District of British Columbia
Division No. 3 - Vancouver
Court No. VLC-S-B-200204
Estate No.11-2634864

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF ENCOREFX INC.

NOTICE OF MOTION

TAKE NOTICE that a Motion will be made by Ernst & Young Inc. ("**EY**"), in its capacity as trustee in bankruptcy (the "**Trustee**") of EncoreFX Inc. ("**EncoreFX**" or the "**Company**"), coming on for hearing via teleconference with the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on May 11, 2020 at 9:00 am for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An Order abridging the time for service and hearing of the within Notice of Motion.
2. Directions, pursuant to s. 34(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "***BIA***"), as to the Trustee's power to complete the transaction contemplated by the Global Reach APA (defined below) (Appendix "A" to the Second Report of Ernst & Young Inc., Trustee of EncoreFX Inc., effective as at May 5, 2020 (the "**Second Report**")), prior to the appointment of inspectors.
3. An Order, in substantially the form of draft Order attached hereto as **Schedule "A"**, permitting the Trustee to act in accordance with the directions provided under para. 2 above.
4. An Order, in substantially the form of draft Approval and Vesting Order attached hereto as **Schedule "B"**, in respect of the transaction contemplated by the Global Reach APA (as defined below).
5. An Order, in substantially the form of draft Order attached hereto as **Schedule "C"**, that Affidavit #1 of Mike Bell, made May 6, 2020, including all Exhibits thereto, be filed under seal pending further Order of the Court.
6. Such further relief as the circumstances may require and as this Honourable Court deems appropriate.

Part 2: FACTUAL BASIS

1. Unless otherwise defined herein, the Trustee adopts the definitions as used in the First Report of Ernst & Young Inc., Trustee of EncoreFX Inc., Effective as at April 22, 2020 (the "**First Report**"), and the Second Report.

Introduction

2. On March 30, 2020 (the "**Bankruptcy Date**"), EncoreFX filed an assignment into bankruptcy. EY consented to act as the licensed insolvency trustee in the estate of EncoreFX (the "**Estate**").

3. The first meeting of creditors (the "**FMOC**") is scheduled to occur on May 7, 2020 after the Trustee sought and obtained approval from the OSB for an extension to the day for the FMOC.

5. Given that a FMOC has not yet been convened in this matter, there are currently no inspectors appointed in the Estate.

6. In its First Report, the Trustee provided this Honourable Court with, *inter alia*, background information pertaining to EncoreFX; and sought directions in respect of, a) the procedure for a First Meeting of Creditors, b) a letter of intent for the sale of the US Subsidiary, and c) other matters pertaining to the EncoreFX Derivatives.

7. The purpose of the Second Report is to provide this Honourable Court with respect to the following:

    i) the sales process undertaken by the Trustee in respect of the sale of a portion of the assets of the Company; and

    ii) the Global Reach APA (defined below) for the sale of certain assets and infrastructure of the Company;

    and to seek approval in respect of:

    iii) the Approval and Vesting order with respect to the sale of the Canadian Business Infrastructure (defined below).

Condensed Background Information

8. EncoreFX is a Federal Corporation incorporated under the *Canada Business Corporations Act*. EncoreFX Ltd., EncoreFX (Australia) Pty Ltd., and EncoreFX (NZ) Limited are wholly owned foreign subsidiaries of EncoreFX.

9. EncoreFX was incorporated on September 15, 2014, and began operating with its head office in Victoria, British Columbia. Over the next few years, EncoreFX opened branch offices in the cities of Vancouver, Calgary, Edmonton, Saskatoon, Regina, Winnipeg, Toronto, Ottawa, Kitchener, and Mississauga (the "**Canadian Business**"). EncoreFX employed a workforce of approximately 150 personnel in the Canadian Business as at the Bankruptcy Date.

10. EncoreFX also established subsidiaries in Australia and New Zealand due to those countries having similar economic conditions to Canada and it carried on significant operations in those Countries.

11. EncoreFX is in the business of providing foreign exchange ("**FX**") risk management and cross-border payment services predominantly to small and medium enterprises ("**SME**") that import or export products from/to foreign markets and base their pricing on foreign currencies. The Company provided the following FX risk management services to its clients to mitigate their exposure to fluctuating FX rates: FX spot transactions and FX derivative contracts (including forward contracts and options) (the "**The EncoreFX Derivatives**"). It should be noted that EncoreFX's primary client base were not speculators.

12. The Australian and New Zealand subsidiaries were also placed into Voluntary Administration (formal insolvency proceedings in those Countries). EY is acting as the Administrator in insolvency proceedings of the Australia and New Zealand entities.

13. Following the bankruptcy, and given that trading with respect to new transactions had been suspended, the Trustee:

    i) made the determination to retain 57 employees (the "**Retained Employees**") to assist the Company in its efforts to wind-down or sell the Company (discussed in further detail below); and

    ii) terminated the employment of all other personnel (approximately 79 employees).

The Sales Process

14. In paragraphs 75 to 84 of First Report, the Trustee provided this Honourable Court with a summary of the Trustee's efforts with respect to the "**Sales Process**". This summary included a discussion with respect to, *inter alia*:

    i) the urgency and narrow window to complete a sale if one were to occur;

    ii) the informal process undertaken by the Trustee with respect to the possible sale of all or part of the Company; and in particular:

        a. given the high-profile nature of this bankruptcy, numerous parties approached the Trustee with varying degrees of interest to acquire all or parts of the Company; and the Trustee engaged in discussions with those parties; and

        b. the Trustee, through a senior representative of Ernst & Young Corporate Finance, also approached fifteen (15) parties including potential strategic inquirers to solicit their interest in an acquisition of EncoreFX in whole or in part (collectively, the "**Prospective Purchasers**"); and

    iii) The Trustee had executed non-disclose agreements ("**NDAs**") with fourteen (14) distinct parties (the "**Prospective Purchasers**"); and provided those parties with a summarized Confidential Information Memorandum ("**CIM**"), preliminary information about EncoreFX, and made itself and management available on short notice (24 hours a day, 7 days a week) to answer any questions and respond to information requests.

15. Throughout the Sales Process, the Trustee facilitated numerous information requests and meetings between the Prospective Purchasers and EncoreFX management. While this condensed, informal Sales Process resulted in engagement with a number of parties, in the end, many Prospective Purchasers cited the COVID-19 pandemic, reputational concerns caused by the bankruptcy of EncoreFX, client attrition and travel restrictions (which prevented in-person due diligence and management meetings) as reasons for not being able to proceed with an acquisition of the Company; and to date, the Trustee received four (4) formal and informal expressions of interest to acquire segments of the Company, including a sale of the shares of the US Subsidiary ("**EOIs**").

16. The four (4) formal and informal expressions of interest to acquire segments of the Company (the "**EOIs**") were as follows:

    i) one (1) EOI contemplated the acquisition of the US Subsidiary and resulted in the US Subsidiary LOI; and

    ii) three (3) EOIs contemplated the acquisition of select assets comprising the Canadian Business.

<u>The Global Reach APA</u>

Background

17. The most attractive of the EOIs received for select assets of the Canadian Business was received on or around April 19, 2020 from Global Reach Group Limited ("**Global Reach**"). Global Reach is a United Kingdom ("**UK**") based company that provides similar FX backed risk management services and cross-border payment solutions to EncoreFX before it ceased trading.

18. Between April 19, 2020 and April 29, 2020, Global Reach undertook substantive due diligence and the Trustee and Global Reach negotiated and executed a "**Term Sheet**" as between the Trustee (the "**Vendor**") and Global Reach Financial Solutions Inc., a newly formed Canadian subsidiary of Global Reach (the "**Proposed Purchaser**").

