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

**REPORT ON THE TRUSTEE'S PRELIMINARY ADMINISTRATION**

**IN THE MATTER OF THE BANKRUPTCY OF**

**EncoreFX Inc.**

**of the City of Vancouver**
**Province of British Columbia**

**BY:** ______________________________
**Peter Venetsanos, CPA, CA, CIRP, LIT**
**Ernst & Young Inc., Trustee**

**May 5, 2020**

1. On March 30, 2020 (the **"Bankruptcy Date**"), EncoreFX Inc. ("**EncoreFX**" or the "**Company**") made an assignment into bankruptcy pursuant to Section 49 of the *Bankruptcy and Insolvency Act* (the "**BIA**") for the benefit of its creditors. Ernst & Young Inc. was appointed as the licensed insolvency trustee (the "**Trustee**") of the estate (the "**Estate**") of EncoreFX, subject to affirmation by the unsecured creditors.

2. Since the Bankruptcy Date, the Trustee has filed two reports in its administration of the Estate with the Supreme Court of British Columbia (the "**Court**"). The Trustee's first report dated April 22, 2020 (the "**First Report**") generally sought to provide the Court with an update on the background of the Company, the key activities of the Trustee since its appointment and the estimated assets and liabilities of the Company. It further sought the

direction and the approval of the Court, for the protocol for the first meeting of creditors, the approval of the US Subsidiary LOI and authorization for the Trustee to "close out" ITM positions. A copy of the First Report is attached as Appendix A.

3. The Trustee is preparing a second report to be dated on or around May 5, 2020 (the "**Second Report**") to seek the approval and vesting order with respect to the sale of select assets and infrastructure of the Company. The Trustee is currently finalizing the Second Report and expects it to be available on the Trustee's website prior to May 7, 2020.

4. This report on the Trustee's Preliminary Administration (the "**Preliminary Administration Report**") references to and is to be read in conjunction with the First Report and the Second Report.

**SECTION A: BACKGROUND AND CAUSES OF INSOLVENCY**

5. Refer to the Background Information section of the First Report (pages 7 to 13).

**SECTION B: PRELIMINARY EVALUATION OF PROPERTY, ASSETS AND UNDERTAKINGS**

6. Refer to the First Report, specifically:

   a) the Assets and Liabilities of the Company section of the First Report (pages 21 to 25); and

   b) the Key Activities of the Trustee since the Bankruptcy Date section of the First Report (pages 13 to 21).

7. Refer to the Second Report for the sale of select assets and infrastructure of the Company.

**SECTION C: BOOKS AND RECORDS OF THE BANKRUPT**

8. Refer to the Key Activities of the Trustee since the Bankruptcy Date section of the First Report (pages 13 to 21).

**SECTION D: CONSERVATORY AND PROTECTIVE MEASURES**

9. Refer to the First Report, specifically:

   a) the Key Activities of the Trustee since the Bankruptcy Date section of the First Report (pages 13 to 21); and

   b) the OTM Clients section of the First Report (pages 25 to 28).

**SECTION E: PROVABLE CLAIMS**

10. As at 6:00PM on May 4, 2020, the Trustee has received 163 claims representing the following claim amounts:

| Creditor Type | Filed Claims | | Admitted Claims | |
|---|---|---|---|---|
| | **No. of Claims Received** | **$ Claim Amount** | **No. of Claims Received** | **$ Claim Amount** |
| **Total Super Priority Claims** | **81** | **139,845** | **-** | **-** |
| **Total Secured Claims** | **5** | **37,187,742** | **-** | **-** |
| *Gustavson Capital Corporation* | *1* | *35,888,950* | - | - |
| *Other Secured Claims* | *4* | *1,298,792* | - | - |
| **Total Preferred Claims** | **4** | **2,361,402** | **-** | **-** |
| **Total Unsecured Claims** | **146** | **20,529,103** | **-** | **-** |
| **Subtotal** | **236** | **60,218,092** | **-** | **-** |
| *Creditors with claims in more than one category* | *-73* | - | | |
| **Total** | **163** | **60,218,092** | **-** | |

<u>Super Priority</u>

11. Super Priority Claims represent the super priority portion (max. $2,000 per employee) of the terminated employee's total claim amount for unpaid eligible wages as provided for under Section 81.3 of the BIA.

12. For further information on the employees, please refer to the Key Activities of the Trustee since the Bankruptcy Date section of the First Report (pages 17 to 18).

Secured Creditor

13. Gustavson Capital Corporation ("**GCC**") is the senior creditor with a security registration against the Company. On May 4, 2020, GCC filed a secured claim in the amount of $35,888,950 pursuant to a loan agreement secured by way of general security agreements (the "**GSA**") dated September 15, 2014 between GCC and EncoreFX.

14. The Trustee has obtained an independent legal opinion and security review of the GSA from Nathanson Schachter & Thompson LLP, who provided an opinion that, subject to customary qualifications, the GSA is valid and enforceable, including as against the Trustee.

Claims Process

15. Given the complex nature of the EncoreFX operations, the Trustee expects the adjudication of creditor claims will be delayed. The Trustee will consult with the Inspectors of the Estate to determine the best and most efficient way to carry out the claims process in these proceedings.

## SECTION F: LEGAL PROCEEDINGS, PREFERENCES AND TRANSFERS AT UNDERVALUES

Legal Proceedings

16. All legal actions, if any, against the Company is stayed. It is the Trustee's preliminary assessment that any amounts, which may become provable against the Estate from these legal actions, will rank as unsecured claims without priority.

17. As is noted in the First Report, a number of OTM clients have engaged legal counsel in these proceedings. To date, the Trustee has not initiated any legal proceedings during its administration of the Estate.

Preferences and Transfer at Undervalue

18. The Trustee is not currently aware of any preferences or transfers at undervalue based on preliminary review of the books and records of the Company. The Trustee will consult with the Inspectors should a more detailed review for preferences and transfers at undervalue, if any, is to be undertaken.

**SECTION G: ANTICIPATED REALIZATION AND PROJECTED DISTRIBUTION**

19. Refer to the First Report, specifically:

    a) the Assets and Liabilities section of the First Report (pages 21 to 25);

    b) the Key Activities of the Trustee since the Bankruptcy Date section of the First Report (pages 13 to 21); and

    c) the OTM Clients and ITM Clients sections of the First Report (pages 25 to 30).

20. Refer to the Second Report for the sale of select assets and infrastructure of the Company.

21. Based on numerous issues identified in the First Report, it is premature to make a determination on a projected distribution, if any, to the unsecured creditors of EncoreFX.

**SECTION J: OTHER MATTERS**

22. Subsequent to its appointment as Trustee, the OSB notified the Trustee that a bond of $1.2M CAD is required to be posted as security for the Estate. The Trustee has obtained and provided the bond to the OSB.

# Appendix A

District of British Columbia
Division No. 3 – Vancouver

Court No:______________
Estate No. 11-2634864

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

AND

**IN THE MATTER OF THE BANKRUPTCY OF ENCOREFX INC.**

**FIRST REPORT of**

**ERNST & YOUNG INC.,**

**TRUSEE OF ENCOREFX INC.**

**EFFECTIVE AS AT APRIL 22, 2020**

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**FIRST REPORT TO THE TRUSTEE
OF ERNST & YOUNG INC., TRUSTEE OF
ENCOREFX INC.**

**Effective as at April 22, 2020**

## INTRODUCTION

1. EncoreFX Inc. ("**EncoreFX**" or the "**Company**") is a Victoria, British Columbia based financial services company providing foreign exchange ("**FX**") risk management services and cross-border payment solutions to predominantly small and medium enterprises ("**SME**") including foreign exchange spot transactions, foreign exchange derivative contracts (including forward contracts and options), and payment processing services. A further description of the background of the Company and reasons for its bankruptcy is described in further detail below.

2. On March 30, 2020 (the "**Bankruptcy Date**"), EncoreFX Inc. filed an assignment into bankruptcy. Ernst & Young Inc. consented to act as the licensed insolvency trustee ("**LIT**") in the estate (the "**Trustee**") of EncoreFX. A copy of the certificate of filing issued by the Office of the Superintendent of Bankruptcy (the "**OSB**") is attached hereto as **Appendix "A"**.

3. Pursuant to Section 69(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), a stay of proceedings (a "**Stay**") has been in effect with respect to the Company since the Bankruptcy Date. Specific statutory provisions of the BIA apply in respect of EFCs (as defined below), which provisions are considered further below.

4. The Trustee has retained the services of MLT Aikins LLP ("**MLT Aikins**") to represent it in the herein proceedings.

5. The Trustee has set up a website www.ey.com/ca/EncoreFX (the "**Website**"). The Trustee has posted copies of the certificate of filing, prescribed proof of claim forms and

other relevant data to its Website and will continue to make timely updates to the Website to ensure that all stakeholders have access to the most current information relating to these insolvency proceedings.

6. Pursuant to the BIA, On March 30, 2020, the OSB fixed April 16, 2020, a date that was within twenty-one (21) days of the date of bankruptcy, as the original date to hold the first meeting of creditors (the "**FMOC**") by teleconference in the estate of the Company.

7. On April 9, 2020, the Trustee, pursuant to Section 102 (1.1) of the BIA, sought and obtained approval from the OSB for an extension of the date for the FMOC to May 7, 2020. The special circumstances cited by the Trustee in its request for an extension included:

   i) the COVID-19 pandemic and, in particular, rules and policies of our Provincial Government, the OSB and most companies that prohibit large gatherings of people and meetings of creditors must be convened by way of teleconference;

   ii) the Trustee expected a large number of creditors in attendance at the FMOC given the Company's large and broad number of stakeholders, including ITM (as defined below) customers pronounced by the fact that there was no requirement to attend in person and people are required to work from home; and

   iii) given the large number of expected attendees and required format for the FMOC, the Trustee was of the view that it would not be possible to administer a meeting with proper roll calls or sign-in, permit for the control of late attendees, review proofs of claim received at or just before the FMOC, or to count and record votes at the meeting.

8. The Trustee sought the extension to permit the Trustee to apply to Court, on notice to the OSB, for approval of a procedural order setting out a protocol for convening the meeting by videoconference that requires, a) notice in advance of intent to attend the FMOC to permit a roll call, b) proofs of claim and proxies to be delivered within a reasonable period

in advance of the FMOC to permit the FMOC to occur on an orderly basis, and (c) procedural matters as to the conducting of the meeting, including calling for motions and voting at the FMOC. On April 14, 2020, the Trustee drafted and sent a protocol for convening the FMOC (the "**Protocol**") to the OSB for its review and consideration. A copy of the Protocol is attached hereto as **Appendix "B"**. The Trustee is seeking an Order of the Honourable Court approving the Protocol pending review and comment by the OSB.

9. Given that a FMOC has not yet been convened in this matter, there are currently no inspectors appointed in the estate of the bankruptcy of the Company.

10. The purpose of this first report of the Trustee (the "**First Report**") is to provide this Honourable Court with an update in respect of the following:

    i) background information pertaining to EncoreFX;

    ii) key activities of the Trustee since its appointment;

    iii) estimated assets and liabilities of the Company;

    and to seek directions in respect of:

    i) approving the Protocol;

    ii) approving the US Subsidiary LOI (as herein defined);

    iii) authorizing the Trustee to consummate settlement agreements with OTM clients in exceptional circumstances, without prior authorization of the inspectors; and

    iv) authorizing the Trustee to "close-out" ITM positions.

## TERMS OF REFERENCE

11. In preparing this First Report, the Trustee has been provided with, and in making the comments herein relied upon, unaudited financial information, the Companies' book and records, financial information prepared by the Companies, and discussions with management of the Companies. The Trustee has not audited, reviewed or otherwise

attempted to verify the accuracy or completeness of such information and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of such information contained in this First Report.

12. Certain information referred to in this First Report consists of forecasts and projections. The Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Trustee expresses no opinion or other form of assurance in respect of the information.

13. This First Report has been prepared for the use of this Honourable Court and the Companies' stakeholders as general information relating to the Companies and their operations. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. The Trustee assumes no responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report contrary to the provisions of this paragraph.

14. All references to dollars are in Canadian currency unless otherwise noted.

## BACKGROUND INFORMATION

### History of EncoreFX

15. 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. Attached hereto and marked as **Exhibit "A"** is a copy of a corporate organization chart provided by management respecting EncoreFX and its subsidiaries.

16. 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. EncoreFX employed a workforce of approximately 150 personnel as at the Bankruptcy Date.

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

18. EncoreFX further established EncoreFX Ltd. (the "**US Subsidiary**"), a United States subsidiary incorporated in Washington State in the United States. In recent years, the US Subsidiary underwent a lengthy process to obtain licenses

19. As discussed above, EncoreFX Inc. is in the business of providing FX risk management and cross-border payment services predominantly to SME clients that import or export products from/to foreign markets and base their pricing on foreign currencies. The Company sold 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 to the best of the knowledge of EncoreFX, EncoreFX's primary client base entered into foreign exchange contracts with EncoreFX to manage the foreign exchange exposures in their business and <u>not for speculation on the movement of FX rates.</u>

**The EncoreFX Derivatives**

20. The EncoreFX Derivatives are referred to as "over-the-counter" derivatives, because they are not traded on a market or securities exchange, but rather negotiated with each counterparty (EncoreFX and its client) at the time they are consummated.

21. A very basic illustration of one of the EncoreFX Derivatives is a forward contract, which allows a client to lock in a specific exchange rate today for a currency to be purchased or sold in the future. A client may choose to lock in a specific rate today for many reasons

including that it aligns with, a) their budget FX rate, or b) the FX rate that was utilized when it costed or priced the goods or services being imported or exported.

22. In the following example, Client A is importing goods from the United States for resale in Canada and must pay their supplier USD $1,000,000 on June 30, 2020. Client A based the ultimate pricing of goods being imported for resale on their budget rate of USD/CAD 1.40 which was the then current FX rate. In order to mitigate the risk that fluctuating FX rates could have on its gross margins, Client A enters into a forward contract with EncoreFX and commits to buying USD$1,000,000 on June 30, 2020 at an exchange rate of 1.40 (i.e. Client A will pay CAD $1,400,000 to purchase USD $1,000,000).

23. If the exchange rate on June 30, 2020 is 1.35, then the market value of USD being purchased is equal to CAD $1,350,000 and Client A would be paying $50,000 more to settle the contract as at June 30, 2020 and as a result of the forward contract booked have a "realized foreign exchange loss" of $50,000. Client A; however, is no worse off as a result of booking the forward contract at 1.40 because they were able to convert funds at their budgeted rate and achieve their expected gross margins.

24. Conversely, if the exchange rate on June 30, 2020 is 1.45, then market value of the US being purchased is equal to CAD $1,450,000 and Client A would be paying $50,000 less than the market value as a result of the forward contract booked thereby resulting in a deemed "realized foreign exchange gain". Client A is better off having booked the forward contract as they were able to purchase the USD at a better than market rate and they were able to convert funds at their budgeted rate to achieve their expected gross margins.

25. The 'market value' of all of the EncoreFX Derivatives products sold to clients fluctuates every second of every day once entered into due to movements in underlying FX rates; and at any given time, the market value is out-the-money ("**OTM**"), in-the-money ("**ITM**") or at-the-money ("**ATM**"). In simplistic terms:

i) an OTM position means that the FX rate and other factors moved against the client and if the contract were to be liquidated, the client would owe EncoreFX an amount equal to the dollar value of the OTM position;

ii) an ITM position means that the FX rate and other factors moved in favour of the client and if the contract were to be liquidated, EncoreFX would owe the client an amount equal to the dollar value of the ITM position; and

iii) an ATM position means there was little to no change in FX rates and neither party owes the other.

**The Treasury Function**

26. EncoreFX's Treasury Department was responsible for continually monitoring the aggregate FX exposure that arose from the sale of EncoreFX Derivatives to clients.

27. The Treasury Department used sophisticated trading platforms to monitor this exposure and assess overall netting of EncoreFX Derivatives bought and sold to clients. Netting was only allowed for if the currencies and contract tenures were the same.

28. Once netting was factored in and / or when currency exposures reached a predetermined threshold outlined in the Company policy, the Treasury Department would book hedging transactions (a simple example being a buy or sell position forward contract that moved in value the opposite way of the contracts being hedged) with one of its third-party banking counterparties (the "**Liquidity Providers**") to eliminate the Company's FX exposure.

29. EncoreFX had signed standard the International Swaps and Derivatives Association, Inc. ("**ISDA**") agreements (the "**ISDA Agreements**") with its Liquidity Providers that required the Company post security or 'margin' to cover the credit and market risk that Liquidity Provider were taking on when entering into FX derivative contracts with EncoreFX.

30. The Company was required to post initial margin with its Liquidity Provider, which was generally a percentage of the notional value of the contract booked (i.e. if EncoreFX

booked a contract to sell USD $1,000,000, the initial margin was calculated at say 1% of USD $1,000,000 then EncoreFX would have to pay a deposit of USD $10,000 to the Liquidity Provider).

31. EncoreFX was also required to post OTM margin with Liquidity Providers equal to the value of all OTM contracts. (i.e. if EncoreFX had various derivatives booked with a Liquidity Provider and on a net basis those derivatives were OTM USD $500,000, EncoreFX would have to pay USD $500,000 in OTM margin to the Liquidity Provider).

**The Credit Function**

32. In order to be competitive within its industry, EncoreFX offered credit to certain clients booking EncoreFX Derivatives. The credit terms offered included no initial margin and OTM limits up to a predetermined amount (i.e. the client's derivative contract would have to be OTM greater than say USD $500,000 before EncoreFX would require the client to pay margin).

33. Prior to granting credit to clients, EncoreFX's Credit Department would perform a detailed credit assessment and would extend terms that were in line with the client's financial strength.

34. Once the assessment was finalized, EncoreFX would issue and the client would sign a Credit Facility Agreement that outlined the terms under which credit was granted.

35. Credit terms were reviewed by the Credit Department on a periodic basis (i.e. quarterly or annually) depending on the client's credit classification.

**Reasons for Insolvency**

36. Beginning in March 2020, global FX markets began to observe atypical levels of volatility mainly driven by the impact that COVID-19 was having on the global economy. In particular the US Dollar (USD) strengthened in a significant way against some of the

world's most traded currencies, including against the Canadian, Australian and New Zealand dollars in which the majority of the EncoreFX Derivatives were booked.

37. Due to this extreme market volatility, a number of EncoreFX's clients (and its subsidiaries' clients) were OTM on their transactions; and as a consequence, EncoreFX was left OTM with its Liquidity Providers.

38. Under the terms of its ISDA Agreements, EncoreFX was required to pay significant additional margin to its Liquidity Providers to cover the value of OTM contracts.

