incurred a Termination of Employment.

2.28 “Investment Fund” shall mean all assets of the Trust Fund.

2.29 “Investment Manager” shall mean any Fiduciary (other than a Trustee or Named Fiduciary) who:

- (a) Has the power to manage, acquire or dispose of any asset of the Plan;
- (b) Is (i) registered as an investment advisor under the Investment Advisors Act of 1940; (ii) a bank as defined in that Act; or (iii) is an insurance company qualified to perform services described in subsection (a) above under the laws of more than one state; and
- (c) Has acknowledged in writing that he is a Fiduciary with respect to the Plan.

2.30 “K-Test Average Contribution Percentage” shall mean the average (expressed as a percentage) of the K-Test Contribution Percentages of the Participants in a group.

2.31 “K-Test Contribution Percentage” shall mean the ratio (expressed as a percentage) of a Participant's K-Test Contributions for a Plan Year to the Participant's Compensation for the Plan Year. The K-Test Contribution Percentage for a Participant who is a Highly Compensated Employee shall be determined by combining all cash or deferred arrangements under which the Highly Compensated Employee is eligible to participate (other than those that may not be permissively aggregated) with this Plan as though they were a single arrangement. The K-Test Contribution Percentage for a Participant who has made no Elective Deferral contributions and who is not credited with any K-Test Contributions for the Plan Year shall be zero (0).

2.32 “K-Test Contributions” shall mean, for any Plan Year, a Participant's Elective Deferrals, plus, if so elected by the Employer, part or all of the Qualified Non-Elective Contributions and Qualified Matching Contributions allocated to the Participant for such year, provided that, any Qualified Non-Elective Contributions included as K-Test Contributions shall not increase the difference between the K-Test Average Contribution Percentage for Highly Compensated Employees and the K-Test Average Contribution Percentage for Non-Highly Compensated Employees; and, further provided that, no Qualified Non-Elective Contributions or Qualified Matching Contributions included as K-Test Contributions shall be included as M-Test Contributions. In determining the amount of a Participant's Elective Deferrals under this Section the Plan Administrator shall take into account elective deferrals made by the Participant under any other plan that is aggregated with this Plan for purposes of Code §401(a)(4) or Code §410(b) (other than Code §410(b)(2)(A)(ii)) and any other plan satisfying Code §401(k)(3) and Reg. §1.401(k)-1(b)(3) that the Employer elects to permissively aggregate with this Plan, by treating all such plans and this Plan as a single plan.

2.33 “Leased Employee” shall mean any person who, pursuant to an agreement between the FX Employer and any other person or organization (leasing organization), performs services for the Employer (or for the FX Employer and related persons determined in accordance with Code §414(n)(6)), and the services are performed under the primary direction or control of the FX Employer.

Contributions or benefits provided by the leasing organization that are attributable to services performed for the Employer shall be treated as provided by the Employer. If the Leased Employees constitute not more than twenty percent (20%) of the FX Employer's non-highly compensated work force, the preceding sentence shall not apply to any Leased Employee who is covered by a money purchase pension plan providing:

- (a) A non-integrated employer contribution rate of at least ten percent (10%) of compensation; and
- (b) Immediate participation with respect to any person who has received compensation from the leasing organization of at least One Thousand Dollars (\$1,000) in any one of the four most recent plan years of such plan; and
- (c) Full and immediate vesting.

2.34 “Limitation Year” shall mean the Plan Year, unless the Employer elects a different twelve (12) month period.

2.35 “M-Test Average Contribution Percentage” shall mean the average (expressed as a percentage) of the M-Test Contribution Percentages of the Participants in a group.

2.36 “M-Test Contribution Percentage” shall mean the ratio (expressed as a percentage) of a Participant's M-Test Contributions for a Plan Year to the Participant's Compensation for the Plan Year. The M-Test Contribution Percentage for a Participant who is a Highly Compensated Employee shall be determined by combining all plans subject to Code §401(m) under which the Highly Compensated Employee is eligible to participate (other than those that may not be permissively aggregated) with this Plan as though they were a single plan. For this purpose, Compensation is defined as in Section 7.01(b) of the Plan. The M-Test Contribution Percentage for a Participant who has made no Elective Deferral contributions and who is not credited with any M-Test Contributions for the Plan Year shall be zero (0).

2.37 “M-Test Contributions” shall mean for any Plan Year Matching Contributions made pursuant to Section 5.05 less any of the Participant's Qualified Matching Contributions included as K-Test Contributions. If so elected by the Employer, part or all of the Qualified Non-Elective Contributions allocated to the Participant for such year shall be included as an M-Test Contribution, provided that, any Qualified Non-Elective Contributions included as M-Test Contributions shall not increase the difference between the M-Test Average Contribution Percentage for Highly Compensated Employees and the M-Test Average Contribution Percentage for Non-Highly Compensated Employees; and, further provided that, no Qualified Non-Elective Contributions included as M-Test Contributions shall be included as K-Test Contributions. In determining the amount of M-Test Contributions under this Section the Plan Administrator shall take into account all employee contributions made by the Participant and all matching contributions made by the Employer under any other plan that is aggregated with this Plan for purposes of Code §401(a)(4) or Code §410(b) (other than Code §410(b)(2)(A)(ii)) and any other plan satisfying Code §401(k)(3) and Reg. §1.401(k)-1(b)(3) that the Employer elects to permissively aggregate with this Plan, by treating all such plans and this Plan as a single plan.

2.38 “Matching Contribution” shall mean any Employer contribution made to the Plan on behalf of an Employee on account of an Employee's Elective Deferral, but excluding, for Plan Years beginning after December 31, 1988, any contribution used to meet the minimum required allocation under Section 19.03. For Plan Years commencing after December 31, 2001, Matching Contributions may be used to satisfy the minimum required contribution requirements of Section 19.03 to the extent provided in Section 19.09.

2.39 “Named Fiduciary” shall mean the Plan Administrator and any Committee appointed and so designated by the Plan Administrator.

2.40 “Net Profit” for any year shall mean the current and accumulated earnings of the Employer as reflected by its books of account for the particular fiscal year prior to the provision for Federal and state income tax, without increase or decrease due to corrections or adjustments subsequently made, but excluding the cost of contributions made under this Plan or any other qualified plan.

2.41 “Non-Highly Compensated Employee” or “NHCE” shall mean an Employee who is not a Highly Compensated Employee.

2.42 “Normal Retirement Age” shall mean age 65.

2.43 “Normal Retirement Date” shall mean the first day of the calendar month coinciding with or next following a Participant's Normal Retirement Age.

2.44 “Participant” shall mean any Eligible Employee who has satisfied all of the age and service requirements of Section 4.01. Such an Eligible Employee shall be deemed to be a Participant in the Plan for purposes of any applicable non-discrimination test, including the K-Test and M-Test defined in this Plan, without regard to whether he has executed a Salary Reduction Agreement and agreed to have contributions made to this Plan through Elective Deferrals. A Participant may nevertheless be considered “active” or “inactive” depending on whether he is eligible to make Elective Deferral Contributions or receive an allocation of Employer Contributions. A Participant who has an Account in the Plan but is an Inactive Participant because he or she has incurred a Termination of Employment shall not be treated as a Participant in the Plan for purposes of any applicable non-discrimination test, including the K-Test and M-Test defined in this Plan in any Plan Year following the Plan Year in which the Participant’s Termination of Employment has occurred.

2.45 “Plan” shall mean the Plan as stated herein and as may be amended from time to time, denominated as the “FX Energy, Inc. 401(k) Stock Bonus Plan.” The Employer intends the Plan to satisfy the requirements of Code Section 401(k) and to include provisions permitting the contribution of Employer Securities.

2.46 “Plan Sponsor” shall mean FX Energy, Inc.

2.47 “Plan Year” shall mean the one year period commencing January 1, and ending December 31.

2.48 “Predecessor Plan” shall mean any Plan that has been previously amended or restated for GUST and whose assets have been transferred to this Plan pursuant to a merger or trust to trust transfer. The benefits that are funded by the transferred assets shall be protected benefits within the meaning of Code §411(d)(6) and the regulations thereunder and prior to their transfer to this Plan shall be subject to all provisions of the Predecessor Plan, including any transitional rules required by prior legislation such as GUST and applicable IRS regulations.

2.49 “Prior Plan” shall mean this Plan as it existed prior to the Effective Date.

2.50 “Qualified Matching Contribution” shall mean a Matching Contribution with respect to which the requirements of Reg. §1.401(k)-1(b)(5) and Code §§401(k)(2)(B) and (C) are met.

2.51 “Qualified Non-Elective Contribution” shall mean any Employer contribution to the Plan other than a Matching Contribution with respect to which the Employee may not elect to have the contribution paid to the Employee in cash instead of being contributed to the Plan and (if treated as K-test Contributions) the requirements of Reg. §1.401(k)-1(b)(5) and Code §§401(k)(2)(B) and (C) are met or (if treated as M-Test Contributions) the requirements of Reg. §1.401(m)-1(b)(5) are met.

2.52 “Transferred Benefits” shall mean those benefits funded by assets transferred to the Plan from a Predecessor Plan. Transferred Benefits shall include all optional forms of benefits available under the Predecessor Plan(s) from which the Transferred Benefits were received, unless unavailable under this Plan.

2.53 “Trust” shall mean the Trust created under the Prior Plan, designated as the FX Energy, Inc. 401(k) Profit Sharing Plan Trust, and continued through the restated and amended Trust Agreement, effective January 1, 2004, and renamed the FX Energy, Inc. 401(k) Stock Bonus Plan Trust.

2.54 “Trust Fund” shall mean all cash, Employer Securities, securities, annuity contracts, Insurance Contracts, real estate and any other property held by the Trustee pursuant to the terms of this Agreement, together with investment earnings or losses thereon, less any applicable expenses of the Plan and Trust.

2.55 “Trustee” shall mean the bank, trust company or other corporation possessing trust powers under applicable State or Federal law, or one or more individuals, or any combination thereof named as parties hereto, or any successor Trustee or Trustees hereunder.

2.56 “Valuation Date” shall mean the date on which the Trust Fund and Accounts are valued, as provided in this Plan. The following shall be Valuation Dates:

- (a) the last day of each Plan Year (the “Annual Valuation Date”);
- (b) any other day designated by the Plan Administrator and set forth in a written notice to the Trustee as the Plan Administrator may consider necessary or advisable to provide for the orderly and equitable administration of the Plan.

2.57 “Vested Interest” or “Vested Accrued Benefit” shall mean the portion of a Participant's Accrued Benefit that is non-forfeitable.

ARTICLE III SERVICE DEFINITIONS AND RULES

3.01 “Eligibility Computation Period” shall mean the period used to measure Eligibility Service and Breaks in Service for purposes of eligibility to begin and maintain participation in the Plan.

- (a) **“Initial Eligibility Computation Period”** shall mean, for any Employee in any Plan Year in which a Year of Eligibility Service is required, the twelve (12) consecutive month period which begins on the Employee's Employment Commencement Date or Re-employment Commencement Date.
- (b) **“Subsequent Eligibility Computation Period”** shall mean, for any Employee in any Plan Year in which a Year of Eligibility Service is required, the Plan Year beginning with or within the Initial Eligibility Computation Period and succeeding Plan Years.
- (c) For any Plan Year in which less than a Year of Eligibility Service is required for participation, the Eligibility Computation Period shall be the number of months or days of Eligibility Service required.

3.02 “Eligibility Service” shall mean service for any period during which an Employee receives credit for Hours of Service for an FX Employer.

3.03 “Employment Commencement Date” shall mean the date on which the Employee first performs an Hour of Service for an FX Employer.

3.04 “Hour of Service” shall mean and be determined as follows:

- (a) Each hour for which an Employee is paid, or entitled to payment, for the performance of duties for the Employer. These hours shall be credited to the Employee for the year or years in which the duties are performed.
- (b) Each hour for which an Employee is paid, or entitled to payment, by the Employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or Leave of Absence. Notwithstanding the preceding sentence:
 - (1) No more than five hundred and one (501) Hours of Service are required to be credited under this paragraph during which the Employee performs no duties (whether or not such period occurs in a single computation period);

- (2) An hour for which an Employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workmen's compensation or unemployment compensation or disability insurance laws; and
- (3) Hours of Service are not required to be credited for a payment that solely reimburses an Employee for medical or medically related expenses incurred by the Employee.

For purposes of this paragraph (b), a payment shall be deemed to be made by or due from an Employer regardless of whether such payment is made by or due from the Employer directly, or indirectly through, among others, a trust fund or insurer to which Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate. Hours under this paragraph (b) shall be calculated and credited pursuant to DOL Reg. §2530.200b-2, paragraphs (b) and (c), which are incorporated herein by this reference.

- (c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer. The same Hours of Service shall not be credited both under paragraph (a) or paragraph (b), as the case may be, and under this paragraph (c). These hours shall be credited to the Employee for the year or years to which the award or agreement pertains rather than the year in which the award, agreement or payment is made.
- (d) Hours of Service shall be determined on the basis of actual hours for which an Employee is paid, entitled to payment or for which back pay is awarded or agreed to.
- (e) For Plan Years beginning after December 31, 1984, in the case of an Employee who is absent from work for any period:
 - (1) By reason of the pregnancy of the Employee;
 - (2) By reason of the birth of a child of the Employee;
 - (3) By reason of the placement of a child with the Employee in connection with the adoption of such child by such Employee; or
 - (4) For purposes of caring for such child for a period beginning immediately following such birth or placement.

Hours of Service shall include the Hours of Service that otherwise would normally have been credited to such Employee but for such absence; or in any case in which the Plan is unable to determine the Hours of Service to be credited, eight (8) Hours of Service for each regularly scheduled work day of such absence. The total number of hours treated as Hours of Service under this Section by reason of any pregnancy or placement shall not exceed five hundred one (501) hours less the number of Hours of Service credited to an Employee pursuant to subsections (a) through (e) above, for an absence described in this subsection (f). The hours described in this subsection (f) shall be treated as Hours of Service only in the computation period in which the absence from work begins, if an Employee would be prevented from incurring a One-Year Break in Service in such computation period solely because the period of absence is treated as Hours of Service as provided herein; or in any other case, in the immediately following computation period. Notwithstanding the foregoing, no credit will be given pursuant to this subsection (f) unless the Employee furnishes to the Plan Administrator such timely information as the Plan Administrator may reasonably require to establish that the absence from work is for reasons referred to herein, and the number of days for which there was such an absence.

- (f) Hours of Service shall be aggregated for service with all FX Employers, however, in no event shall duplicate credit be given for the same Hours of Service.
- (g) The Plan Administrator may use any records to determine Hours of Service that it considers an accurate reflection of the facts.
- (h) When crediting Hours of Service for Employees who are paid on an hourly basis the Plan Administrator shall use the “actual” method. For purposes of the Plan, “actual” method shall mean the determination of Hours of Service from records of hours worked and hours for which the Employer makes payment or for which payment is due from the Employer. When crediting Hours of Service for Employees who are not paid on an hourly basis, the Plan Administrator shall use the “salaried earnings” method. With respect to an Employee whose Compensation consists primarily of periodic salary payments, “salaried earnings” method shall mean the determination of Hours of Service from records showing payments made to the Employee or payments due to the Employee from the Employer. In applying the “salaried earnings” method, an Employee who receives credit for four hundred thirty-five (435) hours and for eight hundred seventy (870) hours shall be deemed to have received credit for the equivalent of five hundred (500) Hours of Service and one thousand (1,000) Hours of Service respectively.

3.05 “One Year Break in Service” shall mean a twelve (12) consecutive month period during which an Employee has not completed more than five hundred (500) Hours of Service, regardless of whether the Employee has incurred a Termination of Employment. For purposes of vesting, such twelve (12) consecutive month periods shall be measured on the same basis as Years of Vesting Service. For purposes of eligibility to participate, the Plan shall not apply any break in service rule. The following types of absence shall not constitute a One-Year Break in Service:

- (a) Temporary leave of absence granted by the Employer for sickness, or extended vacation, provided that persons under similar circumstances shall be treated alike;
- (b) Absence due to illness or accident while regular remuneration is paid;
- (c) Absence for military service or significant civilian service for the United States, provided the absent Employee returns to service with the Employer within thirty (30) days of his/her release from such active military duty or service or any longer period during which his/her right to re-employment is protected by law.

3.06 “Re-employment Commencement Date” shall mean the date on which an Employee, who has both incurred a Termination of Employment from the Employer and has had a One Year Break in Service as a result of that termination, first performs an Hour of Service for the Employer following such Break in Service.

3.07 “Termination of Employment” with respect to any Employee or Participant shall occur upon the separation from service (effective January 1, 2002, severance from employment) of the Employee or Participant due to resignation, discharge, death, retirement, failure to return to active work at the end of an authorized leave of absence or the authorized extension(s) thereof, failure to return to active work when duly called following a temporary layoff, or upon the happening of any other event or circumstance which, under the then current policy of the FX Employer, results in the termination of the employer-employee relationship. Termination of Employment shall not be deemed to occur merely because of a transfer between FX Employers.

3.08 “Vesting Computation Period” shall mean the twelve (12) consecutive month period used to measure Years of Vesting Service and Breaks in Service for purposes of vesting. The twelve (12) consecutive month period used for the Vesting Computation Period shall be the Plan Year.

3.09 “Year of Service” shall mean a twelve (12) consecutive month period during which an Employee has completed at least one thousand (1000) Hours of Service.

3.10 “Year of Eligibility Service” shall mean an Eligibility Computation Period during which an Employee has completed at least one thousand (1000) Hours of Service.

3.11 “Year of Vesting Service” shall mean a Vesting Computation Period during which an Employee has completed at least one thousand (1000) Hours of Service. A Participant's Years of Vesting Service shall be determined based on all Vesting Computation Periods containing or beginning after his/her Employment Commencement Date or Re-employment Commencement Date.

3.12 Special Rules for Crediting Service: In crediting Service under the Plan for any Employee who is or was employed by a Participating Employer the rules for crediting Service as set forth in each respective Participation Agreement shall apply.

3.13 Qualified Military Service Rules: The following rules shall apply to an Employee who has Qualified Military Service while employed by an FX Employer.

- (a) “Qualified Military Service” shall mean service by an Employee in the uniformed services of the United States (as defined in chapter 43 title 38 of the United States Code), provided:
 - (1) the employee provides advance notice of the service to the FX Employer, when such notice is practical;
 - (2) the employee is not dishonorably discharged;
 - (3) the employee is re-employed by the FX Employer within thirty (30) days following the completion of the service or any longer period during which his/her right to re-employment is protected by law; and
 - (4) the cumulative length of the Employee’s absence from employment due to the service does not exceed five (5) years.
- (b) An Employee’s Qualified Military Service shall be treated as service for the FX Employer for all purposes under the Plan. An Employee’s imputed Hours of Service during Qualified Military Service shall be:
 - (1) the Hours of Service the Employee would have worked but for his/her Qualified Military Service; and
 - (2) if the Hours of Service cannot reasonably be determined, the Hours of Service the Employee would have worked had he or she worked during his/her Qualified Military Service at his/her average rate during the twelve (12) month period immediately preceding his/her Qualified Military Service or, if shorter, his/her entire period of employment preceding the Qualified Military Service.
- (c) Compensation (as defined in Section 2.11) shall include imputed compensation during an Employee’s Qualified Military Service. Imputed compensation shall be:
 - (1) the compensation the Employee would have received but for his/her Qualified Military Service; or
 - (2) if the compensation is not reasonably certain, the compensation the Employee would have received had he or she received compensation during his/her qualified Military Leave at his/her average rate during the twelve (12) month period immediately preceding his/her Qualified Military Service, or, if shorter, his/her entire period of employment preceding his/her Qualified Military Service.

- (d) A Participant who returns to employment after any Qualified Military Service shall be entitled to make additional Elective Deferrals to the Plan up to the maximum amount of the Elective Deferrals the Participant would have been permitted to make based upon his/her imputed compensation during the Qualified Military Service, taking into account any other Elective Deferrals made by the Participant during the Qualified Military Service. The period during which the additional Elective Deferrals may be made shall commence on the date the Participant returns to employment and shall extend until the expiration of the lesser of (i) the period that is three (3) times the length of the Participant's Qualified Military Service or (ii) five (5) years. Payment of Matching Contributions attributable to Elective Deferrals of imputed compensation during Qualified Military Service shall be made at the same time as other Matching Contributions, based on the time the Elective Deferrals are actually paid to the Plan. The Matching Contributions need not include earnings that would have accrued had the Participant continued performing his/her duties for the Employer during Qualified Military Service.
- (e) Elective Deferrals of a Participant's imputed compensation during his/her Qualified Military Service shall be treated as Elective Deferrals and as K-Test Contributions with respect to the Plan Year to which the imputed compensation relates, if this Plan Year is not the same Plan Year in which the Elective Deferrals are received by the Plan. Any Matching Contributions based on Elective Deferrals of a Participant's imputed compensation during his/her Qualified Military Service shall be treated as M-Test Contributions with respect to the Plan Year to which the Elective Deferrals relate, if this Plan Year is not the same Plan Year in which the Elective Deferrals are received by the Plan.
- (f) Repayment of any Participant loan from the Plan shall be suspended during Qualified Military Service and the loan repayment period shall be extended by the length of the Qualified Military Service.

ARTICLE IV ELIGIBILITY AND PARTICIPATION

4.01 Age and Service Requirements: An Eligible Employee shall become a Participant in this Plan on the first Entry Date coincident with or next following the date on which he satisfies all of the following requirements:

- (a) attains the Age of twenty-one (21) years;
- (b) completes 90 days of Eligibility Service following his Employment Commencement Date; and
- (c) is employed on the Entry Date.

An Eligible Employee who becomes a Participant and who also executes a written Salary Reduction Agreement in the manner set forth in procedures issued by the Plan Administrator shall be considered to be an active Participant. An Eligible Employee shall not be required to execute a Salary Reduction Agreement in order to become an active Participant in the Plan, however, as a condition to participation in Salary Reduction Contributions the Eligible Employee shall first execute a written Salary Reduction Agreement in the manner set forth in procedures issued by the Plan Administrator. An Employee who was a Participant in the Prior Plan on the day before the Effective Date shall continue as a Participant in this Plan on that date.

4.02 Plan Administrator to Furnish Eligibility Information: As soon as practicable after each Employee's Employment Commencement Date, the Plan Administrator shall determine the Entry Date when the Employee shall first become eligible to participate in the Plan and shall notify each Employee of his/her eligibility, and of any application or other requirements for participation.

4.03 Information to be Provided by Employee: At the request of the Plan Administrator, each Eligible Employee shall furnish such information as is not available from the Employer. As a condition to participation in the Plan, the Employee shall first complete, execute and deliver a written Salary Reduction Agreement as reasonably required by the Plan Administrator.

4.04 Reclassification of an Eligible Employee or Excluded Employee: Any Eligible Employee, whether or not he has previously participated in the Plan, who was previously classified as an Excluded Employee and is reclassified as an Eligible Employee shall be eligible to enter the Plan as an active Participant on the later of the date of his/her reclassification or the Entry Date he would otherwise join if he had not been classified as an Excluded Employee, provided he has otherwise satisfied the requirements of Section 4.01.

Any Participant who is reclassified as an Excluded Employee during the Plan Year shall immediately cease Elective Deferrals to the Plan and shall no longer be eligible for Employer Contributions as of the date the reclassification occurs.

4.05 Re-employment and Commencement of Participation: An Eligible Employee who had met the requirements of Section 4.01(a), (b) or (c) but terminated employment prior to his/her Entry Date shall become a Participant on the date he is re-employed by the Employer, but in no event earlier than the Entry Date he would have joined had he not ceased employment. An Employee who was a Participant shall again become a Participant on the date he is re-employed by the Employer. The Employee who becomes a Participant may immediately elect to execute a Salary Reduction Agreement and commence Elective Deferrals, if it is executed within the time period specified by the Plan Administrator pursuant to a uniform and non-discriminatory policy. If not so executed, the Participant may elect to execute a Salary Reduction Agreement and commence Elective Deferrals as of the first day of any subsequent calendar quarter thereafter.

4.06 Election Not To Participate: At any time after the Plan Administrator notifies an Employee of his eligibility to participate in this Plan, the eligible Employee may elect not to become an active Participant by not executing a Salary Reduction Agreement or by indicating on the enrollment form his election not to participate. The electing Employee may later become an active Participant effective as of any subsequent Entry Date, if the Employee then meets the requirements for participation under this Article IV and properly executes a Salary Reduction Agreement.

4.07 Effect of Participation: A Participant who has executed a Salary Reduction Agreement shall be conclusively deemed to have assented to this Plan and to any subsequent amendments, and shall be bound thereby with the same force and effect as if he had formally executed this Plan.

ARTICLE V PARTICIPANT AND EMPLOYER CONTRIBUTIONS

5.01 Elective Deferrals:

(a) Each Participant may elect to defer any whole percentage of the Participant's Annual Compensation, subject to a minimum of one percent (1%) and to a maximum of one hundred percent (100%). The amount of the deferral shall be contingent on the Participant electing and authorizing the Elective Deferral amount through a Salary Reduction Agreement. The Salary Reduction Agreement and the Participant's authorization thereunder may be evidenced by a written document executed by the Participant and filed with the Administrator on a form prescribed for this purpose or by oral instructions directly from the Participant to the Administrator and confirmed to the Participant in writing. The Salary Reduction Agreement may also be completed and executed by the Participant through any electronic means or method approved by the Plan Administrator. The Salary Reduction Agreement shall be subject to the following rules:

(1) The Salary Reduction Agreement shall apply to each payroll period during which an effective Salary Reduction Agreement is on file with the Administrator. The Salary Reduction Agreement shall be applicable only to the following forms of Compensation: wages, salary, overtime pay and commissions. With the approval of the Administrator a Participant may identify different components of his Compensation (such as wages, overtime pay, etc.) and specify different percentage deferral rates to apply to each component. A Participant may also elect and authorize through a separate Salary Reduction Agreement an Elective Deferral amount (subject to the same rules in (a) above) from any bonus or lump sum severance payment component of the Participant's Compensation.

- (2) The amount by which the Participant's Compensation is reduced under the Salary Reduction Agreement may be changed by a Participant no more than quarterly during the Plan Year. A change shall be evidenced by a written document, by oral instructions directly from the Participant with written confirmation in accordance with rules and procedures established by the Administrator or through any electronic means or method approved by the Plan Administrator.
 - (3) Salary Reduction Agreements and Amendments to Salary Reduction Agreements shall be effective as of the first payroll period commencing with or immediately following the first day of the calendar quarter following the date the Salary Reduction Agreement or the Amendment is executed orally authorized or electronically completed by the Participant and received and confirmed by the Administrator.
 - (4) The Administrator may amend or revoke a Salary Reduction Agreement with any Participant at any time if the Administrator determines that a revocation or amendment is necessary to ensure that the Participant's Elective Deferral for any Plan Year will not exceed any Plan limitations.
- (b) The Elective Deferral amounts designated by the Participant in the Salary Reduction Agreement shall be withheld and contributed to the Plan by the Employer without regard to Net Profits to the Participant's Elective Deferral Account. Unless otherwise authorized by the Plan Administrator, contributions made through payroll deductions shall be pursuant to the Salary Reduction Agreement executed by the Participant or orally authorized by the Participant and confirmed by the Plan Administrator or authorized by any other electronic means or method approved by the Plan Administrator.
 - (c) Commencing January 1, 2002, and for all Plan Years thereafter, an Employee who is eligible to make Elective Deferrals under this Plan and who attains Age 50 before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, Code §414(v). Catch-up contributions shall not be taken into account for purposes of the provisions of the Plan implementing the required limitations of Code §§402(g) and 415. The Plan Administrator shall not treat catch up contributions as failing to satisfy any provisions of the Plan implementing the requirements of Code §§401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416, as applicable.
 - (e) Each Eligible Employee (whether or not an active Participant in the Plan) shall receive from the Plan Administrator no later than one (1) month prior to January 1, 2005, and thereafter, at least one month before the commencement of each subsequent Plan Year, a written notice describing the Eligible Employee's rights and obligations under the Plan, including the Eligible Employee's right to receive a fully vested Matching Contribution if the Eligible Employee executes a Salary Reduction Agreement and makes Elective Deferral Contributions to the Plan. The notice shall be sufficiently accurate and comprehensive to inform the Eligible Employee of the rights and obligations, and shall be written in a manner calculated to be understood by the Eligible Employee.

5.02 Payment to Trustee: The Employer shall transmit to the Trustee the amounts withheld by it pursuant to Section 5.01 above as soon as Administratively Feasible, but in no event later than the fifteenth (15th) business day of the month following the month in which the amounts are withheld or received by the Employer. However, the Employer shall not transmit to the Trustee any amounts withheld by it during the Plan Year pursuant to a deferral election under Section 5.01 that, in the Plan Administrator's opinion, would cause the Plan to fail to meet the limitations described in Section 5.10 for that Plan Year. Such amounts withheld and not transmitted to the Trustee shall be returned by the Employer to the respective Participants.

5.03 Suspension of Deferrals: A Participant may notify the Plan Administrator electronically, orally or in writing of his/her intention to suspend his/her election to have a portion of his/her Annual Compensation deferred. The suspension shall be effective for the payroll period commencing thirty (30) days after the date the notice of suspension is received (unless an earlier effective date is Administratively Feasible) and for each payroll period thereafter, until a new Salary Reduction Agreement is entered into by the Participant. The Participant shall be considered a Participant hereunder for all other purposes if his/her employment continues, however, he shall not be considered to be an active Participant.

5.04 No Voluntary Contributions by Participants: A Participant shall not be required nor permitted to make voluntary after-tax contributions to the Plan.

5.05 Rollover Contributions by Participants: A Participant (or an Employee who is expected to become a Participant) may rollover directly to this Plan (or indirectly through an individual retirement account, annuity or bond) the cash or cash proceeds from the sale of property distributed to the Employee in the form of an “eligible rollover distribution” as that term is defined in Section 11.03(a)) from another plan qualified under Code §401(a). For this purpose this Plan shall be an “eligible retirement plan” as that term is defined in Section 11.03(b). The amount shall be credited to his Participant Rollover Contribution Account, provided:

- (a) The Participant provides adequate evidence to the Plan Administrator that the amount satisfies the requirements of Code §402(c) regarding amounts that may be rolled over;
- (b) If the amount is rolled over indirectly to this Plan through an individual retirement account, annuity, or bond, the amount does not include life insurance policies, amounts contributed (or deemed to have been contributed) by the Participant or amounts distributed from a Plan not qualified under Code §401(a); and
- (c) If the amount to be rolled over to this Plan is received as a direct transfer pursuant to Code §402(e)(6) or rolled over after distribution to the Participant within sixty (60) days following its distribution.

The Plan will accept participant rollover contributions and/or direct rollovers of distributions made after December 31, 2001, from any qualified plan described in Code §401(a) or Code §403(a), an annuity contract described in Code §403(b) or an eligible plan under Code §457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The plan will also accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in Code §408(a) or (b) that is eligible to be rolled over and would otherwise be includable in gross income. The Plan will accept rollovers from other plans described in this paragraph that also include after-tax employee contributions, provided that the after tax contributions are received in a direct rollover as described in Code §401(a)(31)(A).

5.06 Employer Matching Contributions: For each Plan Year the Employer may contribute Employer Securities to the Plan in an amount, determined without regard to Net Profits, that will be sufficient to credit the Employer Matching Contribution Account of each Participant who satisfies the requirements of Section 6.04, with amounts that satisfy the Employer's Matching Contribution percentage as determined by the Employer on a discretionary basis for the Plan Year. The amount of Employer Securities to be contributed as an Employer Matching Contribution and the manner of allocation shall be determined annually by the Employer no later than the time prescribed by law (including any extensions thereof) for filing the Employer's Federal income tax return for the Plan Year for which the Matching Contribution is made. If more than one FX Employer participates in this Plan, then each FX Employer may set its own Matching Contribution level or formula to be applicable to its own Employees, without regard to that determined by other sponsoring FX Employers. The Matching Contribution shall be made in the form of cash or Employer Securities only. If the contribution is in the form of cash, the Plan Administrator, in its discretion, may direct the Trustee to apply the cash immediately toward the purchase of Employer Securities. The Employer Matching Contribution for Employees of the Sponsoring Employer and each Participating FX Employer shall be determined each Plan Year by the Sponsoring Employer and each Participating FX Employer respectively, or shall be as set forth in the Supplemental Participation Agreement executed by the Participating FX Employer. The allocation of the Employer Matching Contribution amount shall be determined solely by reference to the ratio percentage of the Participant's Elective Deferral compared to the aggregate of the forms of the Participant's Compensation that are subject to the Salary Reduction Agreement as specified in Section 5.01(a)(1). If the Employer or Participating FX Employer makes a Matching Contribution to the Plan at any time during the Plan Year (such as on a calendar quarter basis), any limit on the amount of Employer Matching

Contribution shall not be determined by reference to Annual Compensation for the Plan Year, but by reference to Compensation paid only during the period to which the Matching Contribution relates. Notwithstanding the previous sentence, no contribution in excess of the maximum amount that would constitute an allowable deduction for Federal income tax purposes under the applicable provisions of the Code, as now in force or hereafter amended, shall be required to be made by the Employer under this Section. If the Employer makes Matching Contributions for any Plan Year as provided in the first sentence of this paragraph, the Employer may also elect to make an additional Matching Contribution for the Plan Year in an amount that would have been made by the Employer had Matching Contributions been calculated on an annual, rather than periodic, basis. Such additional Matching Contributions must be made by the Employer on a uniform non-discriminatory basis.

5.06A Safe Harbor Employer Matching Contributions: Effective January 1, 2005, and for each Plan Year commencing thereon or thereafter, the Employer may contribute to the Plan an amount, determined without regard to Net Profits, which will be sufficient to credit the Employer Matching Contribution Account of each Participant who is a Non-Highly Compensated Employee and who satisfies the requirements of Section 6.04, with amounts which satisfy the Employer's Matching Contribution percentage as determined by the Employer on a discretionary basis for the Plan Year. In no event however, shall the Employer Matching Contribution for any Participant who is a Non-Highly Compensated Employee in a Plan Year, when determined as a percentage of the Participant's Compensation for the Plan Year, ever be less than the percentage amounts shown in the following table:

Participant's Elective Deferral percentage:	Percentage of Employer Matching Contribution:
0%	0.0%
1%	1.0%
2%	2.0%
3%	3.0%
4%	3.5%
5%	4.0%

The Employer may also contribute to the Plan an amount, determined without regard to Net Profits, which will be sufficient to credit the Employer Matching Contribution Account of each Participant who is a Highly Compensated Employee and who satisfies the requirements of Section 6.04, with amounts which satisfy the Employer's Matching Contribution percentage as determined by the Employer on a discretionary basis for the Plan Year. In no event however, shall the rate of Matching Contributions with respect to Elective Deferrals made by any Highly Compensated Employee exceed the rate of Matching Contributions with respect to Elective Deferrals made by any Participant who is a Non-Highly Compensated Employee. Excess Matching Contributions for Employees of the Sponsoring Employer or a Participating FX Employer shall be determined each Plan Year by the Sponsoring Employer and each Participating FX Employer respectively, or shall be as set forth in the Supplemental Participation Agreement executed by the Participating FX Employer. If the Employer or Participating FX Employer makes a Matching Contribution in excess of that set forth in the table in this Section, in no event shall the rate of Matching Contributions increase as the rate of the Participant's Elective Deferrals increase. The Matching Contribution shall be made in the form of cash or Employer Securities only. If the contribution is in the form of cash, the Plan Administrator, in its discretion, may direct the Trustee to apply the cash immediately toward the purchase of Employer Securities.

If the Employer or Participating FX Employer makes a Matching Contribution to the Plan at any time during the Plan Year (such as on a calendar quarter basis), any limit on the amount of Employer Matching Contribution shall not be determined by reference to Annual Compensation for the Plan Year, but by reference to Compensation paid only during the period to which the Matching Contribution relates. Notwithstanding the previous sentence, no contribution in excess of the maximum amount which would constitute an allowable deduction for federal income tax purposes under the applicable provisions of the Code, as now in force or hereafter amended, shall be required to be made by the Employer under this Section.

5.07 Employer Profit Sharing Contributions: In addition to (or in lieu of) Employer Matching Contributions made pursuant to Section 5.06 for each Plan Year and effective January 1, 2005, in addition to Employer Safe Harbor Matching Contributions made pursuant to Section 5.06A for each Plan Year, each FX Employer may contribute, without regard to Net Profits, an amount determined by its Board of Directors as an Employer Profit Sharing Contribution. The Employer may make the Profit Sharing Contribution in cash or in kind, provided however, that if the Profit Sharing Contribution is made in cash the Plan shall immediately acquire Employer Securities with the entire amount of the contribution and if the Profit Sharing Contribution is made in kind, it shall be made in the form of Employer Securities only. The Employer Profit Sharing Contribution for the Plan Year shall be allocated as provided in Section 6.02(c) to the Accounts of those Participants who satisfy the requirements of Section 6.04. An Employer may reserve the right to increase or decrease the amount from year to year, as determined by the Board of Directors. Notwithstanding the previous sentence, no contribution in excess of the maximum amount that would constitute an allowable deduction for Federal income tax purposes under the applicable provisions of the Code, as now in force or hereafter amended, shall be required to be made by the Employer under this Section.

The amount of the contribution to be credited to the Employer Profit Sharing Contribution Accounts of the Participants shall be in addition to any non-vested forfeitures from Employer Profit-Sharing Contribution Accounts of the Participants to be allocated during the Plan Year pursuant to Section 11.06. The amount of each FX Employer's Profit Sharing Contribution shall be allocated only to the Accounts of those Participants who are Employees of that FX Employer.

5.08 Time and Method of Payment: All payments of Employer Matching and Profit Sharing Contributions shall be made directly to the Trustee and shall be paid no later than the time prescribed by law (including any extensions thereof) for filing the Employer's Federal income tax return for the Plan Year for which they are made. All such Contributions shall be in the form of Employer Securities only. The Employer may in its sole discretion, at any time during the Plan Year, make one or more partial contributions of Employer Securities to the Trustee on an estimated basis. Any amount so contributed in advance shall be applied against the amount thereafter determined to be contributable by the Employer and shall be credited by the Plan Administrator to the Participants' Employer Contribution Accounts as of the end of the calendar quarter for which the contribution is made.

5.09 Employer Contribution Accounts: The Plan Administrator shall establish and maintain an Employer Matching Contribution Account, as defined in Section 2.01(c) and an Employer Profit Sharing Account as defined in Section 2.01(d) for each Participant eligible to receive an Employer Matching Contribution or Employer Profit Sharing Contribution. Contributions of Employer Securities to a Participant's Employer Matching Contribution Account and Employer Profit Sharing Contribution Account after the Effective Date shall also be allocated and credited to the Participant's Employer Securities Account. The establishment of the accounts is for record keeping purposes only, and a physical segregation of assets shall not be required.

5.10 Limitations on Contributions: Notwithstanding any other provisions of this Plan, all contributions shall be subject to the following limitations:

- (a) The total amount of a Participant's Elective Deferrals during any calendar year shall not exceed Eleven Thousand Dollars (\$11,000), which amount shall be indexed at the same time and in the same manner as the dollar limitation for defined benefit plans in Code §415(b)(1)(A). For this purpose a Participant's Elective Deferrals to this Plan plus the Participant's elective deferrals pursuant to any other Code §401(k) arrangement, elective deferrals under a simplified employee pension plan and salary reduction contributions to a tax-sheltered annuity, irrespective of whether the Employer or any member of an Affiliated Group to which the Employer belongs maintains the arrangement, plan or annuity, shall be aggregated
- (b) The K-Test Average Contribution Percentage for Participants who are Highly Compensated Employees shall not exceed in any Plan Year the greater of:
 - (1) The K-Test Average Contribution Percentage for Participants who are Non-Highly Compensated Employees multiplied by 1.25; or

- (2) The lesser of the K-Test Average Contribution Percentage for Participants who are Non-Highly Compensated Employees multiplied by two (2) or the K-Test Average Contribution Percentage for Participants who are Non-Highly Compensated Employees plus two (2).
- (c) The M-Test Average Contribution Percentage for Participants who are Highly Compensated Employees shall not exceed in any Plan Year the greater of:
 - (1) The M-Test Average Contribution Percentage for Participants who are Non-Highly Compensated Employees multiplied by 1.25; or
 - (2) The lesser of the M-Test Average Contribution Percentage for Participants who are Non-Highly Compensated Employees multiplied by two (2) or the M-Test Average Contribution Percentage for Participants who are Non-Highly Compensated Employees plus two (2).
- (d) In any Plan Year in which the requirements of both (b)(1) and (c)(1) above are not met, the sum of the K-Test Average Contribution Percentage and the M-Test Average Contribution Percentage for Participants who are Highly Compensated Employees shall not exceed the greater of:
 - (1) The sum of:
 - (i) The greater of the K-Test Average Contribution Percentage or the M-Test Average Contribution Percentage for Participants who are Non-Highly Compensated Employees multiplied by 1.25; and
 - (ii) The lesser of the K-Test Average Contribution Percentage or the M-Test Average Contribution Percentage for Participants who are Non-Highly Compensated Employees plus two (2), but in no event greater than the lesser of the K-Test Average Contribution Percentage or the M-Test Average Contribution Percentage for Participants who are Non-Highly Compensated Employees multiplied by two (2); or
 - (2) The sum of:
 - (i) The lesser of the K-Test Average Contribution Percentage or the M-Test Average Contribution Percentage for Participants who are Non-Highly Compensated Employees multiplied by 1.25; and
 - (ii) The greater of the K-Test Average Contribution Percentage or the M-Test Average Contribution Percentage for Participants who are Non-Highly Compensated Employees plus two (2), but in no event greater than the lesser of the K-Test Average Contribution Percentage or the M-Test Average Contribution Percentage for Participants who are Non-Highly Compensated Employees multiplied by two (2).

For this purpose, the K-Test Average Contribution Percentage and M-Test Average Contribution Percentage for Participants who are Highly Compensated Employees shall be determined after any distributions or re-characterizations pursuant to Section 5.12(a), (b) and (c). The test described in this subsection 5.10(d) shall not apply for Plan Years commencing after December 31, 2001.

For purposes of applying the tests in (b), (c) and (d) above in any Plan Year, the K-Test Average Contribution Percentage and the M-Test Average Contribution Percentage for Participants who are Non-Highly Compensated Employees shall be based on the prior Plan Year.

The Employer may aggregate this Plan with one or more other plans for purposes of applying the tests in (b), (c) and (d) above, in which case all K-Test Contributions and M-Test Contributions to all such plans shall be treated as made under this Plan, provided that, the aggregated plans may not include an Employee Stock Ownership Plan, and all such aggregated plans must have the same plan year.

5.11 Excess Contributions: In accordance with the limitations on contributions described in Section 5.10, the following amounts shall be treated as excess contributions under this Plan:

- (a) **Excess Deferrals:** With respect to any calendar year, amounts designated by Participants in writing as Excess Deferrals not later than the first March 1 following the end of the calendar year, in accordance with such procedures as the Plan Administrator shall specify, less any Excess K-Test Contributions previously distributed or recharacterized for the Plan Year beginning in the calendar year in which the Excess Deferral is made, pursuant to Section 5.12(b).
- (b) **Excess K-Test Contributions:** With respect to any Plan Year, the excess of the aggregate amount of K-Test Contributions actually made on behalf of Highly Compensated Employees for the Plan Year over the maximum amount of such contributions permitted under Section 5.10(b). The Excess K-Test Contributions of an individual Highly Compensated Employee shall be determined (i) by calculating the total dollar amount resulting from a reduction of the K-Test Contributions made on behalf of Highly Compensated Employees in order of the K-Test Contribution Percentages, beginning with the highest percentage, until the limitations of Section 5.10(b) are met, and (ii) by reducing the K-Test Contributions made on behalf of Highly Compensated Employees in order of the dollar amount of K-Test Contributions for each Highly Compensated Employee, beginning with the highest dollar amount, and subtracting such amounts from the total dollar amount determined in (i) above until the total dollar amount is exhausted. The Excess K-Test Contributions allocated to a Participant shall be reduced by any excess deferrals previously distributed for the calendar year ending with or within the Plan Year in which the Excess K-Test Contributions arose, pursuant to Section 5.12(a).
- (c) **Excess M-Test Contributions:** With respect to any Plan Year, the excess of the aggregate amount of M-Test Contributions actually made on behalf of Highly Compensated Employees for such Plan Year over the maximum amount of such contributions permitted under Section 5.10(c). The Excess M-Test Contributions of an individual Highly Compensated Employee shall be determined (i) by calculating the total dollar amount resulting from a reduction of the M-Test Contributions made on behalf of Highly Compensated Employees in order of the M-Test Contribution Percentages, beginning with the highest percentage, until the limitations of Section 5.10(c) are met, and (ii) by reducing the M-Test Contributions made on behalf of Highly Compensated Employees in order of the dollar amount of M-Test Contributions for each Highly Compensated Employee, beginning with the highest dollar amount, and subtracting such amounts from the total dollar amount determined in (i) above until the total dollar amount is exhausted. The determination of the amount of Excess M-Test Contributions for the Plan Year shall be made after first determining the Excess Deferrals and Excess K-Test Contributions for the Plan Year.
- (d) **Excess Combined-Test Contributions:** With respect to any Plan Year, the excess of the aggregate amount of the K-Test Contributions actually made on behalf of Highly Compensated Employees for such Plan Year over the maximum amount of such contributions permitted under Section 5.10(d), provided that M-Test Contributions are not reduced. The Excess Combined-Test Contributions of an individual Highly Compensated Employee shall be determined in the same manner as Excess K-Test Contributions under (b) above, except disregarding the provision for taking into account distributions of Excess Deferrals.
- (e) **Excess Combined-Test Contributions:** With respect to any Plan Year, the excess of the aggregate amount of the M-Test Contributions actually made on behalf of Highly Compensated Employees for such Plan Year over the maximum amount of such contributions permitted under Section 5.10(d), provided that K-Test Contributions are not reduced. The Excess Combined-Test Contributions of an individual Highly Compensated Employee shall be determined in the same manner as Excess M-Test Contributions under (c) above.
- (f) **Subsections 5.11(d) and (e)** shall not apply for Plan Years commencing after December 31, 2001.

5.12 Correction of Excess Contributions: The Plan provides the following methods for correcting excess contributions as described in Section 5.11:

- (a) **Excess Deferrals:** The Plan Administrator shall direct the Trustee to distribute to a Participant from his/her Participant Elective Deferral Account an amount equal to the Participant's Excess Deferral plus income, if any, allocable thereto. Such distribution shall be designated by the Plan Administrator as a distribution of an Excess Deferral and shall be made not earlier than the date on which the Trustee receives the Excess Deferral and not later than the first April 15 following the end of the calendar year in which the Excess Deferral is made.
- (b) **Excess K-Test Contributions:** The Plan Administrator shall direct the Trustee to distribute to a Participant his/her Excess K-Test Contribution plus income, if any, allocable thereto. Such distribution shall be designated by the Plan Administrator as a distribution of an excess contribution and shall be made after the end of the Plan Year in which the excess contribution arose and within twelve (12) months after the end of such Plan Year.