19. On May 4, 2020, the parties executed a fully negotiated asset purchase agreement (the "**Global Reach APA**"), pursuant to which Global Reach agreed to acquire (or the option to acquire) the Company's infrastructure to operate a business of providing FX risk management and cross-border payment services in Canada. A copy of the Global Reach APA is attached as Appendix "A" to the Second Report. Certain of the assets identified in Schedule E (Optional Purchased Assets) to the Global Reach APA are listed as being in the possession of certain current and former personnel of the Company in the "Additional Notes" column. The Trustee has redacted the names on Schedule E to ensure privacy for those individuals. No other information in the Global Reach APA is redacted.

20. The basic concept behind the Global Reach APA is as follows:

i) only certain assets as described in a schedule to the APA (the "**Required Purchased Assets**") will be acquired by the Purchaser on Closing. The Required Purchased consist primarily of:

   a. all intellectual property used in the operations of the Canadian Business;

   b. client data, transactional data and all other business data which relates to the Canadian Business; and

   c. all tangible assets in the possession of the Trustee immediately prior to the Closing that are not the Excluded Assets (as defined below) or the Optional Purchased Assets (as defined below), including:

      a. the books and records of the Company;

      b. all regulatory materials and documents;

      c. all handbooks and manuals relating to policies and procedures: and

      d. office assets including telephone and computer equipment, as well as office furniture in the Vancouver and Calgary offices

      (collectively defined as the ("**Canadian Business Infrastructure**").

ii) certain other assets of the Company (as described in the Schedule "D" to the Global Reach APA) will be vended to the Purchaser at the option of the Purchaser following the Closing (the "**Optional Purchased Assets**") including the leases and office furniture in each of the Company's other branches;

iii) the APA excludes all financial assets including, cash, accounts receivable, prepaid expenses, and investments in subsidiaries and most notably all open EncoreFX Derivatives (the "**Excluded Assets**"). The "**Book Values**" of the Excluded Assets as described in the First Report are summarized below:

	Book Value

	(in CAD)
Cash balances	13,200,000
Collateral posted with Liquidity Providers	15,300,000
OTM Positions	77,000,000
Investment in subsidiaries	
Encore FX Ltd. (USA)	1,968,000
EncoreFX (Australia) Pty Ltd.	2,665,000
EncoreFX (NZ) Limited	1,715,000
	111,848,000

iv) the Purchaser will re-hire approximately 70 current and former employees of EncoreFX (the "**Transitioned Employees**");

v) the Purchaser and the Vendor will enter into a "**Transition Services Agreement**" whereby the Vendor will:

a. at the cost and expense of the Purchaser, ensure that the Optional Purchased Assets, including all of the Company's leased premises, are made available for the Purchaser's use in the operation of its business during a transition period; and

b. provide the Vendor with:

a. accounting, treasury, and credit risk services necessary to wind down the Company, including assisting with government and tax filings and preparing statements regarding client accounts; and

b. access to all records required to support any asset recovery activities (including litigation support) regarding client accounts, in a form and cadence to be agreed between the Purchaser and the Vendor.

vi) a "**Purchase Price**" to be satisfied as follows:

a. $100,000 payable on Closing (as defined in the Global Reach APA); and

b. an earn out where the Proposed Purchaser shall pay to the Trustee an annual royalty of 3.5% on gross revenue received during the first two annual periods immediately following the Closing (the "**Earn Out**") subject to adjustments in Year 2;

vii) customary Closing conditions including, *inter alia*:

a. approval by this Honourable Court of the Global Reach APA and Vesting Order; and

b. the execution and delivery of new employment or contractor agreements between the Potential Purchasers and Transitioned Employees required to operate the business.

Vesting Order

21. As is noted above, the Closing is conditional upon the pronouncement of an Approval and Vesting Order substantially in the form as attached as Schedule G to the Global Reach APA.

Trustee's Commentary

22. The Trustee notes that financial terms proposed for the Canadian Business Infrastructure reflect the deeply distressed environment that currently exists; but nonetheless, the Trustee is of the view that the Global Reach APA is fair and reasonable and represents the only viable option that is available to preserve the Canadian Business and provide any recovery to stakeholders.

23. The Company ceased trading immediately prior to the bankruptcy and it is not currently generating any revenue. It is unlikely that any goodwill remains in the Canadian Business. The Purchaser has committed over a thousand hours in undertaking its due diligence including extensive meetings with the Company's current management team. This level of diligence has not been observed in the diligence activities undertaken by other Prospective Purchasers.

24. Qualitative factors beyond the financial terms of the Global Reach APA include the Purchaser:

i) intends to maintain a Canadian head office in British Columbia;

ii) will retain and operate the majority of the Canadian Business Infrastructure in each of the geographies note above; thereby providing suppliers, including current creditors and landlords of the Company, with a recurring customer or tenant;

iii) has advised that it will offer employment agreements to the Transitioned Employees and preserve the employment of approximately 70 current and former employees of the Company;

iv) will be required to re-start the business of EncoreFX in a very uncertain environment in challenging circumstances which will require a significant up-front cost; and

v) intends to close the transaction contemplated by the Global Reach APA as soon as possible (i.e. within days) should this Honourable Court grant the Approval and Vesting Order.

25. Lastly, and perhaps most importantly, the Transition Services Agreement requires the Purchaser to make available the Transitioned Employees and other resources to assist the Trustee in realizing on the Excluded Assets for the benefit of the Company's stakeholders and to winddown EncoreFX. The Trustee forecasts that this will result in material savings to the Estate in the within proceedings. As it currently stands, the Trustee estimates the following "**Continuing Costs**":

i) monthly payroll costs for the Retained Employees is in excess of $400,000;

ii) information technology and regulatory licensing costs is in excess of $120,000; and

iii) facility lease costs of approximately $80,000 per month.

26. Under the Transaction Services Agreement, the Trustee will pay to the Purchaser the lesser of, a) 15% of all compensation paid or payable to the Transitions Employees, and b) $14,600 per week (the "**Transition Fee**") for the first four (4) weeks after the Closing (the "**Initial Period**") which is materially lower than the Continuing Costs. Following the Initial Period, the Vendor and the Purchaser will, acting reasonably and in good faith, negotiate a new mutually agreeable Transition Fee that reflects the true costs of providing such services.

27. The Trustee is of the view that, if a sale of the Canadian Business Infrastructure is to happen, it is critical that it occur as soon as reasonably possible. The Trustee is of the view that the Sales Process leading to the proposed sale, while informal and expedited, was fair and reasonable in the circumstance.

28. The Trustee is of the view that the Global Reach APA provides the only viable path forward to preserving the Canadian Business. The likely alternative to the Global Reach APA is a liquidation, loss of employment for the Retained Employees, little to no recovery on the Canadian Business Infrastructure, and higher winddown and realization costs for the Excluded Assets.

Part 3: LEGAL BASIS

1. *BIA*, R.S.C. 1985, c. B-3, Sections 18, 19, 30 and 34.

2. *Bankruptcy and Insolvency General Rules*, C.R.C. 1978, Rule 11.

Application for Directions

3. A trustee may apply to the Court for directions in relation to any matter affecting the administration of the estate of a bankrupt and the Court shall give in writing such directions, if any, as to it appear proper in the circumstances.

BIA, s. 34(1)

4. Applications for directions have been made on a great variety of matters, including: as to the validity of an assignment, *Canadian Steering Wheel Co., Re* (1921), 2 C.B.R. 47 (S.C.C.); as to the disposal of shares and other matters in the bankruptcy of a stockbroker, *R.P. Clark & Co. (Vancouver) Ltd., Re* (1931), 13 C.B.R. 118 (B.C.S.C.); as to termination of oil and gas leases, *Publix Oil & Gas Ltd. (Trustee of) v. Hinds* (1937), 18 C.B.R. 379 (Alta. S.C.); and as to payment of claims incurred prior to bankruptcy by a creditor's committee, *Fairweathers Ltd., Re* (1922), 2 C.B.R. 458 (Ont. S.C.).