39. Many of EncoreFX's clients had exceeded the OTM thresholds outlined in their Credit Facility Agreements and were subject to margin calls (the "**OTM Clients**"). The Trustee is advised that EncoreFX attempted to work with many of the OTM Clients to address margin calls owing however many clients' businesses had been negatively impacted by COVID-19 and they were unable to honour the terms of their Credit Facility Agreements.

40. In the days leading up to the bankruptcy, the Trustee is advised that management determined that even if all OTM amounts owing could be collected from clients over time, there was no short-term liquidity available to the Company to meet its obligations and EncoreFX made the decision suspend all trading activity as at Sunday, March 29, 2020 (prior to the opening of trading on Monday, March 30, 2020).

41. The Trustee notes that it was first approached by the Company with respect to the financial distress of the Company on March 26th, 2020; and thereafter, in the days that followed entertained several discussions to consider various restructuring options available to EncoreFX, both formally and informally. The decision to suspend trading (with respect to new transactions) and to file the assignment into bankruptcy was made on the eve of Sunday, March 29th (as noted above, the day before markets resumed trading the following Monday, March 30).

42. The Australian and New Zealand subsidiaries were also placed into Voluntary Administration (formal insolvency proceedings in those Countries). Ernst & Young Inc. is

acting as the Administrator in insolvency proceedings of the Australia and New Zealand entities.

## KEY ACTIVITIES OF THE TRUSTEE SINCE THE BANKRUPTCY DATE

### Creditor Notice

43. On April 3, 2020, the Trustee mailed notice of the bankruptcy and of the first meeting of creditors (the "**Creditor Notice**") to all known creditors of EncoreFX. A copy of the Creditor Notice is attached as **Appendix "C"** to this Report. A copy of the Creditor Notice is also posted on the Trustee's Website.

44. The Trustee also had notice of the bankruptcy and of the first meeting of creditors that was to be held on April 26, 2020 (further discussed below) published in the Vancouver Sun on April 7, 2020.

### Bank Accounts

45. On the Bankruptcy Date, the Trustee notified EncoreFX's financial institutions of the bankruptcy and instructed each to freeze all debit and credit accounts with the Company, leaving them open to accept deposits only. EncoreFX had sixty-one (61) bank accounts denominated in twenty-four (24) foreign currencies that it held at fourteen (14) separate financial institutions located in Canada and internationally.

46. EncoreFX maintained its four (4) primary operating accounts with the Bank of Montreal ("**BMO**"). Within these operating accounts, EncoreFX entered into standard pre-authorized debit ("**PAD**") agreements with a number of its clients to facilitate the transfer of funds between the parties to process certain transactions by electronic funds transfer ("**EFT**") including to settle transactions. Following the bankruptcy of the Company, a number of the Company's clients instructed their financial institutions to reverse pre-authorized payments that they made to the Company prior to the bankruptcy (the "**EFT Rejects**") pursuant to the Rules of the *Canadian Payments Act*, R.S.C. 1985, c. C-21 (the

"**CPA Rules**"), specifically Rule H1 – Pre-Authorized Debits (PADs) ("**Rule H1**"), in an attempt to cancel pre-authorized debits from their financial institution to EncoreFX which would result in the return of funds from the Company's BMO accounts.

47. In the three (3) days following the Bankruptcy Date, EFT Rejects totaling approximately $4,900,000 CAD and $2,300,000 USD were debited against the frozen operating accounts of the Company. The Trustee is advised by BMO that the reversals occurred automatically pursuant to the CPA Rules and BMO had no ability to stop them.

48. The Trustee advised BMO of its view that, amongst other things, the processing of the EFT Rejects against the Company's frozen operating accounts contravened the Stay. The Trustee instructed BMO to dispute (by way of a standard dispute form) each of the EFT Rejects processed against the operating accounts of the Company; and is advised by BMO that it is processing the dispute forms as quickly as possible.

49. MLT Aikins, legal counsel to the Trustee, also wrote each of the clients (approximately 70) that initiated the EFT Rejects to demand that the funds that were transferred (i.e. reversed out of the operating accounts of the Company) on or after the Bankruptcy Date of EncoreFX be immediately returned to Trustee. A copy of a sample of this letter is attached hereto as **Appendix "D"**.

50. The Trustee has closed these operating accounts with the BMO and transferred the balances to accounts at the Royal Bank that are controlled by, and in the name of the Trustee, and no further EFT Rejects are being processed against those accounts.

51. The Trustee will exercise all available rights and remedies to seek to recover the EFT Rejects on behalf of the Company's estate and may seek further direction from this Honourable Court (with the permission of inspectors, as appropriate) in the future.

52. A summary of the bank accounts of the Company (net of the EFT Rejects) is attached hereto as **Appendix "E"**. The cumulative balance in these accounts denominated in CAD is approximately $13,200,000.

53. The Trustee will be undertaking efforts to covert all foreign currency holdings in into CAD or USD.

**Liquidity Providers**

54. As is noted above, the Company posted security or 'margin' with its Liquidity Providers consisting of Goldman Sachs and Deutsche Bank to cover the credit and market risk that the Liquidity Providers were taking on as counterparties to EncoreFX when entering into FX derivative contracts. The Company also book hedging transactions with the Australia New Zealand Banking Group ("**ANZ**") although no margin was posted by the Company to its account with ANZ.

55. The hedging transactions consisted of currency futures and options which are "eligible financial contracts" ("**EFC**") as defined in the BIA. Solvent counterparties are not stayed from terminating and netting EFCs.

56. In the week that followed the Bankruptcy Date, the Liquidity Providers notified the Company that that they were terminating (and netting) all hedging transactions under their agreements with EncoreFX under the ISDA Agreements.

57. On April 7, 2020, Goldman Sachs provided the Trustee with a detailed close-out statement in respect of the termination of all outstanding transactions which calculated an amount due and payable <u>to</u> the Company of USD $3,946,765 (approximately CAD $5,500,000). The amount payable was comprised of a return of the posted margin net of the gains and losses on the transactions held with Goldman Sachs.

58. On April 9, 2020, Goldman Sachs wired the same amount to MLT Aikins, in trust. MLT Aikins remains in possession of these proceeds as of today.

59. The book of hedging transactions held by EncoreFX with Deutsche Bank was larger and more sophisticated than the book maintained with Goldman Sachs. The Trustee is advised the Deutsche Bank will provide the Trustee with a detailed close-out statement in

the very near future. The Trustee estimates an amount due and payable to the Company of approximately USD $7 million - $8 million (approximately CAD $9.8 million – CAD $11 million).

60. ANZ also terminated all hedging transactions under its agreements with EncoreFX under the ISDA Agreements. On April 14, 2020, ANZ provided the Trustee with a detailed close-out statement in respect of the termination of all outstanding transactions which calculated an amount due and payable by the Company to ANZ of USD $44,000 (approximately CAD $62,230).

61. The Company's Treasury department (under the direction of the Trustee) is currently conducting a detailed review of the Company's accounts with those counterparties to ensure the close outs occurred using proper FX rates and in accordance with standard ISDA procedures.

**Attendance at the Premises**

62. As a result of the current travel and distancing measures in place as a consequence of COVID-19, the Trustee has not been able to attend the EncoreFX premises, to date. Likewise, all of EncoreFX employees that remain retained by the Trustee were, and continue to be, working from home.

63. The Trustee convenes daily coordination and update calls with the retained management team (described below).

64. The Trustee has notified all the Company's landlords of the bankruptcy and of its intent to occupy the leases premises for the limited period of time necessary to fulfill its duties. A copy of the correspondence sent to each landlord is attached hereto as **Appendix "F"**.

65. Lastly, the Trustee has worked with the Company's information technology ("**IT**") department to secure and restrict access to all the Company's electronic platforms,

applications and servers containing the Company's financial records and other sensitive data.

**Stakeholder Correspondence**

66. As is noted above, the Trustee has established the Website and has made timely updates to the Website to ensure that all stakeholders have access to the most current information relating to these insolvency proceedings.

67. The Trustee notes that the Company has a broad range of stakeholders including approximately 4,000 clients, 150 current and former employees, hundreds of suppliers and creditors, numerous landlords, industry regulators across several distinct jurisdictions and banking counterparties. At least 50 parties have retained legal counsel to represent them in the within proceedings.

68. Trustee estimates that it is has received in well in excess of ten thousand (10,000) inquiries from stakeholders since the onset of the within proceedings by email, phone and through social media accounts. The Trustee has used best efforts to be as responsive as possible, but the volume of inquiries has been difficult to manage, particularly in the COVID-19 environment with limited access to physical documents.

**Employees**

69. Following the Bankruptcy Date, the Trustee held a conference call with the Company's employees to advise them of the bankruptcy of the Company, including the possible implications, and answer their questions, to the limited extent possible at the time.

70. In the week that followed, the Trustee consulted with senior management of the Company; and given that trading with respect to new transactions had been suspended, the Trustee 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). The majority of the Retained Employees are employed within the treasury, credit, finance, IT and administration departments of the Company. The Trustee also retained certain branch, sales and operations personnel who were viewed as critical to a possible sale of parts or all of the Company. The Trustee has committed to pay the wage arrears to certain key employees in order to retain those employees in the within proceedings.

71. On April 6, 2020 (the "**Termination Date**"), the Trustee terminated the employment of 79 EncoreFX employees (the "**Terminated Employees**") by way of a letter sent by email, a copy of which is attached hereto as **Appendix "G"**. The Terminated Employees were paid their base pay up to and including the Termination Date.

72. While it is the Trustee's common practice to meet with Terminated Employees face-to-face, the COVID-19 environment regrettably prevented the Trustee from doing so; and in lieu of same, the Trustee held a conference call with all Terminated Employees on April 7, 2020 to discuss, a) the government support programs available to them, b) the status of unpaid vacation and variable compensation (e.g. bonuses and commissions), c) the Wage Earner Protection Program ("**WEPP**"), and d) the delivery of records of employment ("**ROEs**") and T4 slips.

73. ROEs were generated and made available through Service Canada on or around April 13, 2020. Under the direction of the Trustee, the Company's finance department processed the Terminated Employees' final payroll on April 15, 2020. Copies of ROEs were sent by email (as requested by the Terminated Employees) this past weekend.

74. To assist the Terminated Employees in making claims under the WEPP, the Company's finance department under the direction of the Trustee prepared and sent on April 18, 2020 pre-populated proof of claim forms to each Terminated Employee as calculated in the books and records of the Company. The Trustee will fulfill the remainder of its duties under WEPP as proof of claims are reviewed by the Terminated Employees and filed with the Trustee.

**Sales Process**

75. Given the high-profile nature of this bankruptcy, numerous parties approached the Trustee immediately following the date of the Bankruptcy Date with expressions of interest to acquire all or parts of the Company. 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.

76. The Trustee is of the view that if a sale of EncoreFX is to happen, it is critical that it occur urgently. The value of EncoreFX is in its client base, its administrative infrastructure, management and its financial professionals (known in the industry as "dealers"). The cease trading and bankruptcy of EncoreFX has profoundly affected its reputation and has caused its clients to find new counterparties to trade with and there is a very narrow window to retain key personnel before they find alternative employment. This is a classic scenario of a "melting ice-cube".

77. In recognition that a sale of part or all of EncoreFX would require the approval of inspectors or this Honourable Court, the Trustee initiated and is carrying out an informal process to acquire all or certain assets of the Company on an expedited basis.

78. To date, the Trustee had executed non-disclosure agreements ("**NDA**") with twelve (12) distinct parties; 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.

79. To date, the Trustee has received one "binding" letter of intent ("**LOI**") from a United States-based strategic investor (the "**Purchaser**") to acquire 100% of the shares of the Company's US Subsidiary (the "**US Subsidiary LOI**"). The key details of the US Subsidiary LOI are summarized below:

i) a purchase price of USD $200,000 in addition to net working capital estimated at approximately USD $1,000,000 based on the US Subsidiary's draft March 31, 2020 financial statements;

ii) satisfactory completion of due diligence;

iii) standard and customary closing conditions; and

iv) a transition services agreement in which the Purchaser will reimburse the Company for any reasonable fees of the Trustee directly related to the US Subsidiary as well as reasonable expenses required to keep the US Subsidiary operational and in regulatory compliance.

80. The Trustee notes the US Subsidiary has had minimal activity and has also ceased trading. Its draft financial statement for the period ended March 31, 2020 are attached hereto as **Appendix "H"**. The primary assets of the US Subsidiary consist numerous licenses required to trade currencies in a number of States. However, the costs of maintaining such licenses are not insignificant. Attached hereto as **Appendix "I"** is a forecast prepared by management for the remainder of 2020 that projects operating cash requirements of USD $278,000 and no revenues.

81. In order to maintain compliance with respect to its State licenses, the US Subsidiary is required to, *inter alia*, maintain net equity of at least USD $1 million at all times. The US Subsidiary does not have the resources on a stand-alone basis to incur these expenses and maintain the net equity requirement and the only alternative to the US Subsidiary LOI is for the US Subsidiary to "surrender" or withdraw its licenses and wind-down, which would generate $nil value for the benefit of the estate of EncoreFX respecting the licenses.

82. Based on the forgoing, the Trustee is seeking an Order of this Honourable Court authorizing the Trustee to enter into the LOI with the Purchaser.

83. Given that the Purchaser is a United States public company and has public company disclosure requirements, it has asked the Trustee for confidentiality with respect to its

identity. Accordingly, the Trustee intends to file the US Subsidiary LOI in a separate Affidavit and seek a sealing order in connection with same. In order to balance the prejudice of the sealing order, the US Subsidiary LOI will be made available to counsel of record, if requested, on their confirmation that the identity of the Purchaser be kept confidential.

84. The Company is currently in discussions with one or more parties respecting a possible acquisition of the Company's Canadian operations. The Trustee may seek an Order of this Honourable Court, vesting title of the assets in a future purchaser, following approval of the sale of same by the inspectors, as appropriate, in the future.

## ASSETS AND LIABILITIES OF THE COMPANY

85. The book values of the realizable assets and liabilities of EncoreFX are summarized in the table below:

| | Book Value (in CAD) |
|---|---|
| **Assets*** | |
| Cash balances | 13,200,000 |
| Collateral posted with Liquidity Providers | 15,300,000 |
| OTM Positions | 77,000,000 |
| Infrastructure | 650,000 |
| Investment in subsidiaries | |
| Encore FX Ltd. (USA) | 1,968,000 |
| EncoreFX (Australia) Pty Ltd. | 2,665,000 |
| EncoreFX (NZ) Limited | 1,715,000 |
| | **112,498,000** |
| **Liabilities** | |
| Secured indebtedness to GCC | 35,575,000 |
| OTM Client margin deposits | 16,800,000 |
| ITM Positions | 17,900,000 |
| Unsettled transactions | 8,125,000 |
| Client deposits | 33,025,000 |
| Other liabilities (estimated) | 2,000,000 |
| | **113,425,000** |

**Assets**

Cash Balances

86. As is noted above, the Company maintained funds in a number of bank accounts denominated in multiple foreign currencies at a number of financial institutions located internationally. The estimated value represents the CAD equivalent of all cash balances when converted in Canadian Dollars using the FX as of April 17, 2020.

87. The realizable value of the Company's cash balances may vary with FX rate fluctuations in the future. As is noted above, the Trustee will be undertaking efforts to covert all foreign currency holdings into CAD or USD; the impact of any FX rate fluctuations will be reflected in the CAD equivalent value of the Company's cash balances.

Collateral posted with Liquidity Providers

88. As is noted above, MLT Aikins is already in possession of USD $3.9 million from Goldman Sachs. The Trustee estimates that a further USD $7 million to USD $8 million will be received from Deutsche Bank when it completes the close-out process for the hedging transactions booked with them.

OTM Positions

89. The OTM positions represent the aggregate liquidating values from clients with transaction(s) that are OTM (before the OTM Client margin deposits) calculated as at April 7, 2020. Further commentary regarding the OTM positions is provided below.

Infrastructure

90. Infrastructure represents trade fixtures, furniture and other capitalized costs with a net book value ("**NBV**") of approximately $655,000. The Trustee is of the view that these assets have minimal to no value in the context of a liquidation; however, these assets will derive value in a going concern sale of the infrastructure (as discussed above).

Shares in EncoreFX Ltd.

91. As is noted above, the Company owns all of the issued and outstanding shares in three subsidiaries located in Australia, New Zealand and the United States.

92. The Trustee is seeking the approval of the US Subsidiary LOI as described above. According the financial statements of the US Subsidiary, the Trustee estimates net working capital of slightly in excess of USD $1,000,000; and a total recovery from the sale of the US Subsidiary of approximately USD $1,200,000.

93. The Australian and New Zealand subsidiaries are subject to insolvency proceedings in those countries. The Trustee is preliminarily of the view that the Company has a provable unsecured claim of approximately CAD $7 million (approximately AUD $7.9 million) in the Voluntary Administration of the Australian subsidiary; and is evaluation what recovery (if any) will be derived from such claim.

94. The Trustee is currently evaluating whether the Company has a claim against the New Zealand subsidiary.

**Liabilities**

Secured indebtedness to GCC

95. Gustavson Capital Corporation ("**GCC**") is the senior creditor with a security registration against the Company. As at March 30, 2020, GCC was owed approximately $35,575,000 pursuant to a loan agreement secured by way of general security agreement (the "**GSA**") dated September 15, 2014 between GCC and EncoreFX.

96. The Trustee has obtained an independent legal opinion and security review of the GSA from Nathanson Schachter & Thompson LLP, who provided an opinion that, subject to customary qualifications, the GSA is valid and enforceable, including as against the Trustee.

97. The Trustee is not currently aware if GCC's intends to exercise remedies to realize upon its security (including by way of the appointment of a receiver); however, the Trustee is advised that GCC will be filing a secured proof of claim in the within proceedings. The Trustee may seek the approval of the inspectors (when appointed) to redeem the security held by GCC should sufficient capital exist for such purpose.

OTM Client Deposits

98. OTM Client Deposits represents margin (or collateral) that the OTM Clients posted with the Company prior to the bankruptcy. The OTM Clients may have set-off rights with respect to these deposits against the transaction(s) that that resulted in their OTM positions.

ITM Positions

99. The ITM positions represent the aggregate liquidating values from clients with transaction(s) that are ITM calculated as at April 7, 2020. Further commentary regarding the ITM positions is provided below.

Unsettled transactions

100. Amount represents the net quantum of funds received from the Company's clients in respect of spot transactions or drawdowns to close out OTM or ITM transaction(s) in which the Company received the client's incoming payment in the days leading up to the Bankruptcy Date but had not yet processed the outgoing payment in return.