If the Employer has made a Matching Contribution attributable to any portion of the Participant's Excess K-Test Contribution distributed to the Participant pursuant to the above, the Plan Administrator shall treat such Matching Contribution as forfeiture. The forfeited amount shall be used to reduce the Employer's Matching Contribution otherwise required for the Plan Year or for any subsequent Plan Year.

- (c) **Excess M-Test Contributions:** The Plan Administrator shall direct the Trustee to distribute to a Participant any portion of the Participant's Excess M-Test Contribution, plus income, if any, allocable thereto. Such distribution shall be designated by the Plan Administrator as a distribution of excess contributions and shall be made after the end of the Plan Year in which the excess contribution arose and within twelve (12) months after the end of such Plan Year.
- (d) **Excess Combined-Test Contributions:** The Plan Administrator shall correct the Excess Combined-Test Contributions in the same manner as for Excess K-Test and M-Test Contributions in (b) and (c) above, provided however, that the Plan Administrator shall direct the Trustee to distribute the portion of the Excess K-Test Contribution or Excess M-Test Contribution or a combination of both which results in the least amount distributed from the Plan. The provisions of this subsection 5.12(d) shall not apply for Plan Years commencing after December 31, 2001.

For purposes of the above, income shall include realized and unrealized gains and losses for the Plan Year and for the period from the end of the Plan Year to the date of distribution (the "gap period") and shall be allocated to excess contributions in accordance with all appropriate Code and Regulation provisions. Distributions of excess contributions pursuant to the above shall be made without regard to any consent by the Participant otherwise required under this Plan.

ARTICLE VI ALLOCATIONS TO ACCOUNTS

6.01 Revaluation of Assets: Not less frequently than as of the Annual Valuation Date each year, the Plan Administrator shall re-value the net assets of all Participants' General Investments Accounts and Employer Securities Accounts in the Investment Fund. The valuation shall determine the current fair market value. At the Plan Administrator's discretion, applied on a consistent basis, the Plan Administrator may similarly revalue the net assets of the Investment Fund at the end of a semi-annual, quarterly, monthly or more frequent period; the last day of such period shall be referred to as an Interim Valuation Date. The net investment income or loss on the Investment Fund since the previous Annual or Interim Valuation Date shall then be determined. An independent appraiser shall perform all valuations of Employer Securities that are not readily tradeable on an established securities market. The valuation requirement of the immediately preceding sentence applies to all Employer Securities acquired by the Plan.

6.02 Allocation of Contributions and Forfeitures: Contributions and forfeitures for any period shall be credited to the Accounts of Participants in the following manner:

- (a) With respect to Elective Deferral contributions made pursuant to Section 5.01, an amount equal to the Participant's Elective Deferral since the previous Annual or Interim Valuation Date shall be allocated and credited to his/her Participant Elective Deferral Account.
- (b) Matching Contributions made pursuant to Section 5.06 shall be allocated on each Annual Valuation Date (or if the Employer makes Matching Contributions on a calendar quarter or other periodic basis, on the last day of each calendar quarter or other period) to each Participant's Account who satisfies the requirements of Section 6.04(a), in an amount equal to the Employer Matching Contribution percentage determined by the Employer for the Plan Year. If the Employer makes a Matching Contribution to the Plan at any time during the Plan Year, any limit on the percentage amount shall not be determined by reference to Annual Compensation for the Plan Year, but by reference to Compensation (subject to the limitations on Compensation imposed under Section 2.11) paid only during the period to which the Matching Contribution relates. Nevertheless, if the Employer makes an additional Matching Contribution for the Plan Year as provided in the last paragraph of Section 5.06, the additional Matching Contribution shall be allocated on an annual, rather than periodic, basis.
- (c) Employer Profit-Sharing Contributions made pursuant to Section 5.07, shall be allocated as of each Annual Valuation Date to each Participant who satisfies the requirements of Section 6.04(b). The Employer Profit-Sharing Contribution shall be credited to the Employer Profit-Sharing Contribution Accounts of each such Participant in an amount equal to the percentage determined according to the allocation formula set forth in Section 6.06. At the time the Employer makes its Profit-Sharing Contribution, the Employer shall designate to the Administrator the Plan Year for which the Profit-Sharing Contribution shall be deemed to have been made (which may be the current Plan Year or the immediately prior or subsequent Plan Year, as the Employer deems appropriate). If the Employer makes no designation, the Employer Profit-Sharing Contribution shall be deemed to have been made for the Plan Year that begins concurrent with or within the taxable year of the Employer for which the Employer claims a deduction under Code §404.
- (d) Forfeitures from Employer Matching Contribution Accounts that are reallocated pursuant to Section 11.06 shall be used to reduce the amount of the Employer's Matching Contributions for the Plan Year. They shall be allocated as of each Annual Valuation Date to each Participant's Matching Contribution Account who satisfies the requirements of Section 6.04 in the same manner as Employer Matching Contributions in (b) above.
- (e) Forfeitures from Employer Profit-Sharing Contribution Accounts that are reallocated pursuant to Section 11.06 shall be allocated in addition to the amount of the Employer's Profit Sharing Contributions for the Plan Year. They shall be allocated as of each Annual Valuation Date to each Participant's Profit Sharing Contribution Account who satisfies the requirements of Section 6.04 in the same manner as Employer Profit Sharing Contributions in (c) above.
- (f) With respect to contributions made pursuant to Section 5.05, an amount equal to the Participant's Rollover Contributions since the previous Annual or Interim Valuation Date shall be credited to the Participant's Rollover Contribution Account.
- (g) Contributions by the Employer of Employer Securities shall be allocated solely to the Employer Securities Account. All other contributions, whether by the Employer or any Participant, shall be allocated solely to the General Investments Account.

6.03 Adjustment of Accounts: As of each Annual or Interim Valuation Date all Participants' and Inactive Participants' Accounts shall be adjusted to reflect the contributions and income received, profits and losses, and distributions and expenses of the Trust Fund since the previous Annual or Interim Valuation Date. The adjustments shall be made in the following manner and order:

- (a) Each Account shall be charged with all forfeitures, withdrawals and distributions from the Account since the previous Annual or Interim Valuation Date. In making a forfeiture reduction under this Section, the Plan Administrator, to the extent possible, first must forfeit from a Participant's General Investments Account before making a forfeiture from his/her Employer Securities Account.

- (b) Each Account shall be charged with any administrative costs or expenses incurred and paid by the Plan that are allocable to the Account since the previous Annual or Interim Valuation Date. All administrative costs and expenses, to the extent possible, shall be paid from a Participant's General Investments Account before being paid from his/her Employer Securities Account
- (c) Each Participant's General Investment Account that has a non-zero balance after the application of (a) and (b) above, shall be credited (or charged) with its proportionate share of the net investment income (or loss) and expenses since the previous Annual or Interim Valuation Date. The amount to be credited or charged to each Account shall be determined based on the ratio that: (i) the balance in the Account on the previous Annual or Interim Valuation Date less any forfeitures, withdrawals or distributions from the Account since that date bears to (ii) the total of such amounts determined for all Accounts. Notwithstanding the previous sentence, in the sole discretion of the Plan Administrator, the method of allocating the net investment income (or loss) of the General Investment Account may be adjusted to reflect the effect of cash flows into and out of such Accounts (such as contributions, payments on Participant loans, distributions, etc.) based on the length of time between the date of such cash flow and the current Annual or Interim Valuation Date. Any such adjustment pursuant to the previous sentence shall be made in a uniform and non-discriminatory manner among Participants and/or the types of Accounts.
- (d) Each Account shall be credited with the contributions allocated to it since the previous Annual or Interim Valuation Date, subject to the following rules:
 - (1) The Employer Securities Account maintained for each Participant shall be credited with the Participant's allocable share of Employer Securities (including fractional shares) contributed in kind to the Trust, with any forfeitures of Employer Securities and with any stock dividends on Employer Securities allocated to his/her Employer Securities Account. The Plan Administrator will base allocations to the Participant's Employer Securities Account on dollar values expressed as shares of Employer Securities or on the basis of actual shares, assuming there is only a single class of Employer Securities.
 - (2) The General Investments Account maintained for each Participant shall be credited with the Participant's allocable share of Elective Deferrals and any Employer Contribution not attributable to Employer Securities, according to the provisions of Section 6.02.
- (e) Cash dividends the Employer pays with respect to Employer Securities shall be allocated to the General Investments Accounts of Participants in the same ratio, determined on the dividend declaration date, that Employer Securities allocated to a Participant's Employer Securities Account bear to the Employer Securities allocated to all Employer Securities Accounts.

6.04 Eligibility for Allocation of Employer Matching and Profit Sharing Contributions:

- (a) In allocating Matching Contributions to a Participant's Account, the Administrator shall take into account only the Compensation paid the Employee during the period to which the allocation applies and he is an eligible Participant in the Plan with a valid, executed Salary Reduction Agreement in effect and on file with the Administrator. A Participant need not complete any minimum Hours of Service during the Plan Year or be employed on any particular day of the Plan Year in order to receive an allocation of Employer Matching Contributions.
- (b) The Administrator shall determine allocations of Employer Profit Sharing Contributions on the basis of the Plan Year. In allocating Profit Sharing Contributions to a Participant's Account, the Administrator shall take into account only the Compensation paid to the Participant after he has satisfied the eligibility requirements of Section 4.01 and to which the allocation applies. A Participant must complete at least one thousand (1000) Hours of Service during the Plan Year and must be employed on the last day of the Plan Year in order to receive an allocation of Employer Profit Sharing Contributions, unless the Participant has incurred a Termination of Employment during the Plan Year on account of death, Disability or retirement. It shall not be necessary for the Participant to have a Salary Reduction Agreement in effect in order to receive an allocation of Employer Profit Sharing Contributions.

6.05 Suspension of Accrual Requirements for Employer Profit Sharing Contributions: The Plan suspends the accrual requirements under Section 6.04(b) for Employer Profit Sharing Contributions if for any Plan Year the Plan fails to satisfy the Coverage Test. The Plan satisfies the Coverage Test for the Plan Year if the number of Nonhighly Compensated Employees who benefit under the Plan is at least equal to 70% of the total number of Includible Nonhighly Compensated Employees for the Plan Year. “Includible” Employees are all Employees other than: (1) those Employees excluded from participating in the Plan for the entire Plan Year by reason of the collective bargaining unit exclusion or the nonresident alien exclusion described in the Code or by reason of the age and service requirements of Section 4.01; and (2) any Employee who incurs a Termination of Employment during the Plan Year and fails to complete at least 501 Hours of Service for the Plan Year. A “Nonhighly Compensated Employee” is an Employee who is not a Highly Compensated Employee. For purposes of the Coverage Test an Employee is benefiting under the Plan for a Plan Year if, under Section 6.04, he is entitled to an allocation of Employer Non-Elective Contributions for the Plan Year.

If this Section 6.05 applies for a Plan Year, the Plan Administrator will suspend the accrual requirements for the Includible Employees who are Participants, beginning first with the Includible Employee(s) employed with the Employer on the last day of the Plan Year, then the Includible Employee(s) who have the latest Termination of Employment during the Plan Year, and continuing to suspend the accrual requirements for each Includible Employee who incurred an earlier Termination of Employment, from the latest to the earliest date of Termination of Employment, until the Plan satisfies the Coverage Test for the Plan Year. If two or more Includible Employees have a Termination of Employment on the same day, the Plan Administrator will suspend the accrual requirements for all such Includible Employees, irrespective of whether the Plan can satisfy the Coverage Test by accruing benefits for fewer than all such Includible Employees. If the Plan suspends the accrual requirements for an Includible Employee, that Employee will share in the allocation of Employer Contributions and Participant forfeitures, if any, without regard to the number of Hours of Service he has earned for the Plan Year and without regard to whether he is employed by the Employer on the last day of the Plan Year.

6.06 New Comparability Formula for Allocation of Employer Profit Sharing Contributions: Subject to the Top Heavy allocation requirements of Article XIX and the Code §415 limitations of Article VII, each Participant’s share of Employer Profit Sharing Contributions contributed by the Employer under Section 5.07 on behalf of each Allocation Group will be allocated on the last day of the Plan Year (and on such other date or dates as determined by the Plan Administrator on a nondiscriminatory basis) to each Allocation Group. For purposes of this Section 6.06 each Participant who is not an Inactive Participant (an “Eligible Participant”) will constitute a separate Allocation Group. The amount allocated to each Allocation Group will be subject to the following provisions:

- (a) **Failsafe Allocation:** For each Plan Year beginning on or after January 1, 2002, in which it is necessary for the Plan to pass nondiscrimination testing on the basis of equivalent benefit rates as provided under regulation §1.401(a)(4), the allocations made under this Section must satisfy either the “broadly available test” described in subparagraph (1) or one of the “gateway tests” described in subparagraph (2) or subparagraph (3) below.
 - (1) **Broadly Available Test If Employer Does Not Maintain A Defined Benefit Plan:** To satisfy the “broadly available test”, each Allocation Rate applicable to any Eligible Participant must be currently available within the meaning of regulation §1.401(a)(4)-4(b)(2) to a group of Employees and, were such group to be treated as a group of Employees covered under a separate plan, such group of Employees must satisfy the requirements of Code §410(b) without regard to the average benefit percentage test in regulation §1.410(b)-5. For this purpose, if two allocation rates could be permissively aggregated under regulation §1.401(a)(4)-4(d)(4), assuming the allocation rates were treated as benefits, rights or features, then such allocation rates may be aggregated and treated as a single allocation rate. In addition, the disregard of age and service conditions described in regulation §1.401(a)(4)-4(b)(2)(ii)(A) does not apply for purposes of this subparagraph (1).
 - (2) **Gateway Test If The Employer Does Not Maintain A Defined Benefit Plan:** In order to satisfy the “gateway test” for any Plan Year in which the Employer does not maintain a defined benefit plan that also covers Participants covered in this Plan for any portion of the Plan Year, the Allocation Rate for each Eligible Participant who is an NHCE for the Plan Year must be equal to either (A) 5% of each Eligible Participant's Compensation; or (B) 33.33% of the highest Allocation Rate for any Participant who is an HCE for the Plan Year.

- (3) **If The Employer Does Maintain One Or More Defined Benefit Plans:** If the Employer maintains one or more defined benefit plans that cover Participants in this Plan for any portion of a Plan Year, the Plan Administrator may elect to apply for that Plan Year either the procedure set forth in subparagraph (A) or the procedure in subparagraph (B), as follows:
- (A) **Election To Not Permissively Aggregate:** The Plan Administrator may elect not to permissively aggregate this Plan and such defined benefit plan or plans for purposes of satisfying the coverage tests of Code §410(b) and the nondiscrimination tests of Code §401(a)(4), and instead may elect to separately test each plan for such purposes. In that event, either the “gateway test” in subparagraph (2) above or the “broadly available test” of subparagraph (1) above will apply for this Plan.
- (B) **Election To Permissively Aggregate:** The Plan Administrator may elect to permissively aggregate this Plan and such defined benefit plan(s) for purposes of satisfying both the coverage tests of Code §410(b) and the nondiscrimination tests of Code §401(a)(4), in which event for the Plan Year the aggregated plans will be known as a “DB/DC Plan” and will be subject to the requirements in subparagraphs (i) or (ii) below. Unless elected otherwise by the Plan Administrator, this Plan and the defined benefit plan(s) will not necessarily be considered a DB/DC Plan because the plans are being aggregated solely to apply the average benefit ratio test in regulation §1.410(b)-5. If a DB/DC Plan applies, nondiscrimination testing under Code §401(a)(4) may be passed for this Plan and all defined benefit plans of the Employer and any other FX Employer either on the basis of Aggregate Normal Allocation Rates, or at the option of the Plan Administrator and only if either of the exceptions in subparagraph (i) are satisfied or the “gateway test” conditions in subparagraph (ii) are satisfied, on the basis of equivalent benefit rates under regulation §1.401(a)(4) (i.e. normal accrual rates under the defined benefit plans and equivalent benefit rates under the defined contribution plans):
- (i) **“Broadly Available” Or “Primarily Defined Benefit” Tests Are Satisfied:** The requirements of this subparagraph (i) are deemed satisfied if both the defined contribution plan components and the defined benefit plan components of the DB/DC Plan are considered to be “broadly available” as defined in subparagraph (1) above, or the DB/DC Plan is considered to be “primarily defined benefit”. A DB/DC Plan is considered to be “primarily defined benefit” if more than 50% of the Eligible Participants who are NHCEs for the Plan Year have a normal accrual rate under the defined benefit plan or plans that exceeds their equivalent benefit rates under the defined contribution plans.
- (ii) **“Gateway Test” Is Satisfied:** The requirements of this subparagraph (ii) are deemed satisfied if the “gateway test” for a DB/DC Plan is satisfied, in which the Allocation Rate for each Eligible Participant who is an NHCE for the Plan Year must be at least equal to the Aggregate Normal Allocation Rate.
- (b) **Determination Of Accrual And Allocation Rates:** The normal accrual rate and the equivalent normal allocation rate attributable to defined benefit plans, the equivalent accrual rate attributable to defined contribution plans, and the Aggregate Normal Allocation Rate are determined under regulation §1.401(a)(4)(b)(2)(ii), but without taking into account the imputation of permitted disparity under regulation §1.401(a)(4)-7, except as otherwise permitted under regulation §1.401(a)(4)-9(b)(2)(v)(C).
- (c) **Definitions:** Solely for purposes of this Section 6.06, the following listed terms shall have the meanings indicated.

- (1) **“Allocation Rate”** shall mean the percentage obtained by dividing (A) the total amount of Employer contributions or reallocated Forfeitures that are allocated on the Participant's behalf under all defined contribution plans of the Employer or an FX Employer that are aggregated for nondiscrimination testing under Code §401(a)(4) (not including any Matching Contributions if such plan or plans includes Elective Deferrals), by (B) the Participant's Compensation.
- (2) **“Aggregate Normal Allocation Rate”** shall mean the sum of the Allocation Rate in the defined contribution plan(s) and the equivalent Allocation Rate in the defined benefit plan(s) of the Employer or an Affiliated Employer that are permissively aggregated to pass the coverage tests of Code §410(b) and the nondiscrimination tests of Code §401(a)(4). The Aggregate Normal Allocation Rate for each Eligible Participant who is an NHCE for the Plan Year will equal the percentage in subparagraphs (A), (B) or (C) below. At the discretion of the Plan Administrator, the equivalent Allocation Rate for any Plan Year under such defined benefit plan(s) for each Eligible Participant who is an NHCE and who benefits under the defined benefit plan(s) for the Plan Year may be deemed to be equal to the average of the equivalent Allocation Rates under the defined benefit plan(s) for all such Eligible Participants.
 - (A) **33.33% Rate:** If the highest Aggregate Normal Allocation Rate of any Eligible Participant who is an HCE for the Plan Year is less than 15%, then the Aggregate Normal Allocation Rate for each Eligible Participant who was an NHCE for the Plan Year will be 33.33% of such highest Aggregate Normal Allocation Rate; or
 - (B) **5% Rate:** If the highest Aggregate Normal Allocation Rate of any Eligible Participant who is an HCE for the Plan Year is at least 15% but is not greater than 25%, then the Aggregate Normal Allocation Rate for each Eligible Participant who was an NHCE during the Plan Year will be 5% of each such Eligible Participant's Compensation; or
 - (C) **Rate Higher Than 5% To Maximum 7.5% Rate:** If the highest Aggregate Normal Allocation Rate of any Eligible Participant who is an HCE for the Plan Year is greater than 25%, then the Aggregate Normal Allocation Rate for each Eligible Participant who is an NHCE for the Plan Year will be equal to the sum of (A) 5% of each such Eligible Participant's Compensation, plus (B) one percentage point for each five percentage points (or portion thereof) that the highest Aggregate Normal Allocation Rate of any Eligible Participant who is an HCE for the Plan Year exceeds 25%. However, the maximum Aggregate Normal Allocation Rate for each Eligible Participant who is an NHCE for the Plan Year will not exceed 7.5% of each such Eligible Participant's Code §415 Compensation.
- (3) **“Compensation”** shall have the meaning set forth in Section 7.01(b).

6.07 Participant Diversification of Employer Securities Account: This Section shall be effective from and after January 1, 2007. Except as specifically provided in this Section 6.07 and in Section 18.06, the Plan does not permit individual direction of investment by a Participant of the Employer Securities Account.

- (a) Each Qualified Participant shall be permitted to direct the investment of the Participant's Eligible Accrued Benefit from the Participant's Employer Securities Account into the Participant's General Investments Account during the Participant's Qualified Election Period. The Qualified Participant may make his investment direction in writing or may utilize any other investment direction method permitted under the Plan. If the direction provides for the sale of Employer Securities it must also specify which of the investment options in the General Investments Account the Participant has selected for purchase with the proceeds from the sale. A Qualified Participant who elects to diversify may invest the proceeds from the sale of the Employer Securities into any of the investment options available in the General Investments Account.

(b) For purposes of this Section 6.07 the following definitions apply:

- (1) "Eligible Accrued Benefit" shall mean the following designated portions of the Participant's Accrued Benefit attributable to Employer Securities:
 - (A) one hundred percent (100%) of the Participant's Elective Deferral Contributions made and allocated to the Participant's Account after December 31, 2006;
 - (B) one hundred percent (100%) of the Employer's Matching and Profit Sharing Contributions made and allocated to the Participant's Account after December 31, 2006;
 - (C) for the Plan Year commencing January 1, 2007, thirty-three percent (33%) of the Participant's Account acquired or allocated by the Plan no later than December 31, 2006;
 - (D) for the Plan Year commencing January 1, 2008, sixty-six percent (66%) of the Participant's Account acquired or allocated by the Plan no later than December 31, 2006; and
 - (E) for the Plan Year commencing January 1, 2009, one hundred percent (100%) of the Participant's Account acquired or allocated by the Plan no later than December 31, 2006.

For any Participant who has attained at least age fifty-five (55) and has completed at least three (3) Years of Vesting Service no later than December 31, 2005, the percentage amounts in (C) and (D) above shall be 100%.

- (2) "Qualified Participant" means a Participant who has completed at least three (3) Years of Vesting Service prior to the commencement of the Qualified Election Period. No minimum Years of Vesting Service must be completed for a Participant to be deemed a Qualified Participant with respect to diversification of the Eligible Accrued Benefit described in sub-Section (b)(1)(A) above. All of a Participant's Years of Vesting Service (including those credited prior to January 1, 2007) shall be taken into account under this subsection. An Alternate Payee and a Beneficiary of any Participant who has satisfied the foregoing rules shall also be a Qualified Participant.
- (3) "Qualified Election Period" means the first Plan Year beginning after completion by the Participant of the required Years of Vesting Service (or where no minimum Vesting Service is required, the first calendar quarter following an allocation of Employer Securities to the Participant's Account) and continuing thereafter for as long as the Qualified Participant maintains an Account in the Plan. Diversification elections shall be permitted no more frequently than once during each calendar quarter of the Qualified Election Period.

ARTICLE VII LIMITATIONS ON ALLOCATIONS

7.01 Special Definitions: The following terms shall be defined as follows:

- (a) "Annual Additions" shall mean the sum of the following amounts allocated on behalf of a Participant for a Limitation Year:
 - (1) Employer contributions; and
 - (2) Employee contributions; and
 - (3) Forfeitures available for reallocation, if applicable.

Participant Elective Deferrals shall be considered to be Employer contributions. Amounts reapplied to reduce Employer contributions and amounts reapplied from a suspense account (if any) under Section 7.05 as well as contributions allocated to any Individual Medical Benefit Account which is part of a defined benefit plan shall also be included as Annual Additions.

For purposes of this Article, an Annual Addition is credited to the Account of a Participant for a particular Limitation Year if it is allocated to the Participant's Account as of any day within such Limitation Year. Employer contributions will not be deemed credited to a Participant unless the contributions are actually made to the Plan no later than the end of the period described in Code §404(a)(6) applicable to the taxable year with or within which the particular Limitation Year ends.

"Annual Additions" do not include any Employer Contributions applied by the Plan Administrator (not later than the due date, including extensions, for filing the Employer's federal income tax return for the Plan Year) to pay interest (charged to a Participant's Account) on an Exempt Loan, and any Leveraged Employer Securities the Plan Administrator allocates as forfeitures; provided however, the provisions of this sentence do not apply in a Limitation Year for which the Plan Administrator allocates more than one-third of the Employer Contributions applied to pay principal and interest on an Exempt Loan to Highly Compensated Employee-Participants. The Plan Administrator may reallocate the Employer Contributions in accordance with Section 6.02 to the Accounts of non-Highly Compensated Employee-Participants to the extent necessary in order to satisfy this special limitation.

- (b) "Compensation" for purposes of this Article VII (compliance with Code §415) and for purposes of compliance with any applicable non-discrimination test, including the determination of an Employee's status as a Highly Compensated Employee and the K-Test and M-Test procedures described in Section 5.10, shall mean and be determined as follows:

- (1) The term "Compensation" shall include:

- (A) The Participant's wages, salaries, fees for professional service and other amounts received (whether or not paid in cash) for personal services actually rendered in the course of employment with an Employer maintaining the plan (including, but not limited to, commissions paid to salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, reimbursements and expense allowances).
- (B) In the case of a Participant who is an employee within the meaning of Code §401(c)(1), the Participant's earned income as described in Code §401(c)(2).
- (C) Any amounts contributed by the Employer or received by the Participant pursuant to an unfunded, non-qualified plan of deferred compensation to the extent such amounts are includable in the gross income of the Participant for the Limitation Year.
- (D) Any amount contributed or deferred by the Employer at the election of the Participant and which is not includable in the gross income of the Participant by reason of Code §§125, 401(k), 403(b) or 457.
- (E) Elective amounts that are not includable in the gross income of the Employee by reason of Code §132(f)(4).

- (2) The term "Compensation" does not include items such as:

- (A) Except as provided in subparagraph (1)(D) above, any Employer contributions to a qualified retirement plan and any Employer contributions to any other retirement plan which receive special tax benefits to the extent the contributions are not includable in the gross income of the Participant for the taxable year in which made; and any distributions from any qualified retirement plan, regardless of whether the distributions are includable in the gross income of the Participant.
 - (B) Employer contributions made on behalf of a Participant to a simplified employee pension described in Code §408(k) to the extent such contributions are deductible by the Employer under Code §219(b)(7).
 - (C) Except as provided in subparagraph (1)(D) above, other forms of compensation which receive special tax benefits, such as premiums for group health insurance and group term life insurance (but only to the extent that the compensation is not includable in the gross income of the Participant).
 - (D) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by a Participant either becomes freely transferable or is no longer subject to a substantial risk of forfeiture (see Code §83 and the regulations thereunder).
 - (E) Amounts realized from the sale, exchange, or other disposition of stock acquired under a qualified stock option.
 - (F) Compensation in excess of two hundred thousand dollars (\$200,000), or such greater amount as adjusted by the Secretary of the Treasury for increases in the cost of living in accordance with Code §401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to determine the Compensation limit for the Limitation Year that begins with or within such calendar year.
- (3) Compensation actually paid or made available to a Participant within the Limitation Year shall be the Compensation used for the purposes of applying the limitations of this Article and Code §415. In the case of a group of Employers which constitutes an Affiliated Group, all Employers shall apply this same rule.
- (c) “Defined Contribution Dollar Limitation” shall mean the lesser of:
- (1) forty thousand dollars (\$40,000), as adjusted for increases in the cost-of-living under Code §415(d), or
 - (2) one hundred percent (100%) of the Participant’s Compensation, as defined in this Section 7.01, for the Limitation Year. The Compensation limit referred to in this sub-section 7.01(c)(2) shall not apply to any contribution for medical benefits after separation from service (within the meaning of Code §401(h) or Code §419A(f)(2)) which is otherwise treated as an Annual Addition.
- (d) “Employer” shall mean the Employer that adopts this Plan and, in the case of a group of employers which constitutes an Affiliated Group, all such employers shall be considered a single Employer for purposes of applying the limitations of this Article.
- (e) “Excess Amount” shall mean the excess of the Participant’s Annual Additions for the Limitation Year over the Maximum Permissible Amount for such Limitation Year.
- (f) “Individual Medical Benefit Account” shall mean any separate account which is established for a Participant under a defined benefit plan and from which benefits described in Code §401(h) are payable solely to such Participant, his spouse or his dependents.

- (g) “Limitation Year” shall mean the twelve (12) consecutive month period specified in Article II.

The Limitation Year may be changed by amending the election previously made by the Employer. Any change in the Limitation Year must be a change to a twelve (12) month period commencing with any day within the current Limitation Year. The limitations of this Article (and Code §415) are to be separately applied to a limitation period which begins with the first day of the current Limitation Year and which ends on the day before the first day of the first Limitation Year for which the change is effective.

The dollar limitation on Annual Additions with respect to this limitation period is determined by multiplying the applicable dollar limitation for the calendar year in which the limitation period ends by a fraction, the numerator of which is the number of months (computed to the nearest whole month) in the limitation period and the denominator of which is twelve (12).

The Limitation Year for all years prior to the effective date of Code §415 shall, as applied to this Plan, be the twelve (12) consecutive month period selected as the Limitation Year for the first Limitation Year after the effective date of Code §415.

- (h) “Maximum Permissible Amount” shall mean, for a given Limitation Year, the Defined Contribution Dollar Limitation. If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the Maximum Permissible Amount for such short Limitation Year shall not exceed the amount in (1) above multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year (computed to the nearest whole month) and the denominator of which is twelve (12).

7.02 Coordination With Other Plans:

- (a) If the Employer maintains another qualified cash or deferred arrangement (“Alternate 401(k) Plan”) covering Participants in this Plan and if the Annual Additions to a Participant's Account in this Plan and the annual additions to the Participant's account in the Alternate 401(k) Plan would result in the allocation on an allocation date of this Plan that coincides with an allocation date of the Alternate 401(k) Plan of an Excess Amount, the Excess Amount attributed to this Plan shall be determined by the Plan Administrator on a uniform and non-discriminatory basis, considering the amount of elective deferrals and Employer contributions made to each Participant's account in the Alternate 401(k) Plan, and the anticipated allocation of the Employer Contribution to this Plan. The Plan Administrator shall coordinate its actions with those of the plan administrator of the Alternate 401(k) Plan to provide for the maximum possible allocation to all Participants in both plans, taking into account the provisions of the Alternate 401(k) Plan allowing for distribution of elective deferrals to reduce an Excess Amount. In this regard, the Plan Administrator, whenever possible, shall allow for the allocation and distribution of elective deferrals from the Alternate 401(k) Plan so as to eliminate or reduce the possibility of creating a suspense account under this Plan or under the Alternate 401(k) Plan. If, after distributing all amounts that may be distributed from the Alternate 401(k) Plan, there still remains an Excess Amount, the Plan Administrator will attribute the total Excess Amount to the Alternate 401(k) Plan.
- (b) If the Employer maintains another qualified defined contribution plan during any Limitation Year that covers Participants in this Plan and as a consequence of the requirements of Section 7.04 an Excess Amount is allocated to a Participant's Account in this Plan on an allocation date that coincides with an allocation date in the other plan, the total Excess Amount shall be deemed allocated to the other plan.

7.03 Order of Limitations: If, pursuant to this Article, it is necessary to limit or reduce the amount of Contributions credited to a Participant under this Plan during a Limitation Year, the limitation or reduction shall be made in the following order:

- (a) First, from the Participant's General Investment Account, in the following order:
- (1) Unmatched Participant Elective Deferrals;

- (2) Employer Matching Contributions;
 - (3) Matched Participant Elective Deferrals;
 - (4) Employer Profit Sharing Contributions.
- (b) Second, from Employer Profit Sharing Contributions to the Participant's Employer Securities Account.

7.04 Aggregation of Plans: For purposes of applying the limitations of this Article applicable to a Participant for a particular Limitation Year, all qualified defined benefit plans ever maintained by the Employer shall be treated as one defined benefit plan, all defined contribution plans ever maintained by the Employer shall be treated as one defined contribution plan and any Employee contributions to a defined benefit plan shall be treated as a defined contribution plan.

7.05 Suspense Account: If, as a result of a reasonable error in estimating a Participant's Compensation, determining the allocation of forfeitures or determining the amount of elective deferrals under any cash or deferred arrangement sponsored by an FX Employer for the Limitation Year or under other limited facts and circumstances allowed under Reg. §1.415-6(b), the Annual Additions to this Plan would cause an allocation to the Account of a Participant in excess of the Maximum Permissible Amount for the Limitation Year, the Plan Administrator shall deal with the Excess Amount as follows:

- (a) First, the Plan Administrator shall distribute to the Participant his/her Elective Deferrals for the Limitation Year to the extent that the distribution reduces the Excess Amount, provided that the Plan Administrator shall not distribute any Elective Deferral to the Participant that would cause the Plan to make a concurrent reduction in the amount of Employer Matching Contributions allocated to the Participant's Account. A distribution under this provision shall include earnings or gains attributable to the returned Elective Deferrals. All distributions shall be made no later than and in the manner provided in Section 5.10(d).
- (b) Second, to the extent there remains an Excess Amount after application of Section 7.05(a), the Plan Administrator shall hold the Excess Amount in a suspense account and allocate and reallocate the amount in the suspense account in the following Limitation Year (and in succeeding Limitation Years, if necessary) to reduce Employer Profit Sharing Contributions, Employer Matching Contributions and Elective Deferrals (in that order) to the Account of that Participant if that Participant is covered by the Plan as of the end of the Limitation Year. If the Participant is not covered, the excess amount shall be allocated and reallocated in the next Limitation Year to all Participants' Accounts in the Plan before any Employer Profit Sharing Contributions, Employer Matching Contributions and Elective Deferrals (in that order) that would constitute Annual Additions are made to the Plan for the Limitation Year, or at the option of the FX Employer, the Excess Amount shall be used to reduce Employer Profit Sharing Contributions and Employer Matching Contributions to the Plan for the Limitation Year by the amount in the suspense account that is allocated and reallocated during the Limitation Year. The suspense account shall be an unallocated account equal to the sum of all Excess Amounts for all Participants in the Plan during the Limitation Year. The suspense account shall not share in any earnings or losses of the Trust Fund. The Plan may not distribute any amounts in the suspense account to any Participant whether before or after Termination of Employment or termination of the Plan.

ARTICLE VIII IN-SERVICE AND HARDSHIP WITHDRAWALS

8.01 Withdrawals Due to Attainment of Age 59½, Completion of Service or Hardship: Except as otherwise provided in this Section 8.01 and in Section 8.05, no amounts may be withdrawn by a Participant from any Account held for his/her benefit prior to Termination of Employment with the Employer, unless the Employee has attained his/her Normal Retirement Date.

- (a) A Participant who has attained Age 59½ may withdraw all or any portion of his/her Elective Deferral Account. A Participant who has been a Participant in the Plan for at least five (5) Plan Years and who is 100% vested in his/her Account may withdraw all or any portion of his/her Matching Contribution and Profit Sharing Accounts, regardless of attained Age, except that this withdrawal right shall not apply to any portion of the participant's Matching Contribution and Profit Sharing Accounts which is invested in the Participant's Employer Securities Account. A Participant may make a withdrawal (regardless of Account) no more than once in each calendar quarter. In the event the Participant's Account includes amounts subject to the rules in Section 9.06, a withdrawal may only be made with respect to such amounts in accordance Section 9.06.
- (b) A Participant may elect to withdraw an amount credited to his/her Participant Elective Deferral Account without regard to the Participant's Age, but only if he obtains prior approval from the Plan Administrator, which approval shall be granted only upon a determination of Financial Hardship. In the case of a withdrawal due to Financial Hardship, the amount of the withdrawal shall be limited to the total amount of the Participant's Elective Deferrals, without regard to income allocable thereto. Upon granting approval, the Plan Administrator shall direct the Trustee to distribute the indicated portion of the Participant's Elective Deferral Account to the Participant.

8.02 Financial Hardship Distribution Rules: Plan adopts the deemed hardship distribution standards set forth in Reg. §1.401(k)-1(d)(2)(iv) (effective January 1, 2006, Reg. §1.401(k)-1(d)(3)(iv)). As a consequence, the Plan Administrator shall not approve any distribution on account of Financial Hardship unless the distribution is determined by the Administrator to be necessary to meet a Participant's immediate and heavy financial need. The distribution will be deemed necessary if:

- (a) The distribution is not in excess of the amount of the Participant's immediate and heavy financial need, including amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution; and
- (b) Other resources of the Participant are not reasonably available to meet this need. Whether other resources are reasonably available to the Participant must be determined by the Plan Administrator on the basis of all the relevant facts and circumstances. For this purpose the Participant's resources are deemed to include assets of the Participant's spouse and minor children that are reasonably available to the Participant.

The condition in Section 8.02(b) above is deemed to be met if the Participant has obtained all distributions, other than hardship distributions, and all nontaxable loans currently available under all plans maintained by the Employer. If a Participant receives a distribution on account of Financial Hardship during a Plan Year, his or her Elective Deferrals to this Plan and his or her employee contributions to all other plans maintained by the Employer (including qualified and non-qualified plans of deferred compensation and annuities under Code §403(b)) shall be suspended for six months after receipt of the hardship distribution.

8.03 Determination of Immediate and Heavy Financial Need: For purposes of Section 8.03, a distribution shall be deemed to be on account of an immediate and heavy financial need if the distribution is for:

- (a) Expenses for medical care described in Code §213(d) incurred by the Participant, the Participant's spouse or any dependent of the Participant or expenses necessary for these persons to obtain such medical care;
- (b) Payment of tuition and related educational fees, including room and board, for up to the next 12 months of post-secondary education for the Participant, the Participant's spouse, or a dependent of the Participant (as defined in Code §152, and, for taxable years beginning on or after January 1, 2005, without regard to Code §§152(b)(1), (b)(2) and (d)(1)(B));
- (c) Costs directly related to purchase (excluding mortgage payments) a principal residence for the Participant; or

- (d) Payments necessary to prevent the eviction of the Participant from his or her principal residence or foreclosure of the mortgage on that residence.

Effective January 1, 2006, a distribution shall also be deemed to be on account of an immediate and heavy financial need if the distribution is on account of either of the following additional circumstances:

- (e) Payments for burial or funeral expenses for the Participant's deceased parent, spouse, children or dependents (as defined in Code §152, and, for taxable years beginning on or after January 1, 2005, without regard to Code §152(d)(1)(B)); or
- (f) Expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under Code §165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

8.04 Withdrawal of Rollover Contributions: Effective for Plan Years commencing on or after January 1, 2004, in the event a Participant has a Rollover Contribution Account in the Plan, the Participant shall, upon written notice to the Plan Administrator, be entitled to withdraw at any time, subject to the restrictions described below, any amount up to the balance of the Rollover Contribution Account. Withdrawals shall have no effect upon any benefits provided under any other provisions of this Plan. The Plan Administrator and Trustee may establish a reasonable policy regarding the minimum amount that may be withdrawn and the frequency with which withdrawals may be made. The policy shall be in writing and shall be administered in a uniform and non-discriminatory manner.

If the Participant's Accrued Benefit at the time he requests a withdrawal from the Rollover Contribution Account or at any prior time has been greater than \$5,000, no such withdrawal may be made prior to the Participant's Normal Retirement Age unless the Participant first consents in writing. The amount withdrawn shall be distributed to the Participant in the manner and form provided in Section 11.02 as if the amount were distributed on account of the Participant's Termination of Employment or, if the Participant is eligible for Normal Retirement, in the manner and form provided in Article IX as if the amount were distributed on account of the Participant's Retirement. If the spousal consent rules of Section 9.06 apply to any amount in the Participant's Account, then no amount shall be withdrawn unless prior to the withdrawal the Participant's spouse, if any, consents to each separate withdrawal.

ARTICLE IX RETIREMENT BENEFITS

9.01 Normal or Late Retirement: A Participant shall be eligible for Normal Retirement on reaching his/her Normal Retirement Date. A Participant who has not become an Excluded Employee may continue in the service of the Employer as a Participant hereunder beyond his/her Normal Retirement Date. In the event such a Participant continues in the service of the Employer, he shall continue to be treated in all respects as a Participant until his/her actual retirement. When any Participant has a Termination of Employment following his/her Normal Retirement Date he shall be considered a retired Participant and he shall be entitled to receive the entire amount of his/her Accrued Benefit, distributed as set forth below.

9.02 Disability Retirement: Upon any Participant incurring a Disability, regardless of whether he is also treated as having a Termination of Employment, he shall be considered a disabled Participant and entitled to begin receiving his/her Accrued Benefit. Such amount shall be distributed as provided in Section 9.03, or deferred until such later date as elected by the disabled Participant and then distributed as provided in Section 9.03.

9.03 Method of Payment: Subject to the provisions of Section 9.06 and Article XXII, upon receipt of a claim for benefits a retired or disabled Participant's Accrued Benefit shall be payable as elected by the Participant, in a single lump sum payment. The amount of the lump sum payment shall be equal to the Participant's Accrued Benefit on the date payment is made. Payment shall be made in cash only, to the extent the Participant's Accrued Benefit is attributable to the balance in the Participant's General Investments Account and in Employer Securities only, to the extent the Participant's Accrued Benefit is attributable to the balance in the Participant's Employer Securities Account.

Except as provided in Section 9.04, no payment shall be made to a Participant prior to his/her Normal Retirement Age unless the Participant consents in writing to the payment not more than ninety (90) days (effective January 1, 2007, 180 days) prior to his/her Distribution Date.

Not less than thirty (30) days nor more than ninety (90) days (effective January 1, 2007, 180 days) before the Distribution Date, the Plan Administrator shall notify the Participant of the terms, conditions and forms of payment available from the Plan, including a description of the election procedures under this Section and a general explanation of the financial effect on a Participant's Accrued Benefit of the election. The minimum thirty (30) day waiting period after the notification is provided until the Distribution Date may be disregarded if the Plan Administrator informs the Participant of his/her right to the full minimum thirty (30) day waiting period, and the Participant elects in writing (or by other electronic means acceptable to the Plan Administrator) to waive the minimum thirty (30) day waiting period.

If the amount of the Vested Accrued Benefit in the Participant's Account that would be payable to a disabled or retired Participant in a lump sum is not more than Five Thousand Dollars (\$5,000), without regard to whether the Vested Accrued Benefit in the Participant's Account has ever exceeded that amount at the time of any prior distribution, the benefit shall be paid as a single lump sum payment in cash as soon as Administratively Feasible following the end of the calendar month in which his/her Termination of Employment occurs without regard to any Participant consent requirement or the requirements of Section 9.06. The Accrued Benefit held in the Participant's Employer Securities Account shall be valued as of the most recent preceding Valuation Date.

If the Participant dies prior to the complete distribution of the Participant's Accrued Benefit to him, then the Plan Administrator, upon notice of the Participant's death, shall direct the Trustee to make payment in accordance with the provisions of Article X.

For all distributions commencing on or after March 28, 2005, the five thousand dollar (\$5,000) threshold amount in this Section shall be reduced to one thousand dollars (\$1,000).

9.04 Time of Payment: Payment of the portion of the retired or disabled Participant's Accrued Benefit held in his/her General Investments Account shall commence as soon as Administratively Feasible following the end of the calendar month in which a claim for benefits is submitted to the Plan Administrator. Payment of the portion of the Accrued Benefit held in the Participant's Employer Securities Account shall commence as soon as Administratively Feasible after the next Valuation Date that follows the date the claim for benefits is submitted to the Plan Administrator. A Participant may elect to delay distribution of his/her Accrued Benefit held in his/her General Investments Account until distribution of the amounts in his/her Employer Securities Account. Unless a Participant elects otherwise (and failure to submit a claim for benefits shall be deemed such an election) payment of benefits under this Plan will commence not later than sixty (60) days after the close of the Plan Year in which the latest of the following events occurs:

- (a) The attainment by the Participant of Age sixty-five (65) or, if earlier, his/her Normal Retirement Age; or
- (b) The tenth (10th) anniversary of the Participant's Entry Date; or
- (c) The date the Participant terminates employment with the Employer.

If the amount of the payment required to commence on the date determined above cannot be ascertained by such date, or if it is not possible to make such payment on such date because the Plan Administrator has been unable to locate the Participant after making reasonable efforts to do so, a payment retroactive to such date may be made no later than sixty (60) days after the earliest date on which the amount of such payment can be ascertained or the date the Participant is located, whichever is applicable.

9.05 Minimum Distribution Requirements: This Section 9.05 and Section 10.04 shall take precedence over any inconsistent provisions of this Plan. All distributions required to be made under this Section 9.05 (life distributions) or under Section 10.04 (death distributions) will be determined and made in accordance with the Treasury regulations under Code §401(a)(9).

- (a) Effective Date. This Section and Section 10.04 (as amended herein) will apply for purposes of determining required minimum distributions for all calendar years beginning with the 2003 calendar year. Required minimum distributions for the 2002 calendar year under this Section and Section 10.04 will be determined as follows. If the total amount of 2002 required minimum distributions under the Plan made to a Participant or Beneficiary prior to the effective date of this Section equals or exceeds the required minimum distributions determined under this Section, then no additional distributions will be required to be made for the 2002 calendar year on or after such date to the Participant or Beneficiary. If the total amount of the 2002 calendar year required minimum distributions under the Plan made to the Participant or Beneficiary prior to the effective date of this Section is less than the amount determined under this Section, then required minimum distributions for the 2002 calendar year on and after such date will be determined so that the total amount of required minimum distributions for the 2002 calendar year made to the Participant or Beneficiary will be the amount determined under this Section.
- (b) Time and Manner of Distribution.
- (1) Required Beginning Date. The Participant's entire Vested Accrued Benefit will be distributed, or begin to be distributed, to the Participant no later than the participant's Required Beginning Date.
 - (2) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire Vested Accrued Benefit will be distributed, or begin to be distributed, as provided in Section 10.04.
 - (3) Forms of Distribution. Unless the participant's interest has been distributed in the form of a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Section 9.05(c).
- (c) Required Minimum Distributions During Participant's Lifetime
- (1) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:
 - (i) the quotient obtained by dividing the Participant's Account Balance by the distribution period in the Uniform Lifetime Table set forth in Treas. Reg. Section 1.401(a)(9)-9, using the Participant's Age as of the Participant's birthday in the Distribution Calendar Year; or
 - (ii) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Treas. Reg. Section 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the participant's and spouse's birthdays in the Distribution Calendar Year.
 - (2) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 9.05(c) beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.
- (d) Definitions. For purposes of this Section 9.05 and Article X the following definitions shall apply.
- (1) "Designated Beneficiary" shall mean the individual who is designated as the Beneficiary under Section 10.02 of the Plan and is the Designated Beneficiary under Code §401(a)(9) Treas. Reg. Section 1.401(a)(9)-1, Q&A-4.