5. Here, the Trustee is seeking directions as to its authority to complete the transaction contemplated by the Global Reach APA, prior to the appointment of inspectors.

6. As this action directly affects the administration of the Estate of EncoreFX, the Trustee is permitted to seek directions from this Honourable Court.

The Trustee's Powers Prior to the Appointment of Inspectors

S. 18 and s. 19 of the *BIA*

7. Prior to the Appointment of inspectors, the trustee is permitted to take certain action and conservatory measures when necessary and in the interest of the estate of the bankrupt.

BIA, s. 18 and s. 19

8. Under s. 18 of the *BIA*, the trustee may, when necessary and in the interest of the estate of the bankrupt:

    a. take conservatory measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value; and

    b. carry on the business of the bankrupt until the date fixed for the first meeting of the creditors.

9. Under s. 19(1) of the *BIA*, the trustee may, prior to the first meeting of the creditors, obtain such legal advice and take such Court proceedings as it may consider necessary for the recovery or protection of the property of the bankrupt.

10. Under s. 19(2) of the *BIA*, the trustee may, in the case of an emergency and where the necessary authority cannot be obtained from the inspectors, obtain such legal advice and institute such legal proceedings and take such action as it may deem necessary in the interests of the estate of the bankrupt.

11. In regard to property that is perishable or likely to depreciate rapidly in value, it is well established that the trustee may summarily dispose of such property in the interest of the bankrupt's estate, and, in the event of an emergency, the trustee may, without the inspectors' permission, take necessary measures to protect the estate.

Canada (Attorney General) v. Roy, 2007 FCA 410, at para. 59

12. In *National Capital Region, Ottawa Rough Riders Professional Football Club Ltd., Re* (1995), 31 CBR (3d) 136, the Court was required to consider approval of the sale of assets of the Ottawa Rough Riders prior to the first meeting of creditors. In the context of s. 18 and s. 19 of the *BIA*, Chadwick Sr. J. stated the following:

> [16] *The normal procedure would be for the creditors to appoint their inspectors at the first meeting of creditors and for the trustee to present the proposed purchase and sale to the creditors and the inspectors for their approval. Unfortunately this cannot be done and the trustee has moved pursuant to ss. 18 and 19 of the Bankruptcy and Insolvency Act on the basis that this is an urgent situation and further the property will depreciate rapidly in value if the transaction is not completed.*
>
> [17] *Section 19 of the Bankruptcy and Insolvency Act provides that the trustee may prior to the first meeting of creditors obtain such legal advice and take such court proceedings as he may consider necessary for the recovery or protection of the bankrupt.*
>
> [22] *In considering ss. 18 and 19, I have attempted to use a common sense approach to the interpretation of these sections. Considering this application by the trustee, I must take into consideration the other transactions involving the Canadian Football League and other creditors who are either secured or have priority interest by statute. These transactions are confirmed in a settlement agreement and the Canadian Football League membership agreement, which were filed as Exhibits. In my view, the transaction cannot be looked at only by a review of the agreement of purchase and sale but all of these other agreements must be taken into consideration in deciding whether the proposal makes good business sense.*

S. 30(3) of the *BIA*

13. Pursuant to s. 30(3) of the *BIA*, if no inspectors are appointed, the trustee may do all or any of the things referred to in s. 30(1) "*Powers exercisable by the trustee with permission of inspectors*".

14. The authorities in Canada where the Court has considered s. 30(3) of the *BIA*, are decisions involving circumstances whereby the creditors do not appoint an inspector in bankruptcy.

Global Royalties Ltd. v. Brook, 2016 ONSC 6277, at paras 3 and 29

Lehman (Re), 2018 BCSC 2266, at paras 29 to 31

15. However, there is some authority that s. 30(3) of the *BIA* may be relied upon to allow a trustee to take certain action prior to the first meeting of creditors, and prior to the appointment of inspectors.

16. The Honourable Mr. Justice Lloyd Houlden, Mr. Justice Geoffrey Morawetz & Janis Sarra ("**Houlden & Morawetz**"), *Bankruptcy and Insolvency Law of Canada*, 4th Edition, L.W. Houlden and Geoffrey B. Morawetz, state the following regarding the purpose of s. 30(3) of the *BIA*:

> *Section 30 confers twelve specific powers on the trustee that it may exercise with the permission of the inspectors. The predecessor section to s. 30 required the permission of the inspectors to be given in writing, but this requirement is no longer the case. Sections 30(1) and 30(2) set out the powers that may be exercised by the trustee with the permission of the inspectors; however, it is not in every bankruptcy that inspectors are appointed. When an estate is small and creditors do not believe that recovery is likely, they may not expend the time or resources to have inspectors appointed.* ***The addition of subsection (3) in 2009 provides that in the absence of inspectors, the trustee can act unilaterally so that an estate is not left in limbo when inspectors are not appointed.***
>
> *[...]*
>
> *With the permission of the court, and before the appointment of inspectors, the trustee may make necessary advances, incur obligations, and borrow money and give security on the debtor's property.* ***If there is cause, the court can permit the trustee to exercise the powers set out in s. 30 prior to the appointment of inspectors. Thus, it has been held that in matters of emergency or other valid cause, the court may authorize the trustee to dispose of the assets of the estate before the appointment of inspectors****: Re Thornton, Davidson & Co. (1920), 1 C.B.R. 381 and 383 (Que. S.C.); Re Eastern Paper Co. (1923), 3 C.B.R. 722 (Que. S.C.); and see notes on s. 18(a), ante.*
>
> (emphasis added).

17. Although Houlden & Morawetz state the Court can permit a trustee to exercise its powers under 30(1) prior to the appointment of inspectors, the Canadian authorities are limited to circumstances in which the trustee is disposing of assets and relying upon s. 18 and/or s. 19 of the *BIA* in doing so.

The Global Reach APA

18. The authority for the Trustee to enter into Global Reach APA is pursuant to s. 30(1)(a) of the *BIA*, and normally approved by the inspectors.

19. The factors the Court ought to consider in determining whether to approve the sale of assets by a receiver are as follows:

    a. whether the trustee has made a sufficient effort to get the best price and has not acted improvidently;

    b. the interests of all parties;

    c. the efficacy and integrity of the process by which offers are obtained; and

    d. whether there has been unfairness in the working out of the process.

    Royal Bank v Soundair Corp (1991), 7 C.B.R. (3d) 1 (Ont. C.A.) ("***Soundair***"), at para. 16

20. In *Hoque, Re*, 1996 NSCA 30, the Nova Scotia Court of Appeal held that:

    [34] *The tests to be applied by a court reviewing the decision of a trustee appointed under the Bankruptcy and Insolvency Act or a receiver appointed by the court respecting the sale of an asset are substantially the same. Both a trustee under the Bankruptcy and Insolvency Act and a receiver appointed by the court must act in a reasonable and competent manner in the performance of their duties to the creditors. A difference between a trustee acting under the provisions of the Bankruptcy and Insolvency Act and a receiver appointed pursuant to a court Order, is that the trustee is governed by the Act and the receiver by the common law and the terms of the court Order. In addition, the trustee has the benefit of a group of experienced creditors' representatives acting as inspectors who can bring their experience to bear on proposed dispositions of assets by the trustee. These differences do not alter the requirement that both trustees and receivers respectively act with integrity in a competent and reasonable manner.*

21. In assessing the proposed sale under the Global Reach APA, the Trustee has considered whether it is fair and reasonable based on the market for such assets.