101. For example, in order to settle a forward contract in which Client B commited to buying USD$1,000,000 on March 29, 2020 at an exchange rate of 1.35 (i.e. Client A agreed to pay CAD $1,350,000 to purchase USD $1,000,000); Client B on March 29, 2020 paid, and the Company received CAD $1,350,000 in a "pooled" or comingled operating account however the outgoing payment was due to be settled but had not yet been initiated by the Company as of the Bankruptcy Date.

102. Efforts to reconcile this balance has been complicated by the EFT Rejects (as described above) which sought to reverse certain transaction of this nature.

103. The Trustee is evaluating the nature of claims of such claimants within these proceedings.

Client deposits

104. This amount represents funds received by the Company from clients in a "pooled" bank account for future transaction(s) in which the Company was awaiting further instruction. The largest client in this position as reflected in the Company's books and records is a client who is owed approximately $18.6 million Euros (CAD $28.4 million) and is represented by Stikeman Elliott LLP in the within proceedings.

Other liabilities

105. This amount represents the balance the Company's unsecured liabilities as reflected in the Company's books and records.

**THE OTM CLIENTS**

106. As is noted above the Liquidity Providers terminated all hedging transactions under their agreements with EncoreFX under the ISDA Agreements. As a consequence, EncoreFX was left without hedges in place which leaves it exposed to ongoing FX rate fluctuations (i.e. in a speculative position for the open positions), either positive or negative, on its open book transactions with its own clients.

107. The combination of this, and other factors, including the uncertainty that prevailed during the worldwide COVID-19 pandemic and led to volatile movements in the currency market left the Trustee uncertain as to whether or not the Company would be able to perform its obligations under these transactions (currency futures and options).

108. Given these factors, the Trustee determined that EncoreFX could no longer extend credit to OTM Clients (e.g. clients who owe the Company for mark-to-market changes in the value of the transactions entered into between the parties); and in accordance with the

Company's standard form of Credit Facility Letters between EncoreFX and its clients, the Trustee, on or around April 1 and 2, 2020, notified all clients with OTM positions that EncoreFX was terminating the Credit Facility Letter (subject to the margin calls and other ongoing obligations in connection with existing transactions). A copy of this form of correspondence (the "**Credit Termination Letter**") is attached hereto as **Appendix "J"**.

109. The Credit Termination Letter further advised OTM Clients:

i) of the then current quantum of their OTM position;

ii) in accordance with the Company's Credit Facility Letter and standard form of Master Terms and Conditions, the then current quantum of the OTM position was due and owing as a margin call;

iii) it had two business days to pay the then current OTM position;

iv) if the client failed pay the then current OTM position, EncoreFX, as permitted under the credit facility and the Master Terms and Conditions would:

a. close out the client's account and terminate the contract relating to the transaction/contract that resulted in the noted OTM position and any other transactions/contracts; and

b. set off amounts owing by the client (including any gains on contracts closed out/terminated) against any losses EncoreFX incurs; and

v) any payments made in accordance with the Credit Termination Letter would be held in a trust account.

110. Copies of the Company's standard form of Credit Letter Agreement and Master Terms and Conditions are attached hereto as **Appendix "K"** and **Appendix "L"**, respectively.

111. In total, the Trustee sent Credit Termination Letters to 248 of the Company's clients who's total OTM position amounted to approximately $77 million CAD.

112. Of the 248 OTM Clients that received the Credit Termination Letters, approximately 114 contacted the Trustee, mostly through legal counsel, to either, a) seek clarity regarding

contents of the Credit Termination Letter, and/or b) dispute its contents or the methodologies described therein. These clients are defined herein as the "**Disputing Clients**". The reasons for such disputes are voluminous in aggregate and vary in nature from client to client.

113. The other approximately 134 OTM Clients did not formally contact the Trustee within two (2) Business Days to pay their OTM position. With respect to these clients, the Company under the direction of the Trustee has commenced a process to close out and net the transaction(s) that that resulted in the OTM Clients' position. As these transaction(s) are closed out, the Trustee will send each client a letter and detailed statement of account (in the form attached hereto as **Appendix "M"**) (the "**Close Out Statement**") that sets out the amount payable by the client to the Company (i.e. a receivable to EncoreFX).

114. By closing out these transactions, the Trustee will create a receivable only. The Trustee will still be required to collect those balances from those clients.

115. The Trustee has already been approached by several OTM Clients seeking to settle the balances owing by them to the Company. The Trustee anticipates that as clients receive their Close Out Statements, more will approach the Trustee in an effort to do the same.

116. The BIA provides the Trustee, with the permission of inspectors, with broad powers to do things on behalf of a bankrupt including settle any debts owing to the bankrupt.

117. For the reasons described above, there are currently no inspectors as the FMOC in which inspectors are typically appointed has been postponed to May 7, 2020. While the Trustee anticipates entering into binding settlement agreements with certain of the OTM clients, subject only to inspector approval, in exceptional circumstances it may be necessary for the Trustee to consummate the settlement without inspector approval. In light of these exceptional circumstances, the Trustee is seeking authorization from this Honourable Court to consummate such settlements where necessary. The Trustee notes that the current environment is challenging for both the Company and its clients, who may be

without new hedging facilities in place, and is of the view that certain settlements may be advantageous for both the client and the estate and require an immediacy of consummation where liquidity is identified and available.

118. The Trustee likewise notes that no payments have been received from the Disputing Clients in accordance with the Credit Termination Letters. Given the nature of the responses received by various counsel that have been retained by the Disputing Clients, the Trustee is of the view that certain of the Company's clients may be exploring avenues to avoid having to pay any OTM amounts by virtue of the Company's bankruptcy and factors relating to same. The Trustee is of the view that should the Disputing Clients exit these contracts without payment, the result would be a windfall to those clients by virtue related solely to the bankruptcy of the Company.

119. As a consequence of non-compliance with the Credit Termination Letters by the Disputing Clients, the Trustee intends to close out all of the OTM transaction(s) with such clients upon approval of the inspectors. The Trustee is of the view that the rights of these clients, including its set-off and mitigation obligations, can be undertaken immediately, without an adverse interest to the Estate. In particular, there is no adverse result to OTM Clients, including the Disputing Clients, that re-hedges it position in an FX settlement with a forward date. Should the currency denominated by the new forward contract strengthen, the client will achieve an FX gain to offset the OTM under the existing forward contract with EncoreFX; and conversely, should the FX rate of the currency denominated by the forward contract weaken, the net loss on the new contract, when added to the OTM, would have been the net result realized in the forward contract with EncoreFX in any event.

**THE ITM CLIENTS**

120. In contrast to the OTM Clients, approximately 190 clients have ITM transactions with mark-to-market gains (or liabilities to EncoreFX) of approximately $17.9 million CAD (the "**ITM Clients**").

121. As and when the ITM transactions settle or are liquidated, it is likely the ITM Clients will become unsecured creditors against the Company in respect of their ITM positions, unless future FX rates move in a direction opposite that which resulted in the ITM position; and-, in the extreme, such ITM Client could become an OTM Client and owe the Company on settlement.

122. While the transaction(s) that have resulted in the ITM positions are EFCs and the ITM Clients can liquidate those positions at any time (crystallizing an unsecured claim), the Trustee is concerned that if it does not close out these transactions on an urgent basis (and prior to the appointment of inspectors), certain parties may assert that the Trustee implicitly adopted the ITM contracts (where the Estate may have an inability to settle the contracts for lack of capital). Whereas 100% of the OTM contracts can be closed out by the Company for non-performance by the OTM Clients pursuant to the Credit Termination Letter, no similar default has been committed by the ITM Clients. By closing out the transaction(s) resulting in the ITM positions, the Trustee will crystallize the position of the ITM Clients as unsecured creditors against the Estate. Unlike the OTM, the ITM cannot forward trade at today's FX rates to offset the unsecured claim associated with the FX gain realized and foregone on the EncoreFX forward contract.

123. In these unique circumstances, the closing out of positions of ITM Clients prior to the appointment and direction of the inspectors which may impair the value of the estate's assets is not taken lightly by the Trustee; however, given certain positions advanced by legal counsel representing clients that could seek to hold the Trustee personally responsible, the Trustee is seeking the approval of this Honourable Court to notify all ITM

Clients by letter that EncoreFX will close-out the transaction(s) resulting in the ITM positions of ITM Clients at the expiry of seven (7) days following the date of Court approval unless the ITM Client acknowledges, in writing, that it does not want the ITM transaction(s) resulting in the ITM positions closed out and it indemnifies and hold harmless the Estate and Trustee, personally, for any losses realized in connection with the continuance of the contract to maturity. A copy of the form of letter that the Trustee proposes to send to the ITM Clients is attached hereto as **Appendix "N"**.

All of which is respectfully submitted this 22nd day of April, 2020.

Yours very truly,

**ERNST & YOUNG INC.**
In its capacity as Trustee
in the bankruptcy of EncoreFX Inc.
and not in its personal capacity

Per:

**Mike Bell, CPA, CA, CIRP, LIT**
**Senior Vice President**

**Peter Venetsanos, CPA, CA, CIRP, LIT**
**Vice President**

# APPENDIX A

Industry Canada | Industrie Canada

**Office of the Superintendent of Bankruptcy Canada** | **Bureau du surintendant des faillites Canada**

| | |
|---|---|
| District of: | British Columbia |
| Division No.: | 03 - Vancouver |
| Court No.: | 11-2634864 |
| Estate No.: | 11-2634864 |

In the Matter of the Bankruptcy of:

**EncoreFX Inc.**
Debtor

**ERNST & YOUNG INC.**
Licensed Insolvency Trustee

Ordinary Administration

| | | |
|---|---|---|
| Date and time of bankruptcy: | March 30, 2020, 09:47 | Security: $1,200,000.00 |
| Date of trustee appointment: | March 30, 2020 | |
| Meeting of creditors: | April 16, 2020, 10:00<br>Meeting to be conducted via telephone<br>+1 647-749-1785<br>Conference ID: 696 265 419#, British Columbia<br>Canada, | |
| Chair: | Trustee | |

CERTIFICATE OF APPOINTMENT - Section 49 of the Act; Rule 85

I, the undersigned, official receiver in and for this bankruptcy district, do hereby certify that:

- the aforenamed debtor filed an assignment under section 49 of the *Bankruptcy and Insolvency Act*;
- the aforenamed trustee was duly appointed trustee of the estate of the debtor.

The said trustee is required:

- to provide to me, without delay, security in the aforementioned amount;
- to send to all creditors, within five days after the date of the trustee's appointment, a notice of the bankruptcy; and
- when applicable, to call in the prescribed manner a first meeting of creditors, to be held at the aforementioned time and place or at any other time and place that may be later requested by the official receiver.

Date: March 30, 2020, 19:44

E-File/Dépôt Electronique

Official Receiver

300 Georgia Street W, Suite 2000, Vancouver, British Columbia, Canada, V6B6E1, (877)376-9902

Canada

# APPENDIX B

**ESTATE OF ENCOREFX**

**First Meeting of Creditors**

**PROTOCOL**

To facilitate a First Meeting of Creditors for the estate of EncoreFX during this period of COVID-19, and to promote and maintain social distancing, the following substantive protocol will be adopted by Ernst & Young Inc. in its capacity as Licensed Insolvency Trustee for the Estate of EncoreFX (the "**Trustee**") for purpose of the creditors' meetings.

All documents necessary to comply with the requirements and procedural matters addressed herein have been provided by the Trustee to the creditors under cover dated April 1, 2020 (mailed April 3, 2020).

Should there be any questions concerning the protocol, please contact Mr. Marko Gordic at 1 (604) 891 8280 or by email at marko.gordic@ca.ey.com; please allow 12 to 24 hours for return contact as a result of the volume of calls and emails to be received.

**MEETING DETAILS**

- Date – Thursday, May 7, 2020
- Time – Commencing at 10:00 am (Pacific Time) and each 120 minutes thereafter as necessary. Creditors will be notified of the meeting they have been assigned to attend based on a subsequent calendar invite that will be sent by the Trustee (as detailed below)
- Capacity – 150 participants per meeting (subject to change). While the Trustee's technology permits up to 240 participants per conference call meeting, we will attempt to cap meetings at 150 to permit an orderly dissemination of ideas and discussion

**TECHNOLOGY**

- For viewing of materials and accessing features during the meeting, download Microsoft Teams on your computer and/or mobile device:
  - Learn the software prior to attendance, unfortunately we will not have capacity to answer multiple questions on accessing the meeting and materials
- Good hygiene during meeting:
  - Leave your listening device on mute until recognized by the chair to prevent background noise
  - Turn your video feed off within the program, such uses unnecessary bandwidth

**PRE-MEETING REQUIREMENTS**

- Proof of claim recording cut-off for voting purpose (only) – May 6, 2020 at 12:00 pm (Pacific Time), subject to permitted exception detailed below:
  - Proof of claims received by the Trustee after the cut-off cannot be assured to be recorded for purpose of the meeting; however, will be entitled to participate in all future proceedings involving the aforenoted estate
  - The Trustee, on a best efforts basis, will seek to register such late filed proof of claim forms for purpose of the meetings
- Proxy cut-off for voting purpose - May 6, 2020 at 12:00 pm (Pacific Time)

- Based on email provided on the proof of claim, EY will provide:
  - A copy of the Trustee's preliminary report on the administration of the estate of EncoreFX (in draft)
  - Proposed agenda for meeting of creditors
  - Confirmation:
    - Creditor identifier number
    - Status of claim – admitted or contested for voting purpose
    - Defects in proof of claim, if any. Defects can be corrected either prior to or following the meeting of creditors. If after, vote will be marked as contested for purpose of the proceeding
  - Calendar invite for meeting, such invite will include:
    - Call in details
    - Time appointed for meeting that you are invited to attend
    - A two-hour meeting duration, which may be extended or truncated based on actual meeting requirements

**CONDUCT AT MEETING**

**Registration**

- Pre-meeting registration – the Trustee will open lines 45 minutes in advance of an appointed meeting time. We encourage creditors to call in early such that the registration process can be completed in a timely fashion and not delay commencement of the calling to order of the meeting
- Callers will be acknowledged on a "first come, first served" basis, the registration process will include:
  - Identify yourself by your unique creditor identifier number
  - Identify any additional individuals attending with you, including their capacity (legal counsel and firm as applicable)
  - Confirmation of your contact details and claim amount
  - Confirmation of the party to vote, by voice, as creditor for all motions called during the meeting
  - Confirmation of additional proxies held on behalf of creditors, if any
  - Whether you intend that your name stand as a potential Inspector to the estate (additional details will be provided prior to the vote for Inspectors, as detailed below)

**Calling the Meeting to Order**

- The Trustee will act as Chair of the First Meeting of Creditors
- The Chair will call the meeting to order and immediately adjourned, if necessary (based on a motion from a creditor to whom the Chair maintains a proxy) to permit completion of the registration process. The time of the adjournment will be estimated by the Chair at the time the meeting adjournment is declared
  - The creditors generally, by request of the Chair in the negative (seeking parties opposed to admission), will seek permission to register for purpose of the meeting late filed proof of claims that were delivered to the Trustee before the calling of the meeting to order; however, after the proof of claim submission deadline (and not previously registered by

the Trustee on a best efforts basis). For greater certainty, such proof of claim forms must be in the physical possession of the Trustee

**Motions and Voting at Meetings**

- The Chair will maintain a roster of all participants compiled during the registration process. When a motion is called for by the Trustee, either as a standard protocol motion for such meetings or based on a request for a motion from the creditors, generally, the Trustee will request from the general population of creditors attending the meeting for:
  - A second of the motion
  - Call for a vote on the motion – by ordinary or special resolution, as required
- Anticipated motions will include:
  - Approval of the agenda for the meeting, as presented or modified
  - Inclusion or exclusion of media, if appropriate
  - Affirmation of the appointment of the Trustee
  - Appointment of Inspectors
  - Adjournment of meeting
  - Such other motions as the creditors determine appropriate in the circumstances
- To participate in the meeting:
  - To second the motion please state your creditor identifier number and that you second the motion
  - For the vote on the motion, the Chair will undertake a general call of all attending creditors, in person or by proxy, and ask whether you wish to vote:
    - To dissent to the motion
    - To abstain from voting on the motion
  - On such call out from the Chair, if you desire to vote in that manner, please call out your identifier number and name. The Chair will verbally recognize your vote to confirm such recording of same on the tally sheet. For greater certainty, the Chair will record your vote in the affirmative unless your vote is recorded to dissent or abstain
- The Chair will not declare whether a motion passed or failed until the completion of all meetings of creditors (as reported on below)

**Questions at Meeting**

- Technology includes a chat feature that allows parties that are participating through their computers to register their interest to ask a question of the Trustee or a representative of EncoreFX – for purpose of asking a question, in the chat feature, please indicate your identifier number and your intent to ask a question, the Chair will log your interest
- The Chair will recognize parties to ask a question in the following priority:
  - Those that have submitted a request via a chat request and in the order of registration
  - Those that are unable to register on chat or prefer not too, via a general call out for questions
- Once recognized by the Chair and before asking a question, please state your identifier number, name, creditor you represent and your question. For clarity, you will not be permitted to speak until you are recognized by the Chair

**Inspectors**

- Inspectors will be appointed from the creditors group generally. To maintain equity amongst the anticipated multiple first meeting of creditors, we would anticipate the appointment of one or two Inspectors per meeting (subject to the number of meetings hosted) and across the creditor profile:
  - Out-of-the money (from creditor perspective) crystalized forward trade contracts
  - Swap contract participants
  - Other deposit service participants
  - Trade and supplier contracts, including employee claims
- Inspectors are appointed in their personal capacity and to act in the best interests of all creditors generally. Inspectors are expected to recuse themselves on voting on future motions that could create a conflict of interest – more details pertaining to the role of an Inspector will be emailed to the Inspectors appointed following the creditors meeting
- In furtherance of the appointment of Inspectors, the Chair will (sequentially):
  - Review relevant background details:
    - Number of creditor meetings to be hosted
    - Number of permitted Inspectors (not greater than 5 by statute)
    - Exclusions of persons to act as Inspectors
    - Filling of future vacancies on Inspectors
  - Review the duties of an Inspector, including:
    - Requirement for independence
    - Role for oversight of the activities and guidance to the Trustee
    - Remuneration (stipend)
    - Potential time commitments, including frequency and duration of meetings
    - Other relevant guidance based on information discussed during the creditors' meeting
  - Call for nominations, the Chair will:
    - Review the roster and call out the identifier number and name of those that indicated they would let their names stand for purpose of being appointed as an Inspector
    - Once the roster of candidates is fulfilled, the Chair will ask each person so desiring to participate as an Inspector to:
      - Introduce themselves
      - The creditor name (or if legal counsel, the creditor represented)
      - The amount of the claim
      - Other particulars that the creditors should be aware of generally to consider the nomination
    - Call for a motion to consider and vote on the appointment of the Inspectors – considering each nomination individually and by roll call. In such instance, the Chair will call a roll of the general creditors present, personally or by proxy, to tabulate the vote totals by nominee
      - The Trustee will tabulate the votes for each Inspector during the process and report out immediately thereafter

- The **First meeting of Inspectors** will take place on **Friday, May 8, 2020 at 10:00 am (Pacific Time).** A calendar invite will be circulated to the appointed Inspectors as soon as possible following the conclusion of all meetings of creditors
    - Where more than five Inspectors have been appointed to the estate of EncoreFX, the Inspectors will determine at the First Meeting of the Inspectors a fair and equitable means of reducing the Inspector roster to the maximum permitted number of Inspectors (5) based on the statute

**POST MEETING REPORTING**

- On Monday, May 11, 2020, the Chair will send by email to each creditor that attended a First Meeting of the Creditors of EncoreFX, the following:
    - A copy of the Trustee's preliminary report on the administration of the estate of EncoreFX (Final)
    - A summary of all motions called at the meetings of the creditors
    - The result of the votes on each motion:
        - By creditor meeting and cumulative for all meetings:
            - Affirmative and by dissent
            - Admitted and contested
            - Requisite required for each motion (ordinary or special resolution)
        - A declaration by the Chair as to whether the motion passed or failed
    - A summary of the Inspectors appointed at each of the meetings, and cumulatively, and the final roster based on the First Meeting of the Inspectors
    - Such other information as is determined by the creditors at the meetings to be relevant and ancillary to the administration of the estate

# APPENDIX C

EY
Building a better working world

Ernst & Young Inc.
700 West Georgia Street
Vancouver, BC V7Y 1C7

Tel: +1 604 891 8200
Fax: +1 604 899 3530
ey.com

April 1, 2020

To the creditors of EncoreFX Inc.