- (2) "Distribution Calendar Year" shall mean a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year that contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Section 10.04. The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Required Beginning Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that Distribution Calendar Year.
 - (3) "Life Expectancy" shall mean Life Expectancy as computed by use of the Single Life Table in Treas. Reg. §1.401(a)(9)-9.
 - (4) "Participant's Account Balance" shall mean the balance in the Participant's Account as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.
 - (5) "Required Beginning Date" shall mean, if a Participant is a more than five percent (5%) owner in the Plan Year ending in or with the calendar year in which the Participant attains Age 70½, April 1st following that calendar year. For any other Participant the Required Beginning Date is April 1st following the close of the calendar year in which the Participant attains Age 70½, or, if later, April 1st following the close of the calendar year in which the Participant has a Termination of Employment.
 - (6) "Five percent (5%) owner" shall have the meaning set forth in Reg. §1.401(a)(9)-1, Q&A-2(c).
- (e) Form of Benefit Payment. If payment of the Participant's Accrued Benefit commences under this Section 9.05, it shall be distributed to the Participant (consistent with the Participant's election and the requirements of Section 9.03):
- (1) In the form of a cash lump sum payment of the Participant's entire Accrued Benefit; or
 - (2) In the form of minimum annual cash installment payments over a period not extending beyond the life expectancy of the Participant, or the joint life expectancy of the Participant and his/her Designated Beneficiary.
- If the Participant fails to elect a form of payment, the Plan shall distribute the Participant's benefit in annual installments, commencing no later than the Required Beginning Date, with each subsequent installment payment to be made not later than each December 31 thereafter.
- (f) Redetermination of Life Expectancy. For purposes of determining the amount of any minimum annual cash installment payments whenever the Participant's Designated Beneficiary is his/her spouse, the life expectancy of the Participant and his/her Designated Beneficiary spouse shall be redetermined annually, unless otherwise elected by the Participant. If the Participant's Designated beneficiary is not his/her spouse, redetermination of life expectancy shall not apply. Notwithstanding the above, any distribution required under the incidental death benefit requirements of Code §401(a) shall be treated as a required distribution.

9.06 Qualified Joint and Survivor Annuity: Effective for all distributions commencing after December 31, 2001, (provided notice has been delivered to all Participants as required in DOL Reg. §2520.104b-3), this Section shall apply only to a Participant or Inactive Participant with respect to whom this Plan holds Transferred Benefits that were directly or indirectly transferred from a defined benefit pension plan, money purchase pension plan, or other qualified plan to which Code §401(a)(11)(B)(iii) applies. Furthermore, this Section shall only apply to that portion of the Participant's Transferred Benefits attributable to such transfer (the "Annuity Eligible Accrued Benefits"). Prior to January 1, 2004, this Section shall apply as provided in the Prior Plan.

- (a) **Qualified Joint and Survivor Annuity:** A Participant or Former Participant shall receive his/her Annuity Eligible Accrued Benefits in the form of a Qualified Joint and Survivor Annuity, unless he elects otherwise as provided in subsection (b) below. The Qualified Joint and Survivor Annuity is an immediate annuity providing monthly payments for the life of the Participant with, if the Participant is married on the Distribution Date, a survivor annuity providing monthly payments for the life of the Participant's surviving spouse (terminating with the last payment due prior to her death) equal to fifty percent (50%) of the monthly payment amount during the joint lives of the Participant and his/her spouse. The monthly payment amount of the Qualified Joint and Survivor Annuity shall be that amount that can be purchased from an Insurer with the Annuity Eligible Accrued Benefits of the Participant as of the Distribution Date.

The Qualified Joint and Survivor Annuity for a Participant or Former Participant who is not married on his/her Distribution Date shall be a life annuity that provides monthly payments for the life of the Participant and terminates with the last payment due prior to his/her death. The annuity shall be purchased from an Insurer in an amount that can be provided by the Participant's Annuity Eligible Accrued Benefits.

- (b) **Notice and Election of Form of Retirement Benefit:** Each Participant or Inactive Participant with an Annuity Eligible Accrued Benefit shall be provided a written notification by the Plan Administrator. The notification shall be in non-technical language and shall include:
- (1) A general description or explanation of the terms and conditions of the Qualified Joint and Survivor Annuity;
 - (2) The circumstances in which it will be provided unless the Participant elects otherwise;
 - (3) The Participant's right to make, and the effect of, an election to waive the Qualified Joint and Survivor Annuity form of benefit;
 - (4) The rights of the Participant's spouse under subsection (c);
 - (5) The right to make, and the effect of, a revocation of an election to waive the Qualified Joint and Survivor Annuity form of benefit;
 - (6) A general explanation of the relative financial effect of the election on a Participant's benefits; and
 - (7) A general explanation of the eligibility conditions and other material features of the optional forms of retirement benefit and sufficient additional information to explain the relative values of the optional forms of retirement benefit.

The notification shall also inform the Participant that a specific written explanation in non-technical language of the terms and conditions of the Qualified Joint and Survivor Annuity and the financial effect upon the particular Participant's benefits of making an election against the Qualified Joint and Survivor Annuity is available upon written request by the Participant. The notification shall be provided not less than thirty (30) days nor more than ninety (90) days before the Distribution Date. If the Participant requests a specific written explanation, the explanation shall be provided within thirty (30) days of the Participant's request. The Plan Administrator need not comply with more than one such request made by a particular Participant.

During the Joint and Survivor Election Period, as hereinafter defined, a Participant eligible to make the election to waive the Qualified Joint and Survivor Annuity of subsection (a) shall be eligible to elect to receive his/her benefits as provided in Section 9.03. The election shall be in writing and may be revoked at any time during the Joint and Survivor Election Period. New elections and revocations may be made any number of times during the Joint and Survivor Election Period after a previous election or revocation. For purposes of this paragraph, the term "Joint and Survivor Election Period" shall mean the ninety (90) day period ending on the Distribution Date.

- (c) **Consent of Spouse:** Notwithstanding any other provision of this Article, any election by a Participant or Inactive Participant to waive the Qualified Joint and Survivor Annuity pursuant to subsection (b) shall not be given effect unless:

- (1) The spouse of the Participant consents in writing to such election;
 - (2) The spouse acknowledges the form of benefit payment elected by the Participant and, if applicable, the Beneficiary designated by the Participant, or the spouse relinquishes the right to specify the form of benefit payment and name the Beneficiary; and the spouse's consent acknowledges the effect of such election and is witnessed by the Plan Administrator (or representative thereof) or a notary public;
 - (3) It is established to the satisfaction of the Plan Administrator that the consent required under (1) above may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by Regulation prescribe; or
 - (4) The lump sum benefit otherwise payable to the Participant is less than Three Thousand Five Hundred Dollars (\$3,500) and a lump sum payment will be made pursuant to Section 9.03.
- A waiver of the Qualified Joint and Survivor Annuity made pursuant to subsection (b) shall be automatically revoked upon the marriage of the Participant, prior to his/her Distribution Date, to a person who has not consented to the waiver pursuant to subsection (1) above or from whom consent was not required by reason of subsection (2) above; or upon a change in the form of benefit payment or in the Beneficiary designated by the Participant pursuant to subsection (1)(ii) above, unless the spouse has relinquished the right to specify the form of benefit payment and to name the Beneficiary.

If the requirements of the preceding paragraphs are not satisfied, the Participant shall receive his/her Annuity Eligible Accrued Benefit in the form of the Qualified Joint and Survivor Annuity.

9.07 Distribution of Employer Securities:

- (a) So long as the Plan holds Employer Securities that are not issued by an FX Employer that is an electing corporation under sub-chapter S of the Code, then to the extent the Participant's Account is invested in such Employer Securities distributions of benefits from the Plan shall be made in those Employer Securities, valued at fair market value at the time of distribution. Any fractional security share to which a Participant or his/her Beneficiary is entitled shall be paid in cash.
- (b) If the Employer's charter or bylaws restrict ownership of substantially all shares of Employer Securities to Employees or to the Trust, then distribution of the Participant's Accrued Benefit attributable to his/her Employer Securities Account shall be made entirely in cash.

9.08 Distribution of Transferred Benefits: To the extent not already provided under the terms of this Plan, and notwithstanding any other provisions to the contrary, this Plan guarantees to each Participant whose Account includes Transferred Benefits the right to receive all Transferred Benefits in any optional form of benefit (including time, manner and method of distribution) protected under IRC §411(d)(6). The extent and nature of the optional forms of benefits so protected shall be determined by reference to the Predecessor Plan(s). Effective for Plan Years commencing after December 31, 2002, (or if sooner, ninety (90) days after notice is given to all Plan Participants that satisfies DOL Reg. §2520.104b-3) no optional forms of benefit, except those required under Section 9.06 and those set forth in Section 9.03 shall be available under the Plan.

ARTICLE X DEATH BENEFITS

10.01 Death Benefits Payable: If a Participant who has not received a distribution of his/her entire Vested Interest dies, whether before or after his/her Distribution Date, the death benefit payable to the Beneficiary, Contingent Beneficiary or estate (as the case may be) of the Participant shall be all amounts credited (or to be credited) to his/her Accounts then held by the Trustee for the Participant's benefit, without regard to the Participant's Vested Percentage and that have yet to be distributed. If an Inactive Participant who has not received a distribution of his/her entire Vested Interest dies, whether before or after his/her Distribution Date, the death benefit payable to the Beneficiary, Contingent Beneficiary or estate (as the case may be) of the Inactive Participant shall be the remaining Vested Interest in the Inactive Participant's Accounts then held by the Trustee for the Inactive Participant's benefit.

10.02 Designation of Beneficiary: Each Participant or Inactive Participant shall be given the opportunity to designate a Beneficiary and Contingent Beneficiary and from time to time the Participant or Inactive Participant may file with the Plan Administrator a new or revised designation, provided that his/her spouse shall be his/her Beneficiary unless his/her spouse has consented in writing to the designation of a Beneficiary other than his/her spouse or it is established to the satisfaction of the Plan Administrator that the consent of the spouse may not be obtained because there is no spouse, the spouse cannot be located or because of such other circumstances as may be set forth in Regulations issued pursuant to Code §417(a)(2)(B). The change in marital status of a Participant from married to unmarried or vice versa shall void any outstanding beneficiary designation and require the completion and execution of a new beneficiary designation consistent with the provisions of this Section. Each Participant or Inactive Participant may also designate any form of payment available under Section 9.03 to the Beneficiary or Contingent Beneficiary. A Participant shall not be permitted to designate the form of payment on any beneficiary designation amended or executed after the Effective Date. Beneficiary designations shall be completed in the manner approved by the Plan Administrator or set forth in writing on a form provided by the Plan Administrator.

If upon the Participant's death his/her designated Beneficiary does not survive him, the Contingent Beneficiary shall become the Beneficiary and any death benefits shall be paid to him or her. If a deceased Participant is not survived by a designated Beneficiary or Contingent Beneficiary, or if no Beneficiary was designated, the benefits shall be paid to the Participant's surviving spouse or if there is no surviving spouse, then to the executor or administrator of the Participant's estate. For purposes of determining the right of a Beneficiary, Contingent Beneficiary or surviving spouse to receive a benefit on account of the death of a Participant, he or she shall not be deemed to have survived the Participant unless he or she shall survive the Participant by at least thirty (30) days.

If the Beneficiary, Contingent Beneficiary or surviving spouse survives the Participant and is entitled to receive benefits under this Section 10.02, but dies prior to receiving the entire death benefit payable to him or her, the remaining portion of the death benefit shall be paid to the person's named beneficiary or, if none, to the person's estate subject to the right of commutation.

10.03 Death Benefit Payment Procedure: Upon receipt of a claim for benefits, the Participant's death benefit shall be paid by the Trustee to the Beneficiary designated by the Participant pursuant to Section 10.02. The Beneficiary of a Participant may elect to receive any death benefits payable hereunder in any Optional Form of Payment provided in Article IX other than a Joint and Survivor Annuity. Until such time as distribution is made to the Beneficiary the Participant's Account shall be held in the Plan, subject to all investment directions of the Beneficiary as though he or she were the Participant. The Beneficiary's election to receive distribution shall be made in the same manner provided under Articles IX and XI for distribution to Participants. If the Beneficiary fails to elect a form of payment, then subject to the small benefit distribution rules in the next paragraph, the Plan shall distribute the death benefit in annual installments, commencing no later than December 31 of the Plan Year following the Plan Year of the Participant's death, with each subsequent installment payment to be made no later than each December 31 thereafter.

If the lump sum benefit otherwise payable to the Beneficiary is not more than Five Thousand Dollars (\$5,000.00), and payment of benefits to the deceased Participant has not previously commenced, the benefit shall be paid as a single lump sum payment. Payment of any death benefits under this paragraph shall commence, unless otherwise designated by the Participant or elected by the Beneficiary, as soon as Administratively Feasible following the Participant's date of death and the end of the calendar month in which the Plan Administrator receives a claim for benefits. However, if the amount of the benefit required to be paid on the date determined above cannot be ascertained by that date, or if it is not possible to make the payment on that date because the Plan Administrator has been unable to ascertain or locate the Beneficiary after making reasonable efforts to do so, a payment retroactive to that date may be made as soon as Administratively Feasible after the earliest date on which the Beneficiary or amount of the payment can be ascertained or the date the Beneficiary is located, whichever is applicable.

10.04 Required Distributions Upon Death: Notwithstanding any other provisions of this Plan, payment of death benefits shall be subject to the following rules:

- (a) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire Vested Accrued Benefit will be distributed, or begin to be distributed no later than as follows:
 - (1) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then unless otherwise provided herein, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained Age 70½, if later.
 - (2) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then except as otherwise provided herein, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire Vested Accrued Benefit will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (4) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 10.04(a), other than subsection (a)(1), will apply as if the surviving spouse were the Participant.

For purposes of this Section 10.04(a) and Sections 10.04(e) and (f), unless Section 10.04(a)(4) applies, distributions are considered to begin on the participant's Required Beginning Date. If Section 10.04(a)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 10.04(a)(1).

- (b) Forms of Distribution. Unless the participant's interest has been distributed in the form of a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections 10.04(e) and (f).
- (c) Beneficiaries' Election of Five Year Rule. Beneficiaries may elect on an individual basis whether the five year rule or the Life Expectancy rule in Sections 10.04(a) and (f) applies to distributions after the death of a Participant who has a Designated Beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Section 10.04(a) or by September 30 of the calendar year that contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor Beneficiary makes an election under this subsection, distributions will be made in accordance with Sections 10.04(a) and (f).

- (d) Transition Rule for Designated Beneficiary Receiving Distributions Under Five Year Rule to Elect Life Expectancy Distributions. A Designated Beneficiary who is receiving payments under the five year rule may make a new election to receive payments under the Life Expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the Life Expectancy rule for all Distribution Calendar Years before 2004 are distributed by the earlier of December 31, 2003, or the end of the five year period.
- (e) Death On or After Date Distributions Begin.
- (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:
- (i) The Participant's remaining Life Expectancy is calculated using the Age of the Participant in the year of death, reduced by one for each subsequent year.
- (ii) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's Age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the Age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
- (iii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the Age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the Age of the Participant in the year of death, reduced by one for each subsequent year.
- (f) Death Before Date Distributions Begin.
- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Section 10.04(e).
- (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

- (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.
If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 10.04 (a)(1), this Section 10.04(f) will apply as if the surviving spouse were the Participant.

10.05 Qualified Pre-retirement Survivor Annuity and Related Matters: Effective for all distributions commencing after December 31, 2001, (provided notice has been delivered to all Participants and Beneficiaries as required in DOL Reg. §2520.104b-3) this Section shall apply only to a Participant or Inactive Participant with respect to whom this Plan holds Transferred Benefits that were directly or indirectly transferred from a defined benefit pension plan, money purchase pension plan, or other qualified plan to which Code §401(a)(11)(B)(iii) applies. Furthermore, this Section shall only apply to that portion of the Participant's Transferred Benefits attributable to such transfer ("Annuity Eligible Accrued Benefits"). Prior to January 1, 2004, this Section shall apply as provided in the prior Plan.

If a Participant or Inactive Participant dies prior to his/her Distribution Date and is survived by a spouse, a Qualified Pre-retirement Survivor Annuity shall be paid to the surviving spouse except as otherwise provided by the following provisions. A Qualified Pre-retirement Survivor Annuity is an immediate annuity payable to the Participant for the life of the spouse in monthly amounts equal to the monthly amount that can be purchased from an insurer with fifty percent (50%) of the Annuity Eligible Accrued Benefits of the Participant as of the date of his/her death.

- (a) A Participant may elect to waive the Qualified Pre-retirement Survivor Annuity provided under this Section during the election period described in subsection (d). The waiver may be revoked by the Participant during the election period by filing with the Plan Administrator on a form approved by the Plan Administrator an executed revocation of such waiver. Following revocation a Participant may again waive the Qualified Pre-retirement Survivor Annuity and subsequently revoke the waiver any number of times during the election period.
- (b) A waiver pursuant to subsection (a) shall not be effective unless:
- (1) The spouse, to whom the Participant is married at the time such waiver is executed, consents in writing to such waiver;
 - (2) The spouse acknowledges the form of the death benefit payable in lieu of the Qualified Pre-retirement Survivor Annuity and the Beneficiary designated by the Participant, or the spouse relinquishes the right to specify the form of the death benefit and name the Beneficiary; and
 - (3) The consent acknowledges the effect of the waiver and is witnessed by the Plan Administrator (or representative thereof) or a notary public; or
 - (4) It is established to the satisfaction of the Plan Administrator that the consent of the spouse required by this Section may not be obtained because there is no spouse, the spouse cannot be located or because of such other circumstances as may be set forth in Regulations issued pursuant to Section 417(a)(2)(B) of the Code; and
 - (3) The waiver is made on a form approved by the Plan Administrator and executed by the Participant and, if required, the spouse of the Participant.
- (c) A waiver made pursuant to subsection (a) shall be automatically revoked:
- (1) Upon the marriage of the Participant to a person who has not consented to the waiver pursuant to subsection (b)(1) or from whom consent was not required by reason of subsection (b)(2); or
 - (2) Upon a change in the form of the death benefit or in the Beneficiary designated by the Participant, unless the spouse has relinquished the right to specify the form of the death benefit and to name the Beneficiary.

- (d) The election period shall begin on the first day of the Plan Year in which the Participant attains Age thirty-five (35) and shall end on the date such Participant dies. Notwithstanding the foregoing, in the case of a Participant who incurs a Termination of Employment before the Participant attains Age thirty-five (35), the election period shall begin on the date of Termination of Employment and shall end on the date the Participant dies.
- (e) Notwithstanding anything in this Section to the contrary, an election to waive the Qualified Pre-retirement Survivor Annuity made by a Participant before the first day of the Plan Year in which he attains Age thirty-five (35) shall only be effective until the first day of the Plan Year in which he attains Age thirty-five (35), at which time such election shall be automatically revoked.
- (f) The Plan Administrator shall provide to each Participant within the period beginning on the first day of the Plan Year in which the Participant attains Age thirty-two (32), but not earlier than the first day of the one-year period ending on the date he becomes a Participant, and ending on the last day of the Plan Year preceding the Plan Year in which the Participant attains Age thirty-five (35), but not earlier than the last day of the one-year period beginning on the date he becomes a Participant, a written explanation of the Qualified Pre-retirement Survivor Annuity containing the following:
 - (1) The terms and conditions of the Qualified Pre-retirement Survivor Annuity;
 - (2) The Participant's right to make, and the effect of, an election to waive the Qualified Pre-retirement Survivor Annuity;
 - (3) The rights of the Participant's spouse under subsection (b)(1); and
 - (4) The right of the Participant to make, and the effect of, a revocation of an election pursuant to subsection (a).

The Plan Administrator shall also provide an explanation to each Participant who incurs a separation from service prior to receiving the explanation no later than the earlier of the end of the one-year period beginning on the date of his/her separation from service or the end of the period described above.

- (g) Notwithstanding anything herein to the contrary, a surviving spouse entitled to a benefit under this Section, may elect to receive payment of the Qualified Pre-retirement Survivor Annuity in a lump sum or any other form of payment permitted under Section 10.04. Upon request, the Plan Administrator shall furnish the spouse with an explanation of the Qualified Pre-retirement Survivor Annuity and with information concerning the financial effect of receiving benefits in any form selected. An election under this subsection must be filed with the Plan Administrator before benefit payments commence, unless the Plan Administrator determines otherwise.
- (h) Notwithstanding anything herein to the contrary, a surviving spouse may delay the commencement of benefit payments pursuant hereto, provided such delay satisfies the requirement of Article IX by deeming the surviving spouse to be the Participant.
- (i) If the lump sum amount of the Qualified Pre-retirement Survivor Annuity otherwise payable to the surviving spouse is less than Three Thousand Five Hundred Dollars (\$3,500), such benefit shall be paid as a single lump sum payment.

10.06 Optional Forms of Benefit Guaranteed: To the extent not already provided under the terms of this Plan, and notwithstanding any other provisions to the contrary, this Plan guarantees to the Beneficiaries of each Participant whose Account includes Transferred Benefits the right to receive all Transferred Benefits in any optional form of benefit (including time, manner and method of distribution) protected under IRC S 411(d)(6). The extent and nature of the optional forms of benefits so protected shall be determined by reference to the Predecessor Plan(s). Effective for Plan Years commencing after December 31, 2002, (or if sooner, ninety (90) days after notice is given to all Plan Participants that satisfies DOL Reg. §2520.104b-3) no optional forms of benefit, except those required under Section 9.06 and those set forth in Section 9.03 shall be available under the Plan.

ARTICLE XI BENEFITS UPON OTHER TERMINATION OF EMPLOYMENT

11.01 Vested Amounts: Upon attainment of his/her Normal Retirement Age or the occurrence of death or Disability while employed by an FX Employer, a Participant shall be one hundred percent (100%) vested in his/her Accrued Benefit. Prior to the occurrence of any of the events described above a Participant shall have a Vested Interest in his/her Accrued Benefit equal to the sum of the following:

- (a) One hundred percent (100%) of the balances in his/her Participant Elective Deferral Account and Participant Rollover Account, if any, as adjusted for any contributions or distributions since the preceding Valuation Date; and
- (b) his/her vested percentage of the balance in his/her Employer Matching Contribution Account and Employer Profit-Sharing Contribution Account, as adjusted for any contributions or distributions since the preceding Valuation Date, according to the Participant's Years of Vesting Service, and consistent with the following schedule:

<u>Years of Vesting Service</u>	<u>Percent of Vested Accrued Benefit</u>
Less than three (3) years	none
At least three (3) or more years	100%

- (c) A Participant's Predecessor Plan Account (if any) shall be vested pursuant to the vesting rules set forth in the Predecessor Plan Account.

Effective January 1, 2005, a Participant shall be one hundred percent (100%) vested in the balance in his/her Matching Contribution Account which has been allocated to his/her Matching Contribution Account on account of Participant Elective Deferrals made after December 31, 2004, and shall be vested in a percentage of the balance in his/her Profit-Sharing Contribution Account attributable to Profit Sharing Contributions made to the Plan after January 1, 2004, according to the Participant's Years of Vesting Service, and consistent with the following schedule:

<u>Years of Vesting Service</u>	<u>Percent of Vested Accrued Benefit</u>
Less than one (1) year	none
At least one (1) year	33_%
At least two (2) years	66_%
At least three (3) or more years	100%

The percentage of his/her Accrued Benefit attributable to the Participant's Employer Contribution Accounts in which he is not vested shall be forfeited by him as provided in Section 11.06.

11.02 Distribution of Vested Interest: Subject to the provisions of Section 9.06 and Article XXII, a Participant who incurs a Termination of Employment for any reason other than retirement or death shall receive a single lump sum payment equal to the Participant's Vested Interest as of the date payment is made. The amount of the lump sum payment shall be equal to the Participant's Vested Interest on the date payment is made. Payment shall be made in cash only, to the extent the Participant's Vested Interest is attributable to the balance in the Participant's General Investments Account and in Employer Securities to the extent the Participant's Vested Interest is attributable to the balance in the Participant's Employer Securities Account.

If a Participant elects a deferred payment, then payment of the Participant's Vested Accrued Benefit shall be deferred to the subsequent date elected by the Participant, which may be no later than the latest date permitted under Section 9.05, or (if no election is made) to the earliest date permitted under Section 9.04, as though the Participant had then retired. Distribution shall be in accordance with the provisions of Section 9.03.

If the lump sum amount that would be payable to the terminated Participant is not more than Five Thousand Dollars (\$5,000), without regard to whether the Vested Accrued Benefit in the Participant's Account has ever exceeded that amount at the time of any prior distribution, the benefit shall be paid as a single lump sum payment in cash as soon as Administratively Feasible following the end of the calendar month in which his/her Termination of Employment occurs without regard to any Participant consent requirement or the requirements of Section 9.06. For this purpose the Vested Accrued Benefit held in the Participant's Employer Securities Account shall be valued as of the most recent preceding Valuation Date.

If the Participant elects distribution following Termination of Employment, payment shall commence after the later of the date on which the Participant makes the distribution request (by filing a claim for benefits) or terminates employment, according to the following rules:

- (a) Payment of the portion of the Participant's Vested Interest held in his/her General Investments Account shall commence as soon as Administratively Feasible following the end of the calendar month in which the claim for benefits is submitted or the termination occurs.
- (b) Payment of the portion of the Participant's Vested Interest held in the Participant's Employer Securities Account shall commence as soon as Administratively Feasible after the next Valuation Date that follows the date the claim for benefits is submitted or the termination occurs.
- (c) A Participant may elect to delay distribution of his/her Vested Interest held in his/her General Investments Account until distribution of the amounts in his/her Employer Securities Account.

If an Inactive Participant dies or incurs a Disability before his/her Normal Retirement Date, the Plan Administrator, upon notice of the death or Disability, shall direct the Trustee to make payment of the Participant's Vested Interest to him (or to his/her Beneficiary if the Participant is deceased) in accordance with the provisions of Article X in the case of death, or Section 9.02 in the case of Disability.

Notwithstanding the above, if a terminated Participant is re-employed by the Employer prior to distribution of his/her Vested Interest, then no distribution shall be made until his/her employment is again terminated or until the occurrence of another event permitting distribution under the terms of the Plan.

For all distributions commencing on or after March 28, 2005, the five thousand dollar (\$5,000) threshold amount in this Section shall be reduced to one thousand dollars (\$1,000).

11.03 Eligible Rollover Distributions: Notwithstanding any provision of this Plan to the contrary, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. For purposes of this Section 11.03 the following definitions shall apply:

- (a) "Eligible Rollover Distribution" shall mean any distribution of all or any portion of the balance to the credit in the Account of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code §401(a)(9), and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to Employer Securities). Effective January 1, 2000, an Eligible Rollover Distribution shall not include any hardship withdrawal as defined in Code §401(k)(2)(B)(i)(IV) or permitted under Section 8.01(c) that is attributable to the Participant's Elective Deferrals as defined under Reg. §1.401(k)-1(d)(2)(ii).

Effective for distributions made after December 31, 2001, any amount that is distributed on account of hardship (without regard to whether the hardship withdrawal is attributable to Elective Deferrals) shall not be an eligible rollover distribution and the Distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of Employee Voluntary Contributions that are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code §§408(a) or (b), or to a qualified defined contribution plan described in Code §§401(a) or 403(a) that agrees to account separately for amounts so transferred, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not so includable.

- (b) “Eligible Retirement Plan” shall mean an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b), an annuity plan described in Code §403(a), or a qualified trust described in Code §401(a), that accepts the Distributee's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to the surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Code §403(b) and an eligible plan under Code §457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code §414(p).

- (c) “Distributee” shall mean an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code §414(p), are Distributees with regard to the interest of the spouse or former spouse.
- (d) “Direct Rollover” shall mean a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

11.04 Breaks in Service and Vesting: If a Participant has a One Year Break in Service, the Participant's Years of Vesting Service before the One Year Break in Service shall not be included in computing Years of Vesting Service until the Participant shall have completed one Year of Vesting Service after the One Year Break in Service. If an Employee terminated employment prior to becoming a Participant and incurred a One Year Break in Service, or if a Participant did not have any Vested Interest derived from Employer contributions prior to a One Year Break in Service, Years of Vesting Service before a One Year Break in Service shall not be included in Years of Vesting Service calculated after the Participant's One Year Break in Service if the number of consecutive One Year Breaks in Service equals or exceeds the greater of five (5) or the aggregate number of such Years of Vesting Service before the One Year Break in Service.

Solely for the purpose of determining the vested percentage of a Participant's Accrued Benefit derived from Employer contributions that accrued prior to a five (5) consecutive one (1) year Break in Service period, the Plan shall disregard any Year of Service subsequent to such five (5) consecutive one (1) year Breaks in Service period.

If a Participant has a One Year Break in Service, and the break does not arise on account of Termination of Employment, the Participant shall not be credited with a Year of Vesting Service for that Plan Year. However, no amounts in the Participant's Accounts shall be forfeited.

11.05 No Increase in Pre-break Vesting: For purposes of Section 11.01, Years of Vesting Service after a Termination of Employment that resulted in five (5) consecutive One Year Breaks in Service shall not increase the vested percentage of a Participant's Account that was earned before such five (5) consecutive One Year Breaks in Service.

11.06 Disposition of Forfeitures: Amounts forfeited by terminated Participants from their Employer Matching Contribution Accounts shall be used to reduce the Employer's contribution otherwise required pursuant to Section 5.06 and shall be allocated in the same manner as Employer Matching Contributions in accordance with Section 6.02(c). Amounts forfeited by terminated Participants from their Employer Profit Sharing Contribution Accounts shall be allocated in the same manner as the Employer's Profit Sharing Contribution made pursuant to Section 5.07 to Participants' Accounts as provided in Section 6.02(d). To the extent possible, the Plan Administrator must forfeit from a Participant's General Investments Account before making a forfeiture from his/her Employer Securities Account.

Forfeiture of any non-vested interest with respect to any Participant shall occur:

- (a) In the case of a Participant who receives a lump sum distribution of his/her Vested Interest on account of Termination of Employment, on the day the Participant receives the distribution.
- (b) In the case of a Participant who has a Vested Interest derived from Employer Contributions and does not receive a distribution of such Vested Interest, on the last day of the Plan Year in which the Participant incurs five (5) consecutive One Year Breaks in Service.
- (c) In the case of a Participant who has no Vested Interest derived from Employer Contributions, on the last day of the Plan Year in which the Participant terminates employment.

Non-vested interests of terminated Participants shall be held by the Trustee in the respective Accounts of the Participant until the date determined above and shall then be forfeited by the Participant and allocated in accordance with this Section.

11.07 Distribution to Participants Who Are Less Than 100% Vested: In the event a Participant who is less than one hundred percent (100%) vested in his entire Account hereunder incurs a Termination of Employment and returns to the employ of the Employer after a forfeiture of his/her non-vested interest but prior to incurring five (5) consecutive One Year Breaks in Service, and prior to his/her re-employment was paid his/her Vested Interest, the non-vested portion of his/her Accrued Benefit that was forfeited by the Participant shall be disregarded in computing his/her Accrued Benefit after re-entry into the Plan, unless the Participant repays, pursuant to Section 11.08, the amounts distributed from his/her Account from which an amount was forfeited. If a Participant does repay the distribution, the balance in such Account shall be restored as provided in Section 11.09.

In the event a Participant who had no Vested Interest in any Employer Contribution Account separated from service and returns to the employ of the Employer after a forfeiture of his/her non-vested interest but prior to incurring five (5) consecutive One Year Breaks in Service, any non-vested amounts forfeited by the Participant shall be restored, as provided in Section 11.09, to the Account from which an amount was forfeited.

11.08 Repayment of Distribution: A Participant described in Section 11.07 who received a lump sum distribution of less than one hundred percent (100%) of his/her Accrued Benefit shall be entitled to repay the amounts distributed from all Employer Contribution Accounts. The repayment must be for the full amount distributed from all Employer Contribution Accounts and must be made not later than the earlier of:

- (a) The date on which the Participant incurs five (5) consecutive One Year Breaks in Service after the date of distribution.
- (b) The end of the five (5) year period beginning with the date the Participant is re-employed by the Employer.

Any repayment shall not be included in applying the limitations of Article V or Article VIII hereunder.

11.09 Restoration of Accounts: Any amount repaid pursuant to Section 11.08 shall be credited to the Participant's Accounts for which it is repaid, with credit to be made as of the date of repayment. The Account shall also be credited with the amount previously forfeited from the Account, with credit to be made as of the last day of the Plan Year in which repayment is made.

In the case of a Participant to whom the second paragraph of Section 11.07 applies, the Participant's Accounts from which amounts were previously forfeited shall be credited with the amount so forfeited, with credit to be made as of the last day of the Plan Year in which the Participant resumes participation in the Plan.

Any previously forfeited amounts that are credited to Participants' Accounts pursuant to this Section shall be derived from the following sources in the following order of priority:

- (a) First, the amount, if any, to be credited to such types of Accounts for the Plan Year pursuant to Section 11.05;
- (b) Second, Employer contributions for the Plan Year, if any, that are not required to be credited to such types of Accounts for other Participants; and
- (c) Third, an additional Employer contribution for the Plan Year, regardless of whether the Employer has any Net Profits for the year.

If for any Plan Year, the Accounts of more than one Participant are required to be restored, then restorations shall be derived from the above sources in the same proportion that the amount to be restored to each Participant bears to the total amount to be restored to all such Participants for the Plan Year. Any such amounts credited to a Participant's Accounts shall not be included in applying the limitations of Article V or Article VIII hereunder.

11.10 Amendments to the Vesting Schedule: No amendment to the vesting schedule or provisions of Section 11.01, or to this Plan that directly or indirectly affects the computation of a Participant's Accrued Benefit, shall deprive a Participant of a vested right to the benefits accrued to the effective date of the amendment. Furthermore, if the vesting schedule or provisions of Section 11.01 are amended, each Participant with at least three (3) Years of Vesting Service (determined as of the later of the date the amendment is adopted or the date the amendment is effective) may elect to have his/her vesting percentage computed under the Plan without regard to the amendment. The period during which the election may be made shall commence with the date the amendment is adopted and shall end on the latest of:

- (a) Sixty (60) days after the amendment is adopted;
- (b) Sixty (60) days after the amendment becomes effective; or
- (c) Sixty (60) days after the Participant is issued written notice of the amendment by the Employer or Plan Administrator.

In the absence of any written notice under (c) above, any Participant who has at least three (3) Years of Vesting Service (as determined above) shall at all times receive a Vested Interest under whichever vesting schedule provides the greatest Vested Interest.

ARTICLE XII FIDUCIARY DUTIES

12.01 General Fiduciary Duty: A Fiduciary, whether or not a Named Fiduciary, shall discharge his/her duties solely in the interest of the Participants and their Beneficiaries hereunder. All assets of this Plan shall be devoted to the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying the reasonable expenses of administering the Plan. Each Fiduciary, whether or not a Named Fiduciary, shall discharge his/her duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Each Fiduciary shall also discharge his/her duties in a manner consistent with the documents and instruments governing the Plan to the extent such documents and instruments are consistent with law. No Fiduciary, whether or not a Named Fiduciary, shall engage in any of the prohibited transactions with disqualified persons or parties-in-interest as those terms and transactions are defined by the Code and ERISA, as passed and as it may be amended, and regulations thereunder.

12.02 Allocation of Responsibilities: Each Named Fiduciary shall have only those duties and responsibilities expressly allocated under the terms of this Plan. No other duties or responsibilities shall be implied.

12.03 Delegation of Responsibilities: Each Named Fiduciary may delegate the fiduciary responsibilities other than Trustee responsibilities allocated to such Fiduciary under this Plan to any person other than a Named Fiduciary. If any duties or responsibilities are delegated under this section, the person to whom the duties or responsibilities are delegated shall acknowledge the fact in writing and shall specify in writing the duties and responsibilities so delegated. All other duties and responsibilities shall be deemed not to have been delegated.

12.04 Liability for Allocation or Delegation of Responsibilities: A Named Fiduciary shall not be liable for the acts or omissions of a person to whom responsibilities or duties are allocated or delegated in accordance with Section 12.02 or Section 12.03 except to the extent such Named Fiduciary breaches his/her obligation under Section 12.01:

- (a) With respect to the allocation or delegation;
- (b) With respect to establishing or implementing a procedure for allocation or delegation; or
- (c) By continuing the allocation or delegation.

Nothing in this section shall relieve a Fiduciary from liability incurred under Section 12.05.

12.05 Liability for Co-Fiduciaries: In addition to the liability a Fiduciary may incur for the breach of his/her duty under Section 12.01 or 12.04, a Fiduciary shall be liable for a breach of Fiduciary duty committed by another Fiduciary in the following circumstances:

- (a) If he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other Fiduciary knowing such act or omission is a breach;
- (b) If, by his/her failure to comply with Section 12.01 he has enabled such other Fiduciary to commit a breach;
- (c) If he has knowledge of a breach by such other Fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

12.06 Same Person May Serve in More than One Capacity: Nothing herein shall prevent any person from serving in more than one Fiduciary capacity.

12.07 Indemnification: The Employer shall hold harmless and indemnify to the fullest extent permitted by ERISA each non-Trustee Fiduciary of the Plan with respect to the consequences of all actions or failures to act of the Fiduciary while carrying out his/her responsibilities under the Plan. The Employer shall further hold harmless and indemnify each Fiduciary who is subjected to any claim or action or who is made a party in any threatened, pending or completed proceeding, including, without limitation, any proceeding brought by or in the name of the Plan or by any participant thereof or by any governmental agency. The Employer's indemnification shall include any and all expenses (including attorney's and/or consultant's fees), costs, damages, judgments, fines, interest, penalties (including any that may be imposed under ERISA §502(l)) and/or amounts paid in settlement and that are actually and reasonably incurred by a Fiduciary in connection with the investigation, defense, settlement, preparation for trial, trial, or appeal of any proceeding, claim or action. Notwithstanding the foregoing, the Employer shall not be obligated to hold harmless or indemnify a Fiduciary of the Plan if indemnification is inconsistent with applicable law or if the act(s) or omission(s) of the Fiduciary to be indemnified are determined to have involved intentional misconduct, gross negligence or a knowing violation of ERISA or other applicable law by the Fiduciary.

To the extent a Fiduciary is a named insured under any policy of liability insurance maintained by the Plan or the Employer, the policy and the payment obligations of the insurance company under the policy shall be deemed primary and in lieu of the Employer's obligations under this Section 12.07, but only to the extent of the coverage provided in the policy. No insurer under any policy shall claim any right to reimbursement or refund from the Employer and no obligation of the Employer hereunder shall be deemed to inure to the benefit of any third party.

ARTICLE XIII THE PLAN ADMINISTRATOR

13.01 Appointment of Plan Administrator: The Board of Directors of the Plan Sponsor shall appoint the Plan Administrator, which may be the Plan Sponsor. If the Plan Sponsor is appointed as Plan Administrator, the Plan Sponsor may appoint one or more Committees to carry out the duties of the Plan Administrator under this Plan. In that event all references in the Plan to the Plan Administrator shall be deemed to refer to the appointed Committee. The duties of the Committees shall be divided as the Plan Administrator deems appropriate and may be designated by separate instrument. The Committees shall act by majority vote except that they shall act by unanimous vote at any time when there are only two members comprising the Committee.

13.02 Acceptance by Plan Administrator: The Plan Administrator shall accept its appointment by joining with the Employer in the execution of this Agreement.

13.03 Signature of Plan Administrator: All persons dealing with the Plan Administrator may rely on any document executed by the Plan Administrator; or, in the event of appointment of a Committee or Committees, such persons may rely on any document executed by at least one member of the appropriate Committee as being the act of the Plan Administrator.

13.04 Appointment of an Investment Manager: The Plan Administrator may appoint an Investment Manager or Managers to manage, acquire and dispose of any assets of the Plan. In the event responsibility for appointment of Investment Managers is delegated by the Plan Administrator to a named Committee, that delegation shall carry with it the authority of the Committee to act as a Named Fiduciary for purposes of ERISA in appointing an Investment Manager. The Investment Manager shall accept his/her appointment by written agreement executed by the Plan Administrator and Investment Manager. This written agreement shall specify the Plan assets for which the Investment Manager is responsible and such written instrument shall be kept with the other documents governing the operation of the Plan. The Trustee shall be entitled to rely on written instructions from the Investment Manager and shall be under no obligation to invest or otherwise manage any asset of the Plan subject to the management of the Investment Manager.

13.05 Duties of the Plan Administrator: The Plan Administrator shall be responsible for the general administration of the Plan including, but not limited to, the following:

- (a) To prepare an annual report, summary plan description and modifications thereto, and summary annual report;
- (b) To complete and file the various reports and tax forms with the appropriate government agencies as required by law;
- (c) To distribute to Plan Participants and/or their Beneficiaries the summary plan description and reports sufficient to inform such Participants or Beneficiaries of their Accrued Benefit and their Vested Accrued Benefit as required by law;
- (d) To determine annually, or more frequently if necessary, which Employees are eligible to participate in the Plan;
- (e) To determine the benefits to which Participants and their Beneficiaries are entitled and to approve or deny claims for benefits;
- (f) To provide Plan Participants with a written explanation of the effect of electing an optional form of benefit payment;

- (g) To retain copies of all documents or instruments under which the Plan operates in its own office, the principal place of business of the Plan Sponsor and such other place as the Secretary of Labor or his/her delegate may by regulation prescribe; to make all such documents and instruments governing the operation of the Plan available for inspection by Plan Participants and/or their Beneficiaries; and to furnish copies of such documents or instruments to Plan Participants and/or their Beneficiaries on request, charging only the cost thereof as prescribed by regulation of the Secretary of Labor or his/her delegate;
- (h) To interpret Plan provisions as needed and in this regard to have complete and total discretion in the interpretation of the Plan; and
- (i) To act as the Plan's agent for the service of legal process, unless another agent is designated by the Plan Sponsor and to act on behalf of the Plan in all matters in which the Plan is or may be a party.

13.06 Claims Procedure: Claims for benefits under the Plan shall be presented to the Plan Administrator or its designated representative pursuant to procedures established and approved by the Plan Administrator, which may include electronic means. Notice of the disposition of a claim shall be furnished to the claimant no later than ninety (90) days after the application is submitted. In the event the claim is denied, the reasons for the denial shall be specifically set forth in a notice in language calculated to be understood by the claimant. Pertinent provisions of the Plan shall be cited, and, where appropriate, an explanation as to how the claimant may perfect the claim shall be provided. In addition, the claimant shall be furnished with an explanation of the Plan's claim review procedure.

13.07 Claims Review Procedure: Any Employee, former Employee, or Beneficiary of either, whose benefit claim submitted pursuant to Section 13.06 has been denied (whether in full or in part) shall be entitled to request further consideration to his/her claim by filing an appeal with the Plan Administrator, which may be in the form of a request for reconsideration. The request, together with a written statement of the reasons why the claimant believes his/her appeal should be allowed, shall be filed with the Plan Administrator no later than sixty (60) days after receipt of the written notification provided for in Section 13.06. The Plan Administrator shall conduct the review of the appeal. The Plan Administrator, in its sole discretion, may order a hearing at which the claimant may be represented by an attorney or any other representative of his/her choosing and at which the claimant shall have an opportunity to submit written and oral evidence and arguments in support of his/her claim. During the appeal review period or at the hearing (upon five (5) business days prior written notice to the Plan Administrator) the claimant or his/her representative shall have an opportunity to review all documents in the possession of the Plan that are pertinent to the claim at issue and its disallowance. A final decision on the claim shall be made by the Plan Administrator **within sixty (60) days of receipt of the appeal unless (i) because of special circumstances there has been an extension of sixty (60) days that has been communicated in writing to the claimant, or (ii) a hearing is held, in which event the final decision shall be made within one hundred twenty (120) days of receipt of the appeal. The communication containing the Plan Administrator's decision shall be in writing and shall be written in a manner calculated to be understood by the claimant. The communication shall include specific reasons for the Plan Administrator's decision and specific references to the pertinent Plan provisions on which the decision is based. The communication shall also inform the claimant of the limitation on any further action by the claimant set forth in Section 13.08.**

13.08 Limitations of Actions on Claims: The delivery to the claimant of the final decision of the Plan Administrator with respect to a claim for benefits under Section 13.06 that has been reviewed and considered under the appeal procedures of Section 13.07 shall commence the period during which the claimant may bring legal action under ERISA for judicial review of the Plan Administrator's decision. No civil action with respect to the claim for benefits or the subject matter thereof may be commenced by the claimant, whether such action is pursued through litigation, arbitration or otherwise, prior to the completion of the claims and claims review process set forth in Sections 13.06 and 13.07, nor following the expiration of two (2) years from the date of delivery of the final decision of the Plan Administrator to the claimant under Section 13.07.

13.09 Compensation and Expenses of Plan Administrator: The Plan Administrator may engage the services of any person, including counsel, whose services, in the opinion of the Plan Administrator, are necessary to assist it in carrying out its responsibilities under the Plan. The Employer may direct the Trustee to pay any expenses properly and actually incurred for such services from the Trust Fund, including such reasonable compensation for services provided by the Plan Administrator as shall have been agreed upon between them, or, alternatively, the Employer may pay such expenses or compensation directly; provided, however, that no individual acting as Plan Administrator shall receive any compensation if he already receives full-time pay from the Employer.

13.10 Removal or Resignation: A Plan Administrator may be removed by the Board of Directors of the Plan Sponsor upon thirty (30) days written notice, and may resign upon thirty (30) days written notice to the Board of Directors. Upon such removal or resignation, or the inability of the Plan Administrator for any other reason to act as Plan Administrator, the Board of Directors shall appoint a successor Plan Administrator. The successor Plan Administrator, upon written acceptance, shall have all the duties and responsibilities of a Plan Administrator herein. The former Plan Administrator shall deliver to the successor Plan Administrator all records and documents that it holds relating to the Plan upon removal or resignation.

13.11 Records of Plan Administrator: The Plan Sponsor shall have access, upon request, to all the records of the Plan Administrator that relate to the Plan.

13.12 Other Responsibilities: Nothing in this Article shall be construed to limit the responsibilities and duties allocated to the Plan Administrator in other Articles of this Plan.

ARTICLE XIV THE TRUSTEE

14.01 Appointment of Trustee: The Board of Directors of the Plan Sponsor shall appoint the Trustee. Nothing in this Plan shall prevent the Plan Sponsor from appointing multiple Trustees or creating multiple Trust Funds, each with separate Trustees. If more than one person is appointed as Trustee of a single Trust Fund, they shall act by majority vote; provided, however, that they shall act by unanimous vote at any time when there are only two Trustees. In the event there is more than one Trustee, the reference to Trustee shall be deemed to refer to all the Trustees.

14.02 Acceptance by Trustee: The Trustee shall accept its appointment by executing a separate trust agreement in a form acceptable to the Trustee and Employer. The provisions of the separate Trust Agreement shall control over those in this Plan, to the extent such provisions define the duties of the Trustee with respect to the Plan and Trust Fund. Prior to the effective date of the Trust Agreement the provisions of the Prior Plan concerning the Trustee and its duties shall apply.

14.03 Provisions of Trust Agreement: The separate Trust Agreement shall authorize and empower the Trustee to invest up to one hundred percent (100%) of the Trust Fund allocated to the Employer Matching Contribution and Profit Sharing Contribution Accounts in Employer Securities.