22. The Trustee is of the view that the Global Reach APA represents the only viable option that is available to preserve the Canadian Business and provide reasonable recovery to stakeholders.

23. The Trustee's view is based on, *inter alia*:

    a. the Company ceased trading immediately prior to the bankruptcy and it is not currently generating any revenue;

    b. it is unlikely that any goodwill remains in the Canadian Business; and

    c. the Purchaser has committed over a thousand hours in undertaking its due diligence, including extensive meetings with the Company's current management team (this level of diligence has not been observed by other Prospective Purchasers).

24. In addition, qualitative factors beyond the financial terms of the Global Reach APA include the Purchaser:

    a. intends to maintain a Canadian head office in British Columbia;

    b. will retain and operate the majority of the Canadian Business Infrastructure thereby providing suppliers, including current creditors and landlords of the Company, with a recurring customer or tenant;

    c. has advised that it will offer employment agreements to the Transitioned Employees and preserve the employment of approximately 70 current and former employees of the Company;

    d. will be required re-start the business of EncoreFX in a very uncertain environment in challenging circumstances which will require a significant up-front cost; and

    e. intends to close the transaction contemplated by the Global Reach APA as soon as possible (i.e. within days) should this Honourable Court grant the Approval and Vesting Order.

25. Lastly, and perhaps most important, the Transition Services Agreement requires the Purchaser to make available the Transitioned Employees and other resources to assist the Trustee in realizing on the Excluded Assets for the benefit of the Company's stakeholders and to winddown EncoreFX. The Trustee forecasts that this will result in material savings to the Estate in the within proceedings.

26. The Trustee is of the view that if a sale of EncoreFX is to happen, it is critical that it occur urgently. The Trustee is of the view that the Sales Process leading to the proposed sale, while informal and expedited, was fair and reasonable in the circumstance.

27. The Trustee is of the view that the Global Reach APA provides the only viable path forward to preserving the Canadian Business. The likely alternative to the Global Reach APA is a liquidation, loss of employment for the Retained Employees, little to no recovery on the Canadian Business Infrastructure, and higher winddown and realization costs for the Excluded Assets.

28. Based on the foregoing, the Trustee recommends that this Honourable Court grant the proposed Approval and Vesting Order.

The Sealing Order

29. The Court has the authority to Order that certain materials filed with the Court be sealed on the Court file. The Supreme Court of Canada has stated that such an Order can be made where:

    a. such a ban is *necessary* in order to prevent a real and substantial risk to the fairness of the trial, because reasonably available alternative measures will not prevent the risk; and

b. the salutary effects of the publication ban outweigh the deleterious effects to the free expression of those affected by the ban.

Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 ("***Sierra Club***"), at para. 53

30. The need to keep confidential Affidavit #1 of Mike Bell and the EOIs contained therein fit squarely within the test established by *Sierra Club*. The EOIs provide details as to the commercial terms of the sale of certain of EncoreFX's assets, which should not be disclosed publicly.

31. Disclosure of Affidavit #1 of Mike Bell and the EOIs contained therein would be prejudicial to the commercial interest of the parties thereto.

Conclusion

32. Based on the foregoing, it is appropriate for this Honourable Court grant the proposed Approval and Vesting Order.

Part 4: MATERIAL TO BE RELIED ON

1. First Report of Ernst & Young Inc., Trustee of EncoreFX Inc., Effective as at April 22, 2020.
2. Second Report of Ernst & Young Inc., Trustee of EncoreFX Inc., Effective as at May 5, 2020.
3. Affidavit #1 of Brett Flowers, sworn may 6, 2020.
4. Affidavit #1 of Mike Bell, sworn May 6, 2020 (to be sealed).
5. Such further materials as may be filed with this Honourable Court.

The applicant estimates that the application will take 30 minutes.

☒ This matter is not within the jurisdiction of a registrar in bankruptcy.

Dated: May 6, 2020

Signature of William E. J. Skelly
☐ applicant ☒ lawyer for applicant

Name and address of solicitor for Ernst & Young Inc.:
MLT Aikins LLP.
2600 – 1066 West Hastings Street
Vancouver, BC V6E 3X1
Telephone: 604-682-7737
Attn: William E.J. Skelly

SCHEDULE "A"

District of British Columbia
Division No. 3 - Vancouver
Court No. VLC-S-B-200204
Estate No.11-2634864

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF ENCOREFX INC.

ORDER MADE AFTER APPLICATION

	)	The Honourable	)
BEFORE	)	Madam Justice Fitzpatrick	) May/11/2020
	)		)

ON THE APPLICATION of Ernst & Young Inc. (the "**Trustee**"), in its capacity as trustee in bankruptcy of EncoreFX Inc. ("**EncoreFX**"), coming on for hearing via teleconference with the the Law Courts, 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on May 11, 2020, and on hearing William E.J. Skelly, counsel for the Trustee, and those other counsel listed on **Schedule "A"** hereto;

THIS COURT ORDERS that:

29. The time for service of the Notice of Motion herein be and is hereby abridged such that the Notice of Motion is properly returnable today and service hereof upon any interested party other than those parties on the service list maintained by the Trustee in this proceeding is hereby dispensed with.

30. The Trustee is at liberty to complete the transaction contemplated by the asset purchase agreement dated May 4, 2020, made between the Trustee and Global Reach Financial Solutions Inc., in substantially the form attached hereto as **Schedule "B"**, prior to the appointment of inspectors.

31. Endorsement of this Order by counsel appearing on this Notice of Motion, except for counsel for the Trustee, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

____
Signature of lawyer for the Trustee
William E.J. Skelly

BY THE COURT

____
REGISTRAR

SCHEDULE "B"

APPROVAL AND VESTING ORDER

District of British Columbia
Division No. 3 – Vancouver
Court No. VLC-S-B-20024
Estate No. 11-2634864

**IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE BANKRUTPCY OF ENCOREFX INC.

<u>ORDER MADE AFTER APPLICATION</u>

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE	)	
MADAM JUSTICE FITZPATRICK	)	11/05/2020
	)	

THE APPLICATION of Ernst & Young Inc., in its capacity as licensed trustee in bankruptcy (the "**Trustee**") of the assets, undertakings and properties of the of the estate of EncoreFX Inc. (the "**Debtor**") coming on for hearing at Vancouver, British Columbia, on the 11 day of May, 2020; AND ON HEARING William E.J. Skelly, counsel for the Trustee, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the Report of the Trustee dated May 5, 2020 (the "**Report**");

THIS COURT ORDERS AND DECLARES THAT:

1) The time for service of the Notice of Motion herein be and is hereby abridged such that the Notice of Motion is properly returnable today and service hereof upon any interested party other than those parties on the service list maintained by the Trustee in this proceeding is hereby dispensed with.

2) The sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement for the Acquisition of Certain Assets of EncoreFX Inc. dated May 5, 2020 (the "**Sale Agreement**") between the Trustee and Global Reach Financial Solutions Inc. (the "**Purchaser**"), a copy of which is attached as **Appendix "A"** to the Report is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Trustee is hereby authorized and approved, and the Trustee is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the "**Purchased Assets**").

3) Upon delivery by the Trustee to the Purchaser of a certificate substantially in the form attached as **Schedule "B"** hereto (the "**Trustee's Certificate**"), all of the Debtor's right, title and interest in and to the Required Purchased Assets described in the Sale Agreement and listed on **Schedule "C"** hereto (which, for clarity, excludes the Excluded Assets described in the Sale Agreement and hereto listed on **Schedule "D"**) shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4) For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Trustee's Certificate all Claims shall attach to the net proceeds from the sale of the Required Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

5) The Trustee is to file with the Court a copy of the Trustee's Certificate forthwith after delivery thereof.