**IN THE MATTER OF THE BANKRUPTCY OF ENCOREFX INC. (the "Company")**

On March 30, 2020, EncoreFX Inc. filed an assignment into bankruptcy. Ernst & Young Inc. was appointed as the licensed insolvency trustee in the estate (the "**Trustee**").

The Trustee encloses the following documents:

a) Form 68 - Notice of Bankruptcy and First Meeting of Creditors;
b) Certificate of Assignment;
c) Form 78 - Statement of Affairs;
d) List of Creditors;
e) Form 31 - Proof of Claim form;
f) Form 36 - Proxy form; and
g) Instructions to complete the Proof of Claim and Proxy forms

These materials are also published on a website the Trustee has set up for the bankruptcy proceedings at: www.ey.com/ca/encorefx.

It is not necessary for you to attend the first meeting of creditors if you wish to participate in the bankruptcy proceedings. If you do wish to attend the first meeting of creditors, to be entitled to vote at the meeting, a creditor must file with the Trustee, before the meeting, a Proof of Claim and, where necessary, a Proxy form.

Please submit your Proof of Claim to and direct any questions relating to this matter to:

**Mr. Marko Gordic**
**700 West Georgia Street**
**Vancouver, BC V7Y 1C7**
**Phone: (604) 891-8280**
**Email: marko.gordic@ca.ey.com**

Sincerely,

**ERNST & YOUNG INC.**
*In its capacity as Trustee of EncoreFX Inc.*
*and not in its personal or corporate capacity*

Per:

**Mike Bell, CPA, CA, CIRP, LIT**
Senior Vice President

District of: British Columbia
Division No. 11 - Vancouver
Court No.
Estate No. 11-2634864

_FORM 68_
Notice of Bankruptcy, First Meeting of Creditors
(Subsection 102(1) of the Act)

[X] Original [ ] Amended

In the matter of the Bankruptcy of
EncoreFX Inc.
of the city of Vancouver
in the Province of British Columbia

Take notice that:

1. EncoreFX Inc. filed (or was deemed to have filed) an assignment on the 30th day of March 2020, and the undersigned, Ernst & Young Inc., was appointed as trustee of the estate of the bankrupt by the official receiver (or the Court), subject to affirmation by the creditors of the trustee's appointment or substitution of another trustee by the creditors.

2. The first meeting of creditors of the bankrupt will be conducted on the 16th day of April 2020, at 10:00 AM (PST), via telephone Conference Call. Please dial #+1 647-749-1785 and enter Conference ID: 696 265 419#.

3. To be entitled to vote at the meeting, a creditor must lodge with the trustee, before the meeting, a proof of claim and, where necessary, a proxy.

4. Enclosed with this notice is a proof of claim form, proxy form, and list of creditors with claims amounting to $25 or more showing the amounts of their claims.

5. Creditors must prove their claims against the estate of the bankrupt in order to share in any distribution of the proceeds realized from the estate.

Dated at the City of Vancouver in the Province of British Columbia, this 31st day of March 2020.

Ernst & Young Inc. - Licensed Insolvency Trustee

Per:

Mike Bell - Licensed Insolvency Trustee
700 West Georgia Street
Vancouver BC V7Y 1C7
Phone: (604) 891-8200 Fax: (604) 899-3530

Industry Canada | Industrie Canada
**Office of the Superintendent of Bankruptcy Canada** | **Bureau du surintendant des faillites Canada**

District of: British Columbia
Division No.: 03 - Vancouver
Court No.: 11-2634864
Estate No.: 11-2634864

In the Matter of the Bankruptcy of:

**EncoreFX Inc.**
Debtor

**ERNST & YOUNG INC.**
Licensed Insolvency Trustee

Ordinary Administration

| | | | |
|---|---|---|---|
| Date and time of bankruptcy: | March 30, 2020, 09:47 | Security: | $1,200,000.00 |
| Date of trustee appointment: | March 30, 2020 | | |
| Meeting of creditors: | April 16, 2020, 10:00<br>Meeting to be conducted via telephone<br>+1 647-749-1785<br>Conference ID: 696 265 419#, British Columbia<br>Canada, | | |
| Chair: | Trustee | | |

CERTIFICATE OF APPOINTMENT - Section 49 of the Act; Rule 85

I, the undersigned, official receiver in and for this bankruptcy district, do hereby certify that:

- the aforenamed debtor filed an assignment under section 49 of the *Bankruptcy and Insolvency Act*;
- the aforenamed trustee was duly appointed trustee of the estate of the debtor.

The said trustee is required:

- to provide to me, without delay, security in the aforementioned amount;
- to send to all creditors, within five days after the date of the trustee's appointment, a notice of the bankruptcy; and
- when applicable, to call in the prescribed manner a first meeting of creditors, to be held at the aforementioned time and place or at any other time and place that may be later requested by the official receiver.

Date: March 30, 2020, 19:44

E-File/Dépôt Electronique

Official Receiver

| | | | |
|---|---|---|---|
| District of: | British Columbia | [X] Original | [ ] Amended |
| Division No. | 11 - Vancouver | | |
| Court No. | | | |
| Estate No. | | | |

– Form 78 –

Statement of Affairs (Business Bankruptcy) made by an entity

(Subsection 49(2) and Paragraph 158(d) of the Act / Subsections 50(2) and 62(1) of the Act)

To the bankrupt:

You are required to carefully and accurately complete this form and the applicable attachments showing the state of your affairs on the date of the bankruptcy, on the 30th day of March 2020. When completed, this form and the applicable attachments will constitute the Statement of Affairs and must be verified by oath or solemn declaration.

LIABILITIES
(as stated and estimated by the officer)

| | |
|---|---|
| 1. Unsecured creditors as per list "A" | 47,535,147.36 |
| Balance of secured claims as per list "B" | 0.00 |
| Total unsecured creditors | 47,535,147.36 |
| 2. Secured creditors as per list "B" | 35,575,000.00 |
| 3. Preferred creditors as per list "C" | 0.00 |
| 4. Contingent, trust claims or other liabilities as per list "D" estimated to be reclaimable for | 51,510,010.00 |
| Total liabilities | 134,620,157.36 |
| Surplus | NIL |

ASSETS
(as stated and estimated by the officer)

| | | |
|---|---|---|
| 1. Inventory | | 0.00 |
| 2. Trade fixtures, etc. | | 509,724.00 |
| 3. Accounts receivable and other receivables, as per list "E" | | |
| Good | 17,451,036.00 | |
| Doubtful | 10,302,002.00 | |
| Bad | 23,756,972.00 | |
| Estimated to produce | | 17,451,036.00 |
| 4. Bills of exchange, promissory note, etc., as per list "F" | | 0.00 |
| 5. Deposits in financial institutions | | 0.00 |
| 6. Cash | | 1,206,471.00 |
| 7. Livestock | | 0.00 |
| 8. Machinery, equipment and plant | | 0.00 |
| 9. Real property or immovable as per list "G" | | 0.00 |
| 10. Furniture | | 143,661.00 |
| 11. RRSPs, RRIFs, life insurance, etc. | | 0.00 |
| 12. Securities (shares, bonds, debentures, etc.) | | 0.00 |
| 13. Interests under wills | | 0.00 |
| 14. Vehicles | | 0.00 |
| 15. Other property, as per list "H" | | 68,588,531.00 |
| If bankrupt is a corporation, add: | | |
| Amount of subscribed capital | 0.00 | |
| Amount paid on capital | 0.00 | |
| Balance subscribed and unpaid | | 0.00 |
| Estimated to produce | | 0.00 |
| Total assets | | 87,899,423.00 |
| Deficiency | | 46,720,734.36 |

I, Peter Bjorn Gustavson, of the City of Victoria in the Province of British Columbia, do swear (or solemnly declare) that this statement and the attached lists are to the best of my knowledge, a full, true and complete statement of my affairs on the 29th day of March 2020 and fully disclose all property of every description that is in my possession or that may devolve on me in accordance with the Act.

SWORN (or SOLEMNLY DECLARED)
before me at the City of Victoria in the Province of British Columbia, on this 29th day of March 2020.

PETER VAARTNOU
Barrister & Solicitor
1212 - 1175 DOUGLAS STREET
VICTORIA, B.C. V8W 2E1
382-7222

Peter Bjorn Gustavson

District of: British Columbia
Division No. 11 - Vancouver
Court No.
Estate No.

FORM 78 -- Continued

List "A"
Unsecured Creditors

EncoreFX Inc.

| No. | Name of creditor | Address | Unsecured claim | Balance of claim | Total claim |
|---|---|---|---|---|---|
| 1 | 1504331 Alberta Inc. | --- | 104,400.00 | 0.00 | 104,400.00 |
| 2 | A and P Fruit Growers Ltd. | --- | 266,380.00 | 0.00 | 266,380.00 |
| 3 | ACAA Absolute Alliance Incorporated | --- | 231,105.12 | 0.00 | 231,105.12 |
| 4 | AFD Petroleum Ltd. | --- | 35,436.24 | 0.00 | 35,436.24 |
| 5 | Andreas Eberhard Wrede | --- | 28,757,243.00 | 0.00 | 28,757,243.00 |
| 6 | Arjazon Seed Trading Ltd. | --- | 22,725.96 | 0.00 | 22,725.96 |
| 7 | BLewis Trading Inc. | --- | 24,124.99 | 0.00 | 24,124.99 |
| 8 | C Y Grower Supplies Ltd. | --- | 32,811.52 | 0.00 | 32,811.52 |
| 9 | Canadian Wood Fiber Ltd. | --- | 8,190.00 | 0.00 | 8,190.00 |
| 10 | Cascade Gear Inc. | --- | 7,392.67 | 0.00 | 7,392.67 |
| 11 | Cell Phone Parts Canada | --- | 3,834.60 | 0.00 | 3,834.60 |
| 12 | Century Import and Export Inc. | --- | 2,044.36 | 0.00 | 2,044.36 |
| 13 | CWT Victor Travel | --- | 19,187.45 | 0.00 | 19,187.45 |
| 14 | Don Jeremy Enright | --- | 35,000.00 | 0.00 | 35,000.00 |
| 15 | Donald Eric John Calveley | --- | 4,814.14 | 0.00 | 4,814.14 |
| 16 | Dymac Canada Inc. | --- | 49,459.48 | 0.00 | 49,459.48 |
| 17 | DYNA Engineering Ltd. | --- | 25,523.62 | 0.00 | 25,523.62 |
| 18 | Dynamic Windows and Doors Inc. | --- | 3,261.67 | 0.00 | 3,261.67 |
| 19 | EBYT Productions Inc. | --- | 3,686.43 | 0.00 | 3,686.43 |
| 20 | EcoSafe Zero Waste Inc. | --- | 116,243.88 | 0.00 | 116,243.88 |
| 21 | Fillmore Riley LLP | 1700 - 360 Main Street<br>Winnipeg MB R3C 3Z3 | 968.80 | 0.00 | 968.80 |
| 22 | Fraser Valley Packers Inc | --- | 5,000.00 | 0.00 | 5,000.00 |
| 23 | Gigi Importing Limited | --- | 1,314.88 | 0.00 | 1,314.88 |
| 24 | H J S Wholesale Ltd. | --- | 276,062.08 | 0.00 | 276,062.08 |

29-Mar-2020
Date

Peter Bjorn Gustavson

District of: British Columbia
Division No. 11 - Vancouver
Court No.
Estate No.

FORM 78 -- Continued

List "A"
Unsecured Creditors

EncoreFX Inc.

| No. | Name of creditor | Address | Unsecured claim | Balance of claim | Total claim |
|---|---|---|---|---|---|
| 25 | Kastor Energy Ltd. | – | 532.00 | 0.00 | 532.00 |
| 26 | KB Financial Solutions | – | 6,239.13 | 0.00 | 6,239.13 |
| 27 | Kimia Distributors Canada KDC | – | 51,814.17 | 0.00 | 51,814.17 |
| 28 | KSW Holdings Inc. | – | 7,819.00 | 0.00 | 7,819.00 |
| 29 | Lamb Cattle Company Ltd. | – | 475.00 | 0.00 | 475.00 |
| 30 | Liberty Specialty Imports Inc. | – | 155,000.00 | 0.00 | 155,000.00 |
| 31 | Limelight Pictures Inc. | – | 722.50 | 0.00 | 722.50 |
| 32 | Lowfoot Inc. | – | 7,000.00 | 0.00 | 7,000.00 |
| 33 | Machine and Product Design Inc. | – | 23,486.79 | 0.00 | 23,486.79 |
| 34 | Mainmast International Ltd. | – | 24,645.00 | 0.00 | 24,645.00 |
| 35 | Meadow Valley Meats Ltd. | – | 144,119.44 | 0.00 | 144,119.44 |
| 36 | MENs Farming Inc. | – | 20,714.63 | 0.00 | 20,714.63 |
| 37 | Microsoft Corporation | c/o 910430<br>PO Box 4090, Station A<br>Toronto ON – | 1,924.07 | 0.00 | 1,924.07 |
| 38 | Mid Plains Implements Ltd. | – | 13,625.32 | 0.00 | 13,625.32 |
| 39 | Mobilia Interiors Inc. | – | 375.00 | 0.00 | 375.00 |
| 40 | Nash Jewellers | – | 17,598.37 | 0.00 | 17,598.37 |
| 41 | Ocean Seafood Company | – | 179,600.00 | 0.00 | 179,600.00 |
| 42 | Omnae Technologies Inc. | – | 376.14 | 0.00 | 376.14 |
| 43 | Phoenix Commodities Pvt Ltd. | – | 454,547.66 | 0.00 | 454,547.66 |
| 44 | Product Line Holdings and Logistics Ltd. | – | 5,600.00 | 0.00 | 5,600.00 |
| 45 | PRS Plastic and Rubber Solutions Limited | – | 23,800.00 | 0.00 | 23,800.00 |
| 46 | Qualichem Industrial Products Ltd. | – | 491.76 | 0.00 | 491.76 |
| 47 | Ransom Cattle Co Ltd. | – | 206,268.19 | 0.00 | 206,268.19 |

29-Mar-2020
Date

Peter Bjorn Gustavson

District of: British Columbia
Division No. 11 - Vancouver
Court No.
Estate No.

FORM 78 -- Continued

List "A"
Unsecured Creditors

EncoreFX Inc.

| No. | Name of creditor | Address | Unsecured claim | Balance of claim | Total claim |
|---|---|---|---|---|---|
| 48 | Refinitiv Transaction Services Limited | The Thomson Reuters Building<br>South Colonnade, Canary Wharf<br>London -- United Kingdom | 4,541.64 | 0.00 | 4,541.64 |
| 49 | RenewABILITY Energy Inc. | --<br>-- -- -- | 46,871.61 | 0.00 | 46,871.61 |
| 50 | Rogers Communications Canada Inc. | Rogers Business Solutions<br>PO Box 2000, Station D<br>Scarborough ON -- -- | 562.70 | 0.00 | 562.70 |
| 51 | SaskTel CMR #02799807 | PO Box 2121<br>Regina SK S4P 4C5 | 761.21 | 0.00 | 761.21 |
| 52 | SBI Fine Chemicals Inc. | --<br>-- -- -- | 1,456.00 | 0.00 | 1,456.00 |
| 53 | Sergei Glebov | --<br>-- -- -- | 7,925.65 | 0.00 | 7,925.65 |
| 54 | Shaw Cablesystems GP #014-1952-4728 | PO Box 2468, Stn. Main<br>Calgary AB T2P 4Y2 | 285.87 | 0.00 | 285.87 |
| 55 | Shaw Cablesystems GP #030-8955-3030 | PO Box 2468, Stn. Main<br>Calgary AB T2P 4Y2 | 271.74 | 0.00 | 271.74 |
| 56 | Shaw Cablesystems GP #055-6319-4842 | PO BOx 2468, Stn. Main<br>Calgary AB T2P 4Y2 | 251.80 | 0.00 | 251.80 |
| 57 | Song Xing Trading Co Ltd. | --<br>-- -- -- | 1,363.57 | 0.00 | 1,363.57 |
| 58 | South Beach Trading Inc. | --<br>-- -- -- | 200,651.75 | 0.00 | 200,651.75 |
| 59 | Sparkes Corn Barn | --<br>-- -- -- | 3,500.00 | 0.00 | 3,500.00 |
| 60 | Spot Travel Inc. | --<br>-- -- -- | 3,882.06 | 0.00 | 3,882.06 |
| 61 | Stephen James Kralik | --<br>-- -- -- | 600.00 | 0.00 | 600.00 |
| 62 | Strategyworks Corp | --<br>-- -- -- | 500.00 | 0.00 | 500.00 |
| 63 | The Flower Factory | --<br>-- -- -- | 41,553.75 | 0.00 | 41,553.75 |
| 64 | The Premium Tool and Abrasive Co Ltd | --<br>-- -- -- | 4,050.45 | 0.00 | 4,050.45 |
| 65 | Tuberosum Technologies Inc. | --<br>-- -- -- | 511.50 | 0.00 | 511.50 |
| 66 | Various Customer OTM Margin Deposits | --<br>-- -- -- | 15,832,621.00 | 0.00 | 15,832,621.00 |
| | | Total: | 47,535,147.36 | 0.00 | 47,535,147.36 |

29-Mar-2020

Date

Peter Bjorn Gustavson

District of: British Columbia
Division No. 11 - Vancouver
Court No.
Estate No.