14.04 Participant Voting Rights: The separate Trust Agreement shall provide for voting Employer Securities by the Trustee only. The Trust Agreement may permit voting direction from a committee established by the Plan Sponsor for that purpose.

14.05 Investment Committee: In the event of appointment of an Investment Committee by the Plan Administrator, then except to the extent responsibility for certain Plan assets has been allocated to an Investment Manager as provided in Section 13.04, the Investment Committee is authorized and empowered to direct investment of the Trust Fund, consistent with the terms of the separate Trust Agreement. The Investment Committee shall direct investment and reinvestment of the Trust Fund to keep the Trust Fund invested without distinction between principal and income and in such securities or property, real or personal, wherever situated, as the Committee shall deem advisable consistent with the investment policy of the Plan established under Article XVIII. The Committee shall give due regard to any limitations imposed by the Code or ERISA so that at all times this Plan may qualify as a qualified Plan and Trust.

14.06 Liability for Plan Expenses: The Plan specifically permits payment from the Plan's Trust Fund of Plan administration and operation expenses, as well as costs and expenses associated with specific assets in the Trust Fund, consistent with the principles and rules set forth in this Section.

- (a) The Plan permits the allocation of certain administration expenses to an individual Participant's Account whenever an expense can be specifically determined and the Participant's Account identified which gives rise to the expense.
- (b) Expenses not attributable to particular Participant Accounts but nevertheless payable from the Trust Fund may be allocated among all Participant Accounts pro rata, or by any other appropriate method.

- (c) The Plan Sponsor shall determine in its sole discretion the extent to which Plan administration and operation expenses shall be paid from the Trust Fund or from individual Participant Accounts, provided that all such payments and charges shall comply with ERISA and all regulations and other guidance issued by the Department of Labor.
- (d) The Plan Sponsor shall be entitled to reimbursement from the Plan for payment of all Plan expenses advanced by the Plan Sponsor (whether charged to an individual Participant's Account or the Trust Fund as a whole) that are reasonably subject to reimbursement pursuant to ERISA and DOL regulations and other guidance, provided that no reimbursement to the Plan Sponsor shall be made with respect to any charge applicable to an individual Participant's Account unless the Participant has been previously informed through a summary plan description or similar document that his or her Account may be subject to such charges.
- (e)
 - (1) Costs and expenses associated with or attributable to a specific asset held in any pooled or joint fund in the Plan normally shall be charged to the Accounts of the Participants who are or who have been allocated an undivided share in the pooled or joint fund and whose Accounts reflect an undivided interest (either current or past) in the asset. The assessment of costs and expenses shall be made only against that portion of a Participant's Account which has participated in the pooled or joint fund and has been allocated an undivided share of the asset.
 - (2) Notwithstanding the provisions of (e)(1), in the event the Plan Administrator determines that the cost or expense attributable to an asset or former asset in the pooled fund represents a material portion of the Participants' Accounts currently in the Plan attributable to that asset (regardless of amount), the Plan Administrator shall have the authority (in its discretion) (i) to allocate the cost or expense among the Accounts of those Participants, (ii) to allocate the cost or expense to other assets remaining in the same Participants' Accounts, (iii) to allocate the cost or expense among the Accounts of all Participants (including former Participants who no longer have an account in the Plan) which include or included any portion attributable to the asset, or (iv) to allocate the cost or expense among the Accounts of all Participants in the Plan, regardless of their participation in the pooled or joint fund. The foregoing options are not intended to be mutually exclusive and the Plan Administrator may apply one or more of them in any manner deemed appropriate by the Plan Administrator. Nevertheless, the Plan Administrator's decisions and actions shall comply with all guidance and rules issued by the Department of Labor with respect to allocation of costs, including the appointment of an independent fiduciary to assist in the allocation determination, if so required.

14.07 Payment From the Trust Fund: At the direction of the Plan Administrator, the Trustee shall, from time to time, in accordance with the terms of the Plan, make payments out of the Trust Fund. The Trustee shall not be responsible in any way for the application of such payments.

ARTICLE XV THE EMPLOYER

15.01 Notification: The Plan Sponsor shall notify the Plan Administrator and the Trustee in writing if a new Plan Administrator or Trustee has been appointed hereunder.

15.02 Record Keeping: Each participating FX Employer shall maintain records with respect to each Employee sufficient to enable the Plan Administrator and Trustee to fulfill their duties and responsibilities under the Plan.

15.03 Bonding: The Plan Administrator shall procure bonding to insure the Plan against risk of loss. The persons to be bonded and the amount necessary shall be determined in accordance with ERISA and regulations thereunder. No bonding shall be required pursuant to state law.

15.04 Signature of Employer: All persons dealing with the Plan may rely on any document executed in the name of the Plan Sponsor by its general partner or by any other individual duly authorized by its Board of Directors, whether retroactive or prospective.

15.05 Plan Counsel and Expenses: The Plan Sponsor may engage the service of any person or organization, including counsel, whose services, in the opinion of the Plan Sponsor are necessary for the establishment or maintenance of this Plan. The expenses incurred or charged by a person or organization engaged by the Plan Sponsor pursuant to the previous sentence shall be paid by the Plan Sponsor, or alternatively, the Plan Sponsor may direct the Trustee to pay such expenses from the Trust Fund.

15.06 Other Responsibilities: Nothing in this Article shall be construed to limit the responsibilities or duties allocated to the Plan Sponsor and FX Employers in other Articles of the Plan.

15.07 Affiliated Groups:

- (a) For purposes of crediting Hours of Service, all employees of all members of an Affiliated Group of which an FX Employer is also a member and all employees of any other entity required to be aggregated with the FX Employer pursuant to regulations under Code §414(o) shall be treated as employed by a single Employer for purposes of Article III (Service), Article IV (Eligibility), Article V (Contributions) and Article XI, (Vesting). Except as provided in Section 7.01, all employees of all members of an Affiliated Group and all employees of any other entity required to be aggregated with the Employer pursuant to regulations under Code §414(o) shall be treated as employed by a single Employer.
- (b) If the Employer is a member of an Affiliated Group and if the Affiliated Group maintains more than one qualified retirement plan that is integrated with Social Security, only a single integration level shall be applicable to each Participant who is a Participant in one or more integrated plans. The integration level for each Participant shall be prorated in each integrated plan in the ratio that the Annual Compensation received by the Participant from the member of the Affiliated Group maintaining the integrated plan bears to the Annual Compensation received by the Participant from all members of the Affiliated Group maintaining all such integrated plans.
- (c) If more than one Employer has adopted this Plan and if all such Employers are members of the same Affiliated Group the "effective date" for any adopting Employer who adopts this Plan on other than the Effective Date shall be the date indicated in the adoption agreement by which the adopting Employer shall first elect to be covered by this Plan.

15.08 Employer Contributions: Each participating FX Employer shall contribute to the Plan that Employer's share of Elective Deferral and Employer Matching Contributions according to the elections of the Participants employed by that Employer, as well as that Employer's share of Employer Profit Sharing Contributions.

ARTICLE XVI PLAN AMENDMENT OR MERGER

16.01 Power to Amend: The Plan Sponsor and the Plan Administrator shall each have the power to amend, alter, or wholly revise the Plan, prospectively or retrospectively, at any time, and the interest of every Participant is subject to the power so reserved. The Plan Administrator shall not exercise its power to amend without consent of the Plan Sponsor unless the Plan Sponsor has ceased to operate as a viable business entity or has filed or is subject to a petition under Chapter 7 of the U.S. Bankruptcy Code.

16.02 Limitations on Amendments: Upon execution of any amendment, the Employer, Plan Administrator, Trustees, Participants and their Beneficiaries shall be bound thereby; provided, however, that no amendment:

- (a) Shall enlarge the duties or responsibilities of the Plan Administrator or Trustee without its consent; or

- (b) Shall cause any part of the assets contributed to the Plan to be diverted to any use or purpose other than for the exclusive benefit of the Participants and their Beneficiaries (including the reasonable cost of administering the Plan) prior to the satisfaction of all liabilities (fixed and contingent) under the Plan to Participants and their Beneficiaries; or
- (c) Shall reduce the vesting percentage of any Participant, Inactive Participant, or Beneficiary; or
- (d) Shall reduce or restrict the Account Balance of any Participant, Inactive Participant or Beneficiary; or
- (e) Shall eliminate an optional form of benefit, with respect to benefits attributable to service before the amendment.

Notwithstanding the above, any amendment may be made that may be or become necessary in order that the Plan will conform to the requirements of Code §401(a), or of any generally similar successor provision, or in order that all of the provisions of the Plan will conform to all valid requirements of applicable federal and state laws.

16.03 Method of Amendment: If the Plan is amended by the Plan Sponsor, the amendment shall be stated in an instrument in writing signed in the name of the Plan Sponsor by a duly authorized corporate officer, or by any other individual duly authorized by the Plan Sponsor, whether retroactive or prospective. If the Plan is amended by the Plan Administrator, the amendment shall be stated in an instrument in writing signed in the name of the Plan Administrator by the individual duly authorized by the Plan Administrator for that purpose, whether retroactive or prospective.

16.04 Notice of Amendment: Written notice of each amendment shall be given promptly by the Plan Sponsor and the Plan Administrator to each other, to any other Employers and the Trustee.

16.05 Merger or Consolidation: This Plan and Trust may be merged or consolidated with, or its assets or liabilities may be transferred to, any other plan only if the benefits that would be received by each Participant of this Plan, in the event of a termination of the Plan immediately after such merger, consolidation or transfer, are at least equal to the benefits the Participant would have received if the Plan had terminated immediately before the merger, consolidation or transfer. The Trustee possesses the specific authority to enter into merger agreements or direct transfer of assets agreements with the Trustees of other retirement plans described in Code §401(a) and to accept the direct transfer of Plan assets, or to transfer Plan assets, as a party to any such agreement.

The Trustee may accept a direct transfer of Plan assets on behalf of an Employee prior to the date the Employee satisfies the Plan's eligibility condition(s). If the Trustee accepts such a direct transfer of Plan assets, the Plan Administrator and Trustee shall treat the Employee as a Participant for all purposes of the Plan except the Employee may not make Elective Deferral contributions under Article V nor shall the Employee share in Employer contributions or Participant forfeitures under Article VI until he actually becomes a Participant in the Plan and satisfies the Plan's benefit accrual requirements.

The Trustee shall hold, administer and distribute the transferred assets as a part of the Trust Fund and the Trustee shall maintain a separate Predecessor Plan Account for the benefit of the Employee on whose behalf the Trustee accepted the transfer in order to reflect the value of the transferred assets.

ARTICLE XVII TERMINATION OR DISCONTINUANCE OF CONTRIBUTIONS

17.01 Right to Terminate: The Plan Sponsor may terminate the Plan at any time by appropriate corporate action specifying the termination date. The Plan Sponsor shall promptly notify the Plan Administrator, Trustee and any other Employers of such action. Further, the Plan Sponsor shall notify all Participants and Inactive Participants of such action, and shall file all required reports with Federal agencies, in accordance with applicable regulations.

17.02 Effect of Termination: In the event of a Plan termination or a complete discontinuance of Employer Contributions, the rights of all affected Participants to their Accrued Benefits as of the date of such termination shall be fully vested and shall not thereafter be subject to forfeiture, except to the extent that law or regulation may preclude such vesting in order to prohibit discrimination in favor of officers, shareholders, or highly compensated Employees. For purposes of the preceding sentence, a Participant who has terminated employment with the Employer and incurred five consecutive One Year Breaks in Service as of the termination date shall not be considered to be affected by such Plan termination, and shall be vested in his/her Accrued Benefit only to the extent provided in the other applicable Articles of this Plan. All rights of Participants in this Plan affecting Employer Securities held in trust for the benefit of Participants shall continue notwithstanding any Plan termination.

17.03 Manner of Distribution: In the event of a Plan termination, the Plan Administrator shall direct the Trustee to distribute the Accrued Benefits of all Participants, Inactive Participants, and Beneficiaries in accordance with Article IX or Article XI.

Notwithstanding the above, no payment shall be made to a Participant from his/her Participant Elective Deferral Account (or any other Account the contributions to which have been included in the Deferral Account for the Participant) unless or until such time as the Participant:

- (a) Is eligible for Retirement or Disability Benefits as provided in Article IX;
- (b) Dies;
- (c) Separates from the service of the Employer (after December 31, 2001, incurs a severance from employment);
- (d) Attains the Age of fifty-nine and one-half (59½); or
- (e) Incurs a Financial Hardship.

All Elective Deferral Accounts shall be maintained by the Trustee and distributed at such time and in such manner as previously provided herein. Alternatively, the balance in such Accounts may be transferred to another plan maintained or established by the Employer that qualifies under Code §401(a) as provided above, but only if such other plan contains the same restrictions on the distribution of such transferred amounts as described in the preceding paragraph.

17.04 No Reversion: No termination or amendment of this Plan and Trust and no other action shall divert any part of the funds to any purpose other than the exclusive benefit of Participants, Inactive Participants or their Beneficiaries except, and notwithstanding any other provision of this Plan to the contrary, any amount held in an unallocated suspense account that cannot be allocated to any Participant due to the limitations of Article VII may be returned to the Employer upon termination of the Plan.

17.05 Termination of an Employer: An Employer, other than the Plan Sponsor, may terminate its participation in the Plan at any time by a written resolution by the Board of Directors specifying the termination date. The Employer shall promptly notify the Plan Sponsor, Plan Administrator and Trustee of any such action or direction. The participation of an Employer in the Plan shall also terminate in the event of a complete discontinuance of contributions by such Employer.

17.06 Partial Termination: A partial termination of the Plan may be deemed to have occurred if a significant percentage of Participants are excluded from coverage by reason of amendment of the Plan, severance by an Employer or termination of an Employer, or if the Plan is amended to adversely affect the rights of employees to vest in benefits under the Plan or to reduce or eliminate future benefit accruals under the Plan. The determination of whether a partial termination has occurred shall be made on the basis of the facts and circumstances in a particular case.

17.07 Effect of Partial Termination: In the event of a partial termination of the Plan, the provisions of Section 17.02 shall apply to those Participants affected by the partial termination.

ARTICLE XVIII FUNDING POLICY FOR PLAN BENEFITS

18.01 Funding Method: The benefits provided by this Plan shall be funded by contributions of the Employer and Participants. Employer Matching Contributions and Employer Profit Sharing Contributions may consist entirely of Employer Securities. Elective Deferrals shall be made in cash only. The amount of all Employer Contributions shall be determined as provided in this Plan. The amount of all other contributions shall likewise be determined as provided in this Plan.

18.02 Investment Policy: This Plan has been established for the sole purpose of providing benefits to the Participants and their Beneficiaries. In determining investment directions and investment options available hereunder, the Plan Administrator shall establish a funding policy that considers the short and long-range needs of the Plan based on the evident and probable requirements of the Plan as to the time benefits shall be payable and the requirements therefor. Benefits may be provided through any combination of investment media designed to provide the requisite liquidity, growth and security appropriate to this Plan.

Benefits for Participants, to the extent not funded through Employer Securities, may be provided through any investment media offered by the Trustee or through the purchase of shares in any investment company regulated under the Investment Company Act of 1940, or through any investment proper and appropriate to be made by the Trustee in accordance with Article XIV, or through any combination of such investments.

The Plan may not obligate itself to acquire Employer Securities from a particular holder thereof at any indefinite time determined upon the happening of an event such as the death of the holder.

The Plan may not obligate itself to acquire Employer Securities under a put option binding upon the Plan. However, at the time a put option is exercised, the Plan may be given an option to assume the rights and obligations of the Employer under a put option binding upon the Employer.

All purchases of Employer Securities shall be made at a price which, in the judgment of the Plan Administrator, does not exceed the fair market value thereof. All sales of Employer Securities shall be made at a price which, in the judgment of the Plan Administrator, is not less than the fair market value thereof.

18.03 No Purchase of Life Insurance Contracts: Unless authorized by the Plan Sponsor pursuant to amendment to this Article XVIII, no insurance contracts shall be purchased by the Trustee on the life of any Participant.

18.04 Investment Fund: The Employer shall contribute to an Investment Fund that shall be established by the Trustee to provide such additional benefits, in addition to the proceeds or surrender values of any allocated annuity contracts, for Participants and their Beneficiaries provided by this Plan.

18.05 Non-transferability of Annuity Contracts: In the event the assets of the Trust Fund include allocated annuity contracts, all incidents of ownership in such contracts may be exercised by the Trustee, as directed by the Plan Administrator, except to the extent any death benefits payable thereunder may be paid to the Beneficiary designated by the Participant. All such contracts shall provide that the owner may not change the ownership of the contract, nor may it be sold, assigned or pledged as collateral for a loan, as security for the performance of an obligation, or for any other purpose to anyone. No annuity contract may be delivered to a Participant as a distribution from the Plan.

18.06 Participant Directed Investments: In the sole discretion of the Plan Administrator a Participant, Inactive Participant or Beneficiary may be allowed to direct the Trustee to invest all or part of the General Investments Account hereunder in such specific assets as are permitted under the terms of the Trust Agreement. However, the Participant may not direct the Trustee to use any portion of his/her General Investments Account to acquire any property that would be classified as a "collectible" and result in the investment being considered a distribution to the Participant under Code §408(m) and Regulations thereunder. That portion of the General Investments Account so directed shall be credited (charged) solely with all investment earnings (losses) and appreciation (depreciation) thereon, and charged with any fees or expenses incurred by the Trustee in investing or administering that portion of the Account. The portion so directed shall also be credited with any contributions thereto and charged with any withdrawals or payments made therefrom.

Any portion of the General Investments Account, the investment of which is not directed by the Participant, shall be commingled and invested with other Trust assets. That portion shall be credited (charged) with its proportionate share of investment earnings (losses) and appreciation (depreciation) on the total non-directed assets of the Trust Fund, and charged with any specific or proportionate share of expenses incurred by the Trustee in investing or administering that portion of the Account as provided in Section 6.03. The non-directed portion shall also be credited with any contributions thereto and charged with any withdrawals or payments therefrom.

For purposes of Section 6.03, any transfers from the non-directed portion of the General Investments Account to the directed portion of the General Investments Account shall be treated as a withdrawal from the non-directed portion and a contribution to the directed portion, and vice versa for transfers from the directed portion to the non-directed portion.

The Plan Administrator and Trustee may establish a reasonable policy regarding the types of Accounts eligible, minimum balance required, and other reasonable criteria that must be satisfied in determining whether this option of directed investments shall be available to a Participant. The policy shall be in writing and shall be administered in a uniform and non-discriminatory manner.

18.07 Establishment of Separate Funds: There is hereby reserved to the Plan Administrator the right to direct the Trustee to establish separate investment funds within the General Investments Account. The Plan Administrator may follow different investment policies with respect to each investment fund so established. In the sole discretion of the Sponsoring Employer a Participant, Inactive Participant, Beneficiary or Alternate Payee shall be allowed to direct the Trustee to invest the amounts in his/her General Investments Account, consistent with the rules in this Section 18.07, in any or all of the investment Funds. The following administrative rules shall apply if such Funds are established:

- (a) Income, gains and losses from each investment fund will be reinvested in the same fund and credited only to the General Investments Accounts of those Participants who have a balance in such fund, in a manner consistent with Section 6.03.
- (b) Each Participant shall be entitled to direct the portion of the contributions made to his/her General Investments Account that are to be invested in each of the investment funds available. Upon the occurrence of any event or decision of the Plan Administrator that results in the deletion of any of the investment funds, that replaces any such fund with another fund, or that adds a new investment fund, the Plan Administrator shall designate a default investment fund or funds into which contributions on behalf of a Participant shall be invested in the event no specific direction for investment is made by the Participant. The Plan Administrator shall designate a default investment fund for any Participant or Beneficiary (including any Beneficiary by virtue of a Qualified Domestic Relations Order) who does not provide for investment instructions with respect to his/her General Investments Account into any investment fund under this Section or Section 18.06.
- (c) Each Participant shall have the right to change the portion of succeeding contributions to be invested in each investment fund and the right to direct that the asset balance or any portion thereof in any investment funds in his/her General Investments Account be liquidated and the proceeds thereof transferred to any other investment fund. Changes in fund investments pursuant to Participant direction shall be made effective as provided under procedures negotiated between the Plan and the Trustee, which procedures may include daily movement of General Investments Account funds between investment funds, provided valuation of the investment funds is also conducted daily.
- (d) The Plan Administrator may establish reasonable rules regarding:
 - (1) The maximum number of investment funds that may be utilized by an individual Participant or by an individual Account.
 - (2) The minimum, maximum and incremental percentages of contributions that may be invested in a particular investment fund.

- (3) The minimum, maximum and incremental percentages of the current balance in the General Investments Account in any investment fund that may be transferred to another fund.

These rules shall be in writing and shall be administered in a uniform and non-discriminatory manner.

- (e) Except as otherwise provided in Section 6.07, a Participant may not direct investment into or from the Employer Securities Account nor may a Participant direct investment from his/her General Investments Account into the Employer Securities Account or the liquidation or sale of any Employer Securities in the Employer Securities Account.

ARTICLE XIX TOP-HEAVY PROVISIONS

19.01 Application: If this Plan is or becomes Top-Heavy for any Plan Year, the provisions of this Article shall supersede any conflicting provisions contained in any other Article of this Plan.

19.02 Special Definitions: For purposes of this Article and related Plan provisions, the following terms shall have the following meanings unless a different meaning is plainly required by the context:

- (a) **“Determination Date”** shall mean, for any plan year subsequent to the first plan year, the last day of the preceding plan year for such plan; for the first plan year of a plan, the last day of that plan year.
- (b) **“Determination Period”** shall mean the plan year containing the Determination Date and the four (4) preceding plan years for such plan.
- (c) **“Five Percent Owner”** shall mean:
 - (1) If the Employer is a corporation, any person who owns (or is considered as owning within the meaning of Code §318) more than five percent (5%) of the outstanding stock of the corporation or stock possessing more than five percent (5%) of the total combined voting power of all stock of the corporation.
 - (2) If the Employer is not a corporation, any person who owns more than five percent (5%) of the capital or profits interest in the Employer.
- (d) **“Key Employee”** shall mean any Employee or former Employee (and any Beneficiary of such Employee) who at any time during the Determination Period was:
 - (1) An officer of the Employer during a Plan Year in which he received Top-Heavy Compensation greater than fifty percent (50%) of the amount in effect under Code §415(b)(1)(A) for such Plan Year. For purposes of this Paragraph, no more than fifty (50) Employees (or, if lesser, the greater of three (3) or ten percent (10%) of the number of Employees) shall be treated as officers; or
 - (2) One of the ten (10) Employees owning (or considered as owning within the meaning of Code §318) both more than one-half percent (½%) interest and the largest interests in the Employer during a Plan Year in which he received Top-Heavy Compensation greater than the amount in effect under Code §415(c)(1)(A) for such Plan Year; or
 - (3) A Five Percent Owner of the Employer; or
 - (4) A One Percent Owner of the Employer during a plan year in which he received Top-Heavy Compensation greater than one hundred fifty thousand One Hundred Fifty Thousand Dollars (\$150,000).

The determination of who is a Key Employee shall be made in accordance with Code §416(i)(1) and the Regulations thereunder. For purposes of determining who is a One Percent Owner, Five Percent Owner, or ten largest owner, the rules of Code §414(b), (c) and (m) shall not apply. Beneficiaries of Employees shall be treated as a Key Employee or Non-Key Employee based on the Key Employee status of such Employee; inherited benefits shall retain the Key Employee or Non-Key Employee status of the Employee.

The term **“Non-Key Employee”** shall mean any Employee or former Employee (and any Beneficiary of such Employee) who is not a Key Employee. Non-Key Employees include Employees who are former Key Employees.

- (e) **“One Percent Owner”** shall mean:
 - (1) If the Employer is a corporation, any person who owns (or is considered as owning within the meaning of Code §318) more than one percent (1%) of the outstanding stock of the corporation or stock possessing more than one percent (1%) of the total combined voting power of all stock of the corporation; or
 - (2) If the Employer is not a corporation, any person who owns more than one percent (1%) of the capital or profits interest in the Employer.
- (f) **“Permissive Aggregation Group”** shall mean the Required Aggregation Group of plans plus any other plan or plans of the Employer that, when considered as a group with the Required Aggregation Group, would continue to satisfy the requirements of Code §§401(a)(4) and 410.
- (g) **“Present Value”** shall mean the actuarial present value of an amount or series of amounts determined based on the Top-Heavy determination provisions of a defined benefit plan that is part of a Required Aggregation Group or Permissive Aggregation Group with this Plan.
- (h) **“Required Aggregation Group”** shall mean:
 - (1) Each qualified plan of the Employer including any plan terminated within the last five years ending on the determination date, in which at least one Key Employee participates in the plan year containing the determination date, or any of the four preceding plan years; and
 - (2) Any other qualified plan of the Employer that enables a plan described in Item (1) to meet the requirements of Code §§401(a)(4) or 410.
- (i) **“Super Top-Heavy”**: This Plan is Super Top-Heavy if the Plan would be Top-Heavy if “ninety percent (90%)” were substituted for “sixty percent (60%)” each place it appears in subsection (j) below.
- (j) **“Top-Heavy”**: This Plan is Top-Heavy if any of the following conditions apply:
 - (1) If the Top-Heavy Ratio for this Plan exceeds sixty percent (60%) and this Plan is not part of any Required Aggregation Group or Permissive Aggregation Group of plans.
 - (2) If this Plan is a part of a Required Aggregation Group of plans but not part of a Permissive Aggregation Group and the Top-Heavy Ratio for the Required Aggregation Group of plans exceeds sixty percent (60%).
 - (3) If this Plan is a part of a Permissive Aggregation Group of plans and the Top-Heavy Ratio for the Permissive Aggregation Group exceeds sixty percent (60%).

- (k) **“Top Heavy Average Monthly Compensation”** shall mean one-twelfth (1/12th) of the average of a Participant's Top-Heavy Compensation during the five (5) consecutive Plan Years (or the total number of such years of the Participant's employment, if less than five (5)) that produces the highest average, but taking into account only Top-Heavy Compensation for years that this Plan was Top-Heavy and any years preceding a year that this Plan was Top-Heavy.
- (l) **“Top-Heavy Compensation”** shall have the same meaning as the term “Compensation” defined in Section 7.01(b), but effective for Plan Years commencing after December 31, 1997, shall include contributions made by the Employer to a plan of deferred compensation otherwise excluded in Section 7.01(b). Top Heavy Compensation includes all Compensation paid for the Limitation Year without regard to when the Participant commenced participation in the Plan.
- (m) **“Top-Heavy Ratio”** shall mean and be determined as follows:
- (1) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer has never maintained any defined benefit plan that has covered or could cover a Participant in this Plan, the Top-Heavy Ratio is a fraction, the numerator of which is the sum of the account balances of all Key Employees as of the Determination Date and the denominator of which is the sum of all account balances of all Participants as of the Determination Date. Both the numerator and denominator of the Top-Heavy Ratio shall be adjusted to reflect any part of any account balance distributed in the five (5) year period ending on the Determination Date and any contribution that is due but unpaid as of the Determination Date. In the case of a defined contribution plan that is not subject to Code §412, the adjustment for contributions due but unpaid is generally the amount of any contributions actually made after the Top-Heavy Valuation Date but on or before the Determination Date; however, for the first plan year of such a plan, the adjustment shall also reflect the amount of any contributions made after the Top-Heavy Valuation Date that are allocated as of a date in that first plan year. In the case of a defined contribution plan that is subject to Code §412, the account balances shall include contributions that would be allocated as of a date not later than the Determination Date, even though those amounts are not yet required to be contributed; furthermore, the adjustment for contributions due but unpaid shall reflect the amount of any contribution actually made (or due to be made) after the Top-Heavy Valuation Date but before the expiration date of the extended payment period in Code §412(c)(10).
 - (2) If the Employer maintains one or more defined contribution plans (including any simplified employee pension plan) and the Employer maintains or has maintained one or more defined benefit plans that have covered or could cover a Participant in this Plan, the Top-Heavy Ratio is a fraction, the numerator of which is the sum of account balances under the defined contribution plans for all Key Employees and the Present Value of accrued benefits under the defined benefit plans for all Key Employees, and the denominator of which is the sum of the account balances under the defined contribution plans for all Participants and the Present Value of accrued benefits under the defined benefit plans for all Participants. Both the numerator and denominator of the Top-Heavy Ratio are adjusted for any part of any account balance or accrued benefit distributed in the five (5) year period ending on the Determination Date and any contribution to a defined contribution plan due but unpaid as of the Determination Date. In the case of a defined contribution plan that is not subject to Code §412, the adjustment for contributions due but unpaid is generally the amount of any contributions actually made after the Top-Heavy Valuation Date but on or before the Determination Date; however, for the first plan year of such a plan, the adjustment shall also reflect the amount of any contributions made after the Top-Heavy Valuation Date that are allocated as of a date in that first plan year. In the case of a defined contribution plan that is subject to Code §412, the account balances shall include contributions that would be allocated as of a date not later than the Determination Date, even though those amounts are not yet required to be contributed; furthermore, the adjustment for contributions due but unpaid shall reflect the amount of any contribution actually made (or due to be made) after the Top-Heavy Valuation Date but before the expiration date of the extended payment period in Code §412(c)(10).

- (3) For purposes of (1) and (2) above, the value of account balances and the Present Value of accrued benefits shall be determined as of the most recent Top-Heavy Valuation Date that falls within or ends with the twelve month period ending on the Determination Date. The account balances and accrued benefits of a Participant who is not a Key Employee but who was a Key Employee in a prior year shall be disregarded. For Plan Years beginning after December 31, 1984, the account balances and accrued benefits of any Participant who has not performed any service for the Employer at any time during the five (5) year period ending on the Determination Date shall be disregarded. In the case of a defined benefit plan, the Present Value of Accrued Benefits shall not reflect any proportional subsidies and shall reflect any non-proportional subsidies provided by the plan. The calculations of the Top-Heavy Ratio, and the extent to which distributions, rollovers and transfers are taken into account shall be made in accordance with Code §416 and the Regulations thereunder. In the case of unrelated rollovers and transfers: (1) the plan making the distribution or transfer shall count the distribution as part of an accrued benefit distributed; and (2) the plan accepting the rollover or transfer shall not consider the rollover or transfer as part of the accrued benefit if such rollover or transfer was accepted after December 31, 1983, and shall consider the rollover or transfer as part of the accrued benefit if such rollover or transfer was accepted prior to January 1, 1984. In the case of related rollovers and transfers, the plan making the distribution or transfer shall not count the distribution or transfer as part of an accrued benefit distributed, and the plan accepting the rollover or transfer shall count the rollover or transfer as part of the accrued benefit. Deductible employee contributions shall not be taken into account for purposes of computing the Top-Heavy Ratio. When aggregating plans, the value of account balances and accrued benefits will be calculated with reference to the Determination Dates that fall within the same calendar year.

For purposes of the above, a Participant's Accrued Benefit in a defined benefit plan shall be determined under a uniform accrual method that applies for all defined benefit plans maintained by the Employer or, if there is no such method, under the method described in Code §411(b)(1)(C) that provides the slowest rate of accrual.

- (n) **“Top-Heavy Valuation Date”** shall mean the date as of which the Present Value of accrued benefits under a defined benefit plan or account balances under a defined contribution plan, that is part of a Permissive Aggregation Group or Required Aggregation Group, is determined for calculating the Top-Heavy Ratio. For a defined benefit plan, such date shall be the same as the actuarial valuation date used for computing plan costs under Code §412, regardless of whether an actuarial valuation is performed that year. For a defined contribution plan, such date shall be the last day of the plan year.

19.03 Top-Heavy or Super Top-Heavy Minimum Required Allocation: For any Plan Year in which the Plan is Top-Heavy or Super Top-Heavy:

- (a) Except as otherwise provided below, the Employer contributions and forfeitures allocated on behalf of any Participant who is a Non-Key Employee shall not be less than the lesser of:
- (1) three percent (3%) of such Participant's Top-Heavy Compensation if the Plan is Top-Heavy and five percent (5%) of such Participant's Top-Heavy Compensation if the Plan is Super Top-Heavy; or
 - (2) In the case where the Employer has no defined benefit plan that designates this Plan to satisfy Code §§401 and 416(c), the largest percentage of Employer contributions and forfeitures, as a percentage of the first Two Hundred Thousand Dollars (\$200,000), (or such larger amount as may be prescribed by the Secretary of the Treasury or his/her delegate) of the Key Employee's Top-Heavy Compensation, allocated on behalf of any Key Employee for that year. In calculating this percentage all amounts contributed by the Employer to the Key Employee's Elective Deferral Account pursuant to a Salary Reduction Agreement shall be treated as Employer contributions. For Plan Years beginning after December 31, 1993, the Plan shall substitute the amount “One Hundred Fifty Thousand Dollars (\$150,000)” for the amount “Two Hundred Thousand Dollars (\$200,000)” wherever it appears in this Section. The \$150,000 amount shall be adjusted each Plan Year as provided in Code §401(a)(17)(B).

- (b) The minimum allocation shall be determined without regard to any Social Security contribution by the Employer. This minimum allocation shall be made even though, under other Plan provisions, the Participant would not otherwise be entitled to receive an allocation, or would have received a lesser allocation for the Plan Year because of:
- (1) The Participant's failure to complete one thousand (1000) Hours of Service (or any equivalent provided in the Plan);
 - (2) The Participant's failure to make mandatory employee contributions to the Plan;
 - (3) Compensation less than a stated amount;
 - (4) The Employer having no Net Profits; or
 - (5) In the case of a plan qualified under Code §401(k), the Participant's failure to make elective contributions to such plan.

If a Participant is required to receive a minimum allocation under this subsection and such amount exceeds the amount that the Participant would receive under other Plan provisions, the Employer shall make an additional contribution for such Participant. Such additional contribution shall be allocated to the Employer Contribution Account of such Participant in the same manner as regular Employer contributions, pursuant to Article VII.

- (c) The provisions in subsections (a) and (b) above shall not apply to any Participant who was not employed by the Employer on the last day of the Plan Year.
- (d) The provisions in subsections (a) and (b) above shall not apply to a Participant if such Participant is covered under a defined contribution plan designated by the Employer to provide the Top-Heavy minimum benefits, and such Participant receives an allocation of Employer contributions and forfeitures under that plan during the subject Plan Year that is at least as great as the amount otherwise required under (a) and (b) above. If the amount of Employer contributions and forfeitures allocated to such a Participant under that plan during the subject Plan Year is less than the amount required under (a) and (b) above, the amount otherwise required under (a) and (b) above shall be reduced by the amount so allocated under that plan.

19.04 Non-forfeitability of Minimum Top-Heavy Allocation: The minimum allocation of Employer contributions or forfeitures required under Sections 19.03 or 19.04 (to the extent required to be non-forfeitable under Code §416(b)) shall not be forfeited in the case of a suspension of benefits under Code §411(a)(3)(B) or a withdrawal of mandatory employee contributions under Code §411(a)(3)(D).

19.05 Top Heavy Compensation Limitation: for Plan Years commencing on and after January 1, 2002, Annual Compensation of each Participant taken into account under this Article XIX shall not exceed Two Hundred Thousand Dollars (\$200,000), as adjusted for cost-of-living increases in accordance with Code §401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to Annual Compensation for the Plan Year that begins with or within such calendar year.

19.06 Minimum Vesting Provision: For any Plan Year in which this Plan is Top-Heavy, the vesting schedule under Section 11.01 shall automatically apply to each Participant in the Plan. This vesting schedule applies to all accrued benefits within the meaning of Code §411(a)(7), except those attributable to employee contributions, including benefits accrued before the effective date of Code §416 and benefits accrued before the Plan became Top-Heavy. Further, no reduction in vested benefits may occur in the event the Plan's status as Top-Heavy changes for any Plan Year and any change in the Plan's vesting schedule due to a change in Top-Heavy status shall be subject to the provision of Section 11.10. However, this Section does not apply to the Accrued Benefit of any Employee who does not have an Hour of Service after the Plan has initially become Top Heavy; such Employee's Vested Interest attributable to Employer contributions and forfeitures shall be determined without regard to this Section.

19.07 Adjustments to Limitations: For any Plan Year in which the Plan is Top-Heavy, the following adjustments shall be made to the denominators of the Defined Benefit Fraction and Defined Contribution Fraction as defined in Section 7.01.

- (a) **Super Top-Heavy:** In any Plan Year in which the Plan is Super Top-Heavy the denominators shall be computed by substituting “one hundred percent (100%)” for “one hundred twenty-five percent (125%)” each place it appears in such definitions.
- (b) **Not Super Top-Heavy:** In any Plan Year in which the Plan is Top-Heavy but not Super Top-Heavy the denominators shall be computed by substituting “one hundred percent (100%)” for “one hundred twenty-five percent (125%)” each place it appears in such definitions.

19.08 Participant Elective Deferrals: Elective Deferrals shall not be taken into account in determining under Section 19.03(b) the amount of Employer contributions to be allocated to a Participant who is a Non-key Employee.

19.09 EGTRRA Modification of Top-Heavy Rules: Notwithstanding any other provision of this Article XIX, this section shall apply for purposes of determining whether the Plan is a top-heavy plan under Code §416(g) for Plan Years beginning after December 31, 2001, and whether the Plan satisfies the minimum benefits requirements of Code §416(c) for such years.

- (a) Determination of top-heavy status/key employee. Key employee means any Employee or Former Employee (including any deceased Employee) who at any time during the Plan Year that includes the determination date was an officer of the Employer having Annual Compensation greater than \$130,000 (as adjusted under Code §416(i)(1) for Plan Years beginning after December 31, 2002), a 5-percent owner of the Employer, or a 1-percent owner of the Employer having annual compensation of more than \$150,000. For this purpose, Annual Compensation means Compensation within the meaning of Section 7.01(b). The determination of who is a key employee will be made in accordance with Code 416(i)(1) and the applicable regulations and other guidance of general applicability issued thereunder.
- (b) Determination of present values and amounts. This subsection shall apply for purposes of determining the present values of Accrued Benefits and the amounts of Account balances of Employees as of the determination date.
 - (1) Distributions during year ending on the determination date. The present values of Accrued Benefits and the amounts of Account balances of an employee as of the determination date shall be increased by the distributions made with respect to the Employee under the Plan and any plan aggregated with the Plan under Code §416(g)(2) during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which, had it not been terminated, would have been aggregated with the Plan under Code §416(g)(2)(A)(i). In the case of a distribution made for a reason other than separation from service, death, or disability, this provision shall be applied by substituting “5-year period” for “1-year period.”
 - (2) Employees not performing services during year ending on the determination date. The Accrued Benefits and Accounts of any individual who has not performed services for the Employer during the 1-year period ending on the determination date shall not be taken into account.

(c) Minimum benefits.

- (1) Matching contributions. Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of Code §416(c)(2) and the Plan. The preceding sentence shall apply with respect to matching contributions under the Plan or, if the Plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the actual contribution percentage test and other requirements of Code §401(m).
- (2) Contributions under other plans. The minimum benefit requirement of this Section 19.10 shall be met through contributions to this Plan regardless of whether the Employer maintains any other plan (including another plan that may consist solely of a cash or deferred arrangement that meets the requirements of Code §401(k)(12) and matching contributions with respect to which the requirements of Code §401(m)(11) are met).

ARTICLE XX PROVISIONS AFFECTING BENEFITS

20.01 Availability of Loans: Upon acceptance of an application by a Participant who is an active Employee, the Plan Administrator shall direct the Trustee to make a loan to the Participant from his/her Plan Accounts (including any Rollover Accounts but excluding his/her Employer Securities Account), subject to the provisions of this Article. In considering a Participant's application for a loan, the Plan Administrator shall base its decision whether to grant a loan on a uniform and non-discriminatory policy, without regard to the race, color, religion, sex, age or national origin of the applicant.

20.02 Loan Administration: The Plan Sponsor shall prepare and adopt a written Participant Loan Administration Policy Statement, whose provisions shall be made part of this Plan. The Policy Statement shall set forth:

- (a) the identity of the person or persons authorized to administer the loan program;
- (b) the procedure for applying for a loan;
- (c) the basis on which loans will be approved or denied;
- (d) limitations, if any, on the types and amounts of loans offered;
- (e) the procedure for determining a reasonable rate of interest;
- (f) the types of collateral that may secure a loan; and
- (g) the events constituting default and the steps to be taken to preserve plan assets in the event of a default.

20.03 Amount of Loan: The amount of any loan to a Participant when added to the outstanding balance of any previous loans made to him pursuant to this Article or under any other qualified plan maintained by the Employer, shall not exceed the least of:

- (a) Fifty percent (50%) of the Vested Interest in his/her Plan Accounts (including, for calculation purposes, any Rollover Accounts and Employer Securities Account); or
- (b) \$50,000, reduced by the excess (if any) of:
 - (1) the highest outstanding balance of loans from the plan during the 1-year period ending on the day before the date on which such loan was made, over
 - (2) the outstanding balance of loans from the plan on the date on which such loan was made, or

- (c) The total amount of the Vested Interest in his/her Plan Accounts, exclusive of the Vested Interest in his/her Employer Securities Account.

20.04 Collateral Requirements: Any loan to a Participant shall be secured solely by the balance in his/her Plan Account (including any Rollover Account, but excluding his/her Employer Securities Account). In the event of default on the loan, however, foreclosure and attachment of such security shall not occur until a distributable event occurs under the Plan.

20.05 Loan Terms: Any loan made to a Participant by the Trustee shall be evidenced by a promissory note of the Participant drawn in favor of the Trust. Such note shall bear a reasonable rate of interest and shall be amortized in level installments payable at least quarterly within a specified period of time not to exceed five (5) years, unless such loan is used to acquire a dwelling unit which, within a reasonable period of time (determined at the time the loan is made), will be used as the principal residence of the Participant or Beneficiary, in which case the specified period of time shall not exceed ten (10) years.

20.06 Accounting for Loans: Any loan to a Participant pursuant to this Article shall be treated as a directed investment of his/her Participant Accounts (excluding his/her Rollover Account and his/her Employer Securities Account). For purposes of allocating income in the General Investments Account of the Trust Fund pursuant to Section 6.03, the balance in his/her General Investments Account shall be treated as equal to the actual balance in the Accounts minus the outstanding balance of any loans. Furthermore, for purposes of Section 6.03, repayments of principal and interest on such loan shall be treated as deposits to the adjusted balance (determined pursuant to the preceding sentence) of his/her General Investments Account.

20.07 Effect of Termination of Employment or Plan: If a Participant terminates employment with the Employer for any reason, the outstanding balance of any loans made to him shall become fully payable no later than ninety (90) days following his/her Termination of Employment or, if earlier, on his/her Distribution Date. In the event of a termination of the Plan, any outstanding loans shall be due and fully payable within ninety (90) days of the effective date of such termination, or the date the Participant or Beneficiary is notified of such termination. If the Participant or Beneficiary has not fully repaid any loan as of the date full payment is due, any unpaid balance shall be deducted from his/her Vested Accrued Benefit prior to determining the amount of any immediate or deferred benefit payable to the Participant or Beneficiary, his/her spouse or his/her Beneficiary and applied toward repayment of the loan.

20.08 Spousal Consent: No loan shall be made to a Participant unless the Participant consents to the loan and acknowledges the possible reduction in Plan benefits that would occur in the event of default on the loan. No spousal consent shall be required for any loan as long as no portion of the Participant's Accrued Benefit may be distributed from the Plan in the form of an annuity. If any portion of the Participant's Accrued Benefit may be distributed in the form of an annuity, then no loan shall be made to that Participant unless the Participant and his/her spouse (if any) consent to such loan and acknowledge the possible reduction in Plan benefits that would occur in the event of default on the loan. Such consent and acknowledgment shall be provided in writing no earlier than ninety (90) days prior to the making of the loan and witnessed by the Plan Administrator (or representative thereof) or a notary public. In the event of the renegotiation, extension, renewal or other revision of the loan, a new spousal consent shall be required.

20.09 Anti-Alienation: Except as specifically provided in Sections 20.04 and 20.10, no benefit that shall be payable out of the Trust Fund to any person (including a Participant, Inactive Participant or Beneficiary) shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void. No benefit shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements, or torts of any person, nor shall it be subject to attachment or legal process for or against person, and the same shall not be recognized by the Trustee, except to such extent as may be required by law.

20.10 Qualified Domestic Relations Orders: Section 20.09 shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a Participant, Former Participant or Beneficiary pursuant to a Domestic Relations Order, unless such Domestic Relations Order is determined to be a Qualified Domestic Relations Order ("QDRO"). In the event the Plan, the Trustee, or the Plan Administrator receives a Domestic Relations Order, the Plan Administrator shall promptly notify the Participant, Former Participant or Beneficiary whose benefit is the subject of such order and provide him with a copy of the Plan's written procedures for administering QDROs. Effective as of January 1, 2003, administration expenses incurred by the Plan with respect to the QDRO (including costs associated with review and determination of the order as a valid QDRO) may be chargeable to the individual Participant's Account subject to the written policy established by the Plan Administrator. Unless and until the order is set aside, the following provisions shall apply:

- (a) The Plan Administrator shall establish reasonable procedures to determine whether an order received by it or the Trustee is a QDRO and to administer distributions pursuant to said order. The procedures shall set forth all rules to be applied by the Plan for notice to affected parties, suspension of Account activity, including distributions, investment direction and participant loans, and payment of benefits based upon the QDRO or the failure of the Domestic Relations Order to be a QDRO.
- (b) The Plan Administrator shall within a reasonable time determine whether the order is a QDRO and shall notify the Participant, Former Participant or Beneficiary whose benefit is the subject of the order, of its determination. The Plan Administrator may designate a representative to carry out its duties under this Section 20.10.
- (c) Nothing in this Section 20.10 shall be deemed to allow payment under a QDRO to an Alternate Payee of any benefit prior to the first day of the month following the date the Participant or Former Participant whose benefits are subject to the QDRO terminates employment or attains age fifty (50), unless (i) earlier distribution is specifically provided under the terms of the QDRO and (ii) if the value of the Alternate Payee's benefit exceeds \$5,000, the Alternate Payee consents to any distribution occurring prior to the Participant's attainment of earliest retirement age.

20.11 QDRO Definitions: For purposes of Section 20.10 the following definitions and rules shall apply:

- (a) **"Alternate Payee"** shall mean any spouse, former spouse, child or other dependent of a Participant or Former Participant who is recognized by a QDRO as having a right to receive all, or a portion of, the benefits payable under this Plan with respect to the Participant or Former Participant.
- (b) **"Domestic Relations Order"** shall mean any judgment, decree, or order (including approval of a property settlement agreement) which:
 - (1) relates to the provision of child support, alimony payments, or marital property rights to a spouse, child, or other dependent of a Participant or Former Participant and
 - (2) is made pursuant to a state domestic relations law (including a community property law).
- (c) **"Qualified Domestic Relations Order"** shall mean any Domestic Relations Order that satisfies the criteria set forth in the QDRO procedures established by the Plan Administrator.