6) Pursuant to Section 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, the Trustee is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7) Subject to the terms of the Sale Agreement, possession of the Required Purchased Assets shall be delivered by the Trustee to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement.

8) Upon the exercise of the Purchaser's continuing option set out in the Sale Agreement to acquire some or all of the Optional Purchased Assets described in the Sale Agreement and listed on **Schedule "E"** hereto (which, for clarity, excludes the Excluded Assets described in the Sale Agreement and hereto listed on **Schedule "D"**), the Trustee shall deliver to the Purchaser supplemental Trustee's certificates

setting out the Optional Purchased Assets in respect of which the option has been exercised (each, a "**Supplemental Trustee's Certificate**").

9) Upon delivery of a Supplemental Trustee's Certificate, the terms of this Order shall apply to the Optional Purchased Assets in respect of which the Purchaser exercised its option as though they were Required Purchased Assets with effect from the date of closing for the purchase of any Optional Purchased Assets (each, an "**Option Closing Date**").

10) The Trustee, with the consent of the Purchaser, shall be at liberty to extend the Closing Date or the Option Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.

11) Notwithstanding:

   a) these proceedings;

   b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and

   c) any assignment in bankruptcy made by or in respect of the Debtor,

   the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12) THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

13) The Trustee or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of William E.J. Skelly
Lawyer for Ernst & Young Inc., in its capacity as
trustee in bankruptcy of the estate of EncoreFX Inc.

BY THE COURT

REGISTRAR

SCHEDULE "C"

District of British Columbia
Division No. 3 - Vancouver
Court No. VLC-S-B-200204
Estate No.11-2634864

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF ENCOREFX INC.

SEALING ORDER

BEFORE	The Honourable Madam Justice Fitzpatrick	)))	11/May/2020

ON THE APPLICATION of Ernst & Young Inc. (the "**Trustee**"), in its capacity as trustee in bankruptcy of EncoreFX Inc., coming on for hearing via teleconference at Vancouver, British Columbia on May 11, 2020, and on hearing William E.J. Skelly, counsel for the Trustee and those other counsel listed on **Schedule "A"** hereto;

THE COURT ORDERS AND DECLARES THAT:

1. Access to Sealed Items Permitted by:

   a. Further Court Order.

2. Items to be sealed:

Document Name:	**Date Filed:**	**Number of copies filed, including any extra copies for the judge.**	**Duration of Sealing Order:**	**Sought**	**Granted**	
					Yes	**No**
1.Entire File						
2. SpecificDocuments a. Affidavit #1 of Mike Bell sworn May 6, 2020		2	Until further Court Order	X		

3. Clerks Notes						
4. Order						

3. Endorsement of the Order by counsel appearing on this application, except for counsel for the Trustee, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

____
Signature of William E.J. Skelly
Lawyer for Ernst & Young Inc., in its capacity
as trustee in bankruptcy of EncoreFX Inc.

BY THE COURT

____
REGISTRAR

District of British Columbia
Division No. 3 – Vancouver
Court No. VLC-S-B-20024
Estate No. 11-2634864

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUTPCY OF ENCOREFX INC.

ORDER MADE AFTER APPLICATION

APPROVAL AND VESTING ORDER

BEFORE THE HONOURABLE	)	
MADAM JUSTICE FITZPATRICK	)	11/05/2020
	)	

THE APPLICATION of Ernst & Young Inc., in its capacity as licensed trustee in bankruptcy (the "**Trustee**") of the assets, undertakings and properties of the of the estate of EncoreFX Inc. (the "**Debtor**") coming on for hearing at Vancouver, British Columbia, on the 11 day of May, 2020; AND ON HEARING William E.J. Skelly, counsel for the Trustee, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the Second Report of the Trustee dated May 5, 2020 (the "**Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Notice of Motion herein be and is hereby abridged such that the Notice of Motion is properly returnable today and service hereof upon any interested party other than those parties on the service list maintained by the Trustee in this proceeding is hereby dispensed with.

2. The sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement for the Acquisition of Certain Assets of EncoreFX Inc. dated May 5, 2020 (the "**Sale Agreement**") between the Trustee and Global Reach Financial Solutions Inc. (the "**Purchaser**"), a copy of which is attached as **Appendix "A"** to the Report is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Trustee is hereby authorized and approved, and the Trustee is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Purchaser of the assets described in the Sale Agreement (the "**Purchased Assets**").

3. Upon delivery by the Trustee to the Purchaser of a certificate substantially in the form attached as **Schedule "B"** hereto (the "**Trustee's Certificate**"), all of the Debtor's right,

title and interest in and to the Required Purchased Assets described in the Sale Agreement and listed on **Schedule "C"** hereto (which, for clarity, excludes the Excluded Assets described in the Sale Agreement and hereto listed on **Schedule "D"**) shall vest absolutely in the Purchaser in fee simple, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Trustee's Certificate all Claims shall attach to the net proceeds from the sale of the Required Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

5. The Trustee is to file with the Court a copy of the Trustee's Certificate forthwith after delivery thereof.

6. Pursuant to Section 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia, the Trustee is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7. Subject to the terms of the Sale Agreement, possession of the Required Purchased Assets shall be delivered by the Trustee to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement.

8. Upon the exercise of the Purchaser's continuing option set out in the Sale Agreement to acquire some or all of the Optional Purchased Assets described in the Sale Agreement and listed on **Schedule "E"** hereto (which, for clarity, excludes the Excluded Assets described in the Sale Agreement and hereto listed on **Schedule "D"**), the Trustee shall deliver to the Purchaser supplemental Trustee's certificates setting out the Optional Purchased Assets in

respect of which the option has been exercised (each, a "**Supplemental Trustee's Certificate**").

9. Upon delivery of a Supplemental Trustee's Certificate, the terms of this Order shall apply to the Optional Purchased Assets in respect of which the Purchaser exercised its option as though they were Required Purchased Assets with effect from the date of closing for the purchase of any Optional Purchased Assets (each, an "**Option Closing Date**").

10. The Trustee, with the consent of the Purchaser, shall be at liberty to extend the Closing Date or the Option Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.

11. Notwithstanding:

(a) these proceedings;

(b) any applications for a bankruptcy order in respect of the Debtor now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made by or in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

12. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

13. The Trustee or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

____

Signature of William E.J. Skelly
Lawyer for Ernst & Young Inc., in its capacity as trustee in bankruptcy of the estate of EncoreFX Inc.

BY THE COURT

____

REGISTRAR

SCHEDULE "A" – LIST OF COUNSEL

Counsel Name	Appearing For

SCHEDULE "B" – TRUSTEE'S CERTIFICATE

District of British Columbia
Division No. 3 – Vancouver
Court No. VLC-S-B-20024
Estate No. 11-2634864

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUTPCY OF ENCOREFX INC.

TRUSTEE'S CERTIFICATE

All capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Asset Purchase Agreement dated May 5, 2020 (the "**Sale Agreement**") between Ernst & Young Inc., in its capacity as licensed trustee in bankruptcy (the "**Trustee**") of the assets, undertakings and properties of the of the estate of EncoreFX Inc. (the "**Debtor**") and Global Reach Financial Solutions Inc. (the "**Purchaser**"), as purchaser, a copy of which is attached as Schedule A to the Trustee's Second Report dated May 5, 2020.

PURSUANT TO AN ORDER of this Honourable Court (the "**Court**") made May 11, 2020 (the "**Vesting Order**"), the Sale Agreement and related transaction were approved.