FORM 78 -- Continued

List "B"
Secured Creditors

EncoreFX Inc.

| No. | Name of creditor | Address | Amount of claim | Particulars of security | When given | Estimated value of security | Estimated surplus from security | Balance of claim |
|---|---|---|---|---|---|---|---|---|
| 1 | Gustavson Capital Corporation | 517 Fort Street<br>2nd Floor<br>Victoria BC V8W 1E7 | 35,575,000.00 | Debts Due - Business - Accounts receivable | | 17,451,036.00 | | |
| | | | | Other - Initial margin deposits - Deutsche bank | | 10,079,748.00 | 670,753.00 | |
| | | | | Other - Initial margin deposits - Goldman Sachs | | 6,328,021.00 | | |
| | | | | Cash on Hand - Cash and cash equivalents | | 1,206,471.00 | | |
| | | | | Business Assets - Trade Fixtures - Computer Equipment | | 509,724.00 | | |
| | | | | Other - MTM Deposits with Deutsche bank, Goldmand Sachs and ANZ | | 0.00 | 51,510,009.00 | |
| | | | | Furniture - Furniture | | 0.00 | 143,661.00 | |
| | | **Total:** | **35,575,000.00** | | | **35,575,000.00** | **52,324,423.00** | **0.00** |

29-Mar-2020

Date

Peter Bjorn Gustavson

District of: British Columbia
Division No. 11 - Vancouver
Court No.
Estate No.

FORM 78 -- Continued

List "C"
Preferred Creditors for Wages, Rent, etc.

EncoreFX Inc.

| No. | Name of creditor | Address and occupation | Nature of claim | Period during which claim accrued | Amount of claim | Amount payable in full | Difference ranking for dividend |
|---|---|---|---|---|---|---|---|
| | | | | Total: | 0.00 | 0.00 | 0.00 |

20-Mar 2020
Date

Peter Bjorn Gustavson

District of: British Columbia
Division No. 11 - Vancouver
Court No.
Estate No.

FORM 78 -- Continued

List "D"
Contingent or Other Liabilities

EncoreFX Inc.

| No. | Name of creditor or claimant | Address and occupation | Amount of liability or claim | Amount expected to rank for dividend | Date when liability incurred | Nature of liability |
|---|---|---|---|---|---|---|
| 1 | ANZ | -- | 14,465,998.00 | 0.00 | | Derivative liability |
| 2 | Deutsche Bank | -- | 32,846,869.00 | 0.00 | | Derivative liability |
| 3 | Goldman Sachs | -- | 4,197,143.00 | 0.00 | | Derivative Liability |
| | | **Total:** | **51,510,010.00** | **0.00** | | |

29-Mar-2020
Date

Peter Bjorn Gustavson

District of: British Columbia
Division No. 11 - Vancouver
Court No.
Estate No.

FORM 78 -- Continued

List "E"
Debts Due to the Bankrupt

EncoreFX Inc.

| No. | Name of debtor | Address and occupation | Nature of debt | Amount of debt (good, doubtful, bad) | Folio of ledgers or other book where particulars to be found | When contracted | Estimated to produce | Particulars of any securities held for debt |
|---|---|---|---|---|---|---|---|---|
| 1 | Accounts receivable | | Accounts receivable | 17,451,036.00<br>10,302,002.00<br>23,756,972.00 | | 27-Mar-2020 | 17,451,036.00 | Net derivative assets owing from clients |
| | | | Total: | 17,451,036.00<br>10,302,002.00<br>23,756,972.00 | | | 17,451,036.00 | |

29-Mar-2020
Date

Peter Bjorn Gustavson

District of: British Columbia
Division No. 11 - Vancouver
Court No.
Estate No.

FORM 78 -- Continued

List "F"

Bills of Exchange, Promissory Notes, Lien Notes, Chattel Mortgages, etc., Available as Assets

EncoreFX Inc.

| No. | Name of all promissory, acceptors, endorsers, mortgagors, and guarantors | Address | Occupation | Amount of bill or note, etc. | Date when due | Estimated to produce | Particulars of any property held as security for payment of bill or note, etc. |
|---|---|---|---|---|---|---|---|
| | | | Total: | 0.00 | | 0.00 | |

29-Mar-2020
Date

Peter Bjorn Gustavson

District of: British Columbia
Division No. 11 - Vancouver
Court No.
Estate No.

FORM 78 -- Continued

List "G"
Real Property or Immovables Owned by Bankrupt

EncoreFX Inc.

| Description of property | Nature of bankrupt interest | In whose name does title stand | Total value | Particulars of mortgages, hypothecs, or other encumbrances (name, address, amount) | Equity or surplus |
|---|---|---|---|---|---|
| | | Total: | 0.00 | | 0.00 |

29-Mar-2020
Date

Peter Bjorn Gustavson

District of: British Columbia
Division No. 11 - Vancouver
Court No.
Estate No.

FORM 78 – Concluded

List "H"
Property

EncoreFX Inc.

FULL STATEMENT OF PROPERTY

| Nature of property | Location | Details of property | Original cost | Estimated to produce |
|---|---|---|---|---|
| (a) Stock-in-trade | | | 0.00 | 0.00 |
| (b) Trade fixtures, etc. | | Computer Equipment | 0.00 | 509,724.00 |
| (c) Cash in financial institutions | | | 0.00 | 0.00 |
| (d) Cash on hand | | Cash on hand | 1,206,471.00 | 1,206,471.00 |
| (e) Livestock | | | 0.00 | 0.00 |
| (f) Machinery, equipment and plant | | | 0.00 | 0.00 |
| (g) Furniture | | Furniture | 0.00 | 143,661.00 |
| (h) Life insurance policies, RRSPs, etc. | | | 0.00 | 0.00 |
| (i) Securities | | | 0.00 | 0.00 |
| (j) Interests under wills, etc. | | | 0.00 | 0.00 |
| (k) Vehicles | | | 0.00 | 0.00 |
| (l) Taxes | | | 0.00 | 0.00 |
| (m) Other | | Initial margin deposits - Goldman Sachs | 0.00 | 6,328,021.00 |
| | | Initial margin deposits - Deutsche bank | 0.00 | 10,750,501.00 |
| | | MTM Deposits with Deutsche bank, Goldmand Sachs and ANZ | 0.00 | 51,510,009.00 |
| | | | **Total:** | **70,448,387.00** |

29-Mar-2020

Date

Peter Bjorn Gustavson

Court No.

File No.

Form 78 (Bill C-12)
Statement of affairs (Business bankruptcy)

Ernst & Young Inc. - Licensed Insolvency Trustee
Per:

Mike Bell - Licensed Insolvency Trustee
700 West Georgia Street
Vancouver BC V7Y 1C7
Phone: (604) 891-8200 Fax: (604) 899-3530

Ernst & Young Inc.
700 West Georgia Street
Vancouver BC V7Y 1C7
Phone: (604) 891-8200 Fax: (604) 899-3530

| | |
|---|---|
| District of: | British Columbia |
| Division No. | 11 - Vancouver |
| Court No. | |
| Estate No. | 11-2634864 |

FORM 31
Proof of Claim
(Sections 50.1, 81.5, 81.6, Subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1), and Paragraphs 51(1)(e) and 66.14(b) of the Act)

In the matter of the Bankruptcy of
EncoreFX Inc.
of the city of Vancouver
in the Province of British Columbia

All notices or correspondence regarding this claim must be forwarded to the following address:

______________________________________________

______________________________________________

In the matter of the bankruptcy of EncoreFX Inc. of the City of Vancouver in the Province of British Columbia and the claim of ____________________, creditor.

I, ___________________________ (name of creditor or representative of the creditor), of the city of ______________ in the province of ____________, do hereby certify:

1. That I am a creditor of the above named debtor (or I am ____________________ (position/title) of ____________________, creditor).

2. That I have knowledge of all the circumstances connected with the claim referred to below.

3. That the debtor was, at the date of bankruptcy, namely the 30th day of March 2020, and still is, indebted to the creditor in the sum of $____________________, as specified in the statement of account (or affidavit) attached and marked Schedule "A", after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)

4. (Check and complete appropriate category.)

☐ A. UNSECURED CLAIM OF $____________________

(other than as a customer contemplated by Section 262 of the Act)

That in respect of this debt, I do not hold any assets of the debtor as security and
(Check appropriate description.)

☐ Regarding the amount of $ ____________________, I claim a right to a priority under section 136 of the Act.

☐ Regarding the amount of $____________________, I do not claim a right to a priority.
(Set out on an attached sheet details to support priority claim.)

☐ B. CLAIM OF LESSOR FOR DISCLAIMER OF A LEASE $____________________

That I hereby make a claim under subsection 65.2(4) of the Act, particulars of which are as follows:
*(Give full particulars of the claim, including the calculations upon which the claim is based.)*

☐ C. SECURED CLAIM OF $____________________

That in respect of this debt, I hold assets of the debtor valued at $______________ as security, particulars of which are as follows:
*(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)*

☐ D. CLAIM BY FARMER, FISHERMAN OR AQUACULTURIST OF $____________________

That I hereby make a claim under subsection 81.2(1) of the Act for the unpaid amount of $_____________
(Attach a copy of sales agreement and delivery receipts.)

FORM 31 --- Concluded

☐ E. CLAIM BY WAGE EARNER OF $________________________

☐ That I hereby make a claim under subsection 81.3(8) of the Act in the amount of $__________,

☐ That I hereby make a claim under subsection 81.4(8) of the Act in the amount of $__________,

☐ F. CLAIM BY EMPLOYEE FOR UNPAID AMOUNT REGARDING PENSION PLAN OF $________________________

☐ That I hereby make a claim under subsection 81.5 of the Act in the amount of $__________,

☐ That I hereby make a claim under subsection 81.6 of the Act in the amount of $__________,

☐ G. CLAIM AGAINST DIRECTOR $__________

*(To be completed when a proposal provides for the compromise of claims against directors.)*
That I hereby make a claim under subsection 50(13) of the Act, particulars of which are as follows:
*(Give full particulars of the claim, including the calculations upon which the claim is based.)*

☐ H. CLAIM OF A CUSTOMER OF A BANKRUPT SECURITIES FIRM $__________

That I hereby make a claim as a customer for net equity as contemplated by section 262 of the Act, particulars of which are as follows:
*(Give full particulars of the claim, including the calculations upon which the claim is based.)*

5. That, to the best of my knowledge, I __________(am/am not) (or the above-named creditor __________(is/is not)) related to the debtor within the meaning of section 4 of the Act, and ________(have/has/have not/has not) dealt with the debtor in a non-arm's-length manner.

6. That the following are the payments that I have received from, and the credits that I have allowed to, and the transfers at undervalue within the meaning of subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Section 2 of the Act: (Provide details of payments, credits and transfers at undervalue.)

7. (Applicable only in the case of the bankruptcy of an individual.)

☐ Whenever the trustee reviews the financial situation of a bankrupt to redetermine whether or not the bankrupt is required to make payments under section 68 of the Act, I request to be informed, pursuant to paragraph 68(4) of the Act, of the new fixed amount or of the fact that there is no longer surplus income.

☐ I request that a copy of the report filed by the trustee regarding the bankrupt's application for discharge pursuant to subsection 170(1) of the Act be sent to the above address.

Dated at ________________________________________, this ____________________ day of __________________________, ____________.

________________________________
Witness

________________________________
Creditor

Phone Number: ________________________________
Fax Number : ________________________________
E-mail Address : ________________________________

NOTE: If an affidavit is attached, it must have been made before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 201(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

District of: British Columbia
Division No. 11 - Vancouver
Court No.
Estate No. 11-2634864

FORM 36
Proxy
(Subsection 102(2) and paragraphs 51(1)(e) and 66.15(3)(b) of the Act)

In the matter of the Bankruptcy of
EncoreFX Inc.
of the city of Vancouver
in the Province of British Columbia

I, ____________________________, of ________________, a creditor in the above matter, hereby appoint ______________________________, of __________________________________, to be my proxyholder in the above matter, except as to the receipt of dividends,___________ (with or without) power to appoint another proxyholder in his or her place.

Dated at ________________________________, this _______ day of ______________, _______.

______________________
Witness

______________________
Individual Creditor

______________________
Witness

______________________
Name of Corporate Creditor

Per ______________________
Name and Title of Signing Officer

Return To:

Ernst & Young Inc. - Licensed Insolvency Trustee
Per:

______________________
Mike Bell - Licensed Insolvency Trustee
700 West Georgia Street
Vancouver BC V7Y 1C7
Phone: (604) 891-8200 Fax: (604) 899-3530

# INSTRUCTIONS AND CHECKLIST TO COMPLETE THE PROOF OF CLAIM FORM (FORM 31) AND PROXY (FORM 36)

## Checklist for Proof of Claim

This checklist is provided to assist you in preparing the proof of claim form and, if appropriate, the proxy form in a complete and accurate manner. Please check each requirement.

### General

- The **signature of a witness** is required.
- The document **must be signed** by the individual completing the declaration.
- **Provide the complete address** where all notices or correspondence are to be forwarded along with your phone number, fax number and email address where appropriate.

### Notes

- It is permissible to file a proof of claim by fax.
- A creditor may vote either in person or by proxy at any meeting of creditors if the proof of claim is filed with the trustee prior to the time appointed for the meeting.
- A quorum at any meeting of creditors consists of at least one creditor with a valid proof of claim in attendance in person or by proxy.
- A corporation may vote through an authorized agent or mandatary at meetings of creditors.
- In order for a duly authorized person to have a right to vote, they must be a creditor or be the holder of a properly executed proxy. The name of the creditor must appear in the proxy.
- A creditor who is participating in any distribution from an estate must have filed a proof of claim prior to the distribution being declared.
- In the case of an individual bankrupt, by checking the appropriate box or boxes at the bottom of the proof of claim form, you may request that the trustee advise you of any material change in the financial situation of the bankrupt or the amount the bankrupt is required to pay into the bankruptcy, and a copy of the trustee's report on the discharge of the bankrupt.

**INSTRUCTIONS AND CHECKLIST TO COMPLETE THE PROOF OF CLAIM FORM (FORM 31) AND PROXY (FORM 36)**

**Paragraph 1**

- The creditor must state the full and complete legal name of the individual, company or firm.
- If the individual completing the proof of claim is a representative of the creditor, the individual's position or title must be identified.

**Paragraph 3**

- The amount owing must be set out in paragraph 3.
- A **detailed statement of account** must be attached to the proof of claim and marked "Schedule A" and **must** show the date, number and amount of all invoices or charges, together with the date, number and amount of all credits or payments. The amount on the statement of account must correspond to the amount indicated on the proof of claim.

**Paragraph 4**

**Notes**

- **Paragraph A** applies to *ordinary unsecured claims*. In addition to recording the amount of the claim, please indicate whether the claim has a priority pursuant to section 136 of the Act.
- **Paragraph B** applies to *lessor claims* in a commercial proposal. Please ensure that the claim applies to a commercial proposal and, if so, include the full particulars of the claim.
- **Paragraph C** applies to *secured claims*. Please indicate the dollar value of the security and attach copies of the security document. In addition, please attach copies of the security registration documents, where appropriate.
- **Paragraph D** applies to *inventory claims of farmers, fishermen and aquaculturists.* Please note that such claims apply only to inventory supplied from farmers, fishermen and aquaculturists within 15 (fifteen) days of the date of bankruptcy. In addition, please attach copies of any applicable sales agreements and delivery slips.
- **Paragraph E** applies to *claims by wage earners.* Please note that such claims apply only for unpaid wages owed upon the bankruptcy of an employer or when the employer becomes subject to a receivership.

# INSTRUCTIONS AND CHECKLIST TO COMPLETE THE PROOF OF CLAIM FORM (FORM 31) AND PROXY (FORM 36)

- **Paragraph F** applies to *claims by employees for unpaid amounts regarding pension plans*. Please note that such claims apply only to unremitted pension contributions outstanding when the sponsoring employer becomes bankrupt or is subject to a receivership.
- **Paragraph G** applies to *claims against directors*. Please note that such claims apply only to directors of corporations that have filed a commercial proposal to creditors that includes a compromise of statutory claims against directors.

## Paragraph 5

- All claimants must indicate whether or not they are related to the debtor, as defined in section 4 of the Act, or dealt with the debtor in a non-arm's-length manner.

## Paragraph 6

- All claimants must attach a detailed list of **all payments or credits** received or granted as follows:

    a. **within the three (3) months preceding** the initial bankruptcy event (including the bankruptcy or the proposal);

    b. **within the twelve (12) months preceding** the initial bankruptcy event (including the bankruptcy or the proposal) in the case where the claimant and the debtor **were not** dealing at arm's length.

## Proxyholder

## Note

The Act permits a proof of claim to be made by a duly authorized representative of a creditor but, in the absence of a properly executed proxy, does not give such an individual the power to vote at the first meeting of creditors nor to act as the proxyholder of the creditors.

## General

- In order for duly authorized persons to have a right to vote, they must themselves be creditors or be the holders of a properly executed proxy. The name of the creditor must appear in the proxy.

## Notes

- A creditor may vote either in person or by proxyholder.

## INSTRUCTIONS AND CHECKLIST TO COMPLETE THE PROOF OF CLAIM FORM (FORM 31) AND PROXY (FORM 36)

- A proxy may be filed at any time prior to a vote at a meeting of creditors.
- A proxy can be filed with the trustee in person, by mail or by any form of telecommunication.
- A proxy does not have to be under the seal of a corporation unless required by its incorporating documents or its bylaws.
- The individual designated in a proxy cannot be substituted unless the proxy provides for a power of substitution.
- Bankrupts/debtors may not be appointed as proxyholders to vote at any meeting of their creditors.
- The trustee may be appointed as a proxyholder for any creditor.
- A corporation cannot be designated as a proxyholder.

# APPENDIX D

**MLT AIKINS**

WESTERN CANADA'S LAW FIRM

MLT Aikins LLP
Suite 1800, 355 Burrard Street
Vancouver, British Columbia V6C 2G8
T: (604) 682-7737
F: (604) 682-7131

**William E. J. Skelly**
*** services provided by**
**William E.J. Skelly Law Corporation**
Direct Line: (604) 608-4597
E-mail: wskelly@mltaikins.com

Zeena Ali
Legal Assistant
Direct Line: (604) 608-4561
E-mail: zali@mltaikins.com

April 8, 2020

●

**Attention ●:**

Dear ●:

**Re: Bankruptcy of EncoreFX Inc. ("EncoreFX"); Court Action No. 11-2634864**

We are counsel to Ernst & Young Inc. ("**EY**"), the Trustee in bankruptcy of EncoreFX in the above-noted bankruptcy proceeding.