ARTICLE XXI MULTIPLE EMPLOYER PROVISIONS

21.01 Adoption by Other FX Employers: With the consent of the Plan Sponsor and by a properly executed document evidencing the intent and will of the adopting FX Employer, any other FX Employer may adopt this Plan and all of the provisions hereof and participate herein and be known as a Participating FX Employer.

21.02 Requirements of Participating FX Employers:

- (a) Each Participating FX Employer shall be required to use the Trustee determined by the Plan Sponsor or Plan Administrator.

- (b) The Trustee may, but shall not be required to, commingle, hold and invest as one Trust Fund all contributions made by Participating FX Employers, as well as all increments thereof. The assets of the Plan shall, on an ongoing basis, be available to pay benefits to all Participants and Beneficiaries under the Plan without regard to the Participating FX Employer who contributed such assets.
- (c) The transfer of any Participant from or to an FX Employer participating in this Plan, whether he is an Employee of the Plan Sponsor or a Participating FX Employer, shall not affect the Participant's rights under the Plan, and the Participant's Accounts, as well as all accumulated service with the transferor or predecessor, shall continue to his/her credit.
- (d) Any expenses of the Trust and Plan that are to be paid by the Employer or borne by the Trust Fund, including funding of benefits, shall be paid by each Participating FX Employer in the same proportion that the total amount of the Accounts standing to the credit of all Participants employed by such FX Employer bears to the total of the Accounts standing to the credit of all Participants.

21.03 Designation of Agent: Each Participating FX Employer shall be deemed to be a part of this Plan. With respect to all of its relations with the Trustee and Plan Administrator for the purpose of this Plan, each Participating FX Employer shall be deemed to have designated irrevocably the Plan Sponsor as its agent. Unless the context of the Plan clearly indicates the contrary, the word "Employer" shall be deemed to include each Participating FX Employer as related to its adoption of the Plan.

21.04 Employee Transfers: It is anticipated that an Employee may be transferred between Participating FX Employers, and in the event of any transfer, the Employee involved shall carry with him all of his/her accumulated service and eligibility. No transfer shall effect a Termination of Employment hereunder, and the Participating FX Employer to which the Employee is transferred shall thereupon become obligated hereunder with respect to such Employee in the same manner as was the Participating FX Employer from whom the Employee was transferred.

21.05 Amendment: The Plan Sponsor may amend this Plan at any time without regard to whether there are Participating FX Employers hereunder. No written action of a Participating FX Employer shall be required to validate an amendment.

21.06 Discontinuance of Participation: A Participating FX Employer shall be permitted to discontinue or revoke its participation in the Plan. At the time of any discontinuance or revocation, satisfactory evidence thereof and of any applicable conditions imposed shall be delivered to the Trustee. If so directed by the Plan Administrator, the Trustee shall transfer, deliver and assign Contracts and other Fund assets allocable to the Participants of such Participating FX Employer to the new Trustee as shall have been designated by the Participating FX Employer, in the event that it has established a separate pension plan for its Employees. No such transfer shall be made if the result is the elimination or reduction of any Code §411(d)(6) protected benefits. If no successor is designated, the Trustee shall retain the assets for the Employees of the Participating FX Employer pursuant to the provisions of the Plan. In no event shall any part of the corpus or income of the Trust as it relates to the Participating FX Employer be used for or diverted for purposes other than for the exclusive benefit of the Employees of the Participating FX Employer.

21.07 Administrator's Authority: The Plan Administrator shall have authority to make any and all necessary rules or regulations, binding upon all Participating FX Employers and all Participants, to effectuate the purposes of this Article.

21.08 Participating Employer Contributions: All contributions made by a Participating FX Employer, as provided for in this Plan, shall be determined separately for each Participating FX Employer, and shall be allocated only among Participants eligible to share who are Employees of the Participating FX Employer making the contribution. The Administrator shall keep separate books and records concerning the affairs of each Participating FX Employer hereunder and as to the accounts and credits of the Employees of each Participating FX Employer. The Trustee may, but need not, register participation agreements so as to evidence that a particular Participating FX Employer is an interested Employer hereunder. In the event of an Employee transfer from one Participating FX Employer to another, the Employers shall immediately notify the Administrator.

ARTICLE XXII REPURCHASE OF DISTRIBUTED EMPLOYER SECURITIES

22.01 Put option: The Employer may, in its discretion, issue a “put option” to a Participant in the event the Participant receives a distribution of Employer Securities from the Trust that are not readily tradeable on an established market. The put option will permit the Participant to sell the Employer Securities to the Employer, at any time during two option periods, at a price determined by the Employer under a fair valuation formula. The first put option period runs for a period of at least 60 days commencing on the date of distribution of Employer Securities to the Participant. The second put option period runs for a period of at least 60 days commencing after the new determination of the fair market value of Employer Securities by the Plan Administrator and notice to the Participant of the new fair market value. If a Participant (Beneficiary) exercises his/her put option, the Employer will purchase the Employer Securities at fair market value upon the terms provided under Section 22.04. The Employer may grant the Trust an option to assume the Employer's rights and obligations at the time a Participant exercises an option under this Section 22.01. No provision of this Section 22.01 (or of the Plan) shall be interpreted to require the Plan or impose any obligation on the Plan to acquire securities from a particular securities holder at an indefinite time determined upon the happening of an event, such as the death of the holder.

22.02 Restriction on Employer Securities: Except upon the prior written consent of the Employer, no Participant (or Beneficiary) may sell, assign, give, pledge, encumber, transfer or otherwise dispose of any Employer Securities now owned or subsequently acquired by him without complying with the terms of this Article XXII. If a Participant (or Beneficiary) pledges or encumbers any Employer Securities without the required prior written consent, any security holder's rights with respect to such Employer Securities are subordinate and subject to the rights of the Employer. All certificates for Employer Securities distributed pursuant to this Plan shall bear the following legend:

The shares represented by this certificate are transferable only upon compliance with the terms of the FX Energy, Inc. 401(k) Stock Bonus Plan, as amended effective January 1, 2004, which grants to FX Energy, Inc., a right of first refusal. A copy of the Plan is on file in the office of the Company.

22.03 Lifetime Transfer/Right of First Refusal: If any Participant (or Beneficiary) who receives Employer Securities under this Plan desires to dispose of any of his/her Employer Securities for any reason during his/her lifetime (whether by sale, assignment, gift or any other method of transfer), he first must offer the Employer Securities for sale to the Employer. The Plan Administrator may require a Participant (or Beneficiary) entitled to a distribution of Employer Securities to execute an appropriate stock transfer agreement (evidencing the right of first refusal) prior to receiving a certificate for Employer Securities.

In the case of an offer by a third party, the offer to the Employer is subject to all the terms and conditions set forth in Section 22.04, based on the price equal to the fair market value per share and payable in accordance with the terms of Section 22.04, unless the selling price and terms offered to the Participant by the third party are more favorable to the Participant than the selling price and terms of Section 22.04, in which event, the selling price and terms of the offer of the third party apply. The Employer must give written notice to the offering Participant of its acceptance of the Participant's offer within fourteen (14) days after the Participant has given written notice to the Employer or the Employer's rights under this Section 22.03 will lapse. The Employer may grant the Trust the option to assume the Employer's rights and obligations with respect to all or any part of the Employer Securities offered to the Employer under this Section 22.03. The Trust is not under any obligation at any time to purchase Employer Securities from any holder of Employer Securities upon the happening of any event.

22.04 Payment of Purchase Price: If the Employer (or the Trustee), at the direction of the Plan Administrator exercises an option to purchase a Participant's Employer Securities pursuant to an offer given under Section 22.03, the purchaser(s) must make payment in lump sum or, if the distribution to the Participant (or to his/her Beneficiary) constitutes a Total Distribution, in substantially equal installments over a period not exceeding five years, subject to the Participant's election for a longer payment period than five years. A “Total Distribution” to a Participant (or to a Beneficiary) is the distribution, within one taxable year of the recipient, of the entire balance to the Participant's credit under the Plan. In the case of a distribution that is not a Total Distribution or that is a Total Distribution with respect to which the purchaser(s) will make payment in lump sum, the purchaser(s) must pay the Participant (or Beneficiary) the fair market value of the Employer Securities repurchased no later than 30 days after the date the Participant (or Beneficiary) exercises the put option. In the case of a Total Distribution with respect to which the purchaser(s) will make installment payments, the purchaser(s) must make the first installment payment no later than 30

days after the Participant (or Beneficiary) exercises the put option. For installment amounts not paid within 30 days of the exercise of the put option, the purchaser(s) must evidence the balance of the purchase price by executing a promissory note, delivered to the selling Participant at the Closing. The note delivered at Closing must bear a reasonable rate of interest, determined as of the Closing Date, and the purchaser(s) must provide adequate security. The note must provide for equal annual installments with interest payable with each installment, the first installment being due and payable one year after the Closing Date. The note must further provide for acceleration in the event of 30 days' default of the payment on interest or principal and must grant to the maker of the note the right to prepay the note in whole or in part at any time or times without penalty; provided however, the purchaser(s) may not have the right to make any prepayment during the calendar year or fiscal year of the Participant (Beneficiary) in which the Closing Date occurs.

22.05 Notice: A person has given Notice permitted or required under this Article XXII when the person deposits the Notice in the United States mail, first class, postage prepaid, addressed to the person entitled to the Notice at the address currently listed for him in the records of the Advisory Committee. Any person affected by this Article XXII has the obligation of notifying the Plan Administrator of any change of address.

22.06 Terms and Definitions: For purposes of this Article XXII:

- (a) "Fair market value" means the value of the Employer Securities (i) determined as of the date of the exercise of an option if the exercise is by a disqualified person, or (ii) in all other cases, determined as of the most recent Accounting Date. The Plan Administrator must determine fair market value of Employer Securities for all purposes of the Plan by engaging the services of an independent appraiser.
- (b) "Notice" means any offer, acceptance of an offer, payment or any other communication.
- (c) "Beneficiary" includes the legal representative of a deceased Participant.
- (d) "Closing" means the place, date and time ("Closing Date") to which the selling Participant (or his/her Beneficiary) and purchaser may agree for purposes of a sale and purchase under this Article XI, provided Closing must take place not later than 30 days after the exercise of an offer under Section 22.01.

ARTICLE XXIII MISCELLANEOUS

23.01 Participant's Rights: This Plan shall not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect that such discharge shall have upon him as a Participant of this Plan.

23.02 Actions Consistent with Terms of Plan: All actions taken by the Employer, Plan Administrator or Trustee with respect to Trust assets shall be in accordance with the terms of the Plan and Trust.

23.03 Performance of Duties: All parties to this Plan and Trust, or those claiming any interest hereunder, agree to perform any and all acts and execute any and all documents and papers that are necessary or desirable for carrying out this Plan and Trust or any of its provisions.

23.04 Validity of Plan: This Plan shall be construed in a way that is consistent with ERISA and regulations thereunder, the Internal Revenue Code and regulations thereunder, and, to the extent state law has not been preempted by federal law, the laws of the State in which the Plan Sponsor has its principal office. In case any provision of this Plan shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions of the Plan; but the Plan shall be construed and enforced as if such provision had never been included therein.

23.05 Legal Action: In the event any claim, suit, or proceeding is brought regarding the Trust and/or Plan established hereunder to which the Trustee or the Plan Administrator may be a party, and such claim, suit, or proceeding is resolved in favor of the Trustee or Plan Administrator, they shall be entitled to be reimbursed from the Trust Fund for any and all costs, attorney's fees, and other expenses pertaining thereto incurred by them for which they shall have become liable.

23.06 Gender and Number: Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

23.07 Uniformity: All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

23.08 Headings: The headings and subheadings of this Agreement have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

23.09 Receipt and Release for Payments: Any payment to any Participant, his/her legal representative, Beneficiary, or to any guardian or committee appointed for such Participant or Beneficiary in accordance with the provisions of this Agreement, shall, to the extent thereof, be in full satisfaction of all claims hereunder against the Trustee and the Employer, either of whom may require such Participant, legal representative, Beneficiary, guardian or committee, as a condition precedent to such payment, to execute a receipt and release thereof in such form as shall be determined by the Trustee or Employer.

23.10 Payments to Minors, Incompetents: Effective for Plan Years commencing on or after January 1, 1995, in the event the Plan Administrator must direct a payment from the Plan to or for the benefit of any minor or incompetent Participant or Beneficiary, the Plan Administrator, in its sole and absolute discretion may, but need not, order the Trustee to make distribution to any of the following: a legal or natural guardian of the minor or other relative or adult with whom the minor temporarily or permanently resides, a court-appointed conservator of any incompetent, a relative or adult with whom the incompetent temporarily or permanently resides, a residential care facility, rest home, sanitarium or similar entity with which the incompetent temporarily or permanently resides, a person or entity that has applied for and been designated by the United States Government as the recipient or custodian for Social Security benefits for the minor or incompetent. The Plan Administrator may also make payment as directed by the attorney-in-fact of an incompetent Participant when such direction is pursuant to an unrevoked and valid durable power of attorney. Any guardian, conservator, relative, attorney-in-fact, other person or entity shall have full authority and discretion to expend the distribution for the use and benefit of the minor or incompetent. The receipt of the distribution by the guardian, conservator, relative, attorney-in-fact, other person or entity shall be a complete discharge to the Plan, Plan Administrator and Trustee, without any responsibility on the part of the Trustee or the Plan Administrator to see to the application thereof. A Participant shall be deemed incompetent if he or she is incapable of properly using, expending, investing, or otherwise disposing of the distribution, and a court order or the written opinion of a qualified physician, psychiatrist or psychologist setting forth facts consistent with the standards outlined in this Section is presented to the Plan Administrator.

23.11 Missing Persons: Notwithstanding any provision in this Plan and Trust to the contrary, if the Plan Administrator is unable to locate any Former Participant who is entitled to benefits under this Plan within three (3) years of the date he becomes entitled to a distribution from the Trust Fund, any amounts being held for his/her behalf shall be forfeited and used to reduce the Employer's contributions to the Plan and Trust. The Plan Administrator shall proceed with due diligence in attempting to locate any Former Participant. In the Plan Administrator's sole discretion, due diligence may include inquiry of any Beneficiary or Alternate Payee of the Former Participant whose names and addresses are known to the Plan Administrator or use by the Plan Administrator of a commercial locator service. Provided, however, no forfeiture shall occur until the Plan Administrator has mailed the Former Participant a notice of the benefits and the provisions of this section to his/her last known address, via U.S. Mail postage prepaid, return receipt requested. And, provided further, if the Former Participant is located subsequent to such forfeiture, the forfeited amount shall be reinstated and the Former Participant shall receive a distribution of his/her Vested Interest in accordance with the provisions of the Plan.

23.12 Transfer of Interest: Notwithstanding any other provision contained in this Plan, the Trustee at the direction of the Plan Administrator shall transfer the lump sum amount otherwise payable to a Participant or Inactive Participant to another trust forming part of a pension, profit sharing, or stock bonus plan maintained by such Participant's new employer and represented by said employer in writing as meeting the requirements of Code §401(a) provided that the trust to which such transfers are made permits the transfer to be made.

23.13 Prohibition Against Diversion of Funds: It shall be impossible by operation of the Plan or of the Trust, by termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral

arrangement or by any other means, for any part of the corpus or income of any trust fund maintained pursuant to the Plan or any funds contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of Participants, Inactive Participants or their Beneficiaries, except as provided in Sections 17.04 and 21.19.

23.14 Period of the Trust: If it shall be determined that the applicable State law requires a limitation on the period during which this Trust shall continue, then such Trust shall not continue for a period longer than twenty-one (21) years following the death of the last of those Participants, including future Participants, who are living at the Effective Date hereof. At least one hundred eighty (180) days prior to the end of the twenty-first (21st) year as described in the first sentence of this Section, the Plan Sponsor, the Plan Administrator and the Trustee shall provide for the establishment of a successor Trust and transfer of Plan assets to the Trustee of such successor Trust. If applicable State law places no such limitation, then this Section shall not be operative.

23.15 Applicability of Plan: The provisions of this Plan shall apply only to persons who are or who become Participants in this Plan on or after the Effective Date or with respect to Plan provisions with alternate effective dates, such alternate dates. Except as specifically provided in this Plan, the provisions of the Prior Plan will continue to apply to persons who are Inactive Participants or who are not employed by an FX Employer on the Effective Date or as applicable, alternate effective dates, unless and until such time as such persons may again become Participants in this Plan.

23.16 Misstatement of Age: If a Participant or Beneficiary misstates or misrepresents his/her age, date of birth or any other material information to the Employer, Plan Administrator or Trustee, the amount, terms and conditions of any benefits payable from the Plan that are attributable to periods prior to the discovery of such misstatement or misrepresentation shall be limited to the lesser (or more restrictive) of: the amount, terms and conditions determined based on the misstated information; or the amount, terms and conditions determined based on the correct information. The Plan Administrator shall have sole and absolute authority for applying the preceding sentence.

23.17 Return of Contributions to the Employer: Notwithstanding any provision of this Plan to the contrary, if any contribution (or portion thereof) by the Employer to the Trust is made as a result of a mistake of fact, or if any contribution (or part thereof) by the Employer to the Trust Fund that is conditioned upon the deductibility of the contribution by the Employer under the Code is disallowed, whether by agreement within the Internal Revenue Service or by final decision of a court of competent jurisdiction, the Employer may demand repayment of the mistaken or disallowed amount. The Trustee shall return the mistaken or disallowed contribution within one (1) year following the time the mistaken contribution was made or the disallowed contribution was disallowed. Investment earnings attributable to the mistaken or disallowed amount shall not be returned, but any investment losses attributable thereto shall reduce the amount so returned.

23.18 Correction of Incorrect Benefit Payments: In the event of a misstatement, computational error or other error in Plan records or administration, including a failure by the Plan to value correctly a Participant's Account or any assets therein (including any Employer Securities) or to calculate or determine correctly costs or expenses attributable to a Participant's Account, or in the event costs or expenses attributable to a Participant's Account or assets therein are not incurred by the Plan prior to the date distribution of the Participant's Account occurs, and as a result a Participant or Beneficiary is underpaid or overpaid, the Plan shall not be liable to the Participant or Beneficiary for any more than the correct benefit amount under the Plan.

Underpayment amounts may be corrected by the Plan by adding to future payments or by making a single one-time lump sum payment. Overpayment amounts may be deducted by the Plan from any future payments due from the Plan to the Participant or Beneficiary. In lieu of receiving reduced future payments a Participant or Beneficiary may make a lump sum payment to the Plan of any overpayment. In the event no future payments are owing or will be made, the Plan may require a lump sum repayment from the Participant or Beneficiary of the overpayment amount. Each Participant and Beneficiary in the Plan shall receive any distribution from the Plan, regardless of when paid, subject to the right of the Plan to obtain recovery of overpaid amounts as provided herein. The right of the Plan to establish the propriety of distributions from the Plan and/or obtain recovery shall be an equitable remedy and shall extend to all amounts distributed from the Plan, without regard to when the distribution occurs or may have previously occurred.

23.19 Counterparts: This Plan and Trust may be executed in any number of counterparts, each of which shall be deemed to be an original, and the counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Plan Sponsor has caused this Plan to be executed by its duly authorized representative this 25th day of January, 2007.

PLAN SPONSOR:

FX Energy, Inc.

By: /s/ Scott J. Duncan
Its Secretary

AGREEMENT

For the Sale of Natural Gas

This Agreement was signed on 29 December 2005 in Warsaw between:

FX Energy Poland Sp. z o.o. with its registered office in Warsaw, at ul. Chalubinskiego 8, 00-613 Warsaw, entered in the Companies Register of the National Court Register by the District Court in Warsaw, XIX Commercial Division of the National Court Register as KRS No. 0000052459 NIP 521-27-51-481, REGON 012659847,

hereinafter referred to as the “**Seller**” or a “**Party**”, represented by:

Mr. Zbigniew Tatys, member of the Management Board

and,

Mazowiecka Spółka Gazownictwa Sp. z o.o. with its registered seat at ul. Krucza 6/14, 00-537 Warsaw, entered into the National Court Register by the District Court in Warsaw XIX Commercial Division of the National Court Register as KRS No. 0000147419, NIP 527-23-26-936, REGON 017195708, hereinafter referred to as the “**Purchaser**” or a “**Party**”, represented by:

1. Mr. Michał Szubski – President of the Management Board
2. Mr. Kazimierz Nowak – Vice-President of the Management Board

RECITALS

Whereas:

A. The **Seller** is authorised to sell gas produced from the **Wilga Field**, as holder of the mining and usufruct and joint concession No. 33/97/Ł covering exploration, appraisal and production of crude oil and natural gas within concession block no. 225, onshore Poland.

B. The **Purchaser** is engaged in the business of trading, transmission and distribution of **Gas** to customers connected to the gas grid in Mazowieckie Voivodship and wishes to purchase all **Gas** produced from the **Wilga Field**.

C. Pursuant to the **Joint Operating Agreement** with **POGC**, the **Seller** is entitled separately to take in kind and dispose of its share of **Gas** produced from the **Wilga Field**. Pursuant to the said agreement, the **Seller's** percentage interest in the **Gas** produced from the **Wilga Field** equals to 81.82 % (eighty one point eighty two per cent).

D. The **Purchaser** wishes to purchase all gas that the **Seller** is able to deliver from the **Wilga Field**.

The **Parties** acting in their best faith and with reasonable diligence negotiated this **Agreement** and undertake to comply with its provisions.

I

GENERAL PROVISIONS AND DEFINITIONS

§ 1

1.1. This **Agreement** governs the relationship between the **Parties** in connection with the sale of the **Gas** (as defined below) by the **Seller** to the **Purchaser**, including their rights and duties, their liability for non-compliance with the terms of this **Agreement**, as well as the technical conditions of delivery and acceptance of the **Gas**.

1.2. The following Appendix constitutes integral part of this **Agreement**:

Appendix No. 1 - Technical conditions of **Gas** delivery;

In case of any inconsistency between the main body of this **Agreement** and the Appendix, the provisions of the main body shall prevail.

§ 2

2.1 In this **Agreement**, and in any appendices or annexes thereto, the following capitalized terms shall have the following meanings:

- 1/ **Contract Day** - a period starting at 10:00 p.m. of any given calendar day and ending at 10:00 p.m. of the following calendar day;
- 2/ **Business Day** - any day other than Saturday, Sunday or another statutory holiday in Poland;
- 3/ **Gas** - a mix of hydrocarbons and non-flammable gaseous components including methane and nitrogen as main components, conforming to the parameters specified in §8 and in Appendix No. 1, or accepted by the **Purchaser** in spite of non-compliance with those parameters; for the avoidance of doubt, **Gas** shall not include any condensed or extracted liquid hydrocarbons that are liquid at the pressure of 101.325 kPa and at thermodynamic temperature of 273.15 K, and any residue gas remaining after the condensation or extraction of liquid hydrocarbons from such gas;
- 4/ **Operating Committee** - the committee established and empowered to make decisions regarding mining operations in the **Block 255** pursuant to the **Joint Operating Agreement**;
- 5/ **Contract Month** - a period starting at 10:00 p.m. of the last day of the month directly preceding the given calendar month, and ending at 10:00 p.m. of the last day of the given calendar month, provided that the first **Contract Month** shall commence at 10:00 p.m. of the last day of the **Commissioning Period** and shall continue until the end of the same calendar month;
- 6/ **Delivery Period** - the period commencing on the **Production Commencement Day** and ending the **Production Closure Day**;
- 7/ **Operator** - the party appointed as the operator of **Block 255 Wilga** pursuant to the **Joint Operating Agreement**; upon execution of this **Agreement**, FX Energy Poland Sp. z o.o. is the **Operator**;
- 8/ **Planned Maintenance Work** - renovation, construction, maintenance and modernization work:
 - (a) conducted by the **Purchaser** or **OGP** in the **Gas Network**, which affects the **Purchaser's** ability to take the **Gas** at the **Delivery Point**;
 - (b) conducted by the **Operator** or the **Seller** in the **Delivery System**, which affect the **Seller's** ability to deliver the **Gas** to the **Delivery Point** (**Seller's Planned Maintenance Work** shall include, without limitation, any periodical gas field tests);
- 9/ **Block 255** - the area described in Appendix No. 1, within which the **Gas** will be produced from the **Wilga Field** pursuant to the **Joint Operating Agreement**;
- 10/ **Delivery Point** - the agreed valve at the exit from the **Gas Station**;
- 11/ **Contract Year** - a period starting at 10:00 p.m. of the last day of any calendar year and ending at 10:00 p.m. of the last day of the following calendar year, provided that:

- (a) the first **Contract Year** shall commence at 10:00 p.m. on the last day of the **Commissioning Period** and shall continue until 10:00 pm on last day of the same calendar year;
 - (b) if this **Agreement** terminates on any day other than December 31, the last **Contract Year** shall end at 10:00 p.m. on the last day of effectiveness of the **Agreement**;
- 12/ **Gas Station** - the installations located at the mutually agreed location where the **Delivery System** connects to the Wronow-Rembelszczynna 500 millimeter pipeline forming part of the Polish national transmission system operated by **OGP**, which installations include the **Metering System**, used to control, measure and distribute the stream of the **Gas**, together with any ancillary equipment, owned by the parties to the **Joint Operating Agreement** and operated by the **Operator**;
 - 13/ **Delivery System** - installations used for the purposes of producing, processing, compressing, testing, measuring and delivering the **Gas** to the **Delivery Point**, including, without limitation, the **Gas Station**, described in Appendix No. 1;
 - 14/ **Gas Network** – the network of gas pipelines together with compression facilities and ancillary equipment owned by the **Purchaser**, connected and working together, used for the distribution of the **Gas** purchased hereunder to the customers, together with the part of the Polish national transmission system operated by **OGP** used for transportation of **Gas** from the **Delivery Point** to that network;
 - 15/ **Metering System** - gas meters and other metering devices, as well as the systems connecting these devices, described in Appendix No. 1, used to measure the quantity of the **Gas** delivered and taken at the **Delivery Point**, owned in accordance with the **Joint Operating Agreement** by the parties thereto;
 - 16/ **Agreement** - this agreement, together with any future changes, modifications and supplements, which can be made in accordance herewith;
 - 17/ **Production Closure Day**- means the **Contract Day** on which production from the **Wilga Field** is permanently ceased, as determined by the **Operating Committee** in accordance with the **Joint Operating Agreement**;
 - 18/ **OGP** - means OGP Gas-System Sp. z o.o. or its successors as owners and/or operators of gas transmission pipelines;
 - 19/ **Wilga Field** - means the gas field located in the vicinity of Wilga in Mazowieckie Voivodship in Poland owned jointly by the **Seller** and **POGC**, described in detail in Appendix No. 1;
 - 20/ **Delivery Commencement Day** - the **Contract Day** on which the **Seller** delivers the **Gas** to the **Delivery Point** for the first time;
 - 21/ **Production Commencement Day** - means the **Contract Day**, no later than 21 days following the **Delivery Commencement Day**, which is notified by the **Seller** to the **Purchaser** as the day on which regular deliveries of the **Gas** hereunder shall commence;
 - 22/ **Joint Operating Agreement** - means the Joint Operating Agreement covering Block 255, dated 29 October 1999, between the **Seller**, Apache Poland Sp. z o.o., and **POGC**, as amended; current parties to that agreement are the **Seller** and **POGC**;

- 23/ **Commissioning Period** - means the period, no longer than 21 days, commencing on the **Delivery Commencement Day** and ending on the **Contract Day** immediately preceding the **Production Commencement Day**;
- 24/ **Force Majeure** - is defined in §18 below;
- 25/ **Annual Contract Quantity (ACQ)** - the maximum quantity of the **Gas** offered by the **Seller** to the **Purchaser** in the relevant **Contract Year**, specified in accordance with Section 5.2 below;
- 26/ **Daily Contract Quantity (DCQ)** - the maximum quantity of the **Gas** which the **Purchaser** can nominate for delivery hereunder in any **Contract Day**, calculated by dividing the **ACQ** by the number of days in which delivery of the **Gas** is planned in the relevant **Contract Year** (i.e. after deducting days of the **Planned Maintenance Work**);
- 27/ **Daily Nominated Quantity (DNQ)** - the quantity of the **Gas** nominated by the **Purchaser** for delivery in the given **Contract Day** in accordance with Section 6.1 below;
- 28/ **Maximum Hourly Contract Quantity (MHCC)** - the maximum hourly take of gas fuel, specified in Appendix No. 1;
- 29/ **Outstanding Quantity (OO)** - the quantity of the **Gas** not taken by the **Purchaser** in breach of its take-or-pay obligations hereunder, calculated in accordance with Section 7.1 below;
- 30/ **Minimum Annual Contract Quantity (MACQ)** - the quantity of the **Gas** specified in accordance with Section 6.3 below;
- 31/ **Affiliate** - means with respect to a **Party**, any entity which directly or indirectly controls that **Party**, or is controlled by that **Party**, or which is directly or indirectly controlled by an entity which controls that **Party**. Control means:
- (a) the ownership of more than fifty (50) per cent of the voting rights in the general meeting of shareholders, or its equivalent, of another entity;
 - (b) the power to direct the management and policies of another entity, whether through the ownership of voting securities, by contract or otherwise;
- 32/ **Concession** – means jointly a mining license together with any supplementing decision of the concession authority, and mining usufruct authorizing the commercial production of natural gas from the **Wilga Field**, held by the **Seller** or the **Operator**, including any extension or replacement thereof;
- 33/ **Breach** – means failure to perform or improper performance by a **Party** of one or more of its obligations hereunder;
- 34/ **Normal Cubic Meter (Nm³)** - means the amount of gas required to fill a space of one cubic metre with an absolute pressure of one hundred and one decimal three two five kilopascals (101.325 kPa) and at thermodynamic temperature of 273.15 K; unless expressly stated otherwise, all quantities of the **Gas** referred to herein or specified hereunder shall be expressed in **Nm³**.
- 35/ **Annual Statement**– is defined in §13 below;
- 36/ **Monthly Statement**– is defined in §13 below;
- 37/ **Quality Specification** – the chemical parameters of the **Gas** specified in Appendix No. 1;

38/ POGC - Polskie Górnictwo Naftowe i Gazownictwo Spółka Akcyjna with its seat in Warsaw

39/ Total Field Daily Nomination – is defined in Section 6.4 below.

2.2 All units of measurement used herein are units of the SI system in accordance with the Law on Measurements dated 11 May 2001 (Dz. U. of 2004 No. 243, Item 2441).

II CONTRACT TERM, CONDITIONS PRECEDENT AND COMMISSIONING PERIOD

§ 3

3.1 Pursuant to this **Agreement**, the **Seller** shall supply and sell the **Gas** and the **Purchaser** shall buy and take the delivery of the **Gas**, commencing on the **Delivery Commencement Day** until the **Production Closure Day**, provided that no obligations to supply or take the **Gas** shall continue following:

- (a) the termination of this **Agreement** in accordance with its terms; or
- (b) the expiration or termination of the **Concession**.

3.2 The **Delivery Commencement Day** shall not occur unless and until each of the following conditions precedent is fulfilled:

- (a) the **Seller** or the **Operator**, as applicable, obtains all permits and approvals from public authorities required to produce and sell the **Gas** hereunder, and all permits required to construct and operate the **Delivery System**;
- (b) the **Seller** or the **Operator**, as applicable, constructs and brings into operation the **Delivery System**; and
- (c) the **Purchaser** and **OGP** enter into a gas transmission agreement regarding transportation from **Delivery Point** to the Level-I gas stations operated by the **Purchaser** and supplying its distribution network.

The **Seller** shall use its best efforts to ensure that the conditions in letters (a) and (b) above are satisfied as soon as possible. The **Seller** shall promptly notify the **Purchaser** upon becoming aware that a condition, which it is required to satisfy, as provided above, has been satisfied or becomes incapable of being satisfied.

The **Purchaser** shall use its best efforts to ensure that the condition in letter (c) above is satisfied by 31 March 2006. The **Purchaser** shall promptly notify the **Seller** upon becoming aware that the condition, which it is required to satisfy, as provided above, has been satisfied or becomes incapable of being satisfied. If this condition is not fulfilled by that date, the **Parties** shall meet as soon as practicable thereafter to discuss the situation and agree as to the continuation of this **Agreement**.

3.3 If the **Delivery Commencement Day** does not occur by July 1, 2006 the **Parties** shall meet as soon as practicable thereafter to discuss the situation and agree as to the continuation of this **Agreement**.

3.4 In case of a **Force Majeure** occurring before the **Delivery Commencement Day**, the **Delivery Commencement Day** and the **Production Commencement Day** shall be deferred by a period equal to the duration of the **Force Majeure** event.

- 3.5 In case of a **Force Majeure** occurring during the **Commissioning Period**, the **Production Commencement Day** shall be deferred by a period equal to the duration of the **Force Majeure** event.
- 3.6 The **Purchaser** shall provide the **Seller** with a copy of the agreement with **OGP** as referred to in Section 3.2.(c), or another proof of such agreement being in place, immediately after the agreement is entered into.

§ 4

- 4.1 During the **Commissioning Period**, the **Purchaser** shall make reasonable efforts to take all the **Gas** offered by the **Seller** and the **Parties** shall cooperate and shall act diligently in order to ensure that the **Seller** delivers the **Gas** in such quantities as the **Purchaser** is technically capable of accepting.
- 4.2 During the **Commissioning Period** the **Seller** shall not be liable to the **Purchaser** for any failure to supply any specific quantities of the **Gas**, and the **Purchaser** shall not be liable for any failure to take any specific quantities of the **Gas** offered. All other provisions of this **Agreement** shall apply to the **Gas** delivered during the **Commissioning Period**.

III QUANTITIES, PARTIES OBLIGATIONS

§ 5

- 5.1 The **Seller** offers to the **Purchaser** all of the **Gas** produced from the **Wilga Field** (other than any **Gas** used for operations under the **Joint Operating Agreement**, including re-injection for pressure maintenance, gas lifting and power generation) to which it is entitled.
- 5.2 The **Seller** shall (or, if the **Seller** is not the **Operator**, it shall make reasonable efforts to cause the **Operator** to) determine the maximum permitted lifting of gas from the **Wilga Field** in the forthcoming **Contract Year** in accordance with the applicable regulations, referred to in Section 22.1 (b) and attached hereto as Exhibit B to Appendix No. 1, and with good petroleum industry practices, no later than 30 days prior to the **Production Commencement Day** in the case of the first **Contract Year**, and no later than 4 months prior to the beginning of each subsequent **Contract Year**. As soon as practicable following that determination, but in any event no later than 20 days prior to the **Production Commencement Day** in the first **Contract Year** and no later than 3 months prior to the beginning of each subsequent **Contract Year**, the **Seller** shall notify the **Purchaser** in writing of the **Annual Contract Quantity** and the **Daily Contract Quantity** in the forthcoming **Contract Year**. The **Annual Contract Quantity** and the **Daily Contract Quantity** shall be calculated taking into account the **Planned Maintenance Work**.

§ 6

- 6.1 The **Purchaser** shall notify the **Daily Nominated Quantities** to the **Seller** in writing in accordance with the nomination procedures specified in Appendix No. 1.
- 6.2 The **Seller** shall make reasonable efforts to deliver all of the **Gas** ordered by the **Purchaser**, and **Purchaser** shall make reasonable efforts to take all of the **Gas** offered by the **Seller**, without prejudice to Section 6.3 below.
- 6.3 Subject to Section 7.1 below, in each **Contract Year**, the **Purchaser** shall take from the **Seller** at least the **Minimum Annual Contract Quantity (MACQ)** equal to 90% (ninety per cent) of the **Annual Contract Quantity** for that **Contract Year** provided that in any **Contract Year** shorter than 365 **Contract Days** the **MACQ** shall be decreased pro rata to the difference between 365 and the number of **Contract Days** in such a **Contract Year**.

- 6.4 Should the **Purchaser** purchase **Gas** from the **Wilga Field** from any party to the **Joint Operating Agreement** in addition to the **Seller**, the **Purchaser** shall issue field-wide nominations for its total requirements for the **Gas** from the **Wilga Field** in respect of any **Contract Day** (a "**Total Field Daily Nomination**") and the nomination for the **Seller** for such **Contract Day** shall be calculated as a share of the applicable **Total Field Daily Nomination** in the proportion that the **Seller's** participating interest share in the **Joint Operating Agreement** bears to the aggregate of all participating interest shares in the **Joint Operating Agreement**.
- 6.5 The share of the **Seller** in any and all under-deliveries, over-deliveries of **Gas** or deliveries of non-specification gas from the **Wilga Field** shall be determined in the same proportion as calculated for the **Seller** pursuant to and in accordance with Section 6.4 above.

IV GUARANTEED TAKE

§ 7

- 7.1 The **Purchaser** shall be liable to the **Seller** for failure to fulfil its obligation under Section 6.3 above if in any **Contract Year** the amount of the **Gas** actually taken by the **Purchaser** is lower than the **Minimum Annual Contract Quantity** minus the sum of all quantities of the **Gas** during that **Contract Year** that:
- (a) were not delivered to the **Purchaser** as a result of rejection of non-conforming gas pursuant to Section 9.2; or
 - (b) were not delivered to or taken by reason of **Force Majeure** affecting the **Seller** or the **Purchaser**;
- and the resulting quantity of the **Gas** not taken in **Breach** of Section 6.3 shall constitute the **Outstanding Quantity (OQ)**.
- 7.2 The **Purchaser** shall pay the **Seller** for the quantity of the **Gas** constituting the **Outstanding Quantity** an amount equal to 80 % (eighty percent) of the **Gas Price** applicable to the **Gas** delivered on the last **Contract Day** of the **Contract Year** within which the failure referred to in Section 7.1 above took place.
- 7.3 The **Seller** shall issue a proper accounting document for the amount payable pursuant to Section 7.2 above within 3 (three) days after issuing the **Annual Statement** for the **Contract Year** and the said amount shall be payable within 21 (twenty one) calendar days after delivery of the document to the **Purchaser**.
- 7.4 Subject to Sections 21.3, 21.4 and 21.6, the **Purchaser** shall be entitled to take the **Outstanding Quantity** at any time until the **Production Closure Day** subject to the **Purchaser** first having taken during the **Contract Year** an amount of **Gas** at least equal to the applicable **Minimum Annual Contract Quantity** minus the sum of all quantities of **Gas** that were not delivered or taken during the **Contract Year** by reason of **Force Majeure** affecting the **Seller** or the **Purchaser**. **Outstanding Quantities** occurring in different **Contract Years** shall be taken by the **Purchaser** on a "first-in-first-out basis".
- 7.5 Subject to Sections 21.3, 21.4 and 21.6, if the **Purchaser** does not take any portion of the **Outstanding Quantities** within the time stated in Section 7.4 above due to any reason other than non-performance or improper performance by the **Seller** of its obligations, then the **Purchaser** shall cease to have any rights or claims in respect thereof.

- 7.6 If the **Purchaser** takes any **Outstanding Quantities** in a **Contract Year**, then the **Seller's** invoice for the **Contract Month** in which any part of the **Outstanding Quantity** is first taken, and invoices for the remaining **Contract Months**, if any, of that **Contract Year**, shall specify, among others:
- (a) the gross amount due which shall be the product of the entire quantity of the **Gas** actually taken during that **Contract Month** and the then applicable **Gas Price**;
 - (b) the amount already paid by the **Purchaser** to the **Seller** in respect of the relevant portion of the **Outstanding Quantity** pursuant to Section 7.2 above;
 - (c) the net amount payable by the **Purchaser** being the difference between the amount specified under letter (a) above and the amount specified under letter (b) above.

V

QUALITY OF GAS. NON-SPECIFICATION GAS

§ 8

- 8.1 The pressure of the **Gas** at the **Delivery Point** shall be no lower and no greater than the pressure required by **OGP** with respect to gas accepted for transmission. The nominal (minimum) gross calorific value of the **Gas** delivered shall be no lower than the minimum gross calorific value required by **OGP** with respect to gas accepted for transmission, unless the **Parties** agree otherwise.
- 8.2 The **Gas** delivered hereunder shall conform to the **Quality Specification** detailed in Appendix No. 1.

§ 9

- 9.1 If the gas supplied by the **Seller** at the **Delivery Point** does not conform to the **Quality Specification** or the parameters specified in Section 8.1 above (non-conforming gas), the **Seller** shall, or if the **Seller** is not the **Operator**, shall make reasonable efforts to cause the **Operator** to, notify the **Purchaser** thereof as soon as possible and shall provide the **Purchaser** with all known details regarding the quality of the non-conforming gas and the expected timing of the non-compliance. If the **Seller** fails to comply with this requirement, the **Purchaser** shall be entitled to claim reimbursement of fees paid by it to **OGP** for delivery of non-conforming gas to the grid during the period prior to the **Purchaser** becoming aware of the non-conformity, provided that the amount claimed may not exceed 50% of the price payable by the **Purchaser** for the same amount of **Gas** hereunder.
- 9.2 If the **Purchaser** becomes aware of delivery of non-conforming gas it shall notify the **Seller** thereof as soon as possible.
- 9.3 The **Purchaser** shall have the right to reject the delivery of any gas non-conforming to the **Quality Specification** or the parameters specified in Section 8.1 above, and the quantity of gas so rejected by the **Purchaser** shall be deemed to constitute a quantity non-delivered. Any such rejection by the **Purchaser** shall be immediately notified by the **Purchaser** to the **Seller** in writing.
- 9.4 If the **Purchaser**, after being duly informed in accordance with Section 9.1 or having learnt about delivery of non-conforming **Gas** as referred to in Section 9.2, accepts gas which does not conform to the **Quality Specification** or the parameters specified in Section 8.1 above, such gas shall be considered to be **Gas** hereunder and the **Purchaser** shall not be entitled to any price reduction and the **Purchaser** shall not have any claims related to the quality of such **Gas**.

- 9.5 If the quality of the gas delivered continues to be non-conforming to the **Quality Specification** or the parameters specified in Section 8.1 above and is being rejected by the **Purchaser** for a period longer than 2 **Contract Days**, the **Parties** shall meet and negotiate in good faith to agree, as promptly as possible, on such necessary modifications to the **Quality Specification** and other provisions hereof as to allow the continued performance of this **Agreement**. If the **Parties** fail to reach an agreement regarding such modifications within thirty (30) days, either **Party** may terminate this **Agreement** by at least 14-day notice.

VI DELIVERY POINT

§ 10

- 10.1 All the **Gas** shall be delivered by the **Seller** to, and taken by the **Purchaser** at, the **Delivery Point**.
- 10.2 At the **Delivery Point**:
- (a) the title to the **Gas**;
 - (b) the benefits and burdens related to the title to the **Gas**;
 - (c) the risk of loss or quality deterioration of the **Gas**;
 - (d) all risks related to the physical and chemical properties of the **Gas**;
- shall pass from the **Seller** to the **Purchaser**.
- 10.3 Appendix No. 1 includes a description and a chart showing the layout of the **Delivery System** including the **Gas Station** (with the **Metering System**) and the **Delivery Point**. Appendix No. 1 specifies the methods and procedures for taking measurements of the quantity, quality, temperature and pressure of the **Gas** delivered and taken. All issues related to the measurement of the quantity and pressure of the **Gas** which are not specifically addressed in Appendix No. 1 shall be governed by the company standards of **POGC** "MEASUREMENTS OF GASEOUS FUELS", (4000 series), listed in Appendix No. 1 and attached thereto as Exhibit A.
- 10.4 The **Purchaser** shall have the right to be present, at its own expense, during the installation, reading, cleaning, replacement, fixing, inspection, examination, verification, calibration or regulation of the **Metering System**.

VII MEASURING, DISPUTES REGARDING QUANTITY OR QUALITY

§ 11

- 11.1 The **Seller** shall, or if the **Seller** is not the **Operator**, shall make reasonable efforts to cause the **Operator** to, install the **Metering System** at the expense of the **Seller** and other parties to the **Joint Operating Agreement** and to maintain it in good working order and condition. The **Seller** shall, or if the **Seller** is not the **Operator**, shall make reasonable efforts to cause the **Operator** to, check the **Metering System** and verify its accuracy no less than once every three **Calendar Months**, or more frequently if required by the applicable regulations. The **Seller** shall, or if the **Seller** is not the **Operator**, shall make reasonable efforts to cause the **Operator** to, notify the **Purchaser** of any planned checks or verification at least 3 (three) days in advance.

- 11.2 If any component of the **Metering System** is found to be malfunctioning, the **Seller** shall, or if the **Seller** is not the **Operator**, shall make reasonable efforts to cause the **Operator** to, repair or replace that component as soon as possible, and the **Monthly Statements** covering the period since the previous checking and verification (and, if applicable, the relevant **Annual Statement**) shall be adjusted in accordance with the rules set forth in Appendix No. 1, as soon as possible.
- 11.3 Based on the adjusted **Monthly Statement(s)** and, if applicable, the **Annual Statement**, the **Seller** shall correct its invoices covering the relevant periods within 5 days of the adjustment, and any resulting differences in the amounts payable shall be settled within 30 days of the adjustment. The differences shall be subject to statutory interest on the amounts overpaid or underpaid, in accordance with Article 359 of the Civil Code, from the due date of amounts invoiced incorrectly until reimbursement or payment of the amounts resulting from the adjustment, as appropriate.
- 11.4 Malfunction of the **Metering System** referred to in Section 11.2 above can only occur in a situation where inaccuracies in the reading of the metering equipment exceed the permitted margins specified in Appendix No. 1 or in Exhibit A thereto, or the equipment is out of service.
- 11.5 The **Purchaser** may request additional checks and verification of the accuracy of the **Metering Equipment** at any time. If the checks and verification do not reveal any malfunction that exceeds the permitted margins specified in Appendix No. 1 or in Exhibit A thereto, the **Seller's** costs shall be paid by the **Purchaser**, otherwise, they shall be paid the **Seller**.

§ 12

- 12.1 In case of a dispute concerning the quantity or quality of the **Gas** delivered, the **Parties** shall immediately appoint an *ad hoc* panel consisting of an equal number of, but no more than two, representatives of each of the **Purchaser** and the **Seller**, which shall attempt to resolve the dispute.
- 12.2 If the panel is not appointed within 5 days or is unable to resolve the dispute within one (1) month from its appointment, then the dispute shall be resolved by an independent expert appointed jointly by the **Parties**. If the **Parties** fail to agree on the appointment of the expert within 5 days from either **Party** first proposing a candidate or candidates to the other, the expert shall be appointed by the Scientific and Technical Association of Oil and Gas Engineers. The cost of the expert's resolution shall be covered by the **Parties** in equal parts.
- 12.3 The **Parties** agree that the resolution by the expert pursuant to Section 12.2 above shall be final and binding and shall comply with it, save in case of manifest error or fraud. For the avoidance of doubt, resolution by the expert shall not constitute arbitration.

§ 13

- 13.1 Information concerning the quantity and quality parameters of the **Gas** sold shall be compiled in the form of statements covering:
- (a) every **Contract Month (Monthly Statements)**; and
 - (b) every **Contract Year (Annual Statements)**.
- 13.2. **Monthly Statements** shall be made by the **Seller** based on daily reports prepared according to the guidelines contained in Appendix No. 1, within two (2) **Business Days** after the end of the **Contract Month** in which the delivery occurred. **Annual Statements** shall be made by the **Seller** based on the data contained in the relevant **Monthly Statements** within five (5) **Business Days** after the end of the **Contract Year** in which the delivery occurred.