PURSANT TO PARAGRAPHS 2 and 3 / 7 and 8 OF THE VESTING ORDER and pursuant to the Sale Agreement, the Trustee hereby certifies as follows:

1. the Trustee confirms that the Purchaser has delivered the Purchase Price to the Trustee; and

2. the Trustee confirms that all conditions precedent to the Sale Agreement and the transfer of those Purchased Assets set forth on the attached schedule have been satisfied or waived.

DATED at the City of Vancouver, in the Province of British Columbia, this ___ day of _________, 2020.

ERNST & YOUNG INC., in its capacity as licensed trustee in bankruptcy of EncoreFX Inc., and not in its personal capacity

By:

____

Mike Bell
Senior Vice President

SCHEDULE "C" – REQUIRED PURCHASED ASSETS

Other than any assets listed as Excluded Assets or Optional Purchased Assets, the following are the required purchased assets (the "**Required Purchased Assets**"):

1. All right, title and interest of the Company in and to any intellectual property used in connection with or relating to the Business or used or located at the owned or leased premises of the Company prior to the Closing Date, including without limitation:
   a. registered domain names;
   b. all third party developed computer software and licences;
   c. patents;
   d. trade secrets;
   e. inventions;
   f. industrial designs;
   g. process copyrights;
   h. trademarks and designs;
   i. tradenames and designs;
   j. applications for intellectual property rights;
   k. all usernames and passwords including but not limited to server passwords, networks keys, domain usernames and passwords, sysadmin username and passwords for databases and bitlocker keys and passwords;
   l. all client data, transactional data, e-mail correspondence, recorded telephone calls, employee/client monitoring data or any correspondence records of any other means, including client marketing materials; and
   m. all other business data which relates to the Company's operations in Canada.

2. All right, title and interest of the Company in and to all computer software (and any owned source code, interfaces, data, designs whether complete on in process) and hardware systems and all intellectual property therein used in connection with the operation of the Business or used or located at the owned or leased premises of the Company prior to the Closing Date (the "**Information Systems**"), including without limitation:
   a. FX Express Platform;
   b. SQL Datawarehouse (ODS);
   c. Pricing Engine;
   d. Alliance Lite2 ;
   e. Credit Allocation Tool ;
   f. Portfolio Shell;
   g. Benefix;
   h. Profit Pricing Manager;
   i. Value Date service;
   j. Swift data importer;
   k. Payments Tracker;

l. Payments file translation;
m. Exercised options;
n. MTM;
o. Rate Extractor;
p. FXAll Integration;
q. FXO Automation tests;
r. SSRS Reporting Tool;
s. Sales Smart;
t. PowerBI portal;
u. Receivables (White Label client product);
v. SOP software (Strategy Optimization Platform);
w. Internal reporting tools relating to:
    i. Management reports;
    ii. Daily revenue report;
    iii. Historical client Transaction Reports;
    iv. Compliance transaction Dashboard;
    v. Position reports;
    vi. Fintrac US Reports;
x. Development and user acceptance testing platforms;
y. Project management tools;
z. Intranet platform and content;
aa. Externally facing platforms; and
bb. Web portals and content.

3. Any Licences and Permits that are able to be transferred to the Purchaser.

4. All tangible assets that are not Optional Purchased Assets, including the following:
    a. books, records and communications of the Company (excluding the corporate minute books);
    b. all regulatory materials and documents;
    c. all handbooks and manuals relating to policies and procedures;
    d. telephone systems, including mobile phones and all phone numbers; and
    e. computer equipment including laptops, servers, desktops, monitors, network infrastructure.

SCHEDULE "D" – EXCLUDED ASSETS

The following assets are the excluded assets (the "**Excluded Assets**"):

1. cash, money, and all investment property, including without limitation shares, stock, warrants, bonds, debentures, debenture stock and other securities (in each case whether evidenced by a security certificate or an uncertificated security), security entitlements, securities accounts, futures contracts and futures accounts and all other financial assets of the Company, wherever located;
2. Embedded Assets;
3. corporate records (constating documents, resolutions, minutes, etc.);
4. finance and accounting records;
5. tax and transfer pricing;
6. payroll and human resource files;
7. banking agreements and term sheets;
8. emails where correspondence is not required to support ongoing client relationships;
9. regulatory compliance support and communication (Fintrac, AMF);
10. all files relating to EncoreFX Ltd., EncoreFX (Australia) and EncoreFX (NZ);
11. accounts receivable;
12. Prepaid Expenses including any lease deposits;
13. investments in subsidiaries;
14. open and closed derivative contracts;
15. GST refunds or other government receivables; and
16. all other intangibles including without limitation contracts, agreements, clearing house options, permits, licences, consents, approvals, authorizations, orders, judgments, all present and future litigation rights, certificates, rulings, insurance policies and contracts, subsidies, franchises, immunities, warranties, privileges and benefits and all goodwill, to the extent such intangible does not relate directly to any of the Required Purchased Assets, or Optional Purchased Assets.

SCHEDULE "E" – OPTIONAL PURCHASED ASSETS

OPTIONAL PURCHASED ASSETS

All assets listed in the below table, or any other assets owned by the Vendor prior to Closing, wherever located, that are not listed in the attached table, provided that each asset is not a Purchased Asset or an Excluded Asset, are the optional purchased assets (the "**Optional Purchased Assets**"):

Description	**Model**	**Additional Notes**
The leases for any real property used by the Company		
All equipment, desks, furniture and other assets owned by the Company at each office location, including air conditioning units for each server room		
All third party software and licenses, subject to the terms of the applicable software development agreement or license		
22in LED 1920x1080		Vancouver
23" LED monitor x 2		[redacted]
23" LED monitor x 2		[redacted]
23" LED monitor x 2		[redacted]
23" LED monitor x 4		
29" LED monitor x 2		[redacted]
2x Hard drives	400-ATHL	Lethbridge Server - Datawarehouse Expansion
32 GB Memory Upgrade		N/A
4x Hard drives	400-ATHS	Lethbridge Server - Datawarehouse Expansion
50% down payment on solar window coverings		
9 x View SonicVG2239SMH	VG2239SMH	[redacted]
9 x View SonicVG2239SMH	VG2239SMH	[redacted]
Additional charges on Feb 2nd order		
Additional memory for Lethbridge servers		Lethbridge Server
ASA 5506-X with FirePOWER services 8GE AC 3DES/AES		Head Office
ASUS PB238Q 23inch Monitor x 1		
ASUS PB238Q 23inch Monitor x 2		
ASUS PB238Q 23inch Monitor x 2		
ASUS PB238Q 23inch Monitor x 2		
ASUS PB238Q 23inch Monitor x 3		
ASUS PB238Q 23inch x 1		
ASUS PB238Q 23inch x 1		Winnipeg
ASUS PB238Q 23inch x 12		
ASUS PB238Q 23inch x 2		