We write further to Reimbursement Claim made by you under the Rules of the *Canadian Payments Act*, R.S.C. 1985, c. C-21 (the "**CPA Rules**"), specifically Rule H1 – Pre-Authorized Debits (PADs) ("**Rule H1**"), in an attempt to cancel a pre-authorized debit from your financial institution to EncoreFX which would result in the return of funds from the EncoreFX Bank of Montreal ("**BMO**") account.

As you are aware, on March 30, 2020, EncoreFX made an assignment in bankruptcy at approximately 11:00am (PDT) and, as a result, a stay of proceedings is in place respecting EncoreFX.

The bankruptcy stay of proceedings prohibits all recovery remedies against EncoreFX and its assets and the commencement of any execution or any other recovery proceedings pursuant to 69.3 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "***BIA***").

The act of issuing the Reimbursement Claim constitutes a recovery proceeding and was made after the date of the bankruptcy filing which is directly contrary to the stay of proceedings provided for in the *BIA*. The funds in the EncoreFX BMO account constitute assets of the bankrupt estate. As a result, you are not entitled to this remedy for the payment (or return) of those funds without leave of the court.

Pursuant to the CPA Rules, the three conditions under which a claim for reimbursement for a pre-authorized debit ("**PAD**") may be made are as follows:

a. The PAD was not drawn in accordance with the customer's PAD agreement;

b. The customer's PAD agreement was revoked; or

c. Notice or confirmation of the PAD was not given in accordance with Rule H1.

None of the above-noted conditions are applicable in this case and, as a result, your request for return of those funds is invalid and improper pursuant to the Rules of the CPA Rules specifically, Rule H1.

As a result, we demand that funds in the amount of $● which were transferred on or after the date of the assignment in bankruptcy of EncoreFX be immediately returned to EY.

Please be advised that if you fail to return these funds to EY, we will obtain a Court Order requiring the return of funds to EY plus costs payable on a solicitor and own client (full-indemnity) basis.

Please contact EY immediately to coordinate the return of funds.

| | |
|---|---|
| Name: | Peter Venetsanos |
| Phone: | 604.648.3665 |
| Email: | peter.venetsanos@ca.ey.com |

Sincerely,

**MLT AIKINS LLP**

for: William E. J. Skelly

c. Mike Bell, Ernst & Young Inc. (via email)
Peter Vaartnou, Jones Emery Hargreaves Swan LLP (via email)
Catrina J. Webster, MLT Aikins LLP (via email)

# APPENDIX E

**Encore FX Inc - Summary of Bank Accounts**

| Financial Institution | Currency | Current Balance |
|---|---|---|
| The Toronto Dominion Bank | CAD | 1,097,240 |
| The Toronto Dominion Bank | USD | 170,319 |
| Macquarie Bank Limited | USD | n/a |
| Citibank, N.A.., Canadian branch | CAD | 10,362 |
| Citibank, London | CHF | 59,994 |
| Island Savings | CAD | 29 |
| Citibank N.A., Hong Kong | CNH | 242,729 |
| Citibank, N.A., Singapore | EUR | 3,487 |
| Citibank, London | EUR | 533,068 |
| BMO Harris Bank | USD | 3,193,386 |
| BMO Harris Bank | CZK | 68,888 |
| BMO Harris Bank | AUD | 998,590 |
| BMO Bank of Montreal | CAD | n/a |
| BMO Bank of Montreal | CAD | n/a |
| BMO Harris Bank | SEK | 4,472 |
| BMO Harris Bank | TRY | 175 |
| BMO Harris Bank | EUR | 13,790 |
| BMO Harris Bank | DKK | 31,442 |
| BMO Harris Bank | SGD | 4,672 |
| BMO Bank of Montreal | USD | n/a |
| BMO Bank of Montreal | USD | n/a |
| BMO Harris Bank | HKD | 223,434 |
| BMO Harris Bank | JPY | 17,215,613 |
| BMO Harris Bank | MXN | 20,379,230 |
| BMO Harris Bank | HUF | 1,000,000 |
| BMO Harris Bank | NZD | 2,596 |
| BMO Harris Bank | GBP | 9,476 |
| BMO Harris Bank | NOK | 129,235 |
| BMO Harris Bank | PLN | 21,551 |
| Citibank, London | GBP | 214,237 |
| Island Savings | USD | 40 |
| Conexus Credit Union | CAD | n/a |
| Ecobank Keyna | KES | (1,200) |
| Conexus Credit Union | USD | n/a |
| ANZ Banking Group Limited | AED | 26,902 |
| ANZ Banking Group Limited | CNH | 1,666,213 |
| ANZ Banking Group Limited | EUR | 4,731 |
| ANZ Banking Group Limited | FJD | 22,493 |
| ANZ Banking Group Limited | JPY | 18,822,793 |
| ANZ Banking Group Limited | NZD | 843,843 |
| ANZ Banking Group Limited | SGD | 76,545 |
| ANZ Banking Group Limited | USD | 10,365 |
| ATB | CAD | 40,023 |
| ANZ Banking Group Limited | AUD | 2,008,768 |
| Citibank N.A., Hong Kong | HKD | 16,644 |

**Encore FX Inc - Summary of Bank Accounts**

| Financial Institution | Currency | Current Balance |
|---|---|---|
| Citibank, London | HKD | 2,078 |
| Citibank, London | ILS | 117,814 |
| Citibank, N.A., Singapore | JPY | 49,083 |
| Citibank, London | SEK | 126,062 |
| Citibank, N.A., Singapore | SGD | 21,360 |
| Citibank, N.A.., New York | USD | 5,012 |
| Citibank, N.A., Singapore | USD | 1,395 |
| Island Savings | CAD | 6 |
| Island Savings | USD | n/a |
| Citibank, N.A.., Canadian branch | USD | 199 |
| Citibank, London | ZAR | 1,504,606 |
| BMO Bank of Montreal | CAD | 2,498 |
| BMO Bank of Montreal | USD | 53,450 |
| BMO Bank of Montreal | USD | 100 |
| BMO Bank of Montreal | CAD | 90,801 |
| BMO Harris Bank | USD | - |

# APPENDIX F

EY
Building a better working world

Ernst & Young Inc.
Pacific Centre
700 West Georgia Street
PO Box 10101
Vancouver, BC V7Y 1C7

Tel: +1 604 891 8200
Fax: +1 604 643 5422
ey.com

[Company Name]
[Address]
[Address]

April 1, 2020

Attention: [Name]

**Re: EncoreFX Inc. – Tenant at [Address of EncoreFX Branch Location] (the "Premises")**

Dear [Name],

On March 30, 2020, EncoreFX Inc. ("**EncoreFX**" or the "**Company**") filed an assignment in bankruptcy (the "**Bankruptcy**") pursuant to Section 49(1) of the *Bankruptcy and Insolvency Act* of Canada (the "**BIA**") for the benefit of its creditors. Ernst & Young Inc. was appointed as the licensed insolvency trustee (the "**Trustee**").

This letter is to notify you that the Trustee intends to occupy the Premises for a limited period of time. The Trustee will pay the monthly rent, on a pro-rata basis, for the period of time that it will occupy the Premises (the "**Occupation Period**"). The Trustee will only pay rent for the Occupation Period and will not make any payment for rent in arrears or accelerated rent, if any.

Should rent be in arrears or for other amounts owed to you by the Company, as at the date of the bankruptcy, the Trustee will be sending to each creditor, a creditor notice package. The creditor notice package will also be made available on the Trustee's website at www.ey.com/ca/encorefx. Included in the creditor notice package will be a proof of claim form. A properly completed proof of claim form will be required to be filed with the Trustee in order to prove your claim for any amounts owing. Instructions on how to complete and how to file a completed proof of claim form will be provided with the creditor notice package.

Lastly, it is important to note that, the Company, pursuant to Section 69.3(1) of the BIA, is granted a stay of proceedings against its creditors. During the stay of proceedings, creditors will not have remedy against the Company or the Company's property, or shall commence or continue any action, execution or other proceedings, for recovery of amounts owing unless with the prior approval of the Trustee or with leave of the Court. Furthermore, pursuant to Section 84.2(1), no contract may be terminated, amended or payment accelerated, or term forfeited for any contract with a bankrupt by reason only of their bankruptcy.

Building a better
working world



Should you have any questions or concerns with the above, please do not hesitate to contact the undersigned directly at (604) 648-3665, at your earliest convenience.

Respectfully,

**ERNST & YOUNG INC.**
Per:

Peter Venetsanos, CPA, CA, CIRP, LIT
Vice President

# APPENDIX G

EY
Building a better working world

Ernst & Young Inc.
700 West Georgia Street
Vancouver, BC V7Y 1C7

Tel: +1 604 891 8200
Fax: +1 604 899 3530
ey.com

**VIA EMAIL**

April 6, 2020

[Name]
[Address]
[City], [Province]
[Postal Code]

**Re: Termination of Employment with EncoreFX Inc. (In Bankruptcy) ("EncoreFX" or the "Company")**

As you are aware, on March 30, 2020, the Company filed an assignment in bankruptcy (the "**Bankruptcy**") pursuant to Section 49(1) of the Bankruptcy and Insolvency Act of Canada (the "**BIA**"). Ernst & Young Inc. consented to act as the licensed insolvency trustee (the "**Trustee**") in the Bankruptcy of the Company. Information pertaining to the bankruptcy of EncoreFX will made be available on the Trustee's website at: **www.ey.com/ca/encorefx**.

This letter is to provide you with:

a) Confirmation of the termination of your employment with EncoreFX Inc.;
b) Information in respect of the Wage Earners Protection Program ("**WEPP**") including criteria under which a former employee may seek compensation under the WEPP; and
c) The next steps with respect the return of Company property.

**Notice of Termination**

The Trustee hereby provides you with notice that your employment with EncoreFX Inc. has been terminated. You will be paid your base pay up to and including the date of today's letter in your final pay.

A copy of your Record of Employment and T4 will be issued to you in due course.

**Wage Earner Protection Program**

You may apply for the Wage Earners Protection Program ("**WEPP**") if you meet all of the following criteria:

a) your employment has ended;
b) your former employer has filed for bankruptcy or is subject to a receivership;
c) you are owed wages, vacation pay, termination pay or severance pay from the former employer; and
d) amounts owed were earned during the eligibility period or, in the case of termination pay or severance pay, your employment was terminated either during the eligibility period or prior to the discharge of the trustee/receiver.

Under the WEPP legislation, employees are entitled to receive up to a current maximum of approximately $7,296 (seven times the maximum weekly insurable earnings under the Employment Insurance Act) for outstanding wages, vacation pay, severance and termination pay and other amounts due in respect of your duties of employment, including those amounts owing in the six month period preceding the date of Bankruptcy.

Information pertaining to the program may be obtained by calling:

**Toll-Free: 1 (866) 683-6516**

**TTY: 1 (866) 926-9105**

Additional information, including an application for payment from the WEPP established by the Government of Canada, may be obtained at the following website:

**https://www.canada.ca/en/employment-social-development/services/wage-earner-protection.html**

In order to receive a payment from the WEPP, you MUST complete and return the proof of clam with the Trustee on or before May 7, 2020:

a) file a proof of claim with the Trustee (see Form 31 attached); AND
b) file a claim with Service Canada, either in person at a Service Canada office or using the above web site. The Trustee does NOT submit your claim.

**To assist you in applying for the WEPP, in the next week the Trustee will work with representatives of the Company pre-populate on your behalf and send you a proof of claim which outlines all amounts owing to you as reflected in the Company's books and records for your review and submission to the Trustee.**

The Trustee advises that in accordance with the WEPP Regulations you are required to file a proof of claim form in accordance with the Bankruptcy and Insolvency Act as at the date of bankruptcy. Please complete and sign the proof of claim, in either the form attached or in the pre-population form to provided shortly, have the signature witnessed by someone (please note that the witness does NOT need to be a Commissioner of Oaths or a Notary Public), and return all 4 pages of the claim form to **marko.gordic@ca.ey.com**. A completed proof of claim form may also be sent to the EY Vancouver office located at 700 West Georgia Street, Vancouver BC, V7Y 1C7.

**Return of Company Property**

A representative of the Trustee or the Company will be in touch with your shortly regarding the return of laptops and/or mobile phones in your possession,

We appreciate your cooperation under these difficult circumstances and wish you the best in all your future endeavors.

Building a better
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Yours very truly,

**ERNST & YOUNG INC.**
*In its capacity as Trustee of EncoreFX Inc.*
*and not in its personal or corporate capacity*

Per:

**Peter Venetsanos, CPA, CA, CIRP, LIT**
Vice President

# APPENDIX H

Financial Statements of

# ENCOREFX LTD.

For the period ended March 31, 2020
(Unaudited)

# ENCOREFX LTD.

Balance Sheet
(Unaudited)

| | Mar 31, 2020 | Dec 31, 2019 |
|---|---|---|
| **Assets** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 993,961 | $ 2,047,051 |
| Transactions pending settlement | 104,332 | 178,873 |
| Foreign currency derivatives | 459,613 | 98,406 |
| Due from related party | 429,105 | - |
| Prepaid expense and other current assets | 92,109 | 64,832 |
| | 2,079,120 | 2,389,162 |
| Capital assets | 26,684 | 29,311 |
| | $ 2,105,804 | $ 2,418,473 |
| **Liabilities and Shareholder's Equity** | | |
| Current liabilities: | | |
| Accounts payable and accrued liabilities | $ 276,936 | $ 103,267 |
| Transactions pending settlement | 101,416 | 111,666 |
| Client deposits | 268,588 | 30,789 |
| Foreign currency derivatives | 440,170 | 88,107 |
| Due to related party | - | 1,065,046 |
| | 1,087,110 | 1,398,875 |
| Shareholder's equity: | | |
| Share capital | 1,050,100 | 1,050,100 |
| Deficit | (31,406) | (30,502) |
| | 1,018,694 | 1,019,598 |
| | $ 2,105,804 | $ 2,418,473 |

# ENCOREFX LTD.

Statement of Operations and Comprehensive Loss
(Unaudited)

| | For the period ended Mar 31, 2020 | For the year ended Dec 31, 2019 |
|---|---|---|
| Foreign exchange and interest income | $ 102,733 | $ 63,714 |
| Expenses: | | |
| Salaries and benefits | 733,295 | 687,740 |
| Office and general | 109,807 | 194,395 |
| Professional fees | 61,519 | 259,278 |
| Software licensing | 7,809 | 9,828 |
| Transaction costs | 4,952 | 11,700 |
| | 917,382 | 1,162,941 |
| Loss before the undernoted item | (814,649) | (1,099,227) |
| Other income: | | |
| Market support payments | 817,276 | 1,101,440 |
| Income before interest, tax and amortization | 2,627 | 2,213 |
| Amortization expense | (2,627) | (2,213) |
| Interest expense | (5) | (38) |
| Loss before tax | (5) | (38) |
| Income tax | 899 | 10,983 |
| Net loss and comprehensive loss | $ (904) | $ (11,021) |

# ENCOREFX LTD.

Statement of Changes in Equity
(Unaudited)

| | Share capital | Retained earnings (deficit) | Total shareholder's equity |
|---|---|---|---|
| Balance, December 31, 2018 | $ 580,100 | $ (19,481) | $ 560,619 |
| Issuance of shares | 470,000 | - | 470,000 |
| Comprehensive loss | - | (11,021) | (11,021) |
| Balance, December 31, 2019 | $ 1,050,100 | $ (30,502) | $ 1,019,598 |
| Comprehensive loss | - | (904) | (904) |
| Balance, March 31, 2020 | $ 1,050,100 | $ (31,406) | $ 1,018,694 |

# ENCOREFX LTD.

Statement of Cash Flows
(Unaudited)

| | | For the period ended Mar 31, 2020 | | For the year ended Dec 31, 2019 |
|---|---|---|---|---|
| Cash provided by (used in): | | | | |
| Operations: | | | | |
| Net loss and comprehensive loss | $ | (904) | $ | (11,021) |
| Items not involving cash: | | | | |
| Amortization of capital assets | | 2,627 | | 2,213 |
| Unrealized mark-to-market gain | | (9,144) | | (7,854) |
| Changes in non-cash working capital items: | | | | |
| Increase (decrease) in net transactions pending settlement | | 64,291 | | (89,434) |
| Increase in prepaid expense and other current assets | | (27,277) | | (54,190) |
| Increase in client deposits | | 237,799 | | 30,789 |
| Increase in accounts payable and accrued liabilities | | 173,669 | | 39,810 |
| | | 441,061 | | (89,687) |
| Cash flows from investing activities: | | | | |
| Acquisition of capital assets | | - | | (31,524) |
| Acquisition of intangible assets | | - | | - |
| | | - | | (31,524) |
| Financing: | | | | |
| Proceeds from issuance of capital stock | | - | | 470,000 |
| Proceeds from (payments to) related party | | (1,494,151) | | 1,026,070 |
| | | (1,494,151) | | 1,496,070 |
| Increase (decrease) in cash and cash equivalents | | (1,053,090) | | 1,374,859 |
| Cash and cash equivalents, beginning of the year | | 2,047,051 | | 672,192 |
| Cash and cash equivalents, end of the period | $ | 993,961 | $ | 2,047,051 |

# APPENDIX I

**EncoreFX Ltd. - estimated cost of ongoing license compliance**

| | | 2020 | 2020 | 2020 | 2020 | 2020 | 2020 | 2020 | 2020 | 2020 | 2020 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | **April** | **May** | **June** | **July** | **August** | **September** | **October** | **November** | **December** | **Total** |
| **Operating costs** | | | | | | | | | | | |
| Payroll | *See tab* | 16,689 | 16,389 | 11,330 | 11,330 | 11,330 | 11,330 | 11,330 | 11,330 | 11,330 | **112,387** |
| Other software licenses | *Nominal* | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | **900** |
| Rent | *See tab* | 7,144 | 5,688 | 4,489 | 940 | 400 | 400 | 400 | 400 | 400 | **20,260** |
| Office | *Nominal* | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | **900** |
| Smartphone | *Nominal* | 120 | 120 | 120 | 120 | 120 | 120 | 120 | 120 | 120 | **1,080** |
| Internet | *Nominal* | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | **900** |
| Bank & Wire Fees | *Nominal* | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | 50 | **450** |
| Legal & regulatory costs | *See tab* | 54,351 | 25,260 | 2,500 | 3,500 | 3,000 | 4,700 | 7,500 | 38,356 | 2,500 | **141,667** |
| **Total** | | **78,654** | **47,807** | **18,788** | **16,239** | **15,200** | **16,900** | **19,700** | **50,556** | **14,700** | **278,543** |

USDCAD Budget rate 1.40

# APPENDIX J

EY
Building a better working world

Ernst & Young Inc.
700 West Georgia Street
Vancouver, BC V7Y 1C7

Tel: +1 604 891 8200
Fax: +1 604 899 3530
ey.com

**VIA EMAIL**

April 1st, 2020

To [Client Name],

It is with much regret that we inform you that EncoreFX Inc. (the "**Company**") has suspended trading. This suspension will give the Company time to consider its restructuring alternatives. The restructuring has become necessary as a number of customers to whom the Company granted credit have defaulted on their obligations to the Company mainly due to disruptions caused by the coronavirus pandemic.