- 13.3 **Monthly Statements** shall include the following information:
- (a) the **Daily Nominated Quantities** for each **Contract Day** of the **Contract Month**;
 - (b) the quantities of the **Gas** delivered by the **Seller** to the **Purchaser** for each **Contract Day** of the **Contract Month**;
 - (c) the average gross calorific value of the **Gas** delivered during the **Contract Month**, calculated in accordance with Appendix No. 1;
 - (d) the cumulative quantity of the **Gas** delivered by the **Seller** to the **Purchaser** during the **Contract Year** in which the **Contract Month** falls;
 - (e) the portion (if any) of the **Outstanding Quantity** included in the quantity of the **Gas** delivered to the **Purchaser** in the **Contract Month**;
 - (f) the quantities (if any) of the **Gas** not delivered or not taken during the **Contract Month** as a result of (separately for each reason):
 - **Force Majeure**;
 - **Planned Maintenance Work**;
 - rejection of non-conforming gas pursuant to Section 9.2 above;
 - (g) the **Gas Price** in respect of the **Gas** delivered in the **Contract Month**;
 - (h) the balance (if any) of the **Outstanding Quantity** remaining at the end of the **Contract Month**;
 - (i) details of any other charges that arise under this **Agreement**; and
 - (j) the total amount payable by the **Purchaser** to the **Seller**.
- 13.4 Any **Annual Statement** shall include the information, as required in Section 13.3 above with respect to the **Monthly Statements** for the last **Contract Month** of the **Contract Year**, and shall in addition specify:
- (a) the **Outstanding Quantity** (if any) occurred for that **Contract Year**; and
 - (b) the **Gas Price** payable for the **Contract Year** in respect of any **Outstanding Quantity**.
- 13.5 If the **Purchaser** disputes any quantity or amount, or any other piece of information stated in a **Monthly Statement** or **Annual Statement**, it shall notify the **Seller**, providing the details, within seven (7) **Business Days** following the receipt thereof. In such an event, the **Parties** shall communicate immediately and shall attempt to resolve the dispute within three (3) **Business Days**.
- 13.6 If the **Parties** do not reach an agreement within the time specified in Section 13.5 above, any dispute concerning the quantity or quality of the **Gas** delivered shall be resolved by an independent expert in accordance with Section 12.2 above, and any other dispute shall be resolved in accordance with §24 below.

VIII PRICE

§ 14

- 14.1 Subject to other provisions hereof, the **Purchaser** shall pay the **Gas Price (PGU)** for all the **Gas** delivered and taken.
- 14.2 **Gas Price** for **Gas** delivered to the **Purchaser** during a **Contract Month** shall be determined by the application of the following formula:

$$\text{PGU} = (86\% \times \text{POGC Tariff}) \times \frac{\text{GCV}}{39.5\text{MJ/Nm}^3}$$

Where

GCV - average gross calorific value of the **Gas** delivered in the **Contract Month**, calculated in accordance with Appendix No. 1, expressed in MJ/Nm³

POGC Tariff = the gas fuel price applicable to high-methane gas sold to the class of customers which includes the **Purchaser** as per the **POGC** published tariff, in PLN per Nm³. Gas fuel price shall mean the fuel price alone, not including any use of grid (transmission) or administration (subscription) charges. Upon the execution of this **Agreement** the relevant reference gas is the GZ-50 gas having the gross calorific value of 39.5 MJ/Nm³, and the **POGC Tariff** equals 651.30 PLN/1000 Nm³ determined pursuant to and in accordance with the Gas Fuels Tariff No. 1/2003 as amended, including the amendment approved by the President of URE on 14 December 2005.

- 14.3 As long as **POGC** has a published gas tariff including price for the GZ-50 gas, the **Gas Price** shall be adjusted with any change of the **POGC Tariff**, as of the beginning of the **Contract Month** immediately following the effective date of any such change.
- 14.4 Should **POGC** cease to have a published tariff including price for the GZ-50 gas, or should the method of calculation of that tariff price materially change, the **Parties** shall meet immediately upon the request of either of them and shall negotiate in good faith a change in the **Gas Price** adjustment formula, so as to maintain the economic position of each **Party** unchanged and if they cannot reach an agreement within 30 days, either **Party** may refer the matter to resolution in accordance with §24
- 14.5 Numbers used in the calculation of the **Gas Price** shall be rounded up or down to the fifth (5) decimal place inclusive, and the resulting PGU values shall be rounded up or down to the second (2) decimal place. Numbers shall be rounded down if the digit subject to rounding is in the range between 0 and 5 inclusive, and shall be rounded up if the digit subject to rounding is in the range between 6 and 9.
- 14.6 The **Gas Price** and all other amounts stated herein are net of the VAT, excise, any similar tax or public charges. The **Purchaser** shall pay to the **Seller** (or to the relevant tax administration, if so required by the applicable regulations) all amounts due in respect of the VAT and any other taxes or public charges imposed with respect to the delivery and sale of the **Gas** hereunder.
- 14.7 Without prejudice to Section 14.6 above, the **Seller** shall pay and shall be responsible for the payment of all taxes or any other public charges imposed in respect of the recovery, production, processing, transportation, supply or sale of the **Gas** to the **Delivery Point**, and the **Purchaser** shall pay and shall be responsible for the payment of all taxes or any other public charges which are charged or imposed in respect of the **Gas** downstream of the **Delivery Point**.

- 14.8 If any **Daily Nominated Quantity** of **Gas** is in excess of the **Daily Contract Quantity**, the **Purchaser** shall pay for any quantities in excess of the **DCQ**, if delivered, at the prevailing **Gas Price** due hereunder, provided always that:
- (a) the **Seller** shall be under only a reasonable endeavours obligation to deliver such quantities of **Gas**;
 - (b) the **Seller** shall not incur any liability, cost or charge to the **Purchaser** in respect of such quantities of **Gas** that are not delivered on any **Contract Day**; and
 - (c) the **Minimum Annual Contract Quantity** shall not be reduced by the amount of any quantities of such **Gas** that are not delivered on any **Contract Day**.

IX INVOICING AND PAYMENTS

§ 15

- 15.1 Invoices shall be issued within ten (10) **Business Days** after the end of each **Contract Month** based on the **Monthly Statements**, and taking into account any adjustments thereto which may have been agreed upon by the **Parties**.
- 15.2 The amounts due shall be paid by wire transfer from the bank account of the **Purchaser** to the bank account notified in writing by the **Seller** within 14 days following receipt of the original invoice by the **Purchaser**.
- 15.3 Each of the **Parties** represents to the other that it is a VAT payer.
- 15.4 The **Purchaser** authorizes the **Seller** to issue invoices without the **Purchaser's** signature.

§ 16

- 16.1 Payment shall be deemed to be made on the date of crediting the bank account of the recipient.
- 16.2 If any of the **Parties** defaults in its payment obligations hereunder, it shall pay the other interest on the amount in default at a rate equal to the statutory rate established pursuant to Article 359 of the Polish Civil Code, calculated for each day of the default. If the statutory rate ceases to be published, the applicable rate shall be agreed upon by the **Parties** in an annex hereto. Interest for default shall be payable against an appropriate accounting document.
- 16.3 The **Parties** shall notify to each other of any changes in the description or the number of their respective bank accounts, and their notice shall specify both the former and the current account details. A **Party** which defaults in these obligations shall indemnify the other for all losses resulting from the default.

§ 17

- 17.1 Any complaints regarding invoices must be made in writing within ten (10) **Business Days** after receipt.
- 17.2 If the complaint refers to a manifest error (e.g. a mathematical error or manifestly exorbitant amount), then the **Party** receiving the invoice shall be authorized to calculate the correct amount and pay such correct amount only within the time specified in Section 15.2, provided that it gives the issuing **Party**, no later than on the date of payment, a written notice explaining its calculation. The latter **Party** shall issue a correction invoice, without any delay after agreeing the correct amount with the former.

- 17.3 If any **Party** disputes an invoice for reasons other than those stated in Section 17.2, it shall pay the undisputed amount, if any, within the time specified in Section 15.2 and shall undertake steps aimed at the resolution of the dispute in accordance with §12 or §24 hereof, depending on the nature of the dispute.
- 17.4 If a dispute arises out of any matter in this Chapter IX, the **Purchaser** shall have the right, at reasonable hours upon giving reasonable notice to examine the books, records and charts of the **Seller** to the extent necessary to verify the accuracy of any **Monthly Statement** or **Annual Statement** or any charge or computation made pursuant to any provisions of this **Agreement**. If any such examination by reveals any inaccuracy in any **Monthly Statement** or **Annual Statement**, the **Seller** shall adjust such statement promptly. Any examination of the books, records and charts of the **Seller** by the **Purchaser** shall be carried out at the sole cost and expense of the **Purchaser** unless such examination reveals any inaccuracy in any **Monthly Statement** or **Annual Statement** which results in a repayment by the **Seller** to the **Purchaser** of amounts in excess one (1) per cent of the total amount specified as being payable in the relevant statement, in which case the **Seller** shall also reimburse the **Purchaser** for its costs and expenses incurred in carrying out the examination.
- 17.5 Neither any complaint concerning an invoice other than with respect to an issue referred to in Section 17.2 above, nor the occurrence of any dispute referred to in Section 17.3 above, shall release a **Party** from its duty to timely pay any undisputed amounts due.
- 17.6 The provisions of this Chapter IX shall also apply, *mutatis mutandis*, to payment against, and complaints concerning, other accounting documents.

X FORCE MAJEURE

§ 18

- 18.1 **Force Majeure** shall mean, subject to Section 18.2 below, any event or circumstance beyond the reasonable control of either **Party** which prevents the ability, in whole or in part, of a **Party** to fulfil any its obligation hereunder, provided that the **Party** affected could not, in spite of acting with reasonable professional diligence, either avoid or overcome the event or its consequences, and shall include, without limitation, the following events:
- (a) acts of God, lightning, earthquakes, fires, storms, droughts, floods,
 - (b) laws, acts and conduct of any public authority (whether or not in fact legally valid);
 - (c) strikes, lockouts, other industrial disputes or industrial actions
 - (d) wars, civil and military disturbance, blockades, embargoes, acts of terrorism;
 - (e) epidemics and quarantine;
 - (f) the inability to obtain, or the suspension, termination, adverse modification, interruption, or inability to renew, any permit, license, certificate, authorisation, consent or approval of a public authority.
- 18.2 The following events or situations cannot be invoked as **Force Majeure**:
- (a) the lack of funds or any economic or financial reason, such as (without limitation) inability to make a profit or achieve a satisfactory rate of return, or changes in market conditions;
 - (b) any act or omission of a third party contractor, unless caused by an event which would constitute **Force Majeure** hereunder.

- 18.3 If by reason of **Force Majeure** a **Party** is rendered unable wholly or in part to carry out its obligations under this **Agreement**, then the liability for **Breach**, as long as and to the extent that the obligations are affected by such **Force Majeure**, shall be excused.
- 18.4 The **Party** affected by **Force Majeure** shall immediately, no later than within three (3) **Business Days** provide the other with a written notice including the particulars of the **Force Majeure**, its impact on that **Party**'s performance of this **Agreement** and its expected duration. Both **Parties** shall cooperate to bring the **Force Majeure** circumstances to an end, or to minimize their effects.
- 18.5 The occurrence of a **Force Majeure** does not excuse the **Purchaser** taking any **Gas** in the period preceding the occurrence (except where the **Parties** are aware that the **Force Majeure** event is imminent and the acceptance of **Gas** in such circumstances would threaten to cause irreparable damage to a **Party** and carries a risk to public security) and shall not excuse payment for any **Gas** taken by the **Purchaser** in spite of the **Force Majeure**.
- 18.6 If an event or series of events (alone or in combination), of **Force Majeure** occur, and continue for a period in excess of one hundred and eighty (180) consecutive days, and the effect of such events is to reduce the ability of the **Seller** to deliver or the **Purchaser** to take the **DCQ** by more than fifty (50) per cent on average during that period, then the **Seller** and the **Purchaser** shall meet to agree on any amendments to the terms of this **Agreement** to enable them to perform the **Agreement** despite the existence of **Force Majeure**. If the **Parties** fail to agree within thirty (30) days of receipt of notification, then either **Party** may terminate this **Agreement** on not less than fourteen (14) days notice to the other.

XI PLANNED MAINTENANCE WORK

§ 19

- 19.1 In any **Contract Year** each of the **Parties** shall be entitled to conduct the **Planned Maintenance Work** in accordance with a mutually agreed schedule provided that the aggregate duration of the **Planned Maintenance Work** of either **Party** shall not exceed 14 (fourteen) **Contract Days** in any **Contract Year**. If either **Party** expects to require a longer period than 14 **Contract Days** to perform **Planned Maintenance** in any **Contract Year**, it shall request the other to allow an extended period and the other **Party** shall not refuse its consent unreasonably.
- 19.2 The **Parties** undertake to make all efforts to coordinate the timing of their respective **Planned Maintenance Work** with each other and with the **Operator** and **OGP**, so that their **Planned Maintenance Work** is conducted on the same days to the extent possible. In any event, each **Party** shall notify the other of its **Planned Maintenance Work** schedule prior to the end of the preceding **Contract Year**.
- 19.3 In addition, the **Parties** shall inform each other in writing of the date of the commencement of any **Planned Maintenance Work**, no less than 14 (fourteen) calendar days in advance.
- 19.4 During the period of **Planned Maintenance Work**, each **Party** shall have the right to interrupt or decrease the delivery or take of the **Gas**, as necessary.

XII TERMINATION

§ 20

- 20.1 The **Agreement** shall terminate:
- (a) on the **Production Closure Day**;

- (b) upon notice of either **Party** if the **Concession** expires or is terminated and is not replaced or its lack is not otherwise remedied within six months); provided that if the expiration or termination is due to either **Party**'s fault, that shall constitute a **Breach** and Sections 21.3 and 21.4 shall then apply; or
 - (c) as specified in Sections 9.5, 18.6 and 21.2
- 20.2 Termination of the **Agreement** shall be without prejudice to any **Party**'s receivables, rights or remedies claims based hereon, and shall not affect any obligations which are expressly stated to survive termination.

§ 21

- 21.1 If any of the following circumstances occur:
- (a) a **Party** fails to pay to the other an amount due unless reasonably disputed and payable hereunder if the default continues for at least 60 days and the amount in default is at least equal to 10% of the relevant **Annual Contract Quantity** multiplied by the **Gas Price** applicable as of the first day of that **Contract Year**;
 - (b) a **Party** becomes insolvent, or enters into arrangements with its creditors pursuant to the laws governing bankruptcy and composition proceedings, or enters into liquidation; or
 - (c) the **Seller** sells any **Gas** from the **Wilga Field** to a third party without the **Purchaser**'s consent, provided that the **Purchaser** complies with its obligations hereunder and is not affected by **Force Majeure**;
- the other **Party** may terminate this **Agreement** pursuant to Section 21.2 below.
- 21.2 The **Party** entitled to terminate the **Agreement** for reasons specified in Section 21.1 above, shall give the other a reasoned and properly documented written notice specifying the reasons and date of termination of the **Agreement**. The termination date cannot be earlier than 30 days after delivery of the notice to the other **Party**. The **Party** providing the other with a notice of termination shall be entitled to immediately suspend the delivery or take of the **Gas**, as applicable. During the notice period the **Parties** shall attempt to remedy the reasons and effects of the termination event. If these efforts are unsuccessful or if they cannot be successful for objective reasons, the **Agreement** shall terminate on the day specified in the notice, or on such other day as the **Parties** may agree.
- 21.3 In the event of termination prior to the **Production Closure Day** due to the **Purchaser**'s **Breach**, amounts payable by the **Purchaser** in respect of the **Outstanding Quantities** shall become payable as of the termination day, and the **Purchaser** shall have no right to take the **Outstanding Quantities** of the **Gas** pursuant to Section 7.4.
- 21.4 If termination occurs as a result of a **Breach** by the **Seller**, then the amounts paid by the **Purchaser** in respect of **Outstanding Quantities** shall be reimbursed to the **Purchaser** (subject to set off with liabilities hereunder which are due and payable as of the date of termination, if any). The above shall not apply to such amounts payable in relation to the **Outstanding Quantities**, in respect of which:
- (a) the **Seller** has offered to the **Purchaser** in-kind settlement in the form of delivery of natural gas complying with the **Quality Specification**, in the quantity equal to the ratio between any part of the amounts paid by the **Purchaser** in respect of the **Outstanding Quantities** which remains unsettled, and the **Gas Price** applicable hereunder on the last **Contract Day** preceding the termination; and

- (b) the **Purchaser** has accepted such offer, provided that the offer cannot be rejected unreasonably, and if it is rejected the first sentence of Section 21.4 shall apply; and
 - (c) the delivery of such gas takes place within twelve months following the termination.
- 21.5 If the **Agreement** is terminated by the **Purchaser** due to reasons specified in Section 21.1(c), the **Purchaser** shall be entitled to liquidated damages in an amount equal to the **Annual Contract Quantity** for the **Contract Year** in which the termination occurs multiplied by the **Gas Price** applicable on the first day of the same **Contract Year**, in addition to the **Purchaser's** other rights pursuant to Section 21.4.
- 21.6 If termination prior to the **Production Closure Day** occurs as a result of an event which does not constitute a **Breach**, then the **Seller** may, at its own election:
- (a) reimburse to the **Purchaser** the amounts paid by the **Purchaser** in respect of **Outstanding Quantities** (subject to set off with liabilities hereunder which are due and payable as of the date of termination, if any), within eighteen months following termination of this **Agreement**; or
 - (b) deliver to the **Purchaser** Gas from the **Wilga Field** or another natural gas complying with the **Quality Specification**, in the quantity equal to the ratio between any part of the amounts paid by the **Purchaser** in respect of the **Outstanding Quantities** which remains unsettled, and the **Gas Price** applicable hereunder on the last **Contract Day** preceding the termination, according to a delivery schedule agreed upon by the **Parties**, or, failing such agreement, within eighteen months following the termination (provided that the **Purchaser** may refuse to take the gas only if it is technically unable to do so, and if it refuses, Section 21.6(a) shall apply).

Without prejudice to Section 21.6 (a) and (b), the **Seller's** obligations in relation to **Outstanding Quantities** specified in this Section 21.6 shall expire on the **Production Closure Day**.

XIII FINAL PROVISIONS

§ 22

- 22.1 In addition to the **Agreement**, relationships between the **Seller** and the **Purchaser** shall be governed by:
- (a) The Geological and Mining Law of 4 February 1994 (Dz. U. No. 27, Item 96, as amended);
 - (b) The Ordinance of the Minister of the Economy dated 28 June 2002 concerning health and safety at work, operations management and specialised fire protection in mining establishments extracting minerals through wells (Dz.U. No. 109, Item 961);
 - (c) The Ordinance of the Minister of the Economy dated 11 August 2000 concerning inspections conducted by energy enterprises (Dz. U. No. 75, Item 866);
 - (d) The Civil Code dated 23 April 1964 (Dz. U. No. 16, Item 93, as amended);
 - (e) The Law on Measurements of 11 May 2001 (Dz. U. of 2004 No. 243, Item 2441);
- 22.2 Should any individual provisions of this **Agreement** become void by operation of law, the validity of the other provisions of the **Agreement** shall not be affected thereby. The **Parties** undertake negotiate in good faith to replace the void provisions with new ones, to preserve the economic objectives of the **Agreement** and the original intent of the **Parties**.

- 22.3 The **Parties** acknowledge that the **Delivery System** shall be owned and operated under the **Joint Operating Agreement**. Wherever this **Agreement** obliges the **Seller** to undertake any action or incur any expenses with respect the **Metering System** or any other component of the **Delivery System**, it is understood that the action is to be undertaken and the expense incurred by all parties to the **Joint Operating Agreement** in accordance with their interests therein, and the **Seller** as party to the **Joint Operating Agreement** shall be liable to the **Purchaser** for failure to procure the necessary steps to be undertaken and the expenses incurred.

§ 23

- 23.1 Unless this **Agreement** specifically states otherwise, each **Party** shall be liable to the other for failure to act with due care in performing its obligations.
- 23.2 If no liquidated damages are prescribed herein with respect to a given **Breach** and liability for such **Breach** is not excluded by the provisions hereof (whether regarding **Force Majeure** or otherwise), or by applicable law, the **Party** injured can claim compensation for documented damages resulting directly from such **Breach**, excluding loss of profit (*lucrum cessans*). In any event, the aggregate liability of either **Party** in respect of any such **Breach** (other than a default of any express payment obligations) occurring in any **Contract Year** shall be limited to 50% of the relevant **Annual Contract Quantity** multiplied by the **Gas Price** applicable as of the first day of that **Contract Year**. For the avoidance of doubt, the limitation specified in the preceding sentence shall not apply to **Seller's** obligations under Sections 21.4, 21.5 and 21.6.

§ 24

- 24.1 The **Parties** shall attempt resolve all disputes arising out of or in connection with this **Agreement** by direct negotiations. If the **Parties** do not resolve the dispute within three (3) months from the delivery of either **Party's** invitation to negotiations to the other, the dispute shall be resolved by arbitration under the UNCITRAL Arbitration Rules then in force upon notice by any **Party** to the other **Party**.
- 24.2 The arbitral tribunal shall consist of three arbitrators. Each **Party** to the dispute shall appoint one arbitrator. The two arbitrators appointed by the **Parties** shall by agreement appoint the third arbitrator. In default of an agreement within fourteen (14) days one **Party** to the dispute may require the appointment of the third arbitrator, in which case the third arbitrator shall be appointed by the President of the Polish Arbitration Association (*Prezes Polskiego Stowarzyszenia Sadownictwa Polubownego*).
- 24.3 The venue of arbitration proceedings shall be Warsaw. The decision of the arbitral tribunal, and, in the case of difference among the arbitrators the decision of the majority, shall be final and binding upon the **Parties** to the dispute.
- 24.4 Without prejudice to Sections 17.2 and 17.3, the existence of any dispute shall not excuse either **Party's** performance of its obligations hereunder.
- 24.5 The provisions of this §24 shall survive the termination of this **Agreement**.
- 24.6 If the **Parties** agree on any interpretation of this **Agreement**, such an interpretation shall become binding thereon upon its signature by all **Parties**.

§ 25

- 25.1 Any transfer to a third party of the rights and obligations arising hereunder without the consent of the other **Party** shall be null and void, unless permitted under the provisions below.
- 25.2 Any monetary receivables accruing hereunder shall be freely assignable.

- 25.3 Either **Party** shall be entitled, without the prior consent of the other, to assign, pledge or establish another security interest in all or any of their rights, interests, benefits and obligations under this **Agreement** to a bank or another financial institution to secure the payment of any indebtedness incurred or to be incurred.
- 25.4 The **Seller** may transfer its rights and obligations hereunder to an **Affiliate** or any other party which becomes the assignee of its interest in the **Joint Operating Agreement** in accordance with the terms thereof, pro rata to the interest in the **Joint Operating Agreement** so assigned, if such transferee is, in the reasonable opinion of the **Purchaser**, capable of meeting the obligations of the **Seller** under this **Agreement**, together with any other obligations such transferee may have.
- 25.5 The **Purchaser** may transfer its rights and obligations hereunder to an **Affiliate** or any other party, if such transferee is, in the reasonable opinion of the **Seller**, capable of meeting the obligations of the **Purchaser** under this **Agreement**, together with any other obligations such transferee may have.
- 25.6 The **Party** transferring its rights and obligations shall be not be released from its obligations under the **Agreement** unless and until the transferee takes over (subject always to the other **Party** consent, which shall not be unreasonably withheld), by way of a written instrument, all obligations arising under this **Agreement** in relation to the other **Party**.

§ 26

Each **Party** shall, and shall cause its and its **Affiliates'** directors, officers, employees and agents (jointly called below "**Representatives**") to keep in strict confidence all information and data furnished or obtained pursuant to this **Agreement**, including the terms and conditions of this **Agreement**, except as and to the extent that the other **Party** consents in writing to the disclosure of such data, information or terms. The above shall not apply to data or information:

- (a) which, at the time of its disclosure, is in the public domain as evidenced by printed publication or otherwise except through breach of this confidentiality obligation by fault of any **Party** or its respective **Representatives**;
- (b) which is required to be produced by law (including any law applicable to an **Affiliate** of any **Party**) or by the order of any public authority issued pursuant to the law, or the rules of any official regulated securities market on which the shares or other securities of a **Party** or any **Affiliate** of a **Party** are listed;
- (c) which is obtained by a **Party** from a third party who is lawfully in possession of such information or data and not subject to any contractual or fiduciary relationship which would preclude its disclosure;
- (d) required by a bank or other financial institution (and its employees, agents and consultants) that is providing, or proposing to provide, finance to the **Party** wishing to disclose such information, provided that the bank or financial institution has entered into a written agreement with the disclosing **Party** agreeing to keep such information secret and confidential;
- (e) disclosed to consultants, lawyers and other advisers of the **Party** provided that such consultants have entered into a written undertaking with the disclosing **Party** agreeing to keep the information disclosed to it confidential or are bound by confidentiality obligations pursuant to the laws governing their profession; and

- (f) disclosed to bona fide potential assignees or transferees of a **Party's** rights or obligations under this **Agreement** or its interest under the **Joint Operating Agreement**, provided that such potential assignees or transferees have entered into a written undertaking with the disclosing **Party** to keep the information disclosed to it confidential.

The provisions of this § 26 shall survive for a period of five (5) years after the termination of this **Agreement**.

§ 27

- 27.1 Except as otherwise specifically provided, all notices authorized or required between the **Parties** by any of the provisions of this **Agreement**, shall be in writing, in Polish, and delivered in person or by registered mail or by courier service or by any electronic means of transmitting written communications which provides written confirmation of completed transmission. The originating notice given under any provision of this **Agreement** shall be deemed delivered only when received by the **Party** to whom such notice is directed, and the time for that **Party** to deliver any notice in response to such originating notice shall run from the date the originating notice is received. Any communications shall be delivered to the following addresses of the **Parties** (or such other address as the **Party** concerned may communicate to the other in accordance herewith):

Purchaser: Mazowiecka Spółka Gazownictwa Sp. z o.o.
ul. Krucza 6/14
00-537 Warsaw, Poland
Attention: Michał Szubski – President of the Management Board
Phone: +48 22 594 39 46
Fax: +48 22 594 37 46

Seller: FX Energy Poland Sp. z o.o.
Ul. Chałubińskiego 8
00-613 Warsaw
Poland
Attention: Zbigniew Tatys, Country Manager
Phone: +48 22 6306633
Fax: +48 22 6306632

Each time with copy to:
FX Energy, Inc.
3006 Highland Drive # 206
Salt Lake City
Utah 84106
USA
Attention: Clay Newton
Phone: +1 801 486 5555
Fax: +1 801 486 5575

- 27.2 Any amendment to the provisions of this **Agreement** must be in the form of a written annex or shall otherwise be null and void.
- 27.3 This **Agreement** constitutes the full understanding between the **Parties** and supersedes all their prior negotiations, correspondence or agreements regarding the sale of gas from the **Wilga Field**.

- 27.4 This **Agreement** is executed in Polish and English, in two identical counterparts of each language versions, one for each of the **Parties**. In case of any discrepancies between the two language versions, the Polish version shall prevail.
- 27.5 The **Parties** agree to make best efforts to agree on the contents of Appendix No. 1 by 30 April 2006. Appendix No. 1, when agreed upon and signed, shall constitute an integral part of this **Agreement** provided that any amendment thereto shall not constitute an amendment to the **Agreement**. Should the **Parties** fail to reach an agreement and execute Appendix No. 1 by the said date, they shall meet as soon as practicable thereafter to discuss the situation and agree as to the continuation of this **Agreement**.

SELLER

FX Energy Poland Sp. z o.o.

/s/

PURCHASER

Mazowiecka Spółka Gazownictwa Sp. z o.o.

/s/

APPENDIX NO. 1

TECHNICAL CONDITIONS OF GAS DELIVERY

Should cover the following matters:

1. Definition of Block 255
2. Definition of the Wilga Field
3. 5-year schedule of expected gas deliveries, and chemical and physical parameters of gas fuel
4. Description and chart of the Delivery System including the Gas Station and the Delivery Point
5. Methods and procedures for measuring quantity and quality (including pressure and temperature) of Gas delivered
6. Rules for adjustment of Monthly Statements/Annual Statement in case of malfunction of Metering System
7. Guidelines for preparation of daily reports constituting basis for Monthly and Annual Protocols
8. Gas quantity nomination procedures
9. Calculation of monthly average gross calorific value of the Gas
10. Principles of setting the Maximum Hourly Contract Quantity (MHCC).

Exhibit A: POGC Company standards: Measuring of Gaseous Fuels, Series 4000.

Exhibit B: Ordinance of the Minister of the Economy dated 28 June 2002 concerning health and safety at work, operations management and specialised fire protection in mining establishments extracting minerals through wells (Dz.U. No. 109, Item 961)

AGREEMENT NO. PL/012216736/05-0030/DH/HB

For the Sale of Natural Gas

between

FX ENERGY POLAND Sp. z o.o.

and

POLSKIE GÓRNICTWO NAFTOWE I GAZOWNICTWO S.A.

This Agreement was signed on 8 December 2005 in Warsaw between:

FX ENERGY POLAND Sp. z o.o. with its registered office in Warsaw, at ul. Chalubinskiego 8, 00-613 Warsaw, entered in the Companies Register of the National Court Register by the District Court in Warsaw, XIX Commercial Division of the National Court Register under number KRS No. 0000052459 NIP 521-27-51-481, REGON 012659847, hereinafter referred to as the “**Seller**” or a “**Party**”, represented by Zbigniew Tatys and Jerzy Maciolek, members of the Management Board

and,

Polskie Górnictwo Naftowe i Gazownictwo Spółka Akcyjna with its registered office in Warsaw at ul. Krucza 6/14, entered in the Companies Register of the National Court Register by the District Court in Warsaw, XIX Commercial Division of the National Court Register under number KRS 0000059492, NIP 525-000-80-28, REGON 012216736-00027, hereinafter referred to as the “**Purchaser**” or a “**Party**”, represented by:

1. Tomasz Jaskolski – Director of the Production Department
2. Grzegorz Jazwinski – Director of the Controlling Department
3. Sławomir Nesterowicz – Deputy Director of the Commercial Department

Whereas:

A. On 27 October 2005 the **Joint Operating Agreement** (defined below) was executed between CalEnergy Resources Poland Sp. z o.o., Polskie Górnictwo Naftowe i Gazownictwo Spółka Akcyjna and FX Energy Poland;

B. The **Seller** holds a 24.5% interest in the rights and obligations related to the **GZA**, including title to 24.5% of the gas produced from in the **Zaniemysl Field** resulting from its 24.5% interest in the mining usufruct covering the **GZA**;

C. The **Purchaser** wishes to purchase all gas that the **Seller** is able to deliver from the Zaniemysl Field.

The **Parties** acting in their best faith and with reasonable diligence negotiated this **Agreement** and undertake to comply with its provisions.

I

GENERAL PROVISIONS AND DEFINITIONS

§ 1

- 1.1. This **Agreement** governs the relationship between the **Parties** in connection with the sale of the **Gas** (as defined below) by the **Seller** to the **Purchaser**, including their rights and duties, their liability for non-compliance with the terms of this **Agreement**, as well as the technical conditions of delivery and acceptance of the **Gas**.

1.2 The following Appendices constitute integral parts of this **Agreement**:

- (a) Appendix No. 1 - Technical conditions of **Gas** delivery to the **Purchaser**;
- (b) Appendix No. 2 – a certified copy of the Confidentiality Agreement of 24.02.2005.

In case of any inconsistency between the main body of this **Agreement** and the Appendices, the provisions of the main body shall prevail.

§ 2

2.1 In this **Agreement**, and in any appendices or annexes thereto, the following capitalized terms shall have the following meanings:

- 1/ **Contract Day** - a period starting at 10:00 p.m. of any given calendar day and ending at 10:00 p.m. of the following calendar day;
- 2/ **Business Day** - any day other than Saturday or a statutory holiday in Poland;
- 3/ **Gas** - a mix of hydrocarbons and non-flammable gaseous components including methane and nitrogen as main components, prepared for transportation by pipeline and conforming to the parameters specified in §8 and in Appendix No. 1, or accepted by the **Purchaser** in spite of non-compliance with those parameters;
- 4/ **Operating Committee** - the committee established and empowered to make decisions regarding mining operations in the **GZA** pursuant to the **Joint Operating Agreement**;
- 5/ **Contract Month** - a period starting at 10:00 p.m. of the last day of the month directly preceding the given calendar month, and ending at 10:00 p.m. of the last day of the given calendar month, provided that the first **Contract Month** shall commence at 10:00 p.m. of the last day of the **Commissioning Period** and shall continue until the end of the same calendar month;
- 6/ **Delivery Period** - the period commencing on the **Production Commencement Day** and ending the **Production Closure Day**;
- 7/ **Operator** - the party appointed as the operator of the **Greater Zaniemysl Area** pursuant to the **Joint Operating Agreement**;
- 8/ **Planned Maintenance Work** - renovation, construction, maintenance and modernization work:
 - (a) conducted by the **Purchaser** in the **Gas Network**, which affect the **Purchaser's** ability to take the **Gas** at the **Delivery Point**;
 - (b) conducted by the **Operator** or the **Seller** in the **Delivery System**, which affect the **Seller's** ability to deliver the **Gas** to the **Delivery Point** (**Seller's Planned Maintenance Work** shall include, without limitation, any periodical gas field tests);
- 9/ **Greater Zaniemysl Area (GZA)** - the area described in Appendix No. 1, within which the **Gas** will be produced from the **Zaniemysl Field** pursuant to the **Joint Operating Agreement**;
- 10/ **Delivery Point** - the outlet flange at the exit from the **Gas Station**;

- 11/ **Contract Year** - a period starting at 10:00 p.m. of the last day of any calendar year and ending at 10:00 p.m. of the last day of the following calendar year, provided that:
- (a) the first **Contract Year** shall commence at 10:00 p.m. on the last day of the **Commissioning Period** and shall continue until 10:00 pm on last day of the same calendar year;
 - (b) if this **Agreement** terminates on any day other than December 31, the last **Contract Year** shall end at 10:00 p.m. on the last day of effectiveness of the **Agreement**;
- 12/ **Gas Station** - the installations located within the **GZA**, including the **Metering System**, used to control, measure and distribute the stream of the **Gas**, together with any ancillary equipment, owned by the parties to the **Joint Operating Agreement** and operated by the **Operator**;
- 13/ **Delivery System** - installations used for the purposes of producing, processing, compressing, testing, measuring and delivering the **Gas** to the **Delivery Point**, including, without limitation, the **Gas Station**;
- 14/ **Gas Network** - gas pipelines together with gas stations, metering systems and compression facilities owned by the **Purchaser**, connected and working together, necessary for the transmission of the **Gas** delivered hereunder to the Krobia hub;
- 15/ **Metering System** - gas meters and other metering devices, as well as the systems connecting those devices, described in Appendix No. 1, used to measure the quantity of the **Gas** delivered and taken at the **Delivery Point**, owned in accordance with the **Joint Operating Agreement** by the parties thereto;
- 16/ **Agreement** - this agreement, together with any future changes, modifications and supplements, which can be made in accordance herewith;
- 17/ **Production Closure Day**- means the **Contract Day** on which production from the **Zaniemysl Field** is permanently ceased, as determined by the **Operating Committee** in accordance with the **Joint Operating Agreement**;
- 18/ **Zaniemysl Field** - means the gas field located in the vicinity of Zaniemysl in Wielkopolskie Voivodship in Poland owned jointly by the **Seller**, Polskie Górnictwo Naftowe i Gazownictwo Spółka Akcyjna and CalEnergy Resources Poland Sp. z o.o., described in more detail in Appendix No. 1;
- 19/ **Delivery Commencement Day** - the **Contract Day** on which the **Seller** delivers the **Gas** to the **Delivery Point** for the first time;
- 20/ **Production Commencement Day** - means the **Contract Day**, no later than 30 days following the **Delivery Commencement Day**, which is notified by the **Seller** to the **Purchaser** as the day on which regular deliveries of the **Gas** hereunder shall commence;
- 21/ **Joint Operating Agreement** - means the Mining Users Operating Agreement Covering the Greater Zaniemysl Area dated 27 October 2005, between Polskie Górnictwo Naftowe i Gazownictwo S.A., FX Energy Poland Sp. z o.o. and CalEnergy Resources Poland Sp. z o.o.;
- 22/ **Commissioning Period** - means the period commencing on the **Delivery Commencement Day** and ending on the **Contract Day** immediately preceding the **Production Commencement Day**;

- 23/ **Force Majeure** - is defined in §18 below;
- 24/ **Annual Contract Quantity (ACQ)** - the maximum quantity of the **Gas** offered by the **Seller** to the **Purchaser** in the relevant Contract Year, specified in accordance with Section 5.2 below;
- 25/ **Daily Contract Quantity (DCQ)** - the maximum quantity of the **Gas** which the **Purchaser** can nominate for delivery hereunder in any **Contract Day**, calculated by dividing the **ACQ** by the number of days in which delivery of the **Gas** is planned in the relevant **Contract Year** (i.e. after deducting days of the **Planned Maintenance Work**);
- 26/ **Daily Nominated Quantity (DNQ)** - the quantity of the **Gas** nominated by the **Purchaser** for delivery in the given **Contract Day** in accordance with Section 6.1 below;
- 27/ **Outstanding Quantity (OO)** - the quantity of the **Gas** not taken by the **Purchaser** in breach of its take-or-pay obligations hereunder, calculated in accordance with Section 7.1 below;
- 28/ **Minimum Annual Contract Quantity (MACQ)** - the quantity of the Gas specified in accordance with Section 6.3 below;
- 29/ **Affiliate** - means with respect to a **Party**, any entity which directly or indirectly controls that **Party**, or is controlled by that **Party**, or which is directly or indirectly controlled by an entity which controls that **Party**. Control means:
- (a) the ownership of more than fifty (50) per cent of the voting rights in a general meeting or its equivalent of another entity;
 - (b) the power to direct the management and policies of another entity, whether through the ownership of voting securities, by contract or otherwise;
- 30/ **Concession** – means jointly a mining license and mining usufruct authorizing the commercial production of natural gas from the **Zaniemysl Field** (including an exploration concession, to the extent such concession authorizes production), granted to the **Seller** or the **Operator**, including any extension or replacement thereof;
- 31/ **Breach** – means failure to perform or improper performance by a **Party** of one or more of its obligations hereunder;
- 32/ **Normal Cubic Meter (Nm³)** - means the amount of gas required to fill a space of one cubic metre with an absolute pressure of one hundred and one decimal three two five kilopascals (101.325 kPa) and at thermodynamic temperature of 273.15 K; unless expressly stated otherwise, all quantities of the **Gas** referred to herein or specified hereunder shall be expressed in **Nm³**.
- 33/ **Annual Statement**– is defined in §13 below;
- 34/ **Monthly Statement**– is defined in §13 below;
- 35/ **Quality Specification** – the chemical parameters of the **Gas** specified in Appendix No. 1;
- 36/ **Total Field Daily Nomination** – is defined in Section 6.4 below;

37/ **Connecting Pipeline** – means the part of the **Gas Network** used for the transmission of the **Gas** from the **Delivery Point** to the point of connection to the national gas grid located at the Dzonek-Krobia gas pipeline, described in more detail in Appendix No. 1.

2.2 All units of measurement used herein are units of the SI system in accordance with the Law on Measurements dated 11 May 2001 (Dz. U. No. 63, Item 636).

II CONTRACT TERM, CONDITIONS PRECEDENT AND COMMISSIONING PERIOD

§ 3

3.1 Pursuant to this **Agreement**, the **Seller** shall supply and sell the **Gas** and the **Purchaser** shall buy and take the delivery of the **Gas**, commencing on the **Delivery Commencement Day** until the **Production Closure Day**, provided that no obligations to supply or take the **Gas** shall continue following:

- (a) the termination of this **Agreement** in accordance with its terms; or
- (b) the expiration or termination of the **Concession**.

3.2 The **Delivery Commencement Day** shall not occur unless and until each of the following conditions precedent is fulfilled:

- (a) the **Seller** or the **Operator**, as applicable, obtains all permits and approvals from public authorities required to produce and sell the **Gas** hereunder, including, without limitation, the **Concession**, and all permits required to construct and operate the **Delivery System**;
- (b) the **Seller** or the **Operator**, as applicable, constructs and brings into operation the **Delivery System**;
- (c) the **Purchaser** obtains all permits and approvals from public authorities required to purchase, produce and sell the **Gas** hereunder, including, without limitation, all permits required to construct and operate the **Connecting Pipeline**;
- (d) the **Purchaser** constructs and brings into operation the **Connecting Pipeline**.

The **Seller** shall use its best efforts to ensure that the conditions in letters (a) and (b) above are satisfied no later than by July 1, 2006. The **Purchaser** shall use its best efforts to ensure that the conditions in letters (c) and (d) above are satisfied no later than by July 1, 2006. The **Seller** and the **Purchaser** shall promptly notify each other upon becoming aware that a condition which it is required to satisfy, as provided above, has been satisfied or becomes incapable of being satisfied.

3.3 If the **Delivery Commencement Day** does not occur by 30 September, 2006 the **Parties** shall meet as soon as practicable thereafter to discuss the situation and agree as to the continuation of this **Agreement**. If they cannot reach a consensus and the **Delivery Commencement Day** does not occur by 30 November 2006, either **Party** shall have the right to terminate this **Agreement** forthwith at any time thereafter, prior to the **Delivery Commencement Day**, by written notice to the other, unless the other **Party** demonstrates that it has acted with due care to cause the conditions precedent for which it is responsible pursuant to Section 3.2 to be fulfilled.

- 3.4 In case of a **Force Majeure** occurring before the **Delivery Commencement Day**, the **Delivery Commencement Day** and the **Production Commencement Day** shall be deferred by a period equal to the duration of the **Force Majeure** event.
- 3.5 In case of a **Force Majeure** occurring during the **Commissioning Period**, the **Production Commencement Day** shall be deferred by a period equal to the duration of the **Force Majeure** event.

§ 4

- 4.1 During the **Commissioning Period**, the **Purchaser** shall make reasonable efforts to take all the **Gas** offered by the **Seller** and the **Seller** shall act diligently to deliver the **Gas** in such quantities as the **Purchaser** shall require.
- 4.2 During the **Commissioning Period** the **Seller** shall not be liable to the **Purchaser** for any failure to supply any specific quantities of the **Gas**, and the **Purchaser** shall not be liable for any failure to take any specific quantities of the **Gas** offered. All other provisions of this **Agreement** shall apply to the **Gas** delivered during the **Commissioning Period**.

III QUANTITIES, PARTIES OBLIGATIONS

§ 5

- 5.1 The **Seller** offers to the **Purchaser** all of the **Gas** produced from the **Zaniemysl Field** (other than any **Gas** used for operations under the **Joint Operating Agreement**, including re-injection for pressure maintenance, **Gas** lifting and power generation) to which the **Seller** is entitled.
- 5.2 The **Seller** shall make reasonable efforts to cause the **Operator** to determine the maximum permitted lifting of gas from the **Zaniemysl Field** in the forthcoming **Contract Year** in accordance with the applicable Polish regulations, referred to in Section 22.1 (b) and attached hereto as Exhibit B to Appendix No. 1 and with good petroleum industry practices, no later than 30 days prior to the **Production Commencement Day** in the case of the first **Contract Year**, and no later than 4 months prior to the beginning of each subsequent **Contract Year**. As soon as practicable following that determination, but in any event no later than 20 days prior to the **Production Commencement Day** in the first **Contract Year** and no later than 3 months prior to the beginning of each subsequent **Contract Year** the **Seller** shall notify the **Purchaser** in writing of the **Annual Contract Quantity** and the **Daily Contract Quantity** in the forthcoming **Contract Year**. The **Annual Contract Quantity** and the **Daily Contract Quantity** shall be calculated taking into account the **Planned Maintenance Work**.

§ 6

- 6.1 The **Purchaser** shall notify the **Daily Nominated Quantities (DNQ)** to the **Seller** in writing in accordance with the nomination procedures specified in Appendix No. 1.
- 6.2 The **Purchaser** shall make reasonable efforts to take all of the **Gas** offered by the **Seller**, without prejudice to Section 6.3 below.
- 6.3 Subject to Section 7.1 below, in each **Contract Year**, the **Purchaser** shall take from the **Seller** at least the **Minimum Annual Contract Quantity (MACQ)** equal to 17,000,000 Nm³ (seventeen million **Normal Cubic Meters**) of the **Gas**, provided that:
- (a) in any **Contract Year** where the **ACQ** is lower than 19,800,000 Nm³, the **MACQ** shall equal 80% of the **ACQ**;

- (b) in any **Contract Year** shorter than 365 **Contract Days** the **MACQ** shall be decreased pro rata to the difference between 365 and the number of **Contract Days** in such a **Contract Year**.
- 6.4 The **Purchaser** shall issue field-wide nominations for its total requirements for the **Gas** from the **Zaniemysl Field** in respect of any **Contract Day** (a "**Total Field Daily Nomination**") and the nomination for the **Seller** for such **Contract Day** shall be calculated as a share of the applicable **Total Field Daily Nomination** in the proportion that the **Seller's** participating interest share in the **Joint Operating Agreement** bears to the aggregate of all participating interest shares in the **Joint Operating Agreement**.
- 6.5 The share of the **Seller** in any and all under-deliveries, over-deliveries of **Gas** or deliveries of non-specification gas from the **Zaniemysl Field** shall be determined in the same proportion as calculated for the **Seller** pursuant to and in accordance with Section 6.4 above.
- 6.6 If the annual average gross calorific value of gas delivered from the **Zaniemysl Field** in any **Contract Year** and specified in the **Annual Statement** differs by at least 1% from 31.07 MJ/Nm³, then the **Minimum Annual Contract Quantity** for the **Contract Year** covered by such **Annual Statement** shall be calculated in accordance with the following formula:

$$\text{MACQ}_{(t)} = (\text{MACQ}_{(u)} * 31.07 \text{ MJ/Nm}^3 / \text{GCV})$$

Where:

MACQ_(t) – adjusted **Minimum Annual Contract Quantity (MACQ)** for the given **Contract Year (t)**

MACQ_(u) – **Minimum Annual Contract Quantity (MACQ)** for the given **Contract Year (t)**, specified in accordance with Section 6.3

GCV- annual average gross calorific value of the **Gas** delivered from the **Zaniemysl Field** in the **Contract Year (t)** and specified in the **Annual Statement**, expressed in MJ/Nm³.