ASUS PB238Q 23inch x 2		Toronto
ASUS PB238Q 23inch x 6		Saskatoon
ASUS PB238Q 23inch x 6		
ASUS PB238Q 23inch x 8		
ASUS PB238Q 23inch x 8		
ASUS PB238Q 23inch x 8		
Banner Display - Signage		
Base Station for Thinkpad X-1 Carbon Ultrabooks x 1		[redacted]
Base Station for Thinkpad X-1 Carbon Ultrabooks x 1		[redacted]
Base Station x 1		
Base Station x 1		[redacted]
Base Station x 1		[redacted]
Base Station x 2		[redacted]
Base Station x 2		[redacted]
Base Station x 3		[redacted]
Base Station x 4		[redacted]
Base Station x 4		
Base Stations x 2		[redacted]
Basestation for Thinkpad X-1 Carbon Ultrabooks x 4		[redacted]
BMO MC (Oct 4th) - NCIX Viewsonic 22inch Monitor x 2		
Boardwalk Data Services Implementation - ASA VPN Facility		Head Office
Cable management rack & fastening tape		Lethbridge Server
Calgary Office - Aastra 6865i x 9		
Cisco ASA 5508 Router		
Cisco FlexStack-Plus Network Stacking Module		
Cisco Meraki Cloud Managed Switch: MS225-24P -HW	MS225	Head Office & All Branches
Cisco Meraki Cloud Managed Switch: MS225-24P x1	MS225	Head Office
Cisco Meraki Router MX450 x2	MX450	FXO Self-Host Project
Cisco Meraki Security/Firewall Appliance MX100	MX100	FXO Self-Host Project
Cisco Meraki Security/Firewall Powercord	MX100	FXO Self-Host Project
Cisco Meraki Switch: MS350 x2	MS350	FXO Self-Host Project
CISCO phone (SPA504G) x 1		Vancouver
CISCO phone (SPA504G) x 2		
CISCO Phone (SPA504G) x 5		
Computer Warranties		Toronto
Custom workstation x 1 (including setup labour)	Other	[redacted]
Dell EMC 48 Port 10GB Switch x2		FXO Self-Host Project
Dell PowerEdge R740xd Servers x3		Lethbridge Server

Dell Storage SCV3020 x1		Lethbridge Server
Dell Ultrasharp U24105 24inch Monitor x 2		
Desks and Chairs	N/A	[redacted]
Desks/Chairs/Kitchen Table	N/A	[redacted]
Docking Station x 7 [redacted]	N/A	
Dockstation x2		[redacted]
Dockstation x2		[redacted]
[redacted] 2 desks and chairs		Downtown Toronto
Edmonton Office - Aastra 6865i x 9		
Encore Sign - [redacted]	N/A	
Encore Sign -[redacted]	N/A	
Final 50% on solar window coverings		
Hard drive upgrades		Lethbridge Server - Datawarehouse Expansion
Hard drive upgrades		Lethbridge Server - Datawarehouse Expansion
HPE Proliant Microserver x 1 / Kingston 8GB RAM x 1		IT support
[redacted] Vancouver Set-up		[redacted]
Kitchener 4 desks and chairs		
Laptop and dockstation (New GTA employees)	Other	
Laptop and dockstation (New GTA employees)	Other	
Laptop and dockstation (New GTA employees)	Other	
Laptop and dockstation (New GTA employees)	Other	
Laptop and dockstation for [redacted] (Credit) & [redacted] (Ottawa)	Other	
Laptop and dockstation for [redacted] (Credit) & [redacted] (Ottawa)	Other	
Laptop and dockstation x 1 (Derrick Nicholson - VAN)	Other	
Laptop Thinkpad T450 Core i5	T450	
Laptops x 2 - [redacted] and replacement for GTA	Other	
Laptops x 2 - [redacted] and replacement for GTA	Other	
Lenovo Docksation x 4 (New Hire Mississauga)		4 New Employees (GTA)
Lenovo Dockstation x 1		Calgary
Lenovo Dockstation x 1 ([redacted] Lenovo Laptop - Yoga S1)		[redacted]
Lenovo E540 Workstation x 1	E540	[redacted]
Lenovo Laptop T450 plus Dockstation	T450	
Lenovo Laptop T450 x 1 plus Dockstation x 2	T450	
Lenovo Laptop T450 x 2 ([redacted]	T450	
Lenovo Laptop T450 x 2 ([redacted])	T450	
Lenovo Laptop T450 x 2 plus Dockstation	T450	

Lenovo Laptop T450 x 2 plus Dockstation	T450	
Lenovo Laptop T460 plus Dockstation	T460	
Lenovo Laptop T460 plus Dockstation	T460	
Lenovo Laptop T460 with Dock	T460	
Lenovo Laptop Yoga 900 i7 16GB RAM / 512GB SSD	I7	
Lenovo M83 Workstation x 7	M83	Spare workstation for branches
Lenovo M93 Workstation	M93	[redacted]
Lenovo M93 Workstation	M93	[redacted]
Lenovo M93 Workstation x 1	M93	[redacted]
Lenovo M93 Workstations x 5	M93	[redacted]
Lenovo ThinkCentre M83 x 1 plus RAM	M83	
Lenovo ThinkCentre M83 x 1 plus RAM	M93	
Lenovo ThinkPad	Other	
Lenovo Thinkpad	Other	[redacted]
Lenovo ThinkPad / Dockstation	Other	
Lenovo ThinkPad / Dockstation	Other	
Lenovo ThinkPad / Dockstation x 1	Other	
Lenovo ThinkPad / Dockstation x 1	Other	
Lenovo ThinkPad Dockstation x 1 / Dual Travel Adapter x 2		
Lenovo ThinkPad Pro Dock Docking Station x 1		Winnipeg
Lenovo ThinkPad T450 Core i5 8GB RAM 256GB SSD	T450	[redacted]
Lenovo ThinkPad T450 Core i5 8GB RAM 256GB SSD	T450	[redacted]
Lenovo ThinkPad T450 Core i5 8GB RAM 256GB SSD	T450	[redacted]
Lenovo ThinkPad T450 Core i5 8GB RAM 256GB SSD	T450	[redacted]
Lenovo ThinkPad T450 Core i5 8GB RAM 256GB SSD	T450	[redacted]
Lenovo Thinkpad T450 plus Dockstation	T450	
Lenovo Thinkpad T450 plus Dockstation	T450	
Lenovo Thinkpad T450 x 1 plus RAM/Docking Station	T450	
Lenovo Thinkpad T450 x 5 plus RAM/Docking Station	T450	
Lenovo Thinkpad T450 x 5 plus RAM/Docking Station	T450	
Lenovo Thinkpad T450 x 5 plus RAM/Docking Station	T450	
Lenovo Thinkpad T450 x 5 plus RAM/Docking Station	T450	
Lenovo ThinkPad T460 x 2 w/ 3 year warranty	T460	
Lenovo ThinkPad T460 x 2 w/ 3 year warranty	T460	

Lenovo Thinkpad T550 x 1 plus RAM/Docking Station	T550	
Lenovo Thinkpad T550 x 3 plus RAM/Docking Station	T550	
Lenovo Thinkpad T550 x 3 plus RAM/Docking Station	T550	
Lenovo Thinkpad T550 x 3 plus RAM/Docking Station	T550	
Lenovo ThinkPad Ultra Dock Dockstation x 2		
Lenovo Thinkpad X-1	X1	[redacted]
Lenovo Thinkpad X-1 Carbon	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon Ultrabook	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon Ultrabook	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon Ultrabook	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon Ultrabook x 1	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon Ultrabook x 1	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon Ultrabook x 1	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon Ultrabook x 1	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon Ultrabook x 1	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon ultrabook: Intel i5-3427U/4GB DDR3/SSD/Win7Pro	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon ultrabook: Intel i5-3427U/4GB DDR3/SSD/Win7Pro	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon ultrabook: Intel i5-3427U/4GB DDR3/SSD/Win7Pro	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon ultrabook: Intel i5-3427U/4GB DDR3/SSD/Win7Pro	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon ultrabook: Intel i5-3427U/4GB DDR3/SSD/Win7Pro	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon ultrabook: Intel i5-3427U/4GB DDR3/SSD/Win7Pro	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon ultrabook: Intel i5-3427U/4GB DDR3/SSD/Win7Pro x 1	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon ultrabook: Intel i5-3427U/4GB DDR3/SSD/Win7Pro x 1	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon ultrabook: Intel i5-3427U/4GB DDR3/SSD/Win7Pro x 1	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon ultrabook: Intel i5-3427U/4GB DDR3/SSD/Win7Pro x 4	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon x 1	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon x 1	X1 Carbon	[redacted]
Lenovo Thinkpad X-1 Carbon x 2	X1 Carbon	Spare for Victoria Office
Lenovo Thinkpad X-1 Carbon x 2	X1 Carbon	
Lenovo Thinkpad X-1 Carbon x 2	X1 Carbon	Spare
Lenovo Thinkpad X-1 Carbon x 2	X1 Carbon	Spare
Lenovo ThinkPad X1 Carbon20FB	X1 Carbon	