In order to provide stakeholders with transparency, the Company has filed an assignment in bankruptcy pursuant to Section 49(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") with respect to its Canadian operations and has assigned its Australian and New Zealand subsidiaries in Voluntary Administration in Australia and New Zealand.

Ernst & Young Inc. has been appointed as the licensed insolvency trustee (the "**Trustee**") in the Canadian proceedings of the Company and is managing the affairs of the Company in the proceedings. Please note that as the Trustee, working with the Company, determines the best options for the Company and its stakeholders going forward, the Trustee will share that information with you. Information pertaining to the bankruptcy of EncoreFX will be available, in due course, on the Trustee's website at: **www.ey.com/ca/encorefx.**

**MARGIN CALLS, CREDIT FACILITY TERMINATION AND SERVICE TERMINATION**

We write this letter:

- to notify you of the termination of the credit facility;
- to inform you that on April 1st, 2020 your current mark-to-market ("**MTM**") position is CAD [$Amount] based on the spot reference of 1.4237 for options and 1.4215-1.4253 for forwards; and
- to notify you about the termination of services (the "**Services**") under the Master Terms and Conditions.

***Credit Facility Termination***

The Credit Facility Letter between you and EncoreFX provides that EncoreFX reserves the right to amend or cancel the trading facility terms as required from time-to-time. As a result of current circumstances, the Company is unable to continue to provide you with credit terms and hereby notifies you of the cancellation of the Credit Facility Letter as of 1st April, 2020 (subject to the margin calls and other ongoing obligations in connection with existing transactions).

***Margin Calls***

In accordance with the credit facility and the Master Terms and Conditions between you and the Company, your current MTM position (noted above) is now due and owing as a margin call.

You are hereby notified that, under the terms of the credit facility and master terms and conditions, you have **two business days** to pay the MTM position noted above. If you fail to make that payment within two business days, EncoreFX, as permitted under the credit facility and the Master Terms and Conditions will:

- close out your account and terminate the contract relating to the transaction/contract that resulted in the above-noted MTM position and any other transactions/contracts, and
- to set off amounts you owe (including any gains on contracts closed out/terminated) against any losses EncoreFX incurs.

We confirm that any payments that you make in accordance with this letter will be held in a trust account.

***Termination of Services under the Master Terms and Conditions***
In addition to the above, EncoreFX has exercised its right under the Master Terms and Conditions to terminate the Services as of 1st April 2020.

If you have not violated the terms of the Master Terms and Conditions, all transactions which were entered into prior to termination will be carried out in accordance with your instructions to the extent EncoreFX is permitted by law to execute them. In the event that you have violated the terms of the credit facility or the Master Terms and Conditions in any way, EncoreFX may, at its sole discretion, withhold the Services and/or terminate any pending transactions at any time by providing written notice to you.

**Within two business days of termination, you and EncoreFX shall settle all amounts due and owing under pending transactions (including in EncoreFX's discretion, all Spot Transactions, Forward Contracts and Option Contracts).** EncoreFX wishes to inform you that an amount of CAD [$Amount] is owed by [Client Name]. to EncoreFX. That amount does not include any set-off calculation or use of your existing deposits with EncoreFX, if any.

* * * * *

For any questions or concerns, please contact **receivables@encorefx.com**.

Respectfully,

**ERNST & YOUNG INC.**
In its capacity as Trustee
in the bankruptcy of EncoreFX Inc.
and not in its personal capacity
Per:

Peter Venetsanos, CPA, CA, CIRP, LIT
Vice President

# APPENDIX K

Date

CLIENT NAME; Corporate ID number
Client Address
City, Province, Postal Code

Attention: Contact Name

## Credit Facility Letter

EncoreFX Inc. ("EncoreFX") are pleased to offer **CLIENT NAME** the following trading facility terms (all figures expressed in Canadian dollars):

1. Hedging Limit of $ for booking Forwards and/or Options
2. Mark-to-Market (MTM) Limit of $ ($ with $ Increments)
3. Authorization Expiry Date:

The above limits are subject to the following terms and conditions:

1. Hedging Limit:
   a. Hedging Contracts may at any one time be booked to a maximum cumulative amount of $ .
   b. Hedging Contracts may have a maximum tenor of days.
2. MTM Limit:
   a. CLIENT NAME will be required to pay margin deposits to EncoreFX to cover unfavourable market fluctuations over and above the MTM Limit of $ .
   b. The mark-to-market position of all Hedging Contracts will be monitored and if the net-aggregate Out-the-Money (OTM) position is greater than $ your position will be considered to be in-call for $ .
   c. Once the account is in-call, CLIENT NAME will be required to make the required margin payment within two (2) business days.
   d. Margin payments will be refunded to CLIENT NAME if the gross OTM position falls back below $ .

CLIENT NAME will be notified by EncoreFX when margin deposits are either payable to EncoreFX or when margin deposits will be refunded by EncoreFX to CLIENT NAME.

Pursuant to the EncoreFX Master Terms and Conditions Agreement, in the event that a deposit or margin call is not received within 2 business days, EncoreFX shall at its sole discretion and without further notice, have the right to i) close out the account and terminate the contract which relates to the specific Service or Transaction; ii) terminate and close out any other pending Transaction/contract for Services; and iii) set off amounts owed to CLIENT NAME including any gains on contracts closed out (terminated) against any losses incurred. Should the Margin Deposit, the Additional Margin Deposit and any other deposit or funds on hand then held by EncoreFX not be sufficient to reimburse and indemnify EncoreFX for the Losses incurred, CLIENT NAME agrees to forthwith pay to EncoreFX any additional amount required to cover such shortfall.

This Credit Facility Letter and the terms contained herein were approved based upon discussions regarding CLIENT NAME's transactional and hedging requirements. Please contact EncoreFX as soon as possible if these requirements change.

These trading facility terms are offered to CLIENT NAME based upon satisfactory review of CLIENT NAME's foreign exchange requirements, financial standing, financial performance, credit history and other current market conditions and factors.

3. The Terms of this Credit Facility Letter expire as at:

In order to review these terms EncoreFX requires receipt of the following documentation no later than thirty (30) days prior to the expiration-date of this Credit Facility Letter:

- Accountant prepared/reviewed year-end financial statements

EncoreFX reserves the right to re-evaluate, amend or cancel these trading facility terms as required from time-to-time.

Please confirm acceptance of these terms by signing and returning a copy to EncoreFX at your earliest convenience.

Sincerely,

Tanzil Rehman
Director, Credit Services

Terms Accepted by: ______________________________ on ______________ 2020
Printed Name(s) Date

Per: CLIENT NAME

______________________________ ______________________________
Signature Signature

*I/we have the authority to bind the company.*

# APPENDIX L

EncoreFX

# Master Terms and Conditions

**ARTICLE 1 – APPLICANT BOUND**

**1.1** By completing and signing the document provided by EncoreFX entitled "New Account Application" form (the "**Application**"), the Customer shall be bound by these Master Terms and Conditions. For the purposes of these Master Terms and Conditions, "Customer" shall mean the entity identified on the first page of the Application in the box entitled "Applicant Legal Name".

**ARTICLE 2 – APPLICATION**

**2.1** These Master Terms and Conditions apply to all **Transactions** entered into between the Customer and EncoreFX. Such Transactions and all related contracts or agreements between the Customer and EncoreFX will at all times be subject to the provisions of these Master Terms and Conditions, except to the extent modified expressly and clearly by the specific provisions of a Transaction.

**ARTICLE 3 – ENCOREFX SERVICES**

**3.1** The services offered by EncoreFX to the Customer (the "**Services**") may include: i) **Foreign Exchange Spot Transactions**, ii) international **Wire Transfers** and global automated clearing house ("**ACH**") transfers, iii) foreign exchange **Forward Contracts** and **Option Contracts**, iv) foreign currency drafts and cheques. Any or all of the Services offered may be modified or discontinued by EncoreFX at any time and without advance notice, and EncoreFX shall not be liable to the Customer for any loss resulting from such modification or discontinuance. Such modification or discontinuance by EncoreFX of Services shall not affect any existing Transaction between the Customer and EncoreFX.

**ARTICLE 4 – REPRESENTATIONS AND WARRANTIES**

**4.1** The Customer hereby represents and warrants to EncoreFX that:

(a) it has the authority and legal capacity to enter into this **Agreement** and to carry out all of its obligations hereunder including any of its obligations under any Foreign Exchange Transaction it may enter into pursuant to this Agreement;

(b) the execution of this Agreement by the Customer and the performance of the Customer's obligations under this Agreement will not violate any statute, regulation or by-law, nor will such execution and performance violate the terms of any constating documents, including articles, by-laws and other organizational documents of the Customer, or any agreement which is binding upon the Customer;

(c) it is entering into this Agreement as principal and not on behalf of any third party or beneficial purchaser;

(d) it is in compliance with all terms of this Agreement, and is not engaged in any practices or procedures that may constitute a violation of any provision of this Agreement;

(e) it is entering into this Agreement and any Transactions contemplated by this Agreement for the purpose of **Hedging**, and not for the purpose of **Speculation** or investment;

(f) it is exercising its own business judgement when entering into all Transactions pursuant to this Agreement, and is not entering into this Agreement or any Transaction on the advice of EncoreFX;

(g) all information provided to EncoreFX by the Customer is true, correct, complete and accurate and the Customer agrees to notify EncoreFX forthwith should such information change; and

(h) it has received and understands the following documentation:

   (i) Product Disclosure Statement

   (ii) Disclosure – Reporting Requirements

   (iii) Credit Facility Letter (to the extent the Customer will use Margin)

(i) all representations and warranties made by the Customer will be true at the time that the **Parties** enter into this Agreement and at the time that the Parties enter into any Transaction pursuant to this Agreement or any Service is provided by EncoreFX to the Customer.

**ARTICLE 5 – TRADE PROCESS**

**5.1** The following procedures shall apply with respect to the Customer's access to the Services, and the Customer's communication of instructions to EncoreFX:

(a) The Customer may provide instructions to EncoreFX by the following modes of communication: i) telephone call with the EncoreFX designated account representative, ii) facsimile transmission addressed to the Encore FX designated account representative, iii) email sent to the EncoreFX designated account representative, iv) Short Message Service ("**SMS**") (i.e. text message via a cellular phone), and v) the EncoreFX Online Ordering System (*for all Transactions except Options*).

(b) The Customer has provided on its Application a list of representatives authorized to provide such instructions and to complete any Transaction with EncoreFX, which the Customer may update by providing EncoreFX with written confirmation of same in a form acceptable to EncoreFX. EncoreFX will attempt to determine that instructions from the Customer are being provided by a Customer authorized representative before engaging in a Transaction for the Customer's account, provided that EncoreFX shall not be liable for any losses incurred by the Customer resulting from any unauthorized representative of the Customer providing instructions to EncoreFX. The onus rests with the Customer to ensure that only its authorized representatives provide instructions to EncoreFX or enter into a Transaction with EncoreFX or use the Services.

(c) In order to communicate instructions to EncoreFX through an Online Ordering System the Customer will provide a password for the use of such system. The password will be required to access the Online Ordering System, to communicate instructions, and to authorize and consent to any Transactions. The Customer represents that only authorized representatives will use such Online Ordering System, and acknowledges and agrees that protection of the password is the responsibility of the Customer. EncoreFX shall be entitled to assume that anyone using the password is an authorized representative of the Customer, and shall not be responsible for any losses resulting from the use of the password by an unauthorized representative.

**5.2** The following procedures shall apply with respect to the confirmation and completion of Transactions between the Customer and EncoreFX:

(a) In order to complete a Transaction, the Customer must clearly authorize and accept each Transaction, and EncoreFX must clearly indicate its receipt of instructions from the Customer. If the instructions are provided via telephone, such authorization and acceptance shall be provided by the Customer to EncoreFX over the telephone, and such indication of receipt shall be provided by way of EncoreFX's positive affirmation of its receipt of instructions over the telephone. If the instructions are provided via facsimile transmission, such authorization and acceptance shall be clearly indicated by the Customer in the facsimile transmission, and such indication of receipt shall be provided by EncoreFX by return email. If the instructions are provided via email, such authorization and acceptance shall be clearly indicated by the Customer in the email, and such indication of receipt shall be provided by EncoreFX by return email. If the instructions are provided via SMS (text message), such authorization and acceptance shall be clearly indicated by the Customer in the SMS, and such indication of receipt shall be provided by EncoreFX by return email. If the instructions are provided to EncoreFX through EncoreFX's Online Ordering System, such authorization and acceptance shall be clearly indicated by the Customer having sent instructions through the Online Ordering System, and such indication of receipt shall be provided by EncoreFX by email.

(b) The terms of each Transaction, per the instructions provided to EncoreFX by the Customer, shall be outlined in the **Confirmation**, which will be provided to the Customer by EncoreFX upon the completion of each Transaction. Failure to provide such Confirmation for any reason shall not invalidate any Transaction, the Confirmation being a record only of the Transaction. The records of EncoreFX (absent any manifest errors) shall constitute conclusive evidence of the terms and conditions of any Transaction.

(c) Once the Customer's instructions regarding a Transaction have been accepted by EncoreFX in accordance with Section 5.2(a), the Customer shall be bound to complete the Transaction in accordance with such instructions and in accordance with these Master Terms and Conditions.

(d) Upon authorizing and accepting the Transaction the Customer shall forthwith make any required contractual payment to EncoreFX.

**5.3** The following procedures shall apply with respect to payments made by the Customer to EncoreFX:

(a) The Customer may be required to pay a deposit in order to effect the Transaction, as set out in the **Credit Facility Letter.** The deposit may be a fixed amount, a floating **Margin Deposit** or a combination of the two types of deposit, as specified by EncoreFX.

(b) At the discretion of EncoreFX, certain Customers shall be required to maintain margins with respect to certain accounts or Transactions, as set out in the Credit Facility Letter. From time to time, EncoreFX may issue a **Margin Call** to such a Customer to ensure that the Customer is maintaining the appropriate deposit margin in its account. Upon the issuance of such a Margin Call, the Customer shall forthwith deposit the funds required to maintain the appropriate margin with EncoreFX. In the event that the Customer fails to either pay a deposit or respond to the

Margin Call by depositing such required funds within two (2) **Business Days**, the Customer shall be in default under the Transaction, which shall cause a default under all pending Transactions and EncoreFX shall, at its sole discretion and without further notice and in addition to any other rights it may have herein, have the right to: i) close out the Customer's account and terminate the contract which relates to the specific Service or Transaction; ii) terminate and close out any other pending Transaction/contract for Services with Customer; and iii) set off amounts owed to the Customer including any gains on contracts closed out (terminated) against any losses incurred and amounts then owing to EncoreFX on Transactions with Customer.

(c) The Customer may provide funds to EncoreFX by way of: i) **Bank Draft**; ii) **Certified Cheque**; iii) **Wire Transfer**; iv) ACH transfer; v) electronic funds transfer; or vi) authorizing EncoreFX to debit its account (also known as pre-authorized debit) with the Customer's Bank or any other financial institution.

(d) The Customer is to ensure that any **Bank** account used for payments is in its own name. Should a third party make a payment to EncoreFX on behalf of Customer, Customer shall forthwith notify EncoreFX and provide EncoreFX with all information requested by EncoreFX concerning the third party, including without limitation the banking information and/or the nature of the relationship between Customer and the third party. Customer shall ensure that there are sufficient funds in its Bank account to make the payments to EncoreFX. The payment of any NSF or related fees incurred as a result of having insufficient funds to clear the payment in question shall be the responsibility of and charged to the Customer. The Customer indemnifies EncoreFX from and against any claims or losses arising out of the Customer's misrepresentation as to the ownership of any Bank account.

(e) Under any circumstance in which monies are owed to EncoreFX by the Customer pursuant to this Agreement or any Transaction, EncoreFX will provide notice to the Customer of such outstanding amounts. Upon receiving such notice, the Customer shall have two (2) Business Days (unless otherwise agreed to in writing by EncoreFX) to provide such amounts to EncoreFX. Failure to provide the required amount to EncoreFX shall be a default under any and all contracts for Services and Transactions pending or in place with EncoreFX.

**5.4** The following procedures shall apply with respect to the processing of Transactions between the Customer and EncoreFX:

(a) EncoreFX shall use commercially reasonable efforts to process Transactions on the day on which they are authorized. EncoreFX cannot guarantee that such Transactions will be processed on the day on which they are authorized, and is not responsible for the timeliness of other financial institutions in processing such Transactions. Absent gross negligence or wilful misconduct on the part of EncoreFX, EncoreFX shall not be liable for any losses suffered by the Customer resulting from a Transaction not being processed on the day on which it was authorized.

(b) If the Customer wishes to cancel, amend or reverse a Transaction for any reason whatsoever, the Customer must contact EncoreFX directly to do so. EncoreFX shall use commercially reasonable efforts to effect such cancellation, amendment or reversal, but cannot guarantee that such cancellation, amendment or reversal will be possible. EncoreFX shall not be responsible for any costs or losses incurred by the Customer resulting from EncoreFX's failure or inability to cancel, amend or reverse any Transaction. The Customer shall reimburse EncoreFX for any costs incurred by it as a result of EncoreFX efforts to cancel, amend or reverse a Transaction undertaken by EncoreFX on the instructions of the Customer.

**5.5** The terms and conditions contained herein are hereby incorporated into each Transaction entered into between the Parties.

**5.6** EncoreFX shall be entitled to cancel any Transaction where the Customer has not carried out its obligations. The Customer shall reimburse EncoreFX for any losses, costs and expenses incurred as a result of such cancellation.

**5.7** EncoreFX reserves the right to refuse to provide the Services to the Customer or enter into any Transaction with the Customer at any time for any reason whatsoever.

**ARTICLE 6 – FORWARD CONTRACTS**

**6.1** Forward Contracts must not be entered into by a Customer with EncoreFX for the purpose of Speculation or investment. By entering into a Forward Contract with EncoreFX, the Customer is deemed to represent and warrant to EncoreFX at that time and at all times thereafter that the purpose of the Forward Contract is solely for Hedging.