IV GUARANTEED TAKE

§ 7

- 7.1 The **Purchaser** shall be liable to the **Seller** for failure to fulfil its obligation under Section 6.3 above if in any **Contract Year** the amount of the **Gas** actually taken by the **Purchaser** is lower than the **Minimum Annual Contract Quantity** minus the sum of all quantities of the **Gas** during that **Contract Year** that:
- (a) were not delivered to the **Purchaser** as a result of rejection by the **Purchaser** of non-conforming gas pursuant to Section 9.2; or
 - (b) were not delivered to or taken by reason of **Force Majeure** affecting the **Seller** or the **Purchaser**;

and the resulting quantity of the **Gas** not taken in **Breach** of Section 6.3 shall constitute the **Outstanding Quantity (OQ)**.

- 7.2 The **Purchaser** shall pay the **Seller** for the quantity of the **Gas** constituting the **Outstanding Quantity** an amount equal to 50 % (fifty percent) of the **Gas Price** applicable to the **Gas** delivered on the last **Contract Day** of the **Contract Year** within which the failure referred to in Section 7.1 above took place.
- 7.3 The **Seller** shall issue an accounting note (*nota księgowa*) for the amount payable pursuant to Section 7.2 above within 3 (three) days after issuing the **Annual Statement** for the **Contract Year** and the said amount shall be payable within 14 (fourteen) calendar days after issuing the note.
- 7.4 The **Purchaser** shall be entitled to take the **Outstanding Quantity** during 5 (five) **Contract Years** following the **Contract Year** in which the **Outstanding Quantity** occurred, subject to the **Purchaser** first having taken during the **Contract Year** an amount of **Gas** at least equal to the applicable **Minimum Annual Contract Quantity** minus the sum of all quantities of **Gas** that were not delivered or taken during the **Contract Year** by reason of **Force Majeure** affecting the **Seller** or the **Purchaser**. **Outstanding Quantities** occurring in different **Contract Years** shall be taken by the **Purchaser** on a “first-in-first-out basis”.
- 7.5 If the **Purchaser** does not take any portion of the **Outstanding Quantities** within the time stated in Section 7.4 above, or if the **Purchaser** does not take any portion of the **Outstanding Quantities** within the **Delivery Period**, then the **Purchaser** shall cease to have any rights or claims in respect thereof.
- 7.6 If the **Purchaser** takes any **Outstanding Quantities** in a **Contract Year**, then the **Seller’s** invoice for the **Contract Month** in which any part of the **Outstanding Quantity** is first taken, and invoices for the remaining **Contract Months**, if any, of that **Contract Year**, shall specify, among others:
- (a) the gross amount due which shall be the product of the entire quantity of the **Gas** actually taken during that **Contract Month** and the then applicable **Gas Price**;
 - (b) the amount already paid by the **Purchaser** to the **Seller** in respect of the relevant portion of the **Outstanding Quantity** pursuant to Section 7.2 above;
 - (c) the net amount payable by the **Purchaser** being the difference between the amount specified under letter (a) above and the amount specified under letter (b) above.

V

QUALITY OF GAS. NON-SPECIFICATION GAS

§ 8

- 8.1 The pressure of the **Gas** at the **Delivery Point** shall be no lower than 5.5 MPa and no greater than 6.5 MPa . The minimum gross calorific value of the **Gas** delivered shall be no lower than 30 MJ/m³.
- 8.2 The **Gas** delivered hereunder shall conform to the **Quality Specification** detailed in Appendix No. 1.

§ 9

- 9.1 If the gas supplied by the **Seller** at the **Delivery Point** does not conform to the **Quality Specification** or the parameters specified in Section 8.1 above, the **Seller** shall make reasonable efforts to cause the **Operator** to notify the **Purchaser** and the **Seller** thereof as soon as possible and shall provide them with all known details regarding the quality of the non-conforming gas and the expected timing of the non-compliance. If the **Purchaser** becomes aware of delivery of non-conforming gas, it shall notify the **Seller** thereof as soon as possible.

- 9.2 The **Purchaser** shall have the right to reject the delivery of any gas non-conforming to the **Quality Specification** or the parameters specified in Section 8.1 above, and the quantity of gas so rejected by the **Purchaser** shall be deemed to constitute a quantity non-delivered. Any such rejection by the **Purchaser** shall be immediately notified by the **Purchaser** to the **Seller** in writing.
- 9.3 If the **Purchaser** accepts gas which does not conform to the **Quality Specification** or the parameters specified in Section 8.1 above, such gas shall be considered to be **Gas** hereunder and the **Seller** shall grant the **Purchaser** a discount in an amount to be agreed upon between the **Parties** in a separate document within three (3) months following the notice referred to in Section 9.1. If the **Parties** do not reach agreement within the said period, the dispute shall be resolved pursuant to §24, and the last day of the period referred to above shall be deemed to constitute the date of invitation to negotiations referred to in Section 24.1. Unless the **Parties** agree otherwise, pending the agreement and, if applicable, dispute resolution, regarding the discount, the **Purchaser** shall pay to the **Seller** for all **Gas** delivered at a price equal to 90% of the **Gas Price**, provided that if the discount finally agreed upon or established as a result of the dispute resolution is different than 10%, the **Purchaser** shall pay to the **Seller** the resulting underpayment, or the **Seller** shall reimburse to the **Purchaser** the resulting overpayment, as applicable, within one month, with interest calculated at a rate equal to one-month WIBOR. For the avoidance of doubt, as soon as **Gas** is brought to conformity with the **Quality Specification**, payment for such **Gas** shall be made in accordance with § 14, § 15 and §16 hereof.
- 9.4 If the quality of the gas delivered continues to be non-conforming to the **Quality Specification** or the parameters specified in Section 8.1 above and is being rejected by the **Purchaser** for a period longer than 2 **Contract Days**, the **Parties** shall meet and negotiate in good faith to agree, as promptly as possible, on such necessary modifications to the **Quality Specification** and other provisions hereof as to allow the continued performance of this **Agreement**.

VI DELIVERY POINT

§ 10

- 10.1 All the **Gas** shall be delivered by the **Seller** to, and taken by the **Purchaser** at, the **Delivery Point**.
- 10.2 At the **Delivery Point**:
- (a) the title to the **Gas**;
 - (b) the benefits and burdens related to the title to the **Gas**;
 - (c) the risk of loss or quality deterioration of the **Gas**;
 - (d) all risks related to the physical and chemical properties of the **Gas**;
- shall pass from the **Seller** to the **Purchaser**.
- 10.3 Appendix No. 1 includes a description and a chart showing the layout of the **Gas Station** including the **Metering System** and the **Delivery Point**. Appendix No. 1 specifies the methods and procedures for taking measurements of the quantity, quality, temperature and pressure of the **Gas** delivered and taken. All issues related to the measurement of the quantity and pressure of the **Gas** which are not specifically addressed in Appendix No. 1 shall be governed by the company standards of the **Purchaser** "MEASUREMENTS OF GASEOUS FUELS", (4000 series), listed in Appendix No. 1 and attached thereto as Exhibit A.

- 10.4 The **Purchaser** shall have the right to be present, at its own expense, during the installation, reading, cleaning, replacement, fixing, inspection, examination, verification, calibration or regulation of the **Metering System**.

VII

MEASURING. DISPUTES REGARDING QUANTITY OR QUALITY

§ 11

- 11.1 The **Seller** shall make reasonable efforts to cause the **Operator** to install the **Metering System** at the expense of the Seller and other parties to the **Joint Operating Agreement** and to maintain it in good working order and condition. The **Seller** shall make reasonable efforts to cause the **Operator** to check the **Metering System** and verify its accuracy no less than once every three months, or more frequently if required by the applicable regulations. The **Seller** make reasonable efforts to cause the **Operator** to notify the **Purchaser** of any planned checks or verification at least 3 (three) days in advance.
- 11.2 If any component of the **Metering System** is found to be malfunctioning, the **Seller** shall make reasonable efforts to cause the **Operator** to repair or replace that component as soon as possible, and the **Monthly Statements** covering the period since the previous checking and verification (and, if applicable, the relevant **Annual Statement**) shall be adjusted in accordance with the rules set forth in Appendix No. 1, as soon as possible.
- 11.3 Based on the adjusted **Monthly Statement(s)** and, if applicable, the **Annual Statement**, the **Seller** shall correct its invoices covering the relevant periods within 5 days of the adjustment, and any resulting differences in the amounts payable shall be the settled within 30 days of the adjustment.
- 11.4 Malfunction of the **Metering System** referred to in Section 11.2 above can only occur in a situation where inaccuracies in the reading of the metering equipment exceed the permitted margins specified in Appendix No. 1 or in Exhibit A thereto, or the equipment is out of service.
- 11.5 The **Purchaser** may request additional checks and verification of the accuracy of the **Metering System** at any time. If the checks and verification do not reveal any malfunction that exceeds the permitted margins specified in Appendix No. 1 or in Exhibit A thereto, or that the equipment is out of service, the **Seller's** costs related to the checks and verification shall be paid by the **Purchaser**, otherwise, they shall be paid the **Seller**.

§ 12

- 12.1 In case of a dispute concerning the quantity or quality of the **Gas** delivered, verifying measurements shall be taken by an *ad hoc* Commission consisting of an equal number, but no more than two, of representatives of each of the **Purchaser** and the **Seller**.
- 12.2 If the measurements taken by the Commission referred to in Section 12.1 above, reveal errors in excess of the permitted margins, then the settlement shall be conducted according to the rules specified in Appendix No. 1. If metering equipment is dismantled to conduct the tests referred to above, the cost of dismantling, testing and reinstalling, as well as the cost of installation of substitute metering equipment shall be covered by the **Party** whose objections have not been confirmed by the tests results.

- 12.3 If the Commission does not agree on a common position within one (1) month from the day of the commencement of the work referred to in Section 12.1 above, then the dispute shall be resolved through an expertise performed by the Petroleum Mining Institute (*Instytut Górnictwa Naftowego i Gazownictwa -IGNiG*) in Krakow or another scientific institution agreed upon by the **Parties**. The cost of the analysis shall be covered by the **Party** whose objections have not been confirmed.

§ 13

- 13.1 Information concerning the quantity and quality parameters of the **Gas** sold shall be compiled in the form of statements covering:
- (a) every **Contract Month (Monthly Statements)**; and
 - (b) every **Contract Year (Annual Statements)**
- 13.2. **Monthly Statements** shall be made by the **Seller** based on daily reports prepared according to the guidelines contained in Appendix No. 1, within two (2) **Business Days** after the end of the **Contract Month** in which the delivery occurred. **Annual Statements** shall be made by the **Seller** based on the data contained in the relevant **Monthly Statements** within five (5) **Business Days** after the end of the **Contract Year** in which the delivery occurred.
- 13.3 **Monthly Statements** shall include the following information:
- (a) the **Daily Nominated Quantities** for each **Contract Day** of the **Contract Month**;
 - (b) the quantities of the **Gas** delivered by the **Seller** to the **Purchaser** for each **Contract Day** of the **Contract Month**;
 - (c) the average gross calorific value of the **Gas** delivered during the **Contract Month**, calculated in accordance with Appendix No. 1;
 - (d) the cumulative quantity of the **Gas** delivered by the **Seller** to the **Purchaser** during the **Contract Year** in which the **Contract Month** falls;
 - (e) the portion (if any) of the **Outstanding Quantity** included in the quantity of the **Gas** delivered to the **Purchaser** in the **Contract Month**;
 - (f) the quantities (if any) of the **Gas** not delivered or not taken during the **Contract Month** as a result of (separately for each reason):
 - **Force Majeure**;
 - **Planned Maintenance Work**;
 - rejection of non-conforming gas pursuant to Section 9.2 above;
 - (g) the **Gas Price** in respect of the **Gas** delivered in the **Contract Month**;
 - (h) the balance (if any) of the **Outstanding Quantity** remaining at the end of the **Contract Month**;
 - (i) details of any other charges that arise under this **Agreement**; and
 - (j) the total amount payable by the **Purchaser** to the **Seller**.
- 13.4 Any **Annual Statement** shall include the information, as required in Section 13.3 above with respect to the **Monthly Statements** for the last **Contract Month** of the **Contract Year**, and shall in addition specify:
- (a) the **Outstanding Quantity** (if any) occurred for that **Contract Year**;

- (b) the **Gas Price** payable in respect of the **Outstanding Quantity** occurring for that **Contract Year**; and
 - (c) the annual average gross calorific value of the **Gas** delivered from the **Zaniemysl Field** during the **Contract Year**, calculated in accordance with Appendix No. 1.
- 13.5 If the **Purchaser** disputes any quantity or amount in a **Monthly Statement** or **Annual Statement**, it shall notify the **Seller**, providing the details of the disputed items, within seven (7) **Business Days** following the receipt thereof. In such an event, the **Parties** shall communicate immediately and shall attempt to resolve the dispute within three (3) **Business Days**.
- 13.6 If the **Parties** do not reach an agreement within the time specified in Section 13.5 above, any dispute concerning the quantity or quality of the **Gas** delivered shall be resolved in accordance with Section 12.3 above, and any other dispute shall be resolved in accordance with §24 below.

VIII PRICE

§ 14

- 14.1 Subject to other provisions hereof, the **Purchaser** shall pay the **Gas Price (PGU)** for all the **Gas** delivered and taken.
- 14.2 The **Gas Price** as of 14 July 2005 for the **Gas** having the gross calorific value of 31.07 MJ/Nm³ equals:
- $$PGU_{(0)} = 280.13 \text{ PLN/1000 Nm}^3$$
- 14.3 The **Gas Price** shall be adjusted from time to time by reference to changes in the published price at which the **Purchaser** sells natural gas as similar as possible to the **Gas**, to its customers, occurring after the date specified in Section 14.2. Reference shall be made to the fuel price alone, not including any use of grid (transmission) or administration (subscription) charges. As of 14 July 2005, the relevant reference gas was the GZ-41.5 (group "Lw") gas having the gross calorific value of 32.8 MJ/Nm³, and the reference price according to the **Purchaser's** published tariff was 400 PLN/1000 Nm³.
- 14.4 As long as the **Purchaser** has a published gas tariff including price for the GZ-41.5 gas, the **Gas Price** shall be adjusted with any change of such GZ-41.5 tariff price, as of the beginning of the **Contract Month** immediately following the effective date of any such change, according to the following formula:

$$PGU_{(t)} = PGU_{(t-1)} * [PT_{(t)} / PT_{(t-1)}]$$

Where:

$PGU_{(t)}$ – **Gas Price** payable for **Gas** delivered in the **Contract Month (t)** following the effective date of the tariff price change and in all **Contract Months** thereafter until a subsequent tariff change (provided that in case of the first adjustment following the execution of this **Agreement**:

$PGU_{(t-1)} = PGU_{(0)}$);

$PGU_{(t-1)}$ – **Gas Price** applicable in the **Contract Month** immediately preceding the **Contract Month (t)**;

$PT_{(t)}$ – price of GZ-41.5 gas according to the **Purchaser's** tariff effective as of the first day of the **Contract Month**;

$PT_{(t-1)}$ – price of GZ-41.5 gas according to the **Purchaser's** tariff immediately preceding the tariff being in effect as of the first day of the **Contract Month** (provided that in case of the first adjustment following the execution of this **Agreement**: $PT_{(t-1)} = 400 \text{ PLN}/1000 \text{ Nm}^3$).

The foregoing rules regarding **Gas Price** adjustment shall also apply, *mutatis mutandis*, to any change of the **Purchaser's** tariff occurring between 14 July 2005, and the **Production Commencement Day**.

14.5 Should the **Purchaser** cease to have a published tariff including price for the GZ-41.5 gas, or should the structure of the tariff prices and fees change to the extent that the original economic equilibrium between the Parties would be distorted, the **Parties** shall meet immediately upon the request of either of them and shall negotiate in good faith a change in the **Gas Price** adjustment formula, so as to fairly reflect the principle stated in Section 14.3 above.

14.6 If the actual gross calorific value of the **Gas** delivered is different than $31.07 \text{ MJ}/\text{Nm}^3$, then the **Gas Price** shall be adjusted according to the following formula:

$$PGU_{(C)} = (PGU_{(t)} * GCV) / 31.07 \text{ MJ}/\text{Nm}^3$$

Where:

$PGU_{(C)}$ – **Gas Price** payable for the **Gas** delivered in the **Contract Month**, adjusted for actual calorific value

$PGU_{(t)}$ – **Gas Price** calculated in accordance with Sections 14.3-14.4 above

GCV- average gross calorific value of the **Gas** delivered in the **Contract Month**, calculated in accordance with Appendix No. 1, expressed in MJ/Nm^3 .

14.7 Numbers used in the calculation of the **Gas Price** shall be rounded up or down to the fifth (5) decimal place inclusive, and the resulting **PGU** values shall be rounded up or down to the second (2) decimal place. Numbers shall be rounded down if the digit subject to rounding is in the range between 0 and 4 inclusive, and shall be rounded up if the digit subject to rounding is in the range between 5 and 9.

14.8 The **Gas Price** and all other amounts stated herein are net of the VAT, excise, any similar tax or public charges. The **Purchaser** shall pay to the **Seller** (or to the relevant tax administration, if so required by the applicable regulations) all amounts due in respect of the VAT and any other taxes or public charges imposed with respect to the delivery and sale of the **Gas** hereunder.

14.9 Without prejudice to Section 14.8 above, the **Seller** shall pay and shall be responsible for the payment of all taxes or any other public charges imposed in respect of the recovery, production, processing, transportation, supply or sale of the **Gas** to the **Delivery Point**, and the **Purchaser** shall pay and shall be responsible for the payment of all taxes or any other public charges which are charged or imposed in respect of the **Gas** downstream of the **Delivery Point**.

14.10 All **Daily Nominated Quantities** of **Gas** in excess of the **DCQ** shall, if delivered, be paid for by the **Purchaser** at the prevailing **Gas Price** due hereunder, provided always that:

- (a) the **Seller** shall be under only a reasonable endeavours obligation to cause such quantities of **Gas** to be delivered;
- (b) the **Seller** shall not incur any liability, cost or charge to the **Purchaser** in respect of such quantities of **Gas** that are not delivered on any **Contract Day**; and

- (c) the **Maximum Annual Contract Quantity** shall not be reduced by the amount of any quantities of such **Gas** that are not delivered on any **Contract Day**.

IX INVOICING AND PAYMENTS

§ 15

- 15.1 Invoices shall be issued within seven (7) days after the end of each **Contract Month** based on the **Monthly Statements**, and taking into account any adjustments thereto which may have been agreed upon by the **Parties**.
- 15.2 The amounts due shall be paid by wire transfer from the bank account of the **Purchaser** to the bank account notified in writing by the **Seller** by the 30th calendar day following the end of the **Contract Month** of delivery.
- 15.3 Each of the **Parties** represents to the other that it is a VAT payer.
- 15.4 The **Purchaser** authorizes the **Seller** to issue invoices without the **Purchaser's** signature.

§ 16

- 16.1 Payment shall be deemed to be made on the date of crediting the bank account of the recipient.
- 16.2 If any of the **Parties** defaults in its payment obligations hereunder, it shall pay the other interest on the amount in default at a rate equal to the statutory rate established pursuant to Article 359 of the Polish Civil Code, calculated for each day of the default. If the statutory rate ceases to be published, the applicable rate shall be agreed upon by the **Parties** in an annex hereto. Interest for default shall be payable against an accounting note.
- 16.3 The **Parties** shall notify to each other of any changes in the description or the number of their respective bank accounts, and their notice shall specify both the former and the current account details. A **Party** which defaults in these obligations shall indemnify the other for all losses resulting from the default.

§ 17

- 17.1 Any complaints regarding invoices must be made in writing within ten (10) **Business Days** after receipt.
- 17.2 If the complaint refers to a manifest error (e.g. a mathematical error), then the **Party** receiving the invoice shall be authorized to calculate the correct amount and pay such correct amount only within the time specified in Section 15.2, provided that it gives the issuing **Party**, no later than on the date of payment, a written notice explaining its calculation. The latter **Party** shall issue a correction invoice, without any delay after agreeing the correct amount with the former.
- 17.3 If any **Party** disputes an invoice for reasons other than those stated in Section 17.2, it shall pay the undisputed amount, if any, within the time specified in Section 15.2 and shall undertake steps aimed at the resolution of the dispute in accordance with §12 or §24 hereof, depending on the nature of the dispute.
- 17.4 Neither any complaint concerning an invoice other than with respect to an issue referred to in Section 17.2 above, nor the occurrence of any dispute referred to in Section 17.3 above, shall release a **Party** from its duty to timely pay any amounts due.
- 17.5 The provisions of this Chapter IX shall also apply, *mutatis mutandis*, to payment against, and complaints concerning, accounting notes.

X
FORCE MAJEURE

§ 18

- 18.1 Subject to Section 18.3 below, neither **Party** shall be liable hereunder for failure to perform its obligations if it can prove that:
- (a) the failure has been caused by an extraordinary, external event independent of its will, hereinafter called an event of **Force Majeure**;
 - (b) it could not, upon entering into this **Agreement**, in spite of acting with reasonable diligence, foresee the occurrence of the event or its consequences affecting the performance of the **Agreement**;
 - (c) it could not, in spite of acting with reasonable diligence, either avoid or overcome the event or its consequences.
- 18.2 The **Parties** hereby undertake to provide each other with a written and documented notice in writing regarding the occurrence of a **Force Majeure** event, as soon as possible after they become aware thereof, and to make all efforts to bring the **Force Majeure** circumstances to an end, or to minimize their effects.
- 18.3 The occurrence of a **Force Majeure** does not excuse the **Purchaser** paying any amounts due or taking any **Gas** in the period preceding the occurrence, or payment for any **Gas** representing partial take by the **Purchaser** during the occurrence of **Force Majeure**.
- 18.4 If an event or series of events (alone or in combination) of **Force Majeure** occur, and continue for a period in excess of one hundred and eighty (180) consecutive days, and the effect of such events is to reduce the ability of the **Seller** to deliver or the **Purchaser** to take the **DCQ** by more than fifty (50) per cent on average during that period, then the **Seller** and the **Purchaser** shall meet to agree on any amendments to the terms of this **Agreement** to enable them to perform the **Agreement** despite the existence of **Force Majeure**. If the **Parties** do not reach agreement within thirty (30) days, the dispute shall be resolved pursuant to §24, provided that either **Party** may request the arbitration panel to consider termination of the **Agreement**.

XI
PLANNED MAINTENANCE WORK

§ 19

- 19.1 In any **Contract Year** each of the **Parties** shall be entitled to conduct the **Planned Maintenance Work**, provided that the aggregate duration of the **Planned Maintenance Work** shall not exceed 14 (fourteen) **Contract Days** in any **Contract Year**.
- 19.2 The **Parties** undertake to make all efforts to coordinate the timing of their respective **Planned Maintenance Work** with each other and with the **Operator** so that their **Planned Maintenance Work** is conducted on the same days to the extent possible. In any event, each **Party** shall notify the other of its **Planned Maintenance Work** schedule prior to the end of the preceding **Contract Year**.
- 19.3 In addition, the **Parties** shall inform each other in writing of the date of the commencement of any **Planned Maintenance Work**, no less than 14 (fourteen) calendar days in advance.

- 19.4 During the period of **Planned Maintenance Work**, each Party shall have the right to interrupt or decrease the delivery or take of the **Gas**, as applicable.

XII TERMINATION

§ 20

- 20.1 The **Agreement** shall terminate:
- (a) on the **Production Closure Day**;
 - (b) on the effective date of termination notice if the **Agreement** is terminated pursuant to §21 below;
 - (c) upon notice of either **Party** if the **Concession** expires or is terminated and is not replaced or its lack is not otherwise remedied within six months; or
 - (d) as specified in Section 3.3.
- 20.2 Termination of the **Agreement** shall be without prejudice to any **Party**'s receivables, rights or remedies claims based hereon, and shall not affect any obligations which are expressly stated to survive termination.

§ 21

- 21.1 If any of the following circumstances occur:
- (a) a **Party** fails to pay to the other an amount due unless reasonably disputed and payable hereunder if the default continues for at least 30 days and the amount in default is at least equal to 10% of the relevant **Annual Contract Quantity** multiplied by the **Gas Price** applicable as of the first day of that **Contract Year**
 - (b) a **Party** becomes insolvent, or enters into arrangements with its creditors pursuant to the laws governing bankruptcy and composition proceedings, or enters into liquidation.
 - (c) the **Seller** sells any **Gas** from the **Zaniemysl Field** to a third party without the **Purchaser**'s consent, provided that the **Purchaser** complies with its obligations hereunder and is not affected by **Force Majeure**
- the other **Party** may terminate this **Agreement** pursuant to Section 21.2 below.
- 21.2 The **Party** entitled to terminate the **Agreement** for reasons specified in Section 21.1 above, shall give the other a reasoned and properly documented written notice specifying the reasons and date of termination of the **Agreement**. The termination date cannot be earlier than 30 days after delivery of the notice to the other **Party**. The **Party** providing the other with a notice of termination shall be entitled to immediately suspend the delivery or take of the **Gas**, as applicable. During the notice period the **Parties** shall attempt to remedy the reasons and effects of the termination event. If these efforts are unsuccessful or if they cannot be successful for objective reasons, the **Agreement** shall terminate on the day specified in the notice, or on such other day as the **Parties** may agree.
- 21.3 In the event of termination for reasons specified in Section 21.1, the **Party** who has committed the **Breach** referred to in Section 21.1 shall pay the other liquidated damages in the amount equal to three times of the value of the **MACQ** for the **Contract Year** preceding the **Contract Year** in which the termination occurs, calculated pursuant to the **Gas Price PGU_(t)** applicable as at the date of termination.

- 21.4 In the event of termination of the **Agreement**, amounts payable by the **Purchaser** in respect of the **Outstanding Quantities** shall become payable as of the termination day, and the **Purchaser** shall have no right to take the **Outstanding Quantities** of the **Gas** pursuant to Section 7.4. If termination occurs as a result of a **Breach** by the **Seller**, then the amounts paid by the **Purchaser** in respect of **Outstanding Quantities** shall be credited against the **Purchaser's** liabilities hereunder which are due and payable as of the date of termination.

XIII FINAL PROVISIONS

§ 22

- 22.1 In addition to the **Agreement**, relationships between the **Seller** and the **Purchaser** shall be governed by:
- (a) The Geological and Mining Law of 4 February 1994 (Dz. U. No. 27, Item 96, as amended);
 - (b) The Ordinance of the Minister of the Economy dated 28 June 2002 concerning health and safety at work, operations management and specialised fire protection in mining establishments extracting minerals through wells (Dz.U. No. 109, Item 961);
 - (c) The Ordinance of the Minister of the Economy dated 11 August 2000 concerning inspections conducted by energy enterprises (Dz. U. No. 75, Item 866);
 - (d) The Civil Code dated 23 April 1964 (Dz. U. No. 16, Item 93, as amended);
 - (e) The Law on Measurements of 11 May 2001 (Dz.U. No. 63, Item 636);
- 22.2 If, as a result of an extraordinary change of technical, economic or legal circumstances, the performance hereof would become unduly difficult or threaten to cause glaring losses to a **Party** or **Parties**, which could not be foreseen upon entering into this **Agreement**, either **Party** may request that the terms of this **Agreement** be adjusted to the changed circumstances within three months from submission of a reasoned written request to the other **Party**, and the **Parties** shall make best efforts to adjust the **Agreement** in accordance with the request. If the **Parties** do not reach agreement within the said period, the dispute shall be resolved pursuant to §24, provided that either **Party** may request the arbitration panel to consider termination of the **Agreement** if it believes that the **Agreement** cannot be modified without disrupting the original economic equilibrium between the **Parties**.
- 22.3 Should any individual provisions of this **Agreement** become void by operation of law, the validity of the other provisions of the **Agreement** shall not be affected thereby. The **Parties** undertake to negotiate in good faith to replace the void provisions with new ones, to preserve the economic objectives of the **Agreement** and the original intent of the **Parties**.
- 22.4 The **Parties** acknowledge that the **Delivery System** shall be owned and operated under the **Joint Operating Agreement**. Wherever this **Agreement** obliges the **Seller** to undertake any action or incur any expenses with respect the **Metering System** or any other component of the **Delivery System**, it is understood that the action is to be undertaken and the expense incurred by all parties to the **Joint Operating Agreement** in accordance with their interests therein, and both the **Seller** and the **Purchaser** as parties to the **Joint Operating Agreement** shall make all efforts to procure the necessary steps to be undertaken.

§ 23

- 23.1 Non-performance or improper performance by a **Party** of its duties hereunder may entitle the other **Party** to liquidated damages where provided for in this **Agreement**.

- 23.2 Subject to Section 23.3, neither **Party** may claim compensation (for a **Breach**) in excess of the liquidated damages specified herein.
- 23.3 If no liquidated damages are prescribed herein with respect to a given **Breach** resulting from a default by either **Party**, the other **Party** can claim compensation for documented loss resulting directly from such **Breach**, excluding loss of profit. In any event, the aggregate liability of either **Party** in respect of all such events of **Breach** (other than a default of any express payment obligations, including the obligations specified in Section 7.2) occurring in any **Contract Year** shall be limited to 5% of the relevant **Annual Contract Quantity** multiplied by the **Gas Price** applicable as of the first day of that **Contract Year**.
- 23.4 To the extent a **Breach** by the **Seller** is caused by non-performance or improper performance by the **Operator** of its duties under the **Joint Operating Agreement**, the **Seller's** liability hereunder shall be limited in the same way as the **Operator's** liability vis-à-vis the **Seller** under the **Joint Operating Agreement**, provided that if the **Purchaser** ceases to be the **Operator**, any reduction of the scope of liability of the **Operator** under the **Joint Operating Agreement** shall be ineffective for the purposes hereof, unless such a change is approved by the **Purchaser**.
- 23.5 Notwithstanding any other provision in this Agreement to the contrary, as long as the **Purchaser** or its **Affiliate** remains the **Operator**, the **Seller** shall be free from liability for a **Breach** hereunder to the extent it can demonstrate that the **Breach** was caused by action or omission of the **Operator**.
- 23.6 For the avoidance of doubt, the **Seller** shall not be liable for non-delivery of **Gas** or improper quality of the **Gas** delivered, if the same results from geological conditions.

§ 24

- 24.1 The **Parties** shall attempt to resolve all disputes arising out of or in connection with this **Agreement** by direct negotiations. If the **Parties** do not resolve the dispute within three (3) months from the delivery of either **Party's** invitation to negotiations to the other, the dispute shall be resolved by arbitration under the UNCITRAL Arbitration Rules then in force upon notice by any **Party** to the other **Party**.
- 24.2 The arbitral tribunal shall consist of three arbitrators. Each **Party** to the dispute shall appoint one arbitrator. The two arbitrators appointed by the **Parties** shall by agreement appoint the third arbitrator. In default of an agreement within fourteen (14) days one **Party** to the dispute may require the appointment of the third arbitrator, in which case the third arbitrator shall be appointed by the President of the Polish Arbitration Association (*Prezes Polskiego Stowarzyszenia Sądownictwa Polubownego*).
- 24.3 The venue of arbitration proceedings shall be Warsaw. The decision of the arbitral tribunal, and, in the case of difference among the arbitrators the decision of the majority, shall be final and binding upon the **Parties** to the dispute.
- 24.4 The existence of any dispute shall not excuse either **Party's** performance of its obligations hereunder.
- 24.5 The provisions of this §24 shall survive the termination of this **Agreement**.
- 24.6 If the **Parties** agree on any interpretation of this **Agreement**, such an interpretation shall become binding thereon upon its signature by all **Parties**.

§ 25

- 25.1 Any transfer to a third party of the rights and obligations arising hereunder without the consent of the other **Party** shall be null and void, unless permitted under the provisions below.
- 25.2 Any sale proceeds or other monetary receivables accruing hereunder shall be freely assignable.
- 25.3 Either **Party** shall be entitled, without the prior consent of the other, to assign, pledge or establish another security interest in all or any of their rights, interests, benefits and obligations under this **Agreement** to a bank or another financial institution to secure the payment of any indebtedness incurred or to be incurred.
- 25.4 The **Seller** may transfer its rights and obligations hereunder to an **Affiliate** or any other party which becomes the assignee of its interest in the **Joint Operating Agreement** in accordance with the terms thereof, pro rata to the interest in the **Joint Operating Agreement** so assigned.
- 25.5 The **Purchaser** may transfer its rights and obligations hereunder to an **Affiliate** or any other party, subject to Section 25.6.
- 25.6 The **Party** transferring its rights and obligations shall not be released from its obligations under the **Agreement** unless and until the transferee takes over (subject always to the other **Party** consent, which shall not be unreasonably withheld), by way of a written instrument, all obligations arising under this **Agreement** in relation to the other **Party**.

§26

This **Agreement**, all information regarding any disputes in connection herewith, and all information provided by the **Parties** to each other hereunder, shall be subject to the **Confidentiality Agreement** attached hereto as Appendix No.2, provided that nothing in the **Confidentiality Agreement** or herein shall be interpreted to restrict any **Party**'s rights to arbitrate or enforce arbitration awards.

§ 27

- 27.1 Except as otherwise specifically provided, all notices authorized or required between the **Parties** by any of the provisions of this **Agreement**, shall be in writing, in Polish or in English, and delivered in person or by registered mail or by courier service with confirmed delivery, or by any electronic means of transmitting written communications which provides written confirmation of completed transmission. The originating notice given under any provision of this **Agreement** shall be deemed delivered only when received by the **Party** to whom such notice is directed, and the time for that **Party** to deliver any notice in response to such originating notice shall run from the date the originating notice is received. Any communications shall be delivered to the following addresses of the Parties (or such other address as the **Party** concerned may communicate to the other in accordance herewith):

Purchaser: Polskie Gornictwo Naftowe i Gazownictwo S.A.
ul. Krucza 6/14
00-537 Warsaw, Poland
Attention: Director of Commercial Department
Phone: +48 22 691 79 28
Fax: +48 22 691 83 77

Seller: FX Energy Poland Sp. z o.o.
Ul. Chałubińskiego 8
00-613 Warsaw, Poland
Attention: Zbigniew Tatys, Country Manager
Phone: +48 22 6306633
Fax: +48 22 6306632

With copy to:

FX Energy, Inc.
3006 Highland Drive # 206
Salt Lake City
Utah 84106
USA
Attention: Clay Newton
Phone: +1 801 486 5555
Fax: +1 801 486 5575

- 27.2 Any amendment to the provisions of this **Agreement** must be in the form of a written annex or shall otherwise be null and void.
- 27.3 This **Agreement** constitutes the full understanding between the **Parties** and supersedes all their prior negotiations, correspondence or agreements regarding the sale of gas from the **Zaniemysl Field** within the scope covered hereby.
- 27.4 This **Agreement** and the Appendices hereto are executed in two identical counterparts, one for each of the **Parties**.

SELLER

[Two illegible signatures]

PURCHASER

[Name stamps and illegible signatures of Sławomir Nesterowicz, Tomasz Jaskólski and Grzegorz Jaźwiński]

APPENDIX NO. 1

TECHNICAL CONDITIONS FOR DELIVERY OF GAS TO THE PURCHASER

1. DEFINITION OF GZA

Greater Zaniemysl Area – an area identified by the following geographical coordinates:

	Eastern longitude	Northern latitude
1	17°05'26.2"	52°07'00.8"
2	17°10'46.5"	52°11'17.0"
3	17°20'11.0"	52°07'02.0"
4	17°22'49.5"	52°06'34.4"
5	17°21'28.0"	52°02'43.5"
6	17°15'47.4"	52°02'34.6"
7	17°13'35.1"	52°03'01.3"
8	17°11'17.0"	52°03'49.8"
9	17°08'55.9"	52°04'40.1"

Natural gas will be produced from the Zaniemysl Field pursuant to the Joint Operating Agreement.

2. DEFINITION OF THE ZANIEMYSL FIELD

Zaniemysl Field – means the gas field located on the Wielkopolska Plain, Gmina Zaniemyśl, Wielkopolskie Voivodeship, in the vicinity of Śrem, Zaniemyśl and Książ Wielkopolski, developed through the Zaniemysl-3 well, with the following geographical coordinates:

Eastern longitude	Northern latitude
17°10'53"	52°06'18"

3. DESCRIPTION and schematic of the GAS STATION with its METERING SYSTEM and DELIVERY POINT

The Gas Station will contain the following equipment:

- DN100 inlet and outlet pipelines;
- FG-WS type filter-separator manufactured by GAZOMET Rawicz;
- U-2 type metering system with turbine type gas meters manufactured by CAMMON Łódź;
- Control and metering equipment manufactured by KFM Włocławek;
- Electronic devices manufactured by EMERSON Warszawa and PLUM Białystok;
- Gas moisture content measurement equipment manufactured by AMETEK, with a sample collector; and
- Shutdown valves manufactured by GAZOMET Rawicz.

The schematic showing the gas station layout is attached hereto.

4. METHODS and PROCEDURES FOR MEASURING QUANTITY and QUALITY (including pressure and temperature) OF SUPPLIED GAS

The quantity of the gas delivered and taken by the Operator will be measured at the Gas Station in accordance with the terms of the PGNiG S.A. Company Standards, series ZN-G 4001-4010: 2001

Gas flow at the delivery metering station will be measured by turbine type gas meters in a U-2 metering system arrangement, with two metering lines, one of which will be an operating line and the other a control line.

The control meter line is in series with the operating metering line and its capacity set in such a way to enable it to control the operating line.

If the operating line needs to be shut down temporarily, then the control metering line will serve as the sole backup metering line for that period.

The turbine gas meters will be supported by the following electronic devices:

- 3051T absolute pressure transmitter manufactured by FISHER-ROSEMOUNT;
- Pt100 resistance temperature sensors with 3144P processors manufactured by FISHER-ROSEMOUNT; and
- MacMAT II microcomputer gas volume converters manufactured by PLUM Białystok.

Turbine type gas meters will be fitted with low frequency (LF) and high frequency (HF) impulse transmitters. Metering signals converting Gas volumes from the MacMAT II micro-computer gas volume converter will be transmitted via an RS link to the facilities control system.

Gas moisture content will be measured by a 3050-OLV gas moisture analyser manufactured by AMETEK. Metering signals from the gas moisture analyser will be transmitted via an RS link to the facilities control system. The sampling system feeding gas into the gas moisture content analyser is to be installed at the outlet of the metering system.

Data between OG Zaniemyśl and OC Kaleje will be transmitted by fibre-optical cable and by GPRS transmission to KGZ Radlin.

Measurement of Gas quality at the point of delivery:

- a) Content of hydrocarbons, nitrogen and other chemical compounds or elements – not less than once in a Contract Month;
- b) hydrogen sulphide content – yearly;
- c) carbon dioxide content – every six months;
- d) mercury vapour content – every two months;

- e) dust content – twice yearly – once in summer and once in the winter;
- f) total sulphur content – no less than once in a year;
- g) water dew-point determination – continuous measurement;
- h) hydrocarbon dew-point determination – measurement once a year in the winter period;
- i) gross calorific value – assigning the gross calorific value to tranches of gas export - no less than once in a Contract Month;
- j) net calorific value - assigning net calorific value to tranches of gas export - no less than once in a Contract Month; and
- k) Wobbe number - assigning Wobbe number to tranches of gas export - no less than once in a Contract Month.

5. RULES FOR ADJUSTMENT OF MONTHLY STATEMENTS / ANNUAL STATEMENT IN THE CASE OF A MALFUNCTION OF THE METERING SYSTEM

5.1. If the operating metering line needs to be shutdown temporarily, its function is taken over by the control (backup) metering line.

5.2. Inspection of the Metering System is carried out in accordance with PGNiG S.A. Company Standard No. ZN-G-4003:2001, no less than once every three months at a time agreed between the metering personnel of both Parties.

5.3. Regarding the requirements and procedures applicable to the method of metering and the operation and control of the Metering System. Where these are not specified in the Agreement or this Appendix, the Parties will follow the appropriate PGNiG S.A. Company Standards No. ZN-G-4001 to 4010:2001.

5.4. If an inspection of the operating gas meter readings shows that the difference between readings of the operating gas metering line and the control gas metering line exceeds 2.0% of the determined hourly volume, both gas meters must be checked:

In the event of:

- a malfunction of only the control gas metering system, operation and monthly settlement proceeds as normal;
- a malfunction of the operating gas metering system, while the control metering system is proven to work correctly, the readings of the control metering system will be used for accounting purposes, with an appropriate readings adjustment being made for the period between the time when the malfunction of the operating metering system arose and the time when the readings of the control metering system was first used for accounting purposes.

5.5. During the period when such a fault is evident in the operating gas metering system the erroneous readings of Gas volumes will be adjusted by:

- calculating the average error of the operating gas meter during this period across the metering range;
- calculating the correction factor resulting from the average error of the operating gas meter; and
- calculating the adjusted Gas volume.

5.6. In the case of uncertainty as to when the error commenced, then half of the period from the last reading approved by the Parties by way of signing the monthly statement will be deemed to be the period for which the adjustment is required.

5.7 If one of the Parties to the Agreement voices objections with respect to metering accuracy, and the checking of the Metering System proves that the objection to be legitimate, an adjustment shall be made from the date the inaccuracy is reported until the date the causes of the erroneous metering is eliminated.

6. GUIDELINES FOR THE PREPARATION OF DAILY REPORTS FOR INPUT TO THE MONTHLY AND ANNUAL STATEMENTS

6.1 Information on daily gas delivery volumes will be sent through a dispatcher and additionally by fibre-optical cable between OG Zaniemyśl and OC Kaleje, and by GPRS transmission to KGZ Radlin. POGC will provide its partners with access to the electronic volumetric transmission data network. Each party will pay for its own telemetry access costs. Daily and monthly reports will be made available by the Operator through the aforementioned network in the form of electronic information summaries. Daily and monthly reports, and corrections of monthly reports, if any, shall be made by the Operator.

6.2 A daily report will specify:

- The volume of gas taken, and converted by reference to normal conditions, for each hour plus a summary for the Contract Day,
- Average hourly pressure and temperature figures.

6.3. Reports with a temporary settlement adjustment (if applicable) for a metering system malfunction will be implemented directly in the electronic volume converter or in a computer equipped with specialist software based on data from the converter.

A monthly report will specify:

- for individual days of the month:
 1. gas pressure and temperature (minimum, maximum and average daily figures); and
 2. daily gas volumes before correction (based on the gas meter) and after any correction for normal conditions (based on the converter)
- monthly average:
 1. gas pressure and temperature;
- monthly gas volumes totalled from daily figures:
 1. gas volume before any correction (based on the gas meter) and after any correction for normal conditions (based on the converter);
 2. adjustments (if applicable) for metering system malfunctions; and
 3. monthly delivery plans.

Daily and monthly reports shall constitute the basis for making the Monthly Statement. The Operator shall provide the monthly report on the first business day following the end of each month, so as to enable the Seller to make a Monthly Statement within the period prescribed, i.e. within two Business Days after the end of the Contract Month in which the delivery has occurred.

7. DESCRIPTION OF THE GAS NETWORK CONNECTING THE DELIVERY POINT TO THE EXISTING DRZONEK-KLEKA GAS PIPELINE

Gas from the Zaniemyśl facilities station will be transmitted over an approximate 12 km high-pressure Kaleje-Mchy pipeline to the transmission system of OGP Gaz-System, Poznań Branch.

The gas pipeline will be utilised to transmit low-methane natural gas (class Lw), produced in the Kaleje and Zaniemyśl fields, to the existing DN 200/250 Drzonek-Kleka system pipeline.

The basic gas pipeline: specification is DN 250; PN 8,4 MPa; the projected pipeline throughput capacity will be in the range of 30 – 80 thousand m³/h.

The connection of the Kaleje-Mchy gas pipeline to the existing Drzonek –Kleka system pipeline will be made at Mchy, where a high-pressure metering station will be constructed in accordance with transmission regulations issued by the Regional Transmission Branch (ROP) Poznań; the metering station will have a capacity $Q_{nom} = 30$ thousand m³/h (Maximum Operating Pressure MOP=8.4 MPa, min. input pressure = 6.2 MPa, min. output pressure = 6.2 MPa), and will be fitted with:

- Isolation valves upstream of the inlet and downstream of the outlet system connection ;
- Input and output block and bleed systems;

- Filter-separator system; and
- Metering system.

8. GAS QUANTITY NOMINATION/ORDERING PROCEDURES

The Purchaser shall notify the Daily Nominated Quantities (DNQ) to the Seller and the Operator no less than 24 hours before the beginning of the Contract Day for which the DNQ is specified.

If the Purchaser agrees with the Seller and the Operator rules for nominating the quantity of the gas taken in a more detailed manner than is specified in §6 of the Agreement or herein, such procedures, as agreed between the Parties and the Operator, will become an attachment to this Appendix 1.

In the event of a conflict between the rules and the provisions of the Agreement, the provisions of the Agreement will prevail.

9. CALCULATION OF MONTHLY AVERAGE GROSS CALORIFIC VALUE OF THE GAS

The calorific value for natural gas leaving the field shall be determined no less than once in a Contract Month.

The Gross calorific value will be determined by a laboratory certified by the Polish Certification Center.

If more than one measurement of the Gross calorific value is made in a Contract Month, then the average Gross calorific value shall be calculated as the mathematical average of all of the measurements taken.

Annual average Gross calorific value shall be calculated as the mathematical average of the monthly average figures.

10. GAS QUALITY SPECIFICATION

Gas supplied by the Seller shall conform to the requirements concerning the quality of gas transmitted under high pressure through the gas transmission system in accordance with the following standards: PN-C-04752 November 2002 "Natural gas – quality of gas in the transmission system" and PN-C-04753 December 2002 "Natural gas – quality of gas supplied to customers from the distribution network" (to the extent the standard PN-C-04752 refers to standard PN-C-04753 for the "Lw" class of gas).

[A chart showing the gas station layout is attached]

APPENDIX NO. 2

CONFIDENTIALITY AGREEMENT OF 24 FEBRUARY 2005

AGREEMENT

For the Sale of Wellhead Natural Gas

This Agreement was signed on 26 January 2007, between:

FX ENERGY POLAND Sp. z o.o. with its registered seat in Warsaw, at ul. Chalubinskiego 8, 00-613 Warsaw, entered in the Companies Register of the National Court Register by the District Court in Warsaw, XIX Commercial Division of the National Court Register, as KRS No. 0000052459, NIP 521-27-51-481, REGON 012659847,

hereinafter referred to as the “**Seller**” or a “**Party**”, represented by:

Mr Zbigniew Tatys, member of the Management Board,

and

PL Energia S.A. with its registered seat in Krzywopłoty 42, 78-230 Karlino, entered in the Companies Register of the National Court Register by the District Court in Koszalin, IX Division of the National Court Register, as KRS No. 0000031475, NIP 672-18-11-401, REGON 3311091360,

hereinafter referred to as the “**Purchaser**” or a “**Party**”, represented by Mr Piotr Buszka, President of the Management Board.