Lenovo ThinkPad x4 T460	T460	
Lenovo ThinkPad x4 T460	T460	
Lenovo ThinkPad x4 T460	T460	
Lenovo ThinkPad x4 T460	T460	
Lenovo ThinkPad x4 T460 Return Docking Stations		
Lenovo Ultra Dock Dockstation x 1		[redacted]
Lenovo Workstation (Len CarX1i7) x 1	X1 Carbon	[redacted]
Lenovo Workstation (Len CarX1i7) x 1	X1 Carbon	[redacted]
Lenovo Workstation (Len M83FFi5)	M83	[redacted]
Lenovo Workstation (Len M83FFi5)	M83	[redacted]
Lenovo Workstation (Len M83FFi5)	M83	[redacted]
Lenovo Workstation (Len M83FFi5)	M83	[redacted]
Lenovo Workstation (Len M83FFi5) x 1	M83	[redacted]
Lenovo Workstation (Len M83FFi5) x 1	M83	[redacted]
Lenovo Workstation (Len M83FFi5) x 1	M83	[redacted]
Lenovo Workstation (Len M83FFi5) x 3	M83	[redacted]
Lenovo Workstation: Intel i5-4770 8GB 500GB	Other	
Lenovo Workstation: Intel i5-4770 8GB 500GB	Intel I5	Ottawa
Lenovo Workstation: Intel i5-4770 8GB 500GB	Intel I5	Ottawa
Lenovo X1 i5 Workstation x 5	X1 i5	Spare workstation for branches
LG 29inch IPS Monitor x 2		[redacted]
LG 29UM57-P x 3		Treasury
Load Balancer License - testing phase		Lethbridge Server
Load Balancing Device		Lethbridge Server
Meraki MX100 license - testing phase	MX100	FXO Self-Host Project
Meraki Router MX100 x1	MX100	Head Office & All Branches
Meraki Router MX48 x7	MX48	Head Office & All Branches
Meraki Router MX84 Q2PN-4RFD-YKMN	MX84	Waterloo Office
Meraki Router MX84 Q2PN-4RFD-YKMN	MX84	Downtown Toronto
Meraki Switch 48LP x2	48LP	Head Office & All Branches
Meraki Switch Q2GW-TRPA-44XQ	MS225	Waterloo Office
Meraki Switch Q2GW-TRPA-44XQ	MS225	Downtown Toronto
Meraki Switch x7		Head Office & All Branches
Microsoft SQL Server - Perpetual license		Lethbridge Server
Mississauga Office		
Mississauga Office - Aastra 6865i x 12		
Mississauga Office - Aastra 6865i x 12		[redacted]
Mississauga Office - Aastra 6865i x 2		
Mississauga Office - New Furniture (accommodating new employees)		
Mississauga Office - Plantronics PL-CS540 x 4	PLCS540	Mississauga
Mississauga Office - SPA504G x 4		
Monitor x 18 (Edmonton)		
Monitor x 6 (Saskatoon)		

Monitor x 8 (Calgary)		
MS SQL Server/ Remote Desktop Server		
MS SQL Server/ Remote Desktop Server		New server - life: 3yr
MS225 Switch	MS225	FXO Self-Host Project
NCIX - Viewsonic 22inch Monitor x 2		[redacted]
NCIX - Viewsonic 22inch Monitor x 4		[redacted]
NCIX - Viewsonic LED Monitor x 3		[redacted]
Network Stacking Module		GTA
New furniture for new Calgary office, moved May3118		
Office chair x 6		
Office Desks for Head Office		
Office Desks for Head Office		
Ottawa Office - Aastra 6865i x 9		
Polycom Soundstation IP7000 x 1		
Rack screws		Lethbridge Server
Router MS450 License - testing phase	MS450 License	FXO Self-Host Project
Samsung 24inch Monitor x 1		
Saskatoon Office - Aastra 6865i x 9		
Saskatoon Office (Desk)		[redacted]
Shipping equipment to Lethbridge during September		Lethbridge Server
Shipping Meraki gear to Canadian branches		Head Office & All Branches
Source Office Furnishing - Office chairs x 3 (Head Office)		
Spare - Aastra 6865i x 5		
Spare CISCO Phone (SPA504G) x 5		
Switch MS350 License - testing phase	MS350 License	FXO Self-Host Project
System enhancement/upgrade to the server workstation		
Table	N/A	DTT
Thinkpad & Dock	Other	
Thinkpad & Dock	Other	
Thinkpad Carbon 20KH	Carbon 20KH	
Thinkpad LEN-20HD000RUS	Other	
Thinkpad Pro Docking Station	N/A	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	

Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470	T470	
Thinkpad T470 20HD000RUS + dock & warranty	T470	[redacted]
Thinkpad T470 20JM0009US + dock & warranty	T470	
Thinkpad T470 20JM0009US + dock & warranty	T470	
Thinkpad T470 Core i5 + Dock	T470	
Thinkpad T470 Core i5 + Dock	T470	
Thinkpad T470 Core i57300	T470	
Thinkpad T470 Core i57300	T470	
Thinkpad T470 Core i57300	T470	
Thinkpad T480	T480	
Thinkpad T480	T480	
Thinkpad T480	T480	
Thinkpad T480	T480	
Thinkpad T480	T480	
Thinkpad T480	T480	
Thinkpad T480	N/A	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	

Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	T480	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T480 w/dock & warranty	N/A	
Thinkpad T490 14" Notebook & warranty	N/A	
Thinkpad T490 14" Notebook & warranty	N/A	
Thinkpad T490 14" Notebook & warranty	N/A	
Thinkpad Thinkstation P330 (2nd Gen) 30CY	N/A	

Tower & warranty		
Thinkpad X1 Carbon	X1 Carbon	
TV & Wall Mount	N/A	Downtown Toronto
Two new desks and chairs for VAN office		
Vancouver Office - Aastra 6865i x 2		
Vancouver Office - Aastra 6865i x 9		
Vancouver Office - New Furniture (Two new hire)		
Victoria Office - Aastra 6865i x 8		
Victoria Office - Aastra 6865i x 9		
Victoria Office (new desks for 1st and 2nd floor)		
Victoria Office [redacted]		[redacted]
Viewsonic 22inch Monitor (VG2239SMH) x 2		Mississauga
Viewsonic 22inch Monitor (VG2239SMH) x 4		[redacted]
Viewsonic 22inch Monitor x 2		[redacted]
Viewsonic 22inch Monitor x 2 / Dockstation x 1		[redacted]
Viewsonic 22inch Monitor x 2 / Dockstation x 1		[redacted]
Viewsonic 22inch Monitor x 2 / Dockstation x 1		[redacted]
ViewSonic VG2239Smh - LED 22inch x 2		[redacted]
ViewSonic VG2239Smh - LED 22inch x 2		Edmonton
ViewSonic VG2239SMH - LED 22inch x 2		[redacted]
ViewSonic VG2239SMH - LED 22inch x 2		Winnipeg
ViewSonic VG2239Smh - LED 22inch x 4		
ViewSonic VG2239Smh - LED 22inch x 8		Mississauga - 4 new hires
Winnipeg Office - Aastra 6865i x 9		