RECITALS

Whereas:

A. the **Seller** holds a mining usufruct and concession covering the exploration and appraisal of oil and natural gas fields within concession block no. 287, where the discovered natural gas field known under the name **Grabówka Field** is located;

B. as a holder of a mining usufruct, the **Seller** may undertake natural gas production from the **Grabówka Field** on a trial basis, to the extent it is necessary to appraise the field, and has priority in obtaining a mining usufruct and production concession;

C. a preliminary appraisal of the natural gas resources in the **Grabówka Field** shows that they amount to approximately 230 million m³ of low-methane gas, with a gross calorific value $W_s = 22.6$ MJ/Nm³;

D. the **Purchaser**, engaged in the business of trading, transmission and distribution of gas to customers in Poland, wishes to purchase wellhead gas from the **Grabówka Field** and treat it in order to prepare it for trading;

E. the **Purchaser** is prepared to take wellhead natural gas directly from the wellheads, and to assume full responsibility for its treatment and further use.

F. In order to develop the **Grabówka Field** for production, it is necessary to rework and complete three wells, acidize the reservoir, and purchase rights to the geological documentation concerning the field, and the **Purchaser** wishes to participate in covering the costs of the above operations, in consideration for the exclusive right to purchase wellhead gas produced from the field at a price taking into account the expenditure and business risk incurred by the **Purchaser**.

The **Parties** agree as follows.

I GENERAL PROVISIONS AND DEFINITIONS

§ 1

- 1.1. This **Agreement** governs the relationship between the **Parties** in connection with the development of the **Grabówka Field** for production, and with the sale of the **Gas** (as defined below) by the **Seller** to the **Purchaser**, including their rights and duties, their liability for non-compliance with the terms of this **Agreement**, as well as the technical conditions of delivery and acceptance of the **Gas**.
- 1.2. The following Appendices constitute an integral part of this **Agreement**: Appendix No. 1 - Technical conditions of **Gas** delivery to the **Purchaser**, and Appendix 2 – Schedule of expenditures;

If there is any inconsistency between the main body of this **Agreement** and the Appendices, the provisions of the main body shall prevail.

§ 2

- 2.1 In this **Agreement**, and in any appendices or annexes thereto, the following capitalised terms shall have the following meanings:
- 1/ **Contract Day** - a period starting at 22:00 on any given calendar day, and ending at 22:00 on the following calendar day;
 - 2/ **Daily Nominated Quantity (DNQ)** - the quantity of the **Gas** nominated by the **Purchaser** for delivery in a given **Contract Day** in accordance with Section 6.1 below;
 - 3/ **Business Day** - any day other than Saturday, Sunday or another statutory holiday in Poland;
 - 4/ **Delivery Commencement Day** - the **Contract Day** on which the **Seller** delivers the **Gas** to the **Delivery Point** for the first time;
 - 5/ **Production Commencement Day** - means the **Contract Day**, no later than 21 days following the **Delivery Commencement Day**, which is notified by the **Seller** to the **Purchaser** as the day on which regular deliveries of the **Gas** hereunder shall commence;
 - 6/ **Gas** - a mix of hydrocarbons and non-flammable gaseous components, including methane and nitrogen as the main components, produced from wells in the **Grabówka Field**, the quality of which depends on the properties of the field; to avoid any doubt, the **Gas** shall not include any condensed or extracted liquid hydrocarbons that are liquid at the pressure of 101.325 kPa and at the thermodynamic temperature of 273.15 K, and any residue gas remaining after the condensation or extraction of liquid hydrocarbons from such gas;
 - 7/ **Affiliate** – means, with respect to a **Party**, any entity that directly or indirectly controls that **Party**, or is controlled by that **Party**, or which is directly or indirectly controlled by an entity which controls that **Party**. Control means:
 - (a) the ownership of more than fifty percent (50%) of the voting rights at the general meeting of shareholders, or its equivalent, of another entity;
 - (b) the power to direct the management and policies of another entity, whether through the ownership of voting securities, by contract or otherwise;

- 8/ **Exploration Concession** – means jointly a licence covering the exploration and appraisal of hydrocarbons, together with any supplementing decision of the concession authority, and the mining usufruct, both authorising the use of the **Gas** produced from the **Grabówka Field** on a trial basis, granted to the **Seller**, including any extension or replacement thereof;
- 9/ **Production Concession** – means jointly a licence covering the production of hydrocarbons, together with any supplementing decision of the concession authority, and the mining usufruct, both authorising the production of the **Gas** extracted from the **Grabówka Field** on a commercial basis, granted to the **Seller**, including any extension or replacement thereof;
- 10/ **Maximum Hourly Take (MHT)** – the maximum hourly take of **Gas** from the **Grabówka Field**, determined in accordance with prudent field operation rules applicable in the industry, and in accordance with the applicable regulations, taking into account the capacity of the **Mining Installations**;
- 11/ **Contract Month** - a period starting at 22:00 on the last day of the month directly preceding the given calendar month, and ending at 22:00 on the last day of the given calendar month, provided that the first **Contract Month** shall commence at 22:00 on the last day of the **Commissioning Period** and shall continue until the end of the same calendar month;
- 12/ **Breach** – means a failure to perform or improper performance by a **Party** of any of its obligations hereunder;
- 13/ **Normal Cubic Metre (Nm³)** - means the amount of gas required to fill a space of one cubic metre with an absolute pressure of one hundred and one point three two five kilopascals (101.325 kPa), and at thermodynamic temperature of 273.15 K; unless expressly stated otherwise, all quantities of **Gas** referred to herein or specified hereunder shall be expressed in **Nm³**;
- 14/ **Delivery Period** - the period commencing on the **Production Commencement Day** and ending on the **Production Closure Day**;
- 15/ **Commissioning Period** - means a period of up to 21 days, commencing on the **Delivery Commencement Day** and ending on the **Contract Day** immediately preceding the **Production Commencement Day**;
- 16/ **Operator** – a professional party appointed by the **Seller** as the operator of the **Grabówka Field**, i.e. to be responsible for organising and managing the entirety of technical and administrative operations relating to the field development and exploitation, as required under the applicable regulations and good industry practice, including the construction, operation, and shutdown and removal of the mining establishment;
- 17/ **Planned Maintenance Work** - renovation, construction, maintenance and modernisation work:
- (a) conducted by the **Purchaser** in the **Gas Offtake System**, which affect the **Purchaser's** ability to take the **Gas** at the **Delivery Point**;
 - (b) conducted by the **Operator** or the **Seller** in the **Mining Installations**, which affect the **Seller's** ability to deliver the **Gas**, (**Seller's Planned Maintenance Work** shall include, without limitation, any periodical gas field tests);

- 18/ **Monthly Statement** – the document defined in §13 below;
- 19/ **Delivery Point** - the agreed valve at the exit from the given wellhead;
- 20/ **Contract Year** - a period starting at 22:00 on the last day of any calendar year and ending at 22:00 on the last day of the following calendar year, provided that:
- (a) the first **Contract Year** shall commence at 22:00 on the last day of the **Commissioning Period** and shall continue until 22:00 on the last day of the same calendar year;
 - (b) if this **Agreement** terminates on any day other than 31 December, the last **Contract Year** shall end at 22:00 on the last day of the **Agreement** being in effect;
- 21/ **Quality Specification** – the set of chemical parameters of the **Gas** the scope of which is specified in Appendix No. 1 (and Appendix No. 1 shall define which changes in particular parameters are material changes), and whose exact values shall be communicated to the **Purchaser** in accordance with § 4;
- 22/ **Metering System** - gas meters and other metering devices, as well as the systems connecting these devices, described in Appendix No. 1, used to measure the quantity of the **Gas** delivered and taken at the **Delivery Point**;
- 23/ **Agreement** - this agreement, together with any future changes, modifications and supplements, which can be made in accordance herewith;
- 24/ **Mining Installations** – mining installations used to produce **Gas (Well Installations)** and prepare it for transportation, the construction and operation of which is subject to the Geological and Mining Law, owned partly by the **Seller** and partly by the **Purchaser**, including the **Metering System**, described in Appendix No. 1;
- 25/ **Gas Offtake System** – an installation used to treat and further use the **Gas**, along with accompanying installations, owned by the **Purchaser**, located downstream of the **Metering System** on the **Purchaser's** side, not subject to the Geological and Mining Law;
- 26/ **Well Installations** – underground and surface installations (including production wellheads) forming part of each well, reworked and completed in accordance with this Agreement, owned by the **Seller**;
- 27/ **Contractor** – the party defined in Section 7.2;
- 28/ **Grabówka Field** – a gas field located in the vicinity of the Grabówka village, the District (*gmina*) of Milicz, Dolnośląskie Voivodeship, owned by the **Seller**.
- 2.2 All units of measurement used herein are units of the SI system in accordance with the Law on Measurements dated 11 May 2001 (Dz. U. of 2004 No. 243, Item 2441, as amended).

II CONTRACT TERM, CONDITIONS PRECEDENT AND COMMISSIONING PERIOD

§ 3

- 3.1 Pursuant to this **Agreement**, the **Seller** shall supply and sell the **Gas**, and the **Purchaser** shall buy and take the delivery of the **Gas**, commencing on the **Delivery Commencement Day** until the **Production Closure Day**, provided that no obligations to supply or take the **Gas** shall continue, subject to section 3.4, if:

- (a) this **Agreement** is terminated in accordance with its terms; or
- (b) the **Exploration Concession** loses its validity and the **Seller** fails to obtain a **Production Concession** within twelve (12) months of the date when the **Exploration Concession** loses its validity.

3.2 The **Delivery Commencement Day** shall not occur unless and until each of the following conditions precedent is fulfilled:

- (a) the **Seller** successfully completes the works required to make the **Grabówka Field** available, as defined in § 7 below;
- (b) the **Seller** obtains all permits and approvals from public authorities required to construct and use the **Mining Installations** and all permits and approvals necessary to produce and sell the **Gas** hereunder;
- (c) the **Purchaser** constructs and brings into operation the **Gas Offtake System** and the **Mining Installations**, excluding the **Well Installations**; and
- (d) the **Purchaser** obtains all permits and approvals of public authorities necessary to operate the **Gas Offtake System**.

The **Seller** shall act with the utmost care to ensure that the conditions in letters (a) and (b) above are satisfied as soon as possible, subject to § 7. The **Seller** shall promptly notify the **Purchaser** upon becoming aware that a condition, which it is required to satisfy, as provided above, has been satisfied or becomes incapable of being satisfied.

The **Purchaser** shall act with the utmost care to ensure that the conditions in letters (c) and (d) above are satisfied as soon as possible. The **Purchaser** shall promptly notify the **Seller** upon becoming aware that a condition, which it is required to satisfy, as provided above, has been satisfied or becomes incapable of being satisfied.

The **Parties** shall co-operate and support each other when meeting the above conditions.

3.3 If the **Delivery Commencement Day** does not occur by 1 December 2008, the **Parties** shall meet as soon as practicable thereafter to discuss the situation and agree as to the continuation of this **Agreement**.

3.4 If the **Seller** does not obtain the **Production Concession** within 12 months of when the **Exploration Concession** expires, the **Seller** agrees to negotiate in good faith with the **Purchaser**, at the **Purchaser's** request, mutually beneficial conditions of the sale of gas from other fields in Poland, and if such conditions are agreed, the **Parties** agree to enter into an appropriate gas sale agreement. The above does not oblige the **Seller** to reserve production capacity for the **Purchaser** or to negotiate the conditions of sale of gas from other fields, comparable to the conditions of this **Agreement**.

§ 4

4.1 During the **Commissioning Period**, the **Purchaser** shall act with due care to take all the **Gas** offered by the **Seller**, and the **Parties** shall co-operate and shall act with due care in order to ensure that the **Seller** delivers the **Gas** in such quantities as the **Purchaser** is technically capable of accepting.

4.2 During the **Commissioning Period**, the provisions of the **Agreement** concerning the nomination of **Gas** quantities shall not apply. All other provisions of this **Agreement** shall apply to the **Gas** delivered during the **Commissioning Period**.

4.3 During the **Commissioning Period**, the **Seller** shall determine the **Quality Specification** and shall deliver it to the **Purchaser**.

III QUANTITIES, PARTIES' OBLIGATIONS

§ 5

- 5.1 The **Seller** offers the **Purchaser** all of the **Gas** produced from the **Grabówka Field**.
- 5.2 The **Seller** shall determine the **Maximum Hourly Take** for the forthcoming **Contract Year** in accordance with the applicable regulations and with good industry practice, no later than five (5) days prior to the **Production Commencement Day** in the case of the first **Contract Year**, and no later than one (1) month prior to the beginning of each subsequent **Contract Year**. The projected **Maximum Hourly Take** as of the date of this **Agreement** is [1800 Nm³/h].
- 5.3 If the **Maximum Hourly Take** agreed for the given **Contract Year** is such that the processing of **Gas** in the **Gas Offtake System** becomes uneconomical, the **Purchaser** may request the **Seller** to discontinue production from the **Grabówka Field** or to terminate the **Agreement**, and the **Seller** shall not reject such a request without good cause. If the production of gas is discontinued, or if the **Agreement** is terminated, the provisions of sections 3.4 and 8.3 shall apply, *mutatis mutandis*.

§ 6

- 6.1 The **Purchaser** shall order the **Gas** from the **Grabówka Field** by notifying the **Operator** and the **Seller** of the **Daily Nominated Quantities (DNQ)**, in accordance with the nomination procedures specified in Appendix No. 1.
- 6.2 Subject to the provisions of the **Agreement** concerning the **Planned Maintenance Work**, **DNQ** on each **Contract Day** of the **Delivery Period** shall be at least 90% (ninety percent) of twenty-four (24) times the **Maximum Hourly Take** specified for a given **Contract Year**.
- 6.3 The **Seller** shall act with due care to deliver all of the **Gas** ordered by the **Purchaser**, and the **Purchaser** shall act with due care to take all of the **Gas** offered by the **Seller**.

IV FIELD DEVELOPMENT, EXPLOITATION AND ABANDONMENT

§ 7

- 7.1 Immediately after concluding this **Agreement**, the **Seller** shall give instructions to perform, at the **Purchaser's** expense (on the terms defined below), the operations necessary to make the **Grabówka Field** available for the purpose of producing the **Gas**, comprising, among other things, the reworking, completion and acidization of the wells Grabówka 6, 8 and 12, as well as the acquisition of rights to the required geological documentation, provided that the rights to the documentation shall be acquired at a later date, before the lapse of the period in which the production of **Gas** is permitted under the **Exploration Concession**.
- 7.2 Unless an agreement with a third party ("**Contractor**") concerning the operations referred to Section 7.1 is entered into pursuant to a tender procedure, the **Seller** shall, before its execution, obtain the **Purchaser's** consent to enter into such an agreement, which shall not be unreasonably withheld.

- 7.3 The **Seller** may demand advance payments from the **Purchaser** to pay for the costs of performing the works specified in Section 7.1, in amounts and on dates consistent with the preliminary schedule of expenditures constituting Appendix No. 2 to the **Agreement**. The **Purchaser** shall pay the advance within 14 days of the Seller's request. After executing an agreement with the **Contractor**, the **Seller** shall charge the **Purchaser** with all amounts due to the **Contractor** under such an agreement. If the **Purchaser** has not advanced the relevant amounts, or if the advance proves insufficient, the **Purchaser** shall pay the missing amounts to the **Seller** within the time specified by the **Seller** in the invoice, enabling the **Seller** to promptly settle the amounts due to the **Contractor**, though not shorter than seven (7) days. The **Parties** shall update the schedule of expenditures as the works progress and in the event of new circumstances arising, and the **Purchaser** agrees to pay all costs incurred by the Seller in performing the works specified in Section 7.1, notwithstanding the estimate found in Appendix No. 2.
- 7.4 The **Well Installations** shall be owned by the **Seller** and the expenditures incurred by the **Purchaser** to construct the **Well Installations** shall represent the **Purchaser's** investment in the **Seller's** fixed assets, in accordance with the accountancy regulations.
- 7.5 The **Seller** (whether by itself or through the **Operator** acting on its behalf) shall operate the **Mining Installations** (including installations owned by the **Purchaser**) in accordance with the relevant regulations and good field operating practice, without any separate remuneration being payable to the **Seller** (without prejudice to Section 7.7).
- 7.6 The **Purchaser** shall forthwith repay to the **Seller** the documented costs of obtaining and maintaining in force permits and approvals necessary to perform the **Agreement**, and specifically the fees for obtaining the **Production Concession** and the royalties payable under the Geological and Mining Law.
- 7.7 The **Purchaser** shall forthwith repay to the **Seller** the documented costs relating to the production of the **Gas** and the operation of the **Mining Installations**, including the fees paid to the **Operator**, the fees payable to the real estate owners, the costs of periodic tests conducted on the field, and the costs of maintenance or repair of the **Mining Installations**.
- 7.8 The **Purchaser** shall provide the **Seller** with access to the real estate, necessary to perform the operations referred to in Section 7.1, and the right to use this real estate for a period no shorter than the term of the **Agreement**.
- 7.9 The **Purchaser** shall conduct, using its own resources but for and on behalf of the **Seller**, administrative proceedings aimed at obtaining all permits and approvals necessary to construct and operate the **Mining Installations**, except for the **Production Concession**.
- 7.10 The **Purchaser** shall construct, at its own expense, the **Gas Offtake System** and the **Mining Installations** not covered by the provisions of Section 7.1, by 1 December 2008.
- 7.11 Immediately after the termination of this **Agreement**, the **Purchaser** shall shut down and remove the **Gas Offtake System** and the **Mining Installations** owned by the **Purchaser**, and shall reclaim the land, at its own expense, subject to the provisions of Sections 5.3 and 8.3.
- 7.12 Once the production has been ended, the **Seller** shall shut down and remove the **Well Installations**, subject to Sections 5.3 and 8.3.

V
QUALITY OF GAS. WELL FLUIDS

§ 8

- 8.1 The pressure and chemical composition of the **Gas** at the **Delivery Point** shall depend on the field and production conditions. The **Seller** shall not be obliged to treat the **Gas** in any way. The **Purchaser** represents that it enters into the **Agreement** being fully aware of the uncertainty of the quantitative and qualitative parameters of the **Gas** (including the calorific value) and shall not raise any claims or objections on this account against the **Seller** or parties acting for the **Seller**, and shall not evade the performance of the **Agreement**, subject to the provisions of Sections 5.3 and 8.3.
- 8.2 If any of the parameters covered by the **Quality Specification** changes, the **Seller** shall notify the **Purchaser** of the fact immediately after becoming aware of the change, or shall procure such notification by the **Operator**.
- 8.3 If the qualitative parameters of the **Gas** make it unsuitable for treatment in the **Gas Offtake System**, or make such a treatment uneconomical, the **Purchaser** may request the **Seller** to end production from the **Grabówka Field**, or to terminate the **Agreement**, and the **Seller** shall not unreasonably reject such a request. If the production is ended, or this **Agreement** is terminated on the basis of this provision, the **Purchaser** shall be obliged to cover the costs of the wells plugging and abandonment and costs of shutting down and removal of the remaining **Mining Installations**, to the extent that the cost of these operations are not covered by the funds deposited in the mining establishment liquidation fund created in accordance with applicable laws. In addition, the **Purchaser** shall repay the **Seller** the costs relating to the premature termination of agreements with third parties (and in particular with the **Operator**) resulting from the termination of production or of the **Agreement**. If production is terminated in this way, the provisions of Section 3.4 shall apply, *mutatis mutandis*. If the **Agreement** is terminated without the termination of production, the **Parties** shall in good faith negotiate the conditions of the **Seller** taking over or using the **Mining Installations** owned by the **Purchaser**.

§ 9

- 9.1 The **Purchaser** shall off-take, on an on-going basis, all well fluids extracted from the **Grabówka Field**, directly from the wellhead.
- 9.2 The **Purchaser** agrees to utilise all fluids extracted from the **Grabówka Field**, including condensate and water, at its own cost and effort, in accordance with the relevant regulations, and shall, among other things, obtain all the relevant permits and pay the necessary fees. Therefore, the **Seller** transfers the ownership of well fluids to the **Purchaser** without a separate remuneration.
- 9.3 The ownership of well fluids shall pass to the **Purchaser** at the time the fluids pass the wellhead exit valve.

VI DELIVERY POINT

§ 10

- 10.1 All the **Gas** shall be delivered by the **Seller** and taken by the **Purchaser** at the **Delivery Point**.
- 10.2 At the **Delivery Point**:
- (a) the title to the **Gas**;
 - (b) the benefits and burdens related to the title to the **Gas**;
 - (c) the risk of loss or quality deterioration of the **Gas**;
 - (d) all risks related to the physical and chemical properties of the **Gas**;
- shall pass from the **Seller** to the **Purchaser**.
- 10.3 Appendix No. 1 includes a description of the **Metering System** and of the **Delivery Point**. The **Metering System** shall be installed downstream of the **Delivery Point** on the **Purchaser's** side. Appendix No. 1 specifies the methods and procedures for taking measurements of the quantity and other relevant parameters of the **Gas**. All issues related to the measurement of the **Gas** that are not specifically addressed in Appendix No. 1 shall be governed by the company standards of the Polish Oil and Gas Company "MEASUREMENTS OF GASEOUS FUELS" (4000 series).
- 10.4 The **Seller** shall have the right to be present, at its own expense, during the installation, reading, cleaning, replacement, fixing, inspection, examination, verification, calibration or regulation of the **Metering System**.

VII MEASURING. DISPUTES REGARDING QUANTITY

§ 11

- 11.1 The **Purchaser** shall ensure, in accordance with § 7, that the **Metering System** is installed and maintained in good working order and condition. The **Purchaser** shall ensure that the **Metering System** is checked and its accuracy is verified no less than once every three months, or more frequently if required by the applicable regulations. The **Purchaser** shall notify the **Seller** of any planned checks or verification at least three (3) days in advance.
- 11.2 If any component of the **Metering System** is found to be malfunctioning, the **Purchaser** shall ensure the repair or replacement of that component as soon as possible, and the **Monthly Statements** covering the period since the previous check and verification of the **Metering System** shall be adjusted in accordance with the rules set forth in Appendix No. 1, as soon as possible.
- 11.3 Based on the adjusted **Monthly Statement(s)**, the **Seller** shall correct its invoices covering the relevant periods within five (5) days of the adjustment, and any resulting differences in the amounts payable shall be settled within thirty (30) days of the adjustment. The differences shall be subject to statutory interest on the amounts overpaid or underpaid, in accordance with Article 359 of the Civil Code, from the due date of amounts invoiced incorrectly until reimbursement or payment of the amounts resulting from the adjustment, as appropriate.
- 11.4 Either **Party** may request additional checks and verification of the accuracy of the **Metering System** at any time.

§ 12

- 12.1 In the event of a dispute concerning the quantity of the **Gas** delivered, the **Parties** shall immediately appoint an *ad hoc* panel consisting of an equal number of (but no more than two (2)), representatives from each of the **Purchaser** and the **Seller**, which shall attempt to resolve the dispute.
- 12.2 If the panel is not appointed within five (5) days, or is unable to resolve the dispute within one (1) month from its appointment, then the dispute shall be resolved by an independent expert appointed jointly by the **Parties**. If the **Parties** fail to agree on the appointment of the expert within five (5) days from either **Party** first proposing a candidate or candidates to the other, the expert shall be appointed by the Scientific and Technical Association of Oil and Gas Engineers. The cost of the expert's resolution shall be covered by the **Parties** equally.
- 12.3 The **Parties** agree that the resolution by the expert, pursuant to Section 12.2 above, shall be final and binding and they shall comply with it, save in case of manifest error or acting in bad faith. To avoid any doubt, the resolution by the expert shall not constitute arbitration.

§ 13

- 13.1 Information concerning the quantity parameters of the **Gas** sold shall be compiled in the form of statements covering every **Contract Month (Monthly Statements)**.
- 13.2. **Monthly Statements** shall be made by the **Seller**, based on daily reports prepared according to the guidelines contained in Appendix No. 1, within two (2) **Business Days** after the end of the **Contract Month** in which the delivery occurred.
- 13.3 **Monthly Statements** shall include the following information:
- (a) the **Daily Nominated Quantities** for each **Contract Day** of the **Contract Month**;
 - (b) the quantities of the **Gas** delivered by the **Seller** to the **Purchaser** for each **Contract Day** of the **Contract Month**;
 - (c) the **Gas Price** in respect of the **Gas** delivered in the **Contract Month**;
 - (d) details of any other charges that may arise under this **Agreement**; and
 - (e) the total amount payable by the **Purchaser** to the **Seller**.
- 13.4 If the **Purchaser** disputes any quantity or amount, or any other piece of information stated in a **Monthly Statement**, it shall notify the **Seller**, providing the details, within seven (7) **Business Days** following the receipt thereof. In such an event, the **Parties** shall communicate immediately and shall attempt to resolve the dispute within three (3) **Business Days**.
- 13.5 If the **Parties** do not reach an agreement within the time specified in Section 13.4 above, any dispute concerning the quantity or quality of the **Gas** delivered shall be resolved by an independent expert in accordance with Section 12.2 above, and any other dispute shall be resolved in accordance with §24 below.

VIII PRICE

§ 14

14.1 Subject to other provisions hereof, the **Purchaser** shall pay the **Gas Price (PGU)** for all the **Gas** delivered and taken.

14.2 **Gas Price (PGU)** shall be expressed in PLN/1000 m³ and calculated according to the following formula:

$$PGU = 60 * K + R + Op$$

Where:

K = the mid-exchange rate of the Polish zloty against the US dollar, published by the President of the National Bank of Poland for the last day of the **Contract Month** concerned, and if no such a rate is published for that day, the rate published for the closest subsequent day shall apply.

R – a supplementary rate on account of the reduction of development costs, calculated as the product of a coefficient equaling 10⁻⁴ (ten to the power of minus four) and ½ (half) of the positive difference between the planned value of net expenditures on the development of the **Grabówka Field**, amounting to PLN 12,400,000 (twelve million, four hundred thousand Zloty) and the actual value of those expenditures, covered by the **Purchaser** in accordance with § 7 (not including the costs of constructing the **Gas Offtake System** or the **Mining Installations** not constituting **Well Installations**) incurred up to the date of obtaining the **Production Concession**. The supplementary rate R shall apply after obtaining the **Production Concession**, with respect to the first 10 MM. (ten million) Nm³ of **Gas** purchased hereunder since the beginning of the **Contract Month** following the month in which the **Production Concession** is obtained. Once the **Purchaser** has purchased 10 million Nm³ of **Gas**, starting from the **Contract Month** specified above, the supplementary rate R shall be zero with respect to further quantities of **Gas**. If the difference referred to above is negative, the supplementary rate R shall be zero.

Op – a supplementary rate on account of the Operator's operating costs calculated for each **Contract Year** as the quotient of the **Operator's** total remuneration in the given **Contract Year** and the quantity of **Gas** sold under the **Agreement** in the same period (expressed in thousand Nm³), provided that the Op rate applicable in each **Contract Year** shall be calculated on the basis of the costs and sales planned by **Seller** for the given **Contract Year**. Within 15 days of the lapse of the **Contract Year**, the **Seller** shall present the **Purchaser** with a calculation based on actual figures, and the difference, if any, shall be settled in the invoice for the following **Contract Month**.

14.3 Numbers used in the calculation of the **Gas Price** shall be rounded up or down to the fifth (5) decimal place, and the resulting **PGU** values shall be rounded up or down to the second (2) decimal place. Numbers shall be rounded down if the digit subject to rounding is in the range between 0 and 5 inclusive, and shall be rounded up if the digit subject to rounding is in the range between 6 and 9.

14.4 The **Gas Price** and all other amounts stated herein are net of VAT, excise, any similar tax or public charges. The **Purchaser** shall pay the **Seller** (or the relevant tax administration, if so required by the applicable regulations) all amounts due in respect of the VAT, excise and any other indirect or similar taxes or public charges imposed with respect to the delivery and sale of the **Gas** hereunder.

- 14.5 To the extent not covered by Section 14.4, the **Seller** shall be responsible for the payment of the royalties in accordance with the Geological and Mining Law (subject to § 7), as well as all taxes or any other public charges imposed in respect of the recovery, production, processing, transportation, supply or sale of the **Gas** to the **Delivery Point**, and the **Purchaser** shall be responsible for the payment of all taxes or any other public charges charged or imposed in respect of the **Gas** downstream of the **Delivery Point**.

IX INVOICING AND PAYMENTS

§ 15

- 15.1 Invoices shall be issued within ten (10) **Business Days** after the end of each **Contract Month**, based on the **Monthly Statements** and taking into account any adjustments thereto that may have been agreed upon and made by the **Parties**.
- 15.2 The amounts due shall be paid by wire transfer from the bank account of the **Purchaser** to the bank account notified in writing by the **Seller**, within fourteen (14) days following receipt of the original invoice by the **Purchaser**.
- 15.3 Each of the **Parties** represents to the other that it is a VAT payer.
- 15.4 The **Purchaser** authorises the **Seller** to issue invoices without the **Purchaser's** signature.

§ 16

- 16.1 Payment shall be deemed to be made on the date of crediting the bank account of the recipient.
- 16.2 If any of the **Parties** defaults in its payment obligations hereunder, it shall pay the other **Party** interest on the amount in default at a rate equal to the statutory rate established pursuant to Article 359 of the Polish Civil Code, calculated for each day of the default. If the statutory rate ceases to be published, the applicable rate shall be agreed upon by the **Parties** in an annex hereto. Interest for default shall be payable against an appropriate accounting document.
- 16.3 The **Parties** shall notify each other of any changes in the description or the number of their respective bank accounts, and their notice shall specify both the former and the current account details. A **Party** that defaults in these obligations shall indemnify the other for all losses resulting from the default.

§ 17

- 17.1 Any complaints regarding invoices must be made in writing within ten (10) **Business Days** after receipt.
- 17.2 If the complaint refers to a manifest error (e.g. a mathematical error or a manifestly exorbitant amount), then the **Party** receiving the invoice shall be authorised to calculate the correct amount and pay such correct amount only within the time specified in Section 15.2, provided that it gives the issuing **Party**, no later than on the date of payment, a written notice explaining its calculation. The latter **Party** shall issue a correction invoice without any delay, after agreeing the correct amount with the former.
- 17.3 If any **Party** disputes an invoice for reasons other than those stated in Section 17.2, it shall pay the undisputed amount, if any, within the time specified in Section 15.2 and shall undertake steps aimed at the resolution of the dispute in accordance with §12 or §24 hereof, depending on the nature of the dispute.

- 17.4 If a dispute arises out of any matter in this Chapter IX, the **Purchaser** shall have the right, at reasonable hours upon giving reasonable notice, to examine the books, records and charts of the **Seller** to the extent necessary to verify the accuracy of any **Monthly Statement** or any charge or computation made pursuant to any provisions of this **Agreement**. If any such examination reveals an inaccuracy in any **Monthly Statement**, the **Seller** shall adjust such statement promptly. Any examination of the books, records and charts of the **Seller** by the **Purchaser** shall be carried out at the sole cost and expense of the **Purchaser**, unless such examination reveals an inaccuracy in any **Monthly Statement** which results in a repayment by the **Seller** to the **Purchaser** of amounts in excess of one (1) percent of the total amount specified as being payable in the relevant statement, in which case the **Seller** shall also reimburse the **Purchaser** for its costs and expenses incurred in carrying out the examination.
- 17.5 Neither a complaint concerning an invoice other than with respect to an issue referred to in Section 17.2 above, nor the occurrence of any dispute referred to in Section 17.3 above, shall release a **Party** from its duty to timely pay any undisputed amounts due.
- 17.6 The provisions of this Chapter IX shall also apply, *mutatis mutandis*, to payment against, and complaints concerning, other accounting documents.

X OPERATOR. PRODUCTION CONCESSION

§ 18

- 18.1 Subject to the public procurement regulations in force, the **Seller** shall enter into an agreement for the performance of the function of the **Operator** with an entity nominated by the **Seller** and approved by the **Purchaser**.
- 18.2 If the **Operator** is a company affiliated with the **Purchaser** (within the meaning of the Commercial Companies Code) or other entity controlled by the **Purchaser**, the **Seller** shall not be liable for any **Breach** caused by the **Operator**'s act or omission.
- 18.3 The **Seller** shall prepare a development plan for the **Grabówka Field** in accordance with the applicable regulations and shall apply for the **Production Concession** within a period enabling the issue of this concession before the expiry of the permitted trial production under the **Exploration Concession**, unless the **Parties** agree that the production should be shut down upon the expiry of this period at the latest.

XI PLANNED MAINTENANCE WORK

§ 19

- 19.1 In any **Contract Year**, each of the **Parties** shall be entitled to conduct **Planned Maintenance Work** in accordance with a mutually agreed schedule, provided that the total duration of the **Planned Maintenance Work** of either **Party** shall not exceed fourteen (14) **Contract Days** in any **Contract Year**. If either **Party** expects to require a longer period than fourteen (14) **Contract Days** to perform **Planned Maintenance** in any **Contract Year**, it shall request the other to allow an extended period and the other **Party** shall not refuse its consent unreasonably.
- 19.2 If no schedule is agreed for a given **Contract Year**, each of the **Parties** shall carry out its **Planned Maintenance Work** in the second half of August.
- 19.3 In addition, the **Parties** shall inform each other, in writing, of the date of commencing any **Planned Maintenance Work**, no less than fourteen (14) calendar days in advance.
- 19.4 During the period of the **Planned Maintenance Work**, each **Party** shall have the right to interrupt or decrease, as appropriate, the delivery or take of the **Gas**, if necessary.

XII TERMINATION

§ 20

- 20.1 The **Agreement** shall terminate:
- (a) on the **Production Closure Day**;
 - (b) upon notice of either **Party**, which each Party is entitled to give if the **Production Concession** expires or is terminated and is not replaced or otherwise remedied within six (6) months; provided that if the expiry or termination is due to either **Party**'s fault, that shall constitute a **Breach**; or
 - (c) as specified in Sections 5.3, 8.3 and 21.2.
- 20.2 Termination of the **Agreement** shall be without prejudice to any **Party**'s receivables, rights, remedies or claims based hereon, and shall not affect any obligations that are expressly stated to survive termination.

§ 21

- 21.1 If any of the following circumstances occur:
- (a) a **Party** fails to pay to the other an amount due and payable hereunder, unless reasonably disputed, if the default continues for at least sixty (60) days and the amount in default is at least equal to the ten (10) times the **Maximum Hourly Take** multiplied by the **Gas Price** applicable as of the first day of that **Contract Year**; or
 - (b) a **Party** becomes insolvent, or enters into proceedings aimed at arrangements with its creditors pursuant to the laws governing bankruptcy and recovery proceedings, or enters into liquidation;
- the other **Party** may terminate this **Agreement** pursuant to Section 21.2 below.
- 21.2 The **Party** entitled to terminate the **Agreement** for reasons specified in Section 21.1 above, shall give the other a reasoned and properly documented written notice specifying the reasons and date of termination of the **Agreement**. The termination date cannot be earlier than thirty (30) days after delivery of the notice to the other **Party**. The **Party** providing the other with a notice of termination shall be entitled to immediately suspend the delivery or offtake of **Gas**, as applicable. During the notice period, the **Parties** shall attempt to remedy the reasons and effects of the termination event. If these efforts are unsuccessful, or if they cannot be successful for objective reasons, the **Agreement** shall terminate on the day specified in the notice, or on such other day as the **Parties** may agree.

XIII FINAL PROVISIONS

§ 22

- 22.1 In addition to the **Agreement**, relationships between the **Seller** and the **Purchaser** shall be governed by:
- (a) The Geological and Mining Law of 4 February 1994 (Dz. U. No. 27, Item 96, as amended);
 - (b) The Ordinance of the Minister of the Economy dated 28 June 2002 concerning health and safety at work, operations management and specialised fire protection in mining establishments extracting minerals through wells (Dz.U. No. 109, Item 961);

- (c) The Ordinance of the Minister of the Economy dated 11 August 2000 concerning inspections conducted by energy enterprises (Dz. U. No. 75, Item 866);
- (d) The Civil Code dated 23 April 1964 (Dz. U. No. 16, Item 93, as amended);
- (e) The Law on Measurements of 11 May 2001 (Dz. U. of 2004 No. 243, Item 2441, as amended);

§ 23

- 23.1 Unless this **Agreement** specifically states otherwise, each **Party** shall be liable to the other for a failure to act with due care in performing its obligations.
- 23.2 Unless liability for the given **Breach** is excluded by the provisions hereof, or by applicable law, then the injured **Party** can claim compensation for documented damages resulting directly from such **Breach**, excluding loss of profit (*lucrum cessans*). In any event, the aggregate liability of either **Party** in respect of any such **Breach** (other than a default of any express payment obligations) occurring in any **Contract Year** shall be limited to PLN 12,400,000 (twelve million, four hundred thousand Zloty).

§ 24

- 24.1 The **Parties** shall attempt to resolve all disputes arising out of or in connection with this **Agreement** by direct negotiations. If the **Parties** do not resolve the dispute within three (3) months from the delivery of either **Party**'s invitation to negotiations to the other, the dispute shall be resolved by arbitration under the UNCITRAL Arbitration Rules in force at the time the notice to enter into arbitration is delivered by either **Party** to the other **Party**.
- 24.2 The arbitral tribunal shall consist of three (3) arbitrators. Each **Party** to the dispute shall appoint one (1) arbitrator. The two arbitrators appointed by the **Parties** shall, by agreement, appoint the third arbitrator. In default of an agreement within fourteen (14) days, one **Party** to the dispute may require the appointment of the third arbitrator, in which case the third arbitrator shall be appointed by the President of the Polish Arbitration Association (*Prezes Polskiego Stowarzyszenia Sadownictwa Polubownego*).
- 24.3 The venue of arbitration proceedings shall be Warsaw. The majority decision of the arbitral tribunal shall be final and binding upon the **Parties**.
- 24.4 Without prejudice to Sections 17.2 and 17.3, the existence of any dispute shall not excuse either **Party**'s performance of its obligations hereunder.
- 24.5 The provisions of this §24 shall survive the termination of this **Agreement**.
- 24.6 If the **Parties** agree on any interpretation of this **Agreement**, such an interpretation shall become binding thereon once signed by all the **Parties**.

§ 25

- 25.1 Any transfer to a third party of the rights and obligations arising hereunder without the consent of the other **Party** shall be null and void, unless permitted under the provisions below.
- 25.2 Any monetary receivables accruing hereunder shall be freely assignable.
- 25.3 Either **Party** shall be entitled, without the prior consent of the other, to assign, pledge or establish another security interest in all or any of their rights, interests, benefits and obligations under this **Agreement** to a bank or another financial institution, to secure the payment of any indebtedness incurred or to be incurred.

- 25.4 The **Seller** may transfer its rights and obligations hereunder to its **Affiliate**, if such transferee is, in the reasonable opinion of the **Purchaser**, capable of meeting the obligations of the **Seller** under this **Agreement**, together with any other obligations the transferee may have.
- 25.5 The **Purchaser** may transfer its rights and obligations hereunder to an **Affiliate** or any other party, if such transferee is, in the reasonable opinion of the **Seller**, capable of meeting the obligations of the **Purchaser** under this **Agreement**, together with any other obligations the transferee may have.
- 25.6 The **Party** transferring its rights and obligations shall not be released from its obligations under the **Agreement**, unless and until the transferee takes over (subject always to the other **Party's** consent, which shall not be unreasonably withheld), by way of a written instrument, all obligations arising under this **Agreement** in relation to the other **Party**.

§ 26

Each **Party** shall, and shall cause its and its **Affiliates'** directors, officers, employees and agents (jointly called below "**Representatives**") to keep in strict confidence all information and data furnished or obtained pursuant to this **Agreement**, including the terms and conditions of this **Agreement**, except as and to the extent that the other **Party** consents in writing to the disclosure of such data, information or terms. The above shall not apply to data or information:

- (a) which, at the time of its disclosure, is in the public domain as evidenced by printed publication or otherwise, without a breach of this confidentiality obligation by fault of any **Party** or its respective **Representatives**;
- (b) which is required to be disclosed by any law (including any law applicable to an **Affiliate** of any **Party**) or by the order of any public authority issued pursuant to the law, or the rules of any official regulated securities market on which the shares or other securities of a **Party** or any **Affiliate** of a **Party** are listed;
- (c) which is obtained by a **Party** from a third party who is lawfully in possession of such information or data and not subject to any contractual or fiduciary relationship which would preclude its disclosure;
- (d) required by a bank or other financial institution (and its employees, agents and consultants) that is providing, or proposing to provide, finance to the **Party** wishing to disclose such information, provided that the bank or financial institution has entered into a written agreement with the disclosing **Party** to keep such information secret and confidential;
- (e) disclosed to consultants, lawyers and other advisers of the **Party** provided that such consultants have entered into a written undertaking with the disclosing **Party** to keep the information disclosed to it confidential or are bound by confidentiality obligations pursuant to the laws governing their profession; and
- (f) disclosed to bona fide potential assignees or transferees of a **Party's** rights or obligations under this **Agreement**, or its interest under the **Joint Operating Agreement**, provided that such potential assignees or transferees have entered into a written undertaking with the disclosing **Party** to keep the information disclosed to it confidential.

The provisions of this § 26 shall remain in force for a period of five (5) years after the termination of this **Agreement**.

§ 27

- 27.1 Except as otherwise specifically provided, all notices authorised or required between the **Parties** by any of the provisions of this **Agreement**, shall be in writing, in Polish, and delivered in person or by registered mail or by courier service, with acknowledgement of receipt, or by any electronic means of transmitting written communications which provides written confirmation of completed transmission. The originating notice given under any provision of this **Agreement** shall be deemed delivered only when received by the **Party** to whom such notice is directed, and the time for that **Party** to deliver any notice in response to such originating notice shall run from the date the originating notice is received. Any communications shall be delivered to the following addresses of the **Parties** (or such other address as the **Party** concerned may communicate to the other in accordance herewith):

Purchaser: PL Energia S.A.
Krzywopłoty 42
72-230 Karlino
Attention: Piotr Buszka, President of the Management Board
Phone: +48 94 311 300 00
Fax: +48 94 311 300 00

Seller: FX Energy Poland Sp. z o.o.
Ul. Chałubińskiego 8
00-613 Warsaw Poland
Attention: Zbigniew Tatys, Country Manager
Phone: +48 22 6306633
Fax: +48 22 6306632

Each time with a copy to:
FX Energy, Inc.
3006 Highland Drive # 206
Salt Lake City
Utah 84106 USA
Attention: Clay Newton
Phone: +1 801 486 5555
Fax: +1 801 486 5575

- 27.2 Any amendment to the provisions of this **Agreement** must be in the form of a written annex or shall be null and void.
- 27.3 This **Agreement** constitutes the full understanding between the **Parties** and supersedes all prior negotiations, correspondence or agreements regarding the sale of gas from the **Grabówka Field**.
- 27.4 This **Agreement** is executed in Polish and English, in two identical counterparts of each language versions, one for each of the **Parties**. In the event of any discrepancies between the two language versions, the Polish version shall prevail.
- 27.5 The **Parties** agree to act with due care to agree on the contents of Appendix No. 1 by [] 2007. Appendix No. 1, when agreed upon and signed, shall constitute an integral part of this **Agreement**, provided that any amendment thereto shall not constitute an amendment to the **Agreement**. Should the **Parties** fail to reach an agreement and execute Appendix No. 1 by the said date, they shall meet as soon as practicable thereafter to discuss the situation and agree as to the continuation of this **Agreement**.

SELLER
FX ENERGY POLAND Sp. z o.o.
By /s/ Zbigniew Tatys

PURCHASER
PL Energia S.A.
By /s/

APPENDIX NO. 1

TECHNICAL CONDITIONS OF GAS DELIVERY

Should cover the following matters:

- 1. Quality Specification (along with information on which changes in the Gas parameters are material changes).*
- 2. Description and chart of the Mining Installations and Delivery Point.*
- 3. Methods and procedures for measuring quantity and quality (including pressure and temperature) of the Gas delivered.*
- 4. Rules for adjusting Monthly Statements if the Metering System malfunctions.*
- 5. Guidelines for preparing daily reports constituting the basis for the Monthly Statements.*
- 6. Gas quantity nomination procedures.*

APPENDIX NO. 2

SCHEDULE OF EXPENDITURES

No.	Item	Estimated timing	Estimated net value, excl. VAT
1	Reworking of 3 wellheads, acidization, completion	June - October 2007	PLN 3,000,000
2	Acquisition of rights to geological documentation	June 2009	PLN 9,400,000 with possible payment by instalments
	TOTAL		PLN 12,400,000

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-80489, 333-104792, 333-110345 and 333-112058) and the Registration Statement on Form S-8 (No. 333-112717) of FX Energy, Inc. and subsidiaries of our report dated March 9, 2007, relating to the financial statements, management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP
Salt Lake City, Utah
March 9, 2007

CONSENT OF PETROLEUM ENGINEERING CONSULTANT

I consent to the use of my report respecting the estimated oil reserve information as of December 31, 2006, for the Montana and Nevada producing properties of FX Energy, Inc. (the “Company”), and the discussion of such report as contained in the Company’s annual report on Form 10-K for the year ended December 31, 2006, and to the incorporation by reference of such report, as it is referred to in the Company’s annual report, into the following registration statements:

<u>Form</u>	<u>SEC File No.</u>	<u>Effective Date</u>
S-3	333-80489	June 30, 1999
S-3	333-104792	October 27, 2003
S-3	333-110345	November 18, 2003
S-3	333-112058	February 11, 2004
S-8	333-112717	February 11, 2004

Larry D. Krause

/s/ Larry D. Krause
 Billings, Montana
 March 8, 2007

[RPS Energy Letterhead]

CONSENT OF INDEPENDENT PETROLEUM ENGINEERS

We hereby consent to the use of the name RPS Energy and of references to RPS Energy and to the inclusion of and references to our report, or information contained therein, dated February 13, 2007, prepared for FX Energy in the FX Energy, Inc. annual report on Form 10-K for the year ended 31st December 2006, and the incorporation by reference to the report prepared by RPS Energy into FX Energy, Inc.'s previously filed registration statements listed below.

<u>Form</u>	<u>SEC File No.</u>	<u>Effective Date</u>
S-3	333-80489	June 30, 1999
S-3	333-104792	October 27, 2003
S-3	333-110345	November 18, 2003
S-3	333-112058	February 11, 2004
S-8	333-112717	February 11, 2004

RPS Energy

/s/ Francis Boundy
Francis Boundy
Director

8 March 2007

CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO RULE 13a-14

I, David N. Pierce, certify that:

1. I have reviewed this annual report on Form 10-K of FX Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: March 12, 2007

/s/ David N. Pierce
David N. Pierce
Chief Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO RULE 13a-14

I, Clay Newton, certify that:

1. I have reviewed this annual report on Form 10-K of FX Energy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: March 12, 2007

/s/ Clay Newton
Clay Newton
Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of FX Energy, Inc. (the "Company") on Form 10-K for the year ended December 31, 2006, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David N. Pierce, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge and belief:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ David N. Pierce
David N. Pierce
Chief Executive Officer
March 12, 2007

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of FX Energy, Inc. (the "Company") on Form 10-K for the year ended December 31, 2006, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Thomas B. Lovejoy, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge and belief:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Clay Newton
Clay Newton
Chief Financial Officer
March 12, 2007

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.