**6.2** EncoreFX may offer to the Customer fixed delivery date Forward Contracts or flexible delivery date Forward Contracts. Any request by a Customer for a change to a **Currency** delivery date once set in the Forward Contract shall be considered by EncoreFX in its sole discretion and if accepted by EncoreFX, EncoreFX shall set a revised exchange rate applicable to the revised Forward Contract, which the Customer shall accept as a term of the revised Forward Contract.

**6.3** Forward Contracts may require a Margin Deposit in an amount and on terms specified by EncoreFX which shall be stated in the Credit Facility Letter. The Margin Deposit shall be the amount specified by EncoreFX when the Forward Contract is entered into. The Margin Deposit shall be either in guaranteed funds or by a bank letter of guarantee/credit (on terms and conditions satisfactory to EncoreFX including without limitation, the issuing bank and the maturity date) and must be paid within two (2) Business Days. In the event that the Margin Deposit is not received within two (2) Business Days EncoreFX shall at its sole discretion and without further notice, have the right to i) close out the Customer's account and terminate the contract which relates to the specific Service or Transaction; ii) terminate and close out any other pending Transaction/contract for Services with Customer; and iii) set off amounts owed to the Customer including any gains on contracts closed out (terminated) against any Losses incurred and amounts then owing to EncoreFX on Transactions with Customer. Where a Margin Deposit is placed on a floating basis for the Forward Contract, the Customer agrees to submit to EncoreFX additional deposit funds/letter of guarantee (the "**Additional Margin Deposit**") when EncoreFX determines that the mark-to-market potential loss on the Forward Contract exceeds the prescribed amount established with EncoreFX in the Credit Facility Letter. EncoreFX shall determine the mark-to-market value of a Forward Contract at a given point on a daily basis on each business day based upon the **Mid-Market Rate**. The Customer agrees to accept and be bound by such mark-to-market value determination as made by EncoreFX.

**6.4** EncoreFX shall have the right, in its sole discretion, to notify a Customer at any time that an Additional Margin Deposit is required as determined by EncoreFX in accordance with Section 6.3. The Customer agrees that upon such notification from EncoreFX, the Customer will have two (2) Business Days from notification to provide to EncoreFX the Additional Margin Deposit. The amount of the Additional Margin Deposit shall be that amount determined by EncoreFX which is sufficient to ensure that the Margin Deposit together with the Additional Margin Deposit held by EncoreFX for the particular Forward Contract on a mark-to-market value is at least the minimum prescribed amount established by EncoreFX for the Forward Contract as established in the Credit Facility Letter.

**6.5** Should the Customer not: (i) complete the Forward Contract by the required Settlement Date(s), or (ii) pay to EncoreFX any Margin Deposit, including any required Additional Margin Deposit, then in that event, EncoreFX shall no longer be obligated to complete the Forward Contract and at EncoreFX's sole discretion, any other pending Transaction including any other Forward Contract(s) with the Customer. In addition, EncoreFX shall have the right to: (i) sell the necessary covering Currency to terminate the Forward Contract(s), (ii) charge the Customer with the damages, losses (including loss of profit), costs and expenses incurred by EncoreFX (the "**Losses**"), and (iii) apply the Margin Deposit, the Additional Margin Deposit and any other deposit or funds on hand then held by EncoreFX to pay the Losses. Should the Margin Deposit, the Additional Margin Deposit and any other deposit or funds on hand then held by EncoreFX not be sufficient to reimburse and indemnify EncoreFX for the Losses incurred, the Customer agrees to forthwith pay to EncoreFX any additional amount required to cover such shortfall.

**6.6** If the Margin Deposit and any Additional Margin Deposit are not needed based upon the Customer performing its obligations under the Forward Contract to completion, EncoreFX agrees to return to the Customer the Margin Deposit or the amount thereof remaining that was not required.

**ARTICLE 7 – OPTION CONTRACTS**

**7.1** Option Contracts must not be entered into by a Customer with EncoreFX for the purpose of Speculation or investment. By entering into an Option Contract with EncoreFX, the Customer is deemed to represent and warrant to EncoreFX at that time and at all times thereafter that the purpose of the Option Contract is solely for Hedging.

**7.2** EncoreFX may offer Option Contracts comprised of any of the Options described in the Product Disclosure Statement, a copy of which the Customer has received and confirms it understands.

**7.3** The Customer must indicate to EncoreFX the proposed Currency, the proposed contract amount, the type of Option it desires, the proposed option exercise (strike) price, the proposed term and the Currency in which the Customer proposes to pay any premium, if required.

**7.4** EncoreFX may, at its sole discretion, require the Customer to pay a premium to spot value from the initial deal date at the time that the Option Contract is entered into or at a future time agreed to in writing between EncoreFX and the Customer. In the event that EncoreFX requires the Customer to pay a premium, the Option Contract shall not be considered in effect or binding on EncoreFX until such premium is paid.

**7.5** The Customer may only exercise the Option stipulated in the Option Contract in accordance with the terms and conditions of the Option Contract by giving notice to EncoreFX of its intention to exercise said Option Contract. Exercise occurs when the Customer gives notice to EncoreFX to convert the Option Contract into the underlying foreign exchange Currency, provided that any premium due has also been received by EncoreFX. The Customer acknowledges and agrees that if the Option Contract trades at or beyond the barrier level or is "in-the-money", EncoreFX shall have the right to convert the Option Contract into the underlying Currency on such Option Contract's Expiry Date.

**7.6** If the Option provided for in the Option Contract has been exercised in accordance with Section 7.5, then each party to such Option Contract shall pay the Currency and amount due thereunder to the other party on the Settlement Date.

**7.7** The Customer may notify EncoreFX that it desires to offset or cancel an Option Contract (a "**Notice of Cancellation**"). EncoreFX may, in its sole discretion, agree to the request in the Notice of Cancellation provided that the Customer has paid any required premium as determined by EncoreFX and any Notice of Cancellation has been received by EncoreFX before the Expiry Time on the Expiry Date of such Option Contract. EncoreFX will evaluate the relevant closing strike rate and premium and the net difference will be charged to the Customer for immediate payment.

**7.8** An Option Contract will lapse at its Expiry Date if such Option Contract has not been exercised in accordance with Section 7.5 or offset in accordance with Section 7.7.

**7.9** Option contracts may require a Margin Deposit (unless waived in writing by EncoreFX in its sole discretion) in an amount and on terms specified by EncoreFX, which shall be stated in the Credit Facility Letter. The amount of the Margin Deposit shall be specified at the time that the Option Contract is entered into. The Margin Deposit shall be either in guaranteed funds or by a Bank letter of guarantee or letter of credit (on terms and conditions satisfactory to EncoreFX including without limitation, the issuing Bank and the maturity date and must be paid within two (2) Business Days. In the event that the Margin Deposit is not received within two (2) Business Days EncoreFX shall at its sole discretion and without further notice, have the right to i) close out the Customer's account and terminate the contract which relates to the specific Service or Transaction; ii) terminate and close out any other pending Transaction/contract for Services with Customer; and iii) set off amounts owed to the Customer including any gains on contracts closed out (terminated) against any Losses incurred and amounts then owing to EncoreFX on Transactions with Customer. Where a Margin Deposit is placed on a floating basis for the Option Contract, the Customer agrees to submit to EncoreFX an Additional Margin Deposit when EncoreFX determines that the mark-to-market potential loss on the Option Contract exceeds the prescribed amount established with EncoreFX in the Credit Facility Letter. EncoreFX shall determine the mark-to-market value of an Option Contract at a given point on a daily basis based upon the Mid-Market Rate. The Customer agrees to accept and be bound by such mark-to-market value determination as made by EncoreFX.

**7.10** EncoreFX shall have the right, in its sole discretion, to notify a Customer at any time that an Additional Margin Deposit is required pursuant to Section 7.9. The Customer acknowledges and agrees that upon such notification from EncoreFX, it will have two (2) Business Days from notification to provide to EncoreFX the Additional Margin Deposit. The amount of the Additional Margin Deposit shall be that amount determined by EncoreFX which is sufficient to ensure that that the Margin Deposit together with the Additional Margin Deposit held by EncoreFX for the particular Option Contract on a mark-to-market value is at least the minimum prescribed amount established by EncoreFX for the Option Contract as established in the Credit Facility Letter.

**7.11** Should the Customer not: (a) complete the Option Contract as set out in the terms by the Expiry Date, or (b) pay any Margin Deposit, including any required Additional Margin Deposit, then EncoreFX shall no longer be obligated to complete the Option Contract and at its discretion, any other pending Transaction including any other Option Contract(s) with the Customer. EncoreFX shall have the right to (i) sell the necessary covering Currency to terminate the Option Contract, (ii) charge the Customer with the Losses incurred by EncoreFX, and (iii) apply the Margin Deposit or any Additional Margin Deposit and any other deposit or funds held by EncoreFX to pay the Losses. Should such amounts be insufficient to reimburse EncoreFX for the Losses, the Customer agrees to forthwith pay to EncoreFX any additional amount required to reimburse EncoreFX for the Losses.

**7.12** If the Margin Deposit and any Additional Margin Deposit are not needed based upon the Customer performing its obligations under the Option Contract to completion, EncoreFX agrees to return to the Customer the Margin Deposit or the amount remaining that was not required.

**ARTICLE 8 – SPECULATION/INVESTMENT NOT PERMITTED**

**8.1** For greater certainty, the Customer may only enter into a Transaction using a Forward Contract or an Option Contract for the purpose of Hedging against adverse price movements in a given Currency. The Customer may not enter into a Transaction using a Forward Contract or an Option Contract for the purpose of Speculation or investment. If EncoreFX, at its sole discretion, suspects that the Customer may be entering into a Transaction for the purpose of Speculation or investment, EncoreFX may immediately suspend Services and terminate any or all pending Transactions at the cost and expense of the Customer.

**ARTICLE 9 – NO INTEREST PAID**

**9.1** EncoreFX may hold monies of the Customer in the course of providing Services under this Agreement. The Customer acknowledges and agrees that such monies will not accrue interest while held by EncoreFX. If such funds are not required as a Margin Deposit or for the purpose of settling a contract with EncoreFX based upon a Transaction or a Service, the Customer may direct EncoreFX as to the payment or the application of the funds held by EncoreFX.

**ARTICLE 10 – SET OFF**

**10.1** If at any time the Customer has failed to make a payment or delivery when due for a Service or pursuant to a Transaction, or is indebted to EncoreFX for any other reason, then EncoreFX may, without prior notice, apply any monies held by it on behalf of the Customer against any amount owed by the Customer to EncoreFX for any Services or Transaction entered into, against any amount owed by EncoreFX to the Customer, whether or not the amount is owed to the Customer under this Agreement or for any Transaction entered into pursuant to this Agreement.

**10.2** EncoreFX may also, without prior notice, set off against any amounts owed by the Customer to EncoreFX, any amounts owed by EncoreFX to the Customer.

**ARTICLE 11 – TERMINATION**

**11.1** EncoreFX may suspend or terminate Services to the Customer at any time without notice.

**11.2** Subject to Section 11.3, the Customer may terminate this Agreement at any time by providing written notice to EncoreFX.

**11.3** Provided the Customer has not violated the terms of this Agreement, all Transactions which were entered into prior to termination shall be carried out in accordance with the instructions of the Customer relating to such Transactions. The Agreement shall continue until such time as all obligations of the Customer and of EncoreFX pursuant to such Transaction have been performed.

**11.4** Notwithstanding Section 11.3 hereof, in the event that the Customer has violated the terms of this Agreement in any way including, but not limited to, not performing any of its obligations under any Transaction, making a misrepresentation in any of its representations and warranties under this Agreement, providing any untrue or misleading information to EncoreFX, participating in money laundering or being pursued by law enforcement and/or regulatory agencies, or becoming Bankrupt or insolvent or committing an act of Bankruptcy, EncoreFX may, at its sole discretion, withhold the Services offered by EncoreFX from the Customer and/or terminate any pending Transactions immediately by providing written notice to the Customer of the termination and of its violation of the terms of this Agreement. In the event that any Transaction is terminated based upon a Customer's violation of any term or condition of the Transaction or this Agreement by the Customer, EncoreFX will be relieved of any and all its obligations under this Agreement to complete any pending Transaction, including its obligations under any Transaction entered into prior to such termination.

**11.5** Subject to Section 11.4, within two (2) Business Days of termination, the Customer and EncoreFX shall settle all amounts due and owing under pending Transactions (including in EncoreFX's discretion, all Spot Transactions, Forward Contracts and Option Contracts) and this Agreement.

**11.6** All rights and obligations under this Agreement relating to confidentiality and privacy, data and records, and limitation of liability/indemnity shall survive the termination of this Agreement and any Transaction and shall continue indefinitely.

**ARTICLE 12 – DATA AND RECORDS**

**12.1** EncoreFX will retain a record of information provided to it by the Customer, including a database of all instructions provided to it by the Customer and Confirmations issued. EncoreFX will record the Customer's use of specific Services offered by EncoreFX. The Customer acknowledges and understands that the data and records collected by EncoreFX may be used by it for its own business purposes. All data and records collected by EncoreFX will be collected and maintained strictly in accordance with EncoreFX's own privacy policy.

**12.2** The records kept by EncoreFX shall be conclusive and binding upon the Customer in the event of any dispute or legal proceeding involving the Customer, EncoreFX and any third party in the absence of clear proof that the records of EncoreFX are incorrect or incomplete.

**ARTICLE 13 – CONFIDENTIALITY AND PRIVACY**

**13.1** EncoreFX will take all commercially reasonable precautions to maintain the privacy and confidentiality of all information provided to EncoreFX by the Customer, including collecting, using and disclosing all such information strictly in accordance with EncoreFX's own privacy policy. The Customer understands and acknowledges that information exchanged electronically is subject to inherent risks with respect to privacy and confidentiality, and that EncoreFX cannot assure that any particular communication between itself and the Customer will remain private and confidential. The Customer hereby indemnifies and holds EncoreFX harmless for any unintended or accidental disclosure by EncoreFX of its confidential information.

**13.2** EncoreFX may disclose certain personal, private or confidential information of the Customer to employees, agents, officers or affiliates of EncoreFX for the purpose of providing the Services offered by EncoreFX. Further, EncoreFX may disclose certain personal, private or confidential information of the Customer as required by law and for the purposes of complying with all applicable legislation or legal requirements.

**ARTICLE 14 - TRANSMISSION OF DATA AND INFORMATION**

**14.1** The Customer understands and acknowledges that data and information transmitted electronically may be subject to loss or error. EncoreFX shall not be liable to the Customer for any loss or damage suffered as a result of or in connection with any such loss or error or resulting from or in connection with any transmission failure or communication failure.

**14.2** Any time information (which includes instructions) is transmitted electronically by the Customer to EncoreFX, EncoreFX will use all commercially reasonable efforts to provide the Customer with confirmation of EncoreFX's receipt of such information. Failure to provide the Customer with a confirmation will not invalidate or cancel any Transactions entered into by the Customer and EncoreFX pursuant to the transmission of such information. Any such information transmitted by the Customer to EncoreFX will be deemed to have been duly authorized by the Customer and EncoreFX will be entitled to rely on such information.

**14.3** Pursuant to applicable privacy legislation, EncoreFX is only responsible for the security and confidentiality of information under its control. EncoreFX is not liable for any loss or damage arising out of an error, transmission failure or communication failure that is outside the control of EncoreFX.

**ARTICLE 15 – SERVICE MODIFICATIONS AND INTERRUPTIONS**

**15.1** All electronic or internet-based Services offered by EncoreFX are subject to interruption, malfunction or breakdown. EncoreFX does not guarantee the offering or availability of such Services, and shall not be responsible for any losses incurred by the Customer resulting from the unavailability or malfunction of any such Services.

**15.2** EncoreFX may alter, modify or terminate the Services offered by it, including any electronic or internet-based Services, at any time for any reason whatsoever. EncoreFX will provide the Customer with written notice of any upcoming alteration, modification or termination of any Services offered by it where possible. Failure to provide such notice will not result in EncoreFX being liable to the Customer for any losses or damages suffered as a result of the alteration, modification or termination of any Services offered by it.

**ARTICLE 16 – CONSENT TO CREDIT CHECKS**

**16.1** The Customer will provide EncoreFX with all banking information reasonably required and requested by EncoreFX from time to time, including the name and contact information of the Bank at which the Customer maintains an account. The Customer authorizes and consents to EncoreFX contacting the Customer's Bank to verify the Customer's identity, account information, and any other information reasonably required by EncoreFX from the Customer's Bank. The Customer further authorizes EncoreFX to take all commercially reasonable measures to confirm the Customer's identity and confirm the Customer's ability to meet its obligations under this Agreement and under the terms of any Transaction between the Customer and EncoreFX.

**16.2** The Customer authorizes and consents to EncoreFX conducting credit assessments by contacting such credit bureau or agency as EncoreFX may determine, in its sole discretion, from time to time to allow EncoreFX to confirm the Customer's credit worthiness.

**ARTICLE 17 - ANTI-MONEY LAUNDERING**

**17.1** EncoreFX will take precautions, as set out in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, to ensure that it is not participating in or assisting money laundering or terrorist financing.

**17.2** EncoreFX may, at its own sole discretion, refuse to accept instructions from the Customer or refuse to carry out any Transaction if it suspects that the Transaction may breach any law or regulation, or that the Transaction may involve the proceeds of crime or unlawful conduct. The Customer agrees to provide all information reasonably required by EncoreFX in order to ensure that any Transaction does not breach any law or regulation or that any Transaction does not involve the proceeds of crime or unlawful conduct.

**17.3** The Customer acknowledges and understands that law enforcement and regulatory agencies may inspect any Transaction either with the consent of EncoreFX or pursuant to applicable law. As such, any information provided to EncoreFX by the Customer may be subject to disclosure to law enforcement or regulatory agencies pursuant to such inspection. The Customer hereby consents to the disclosure of any such information, as required by law, to law enforcement and regulatory authorities.

**ARTICLE 18 – SECURITIES LAWS AND DERIVATIVES LAWS COMPLIANCE**

**18.1** The Customer shall be subject to the terms and conditions set out in Appendix "A".

**18.2** The Customer represents and warrants that it is not resident in or otherwise subject to the laws of any jurisdiction other than British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec Nova Scotia, Prince Edward Island, New Brunswick or Newfoundland and Labrador.

**ARTICLE 19 - LIMITATION OF LIABILITY/INDEMNITY**

**19.1** EncoreFX will not be liable to the Customer for any losses or damages suffered under this Agreement except to the extent that such losses or damages are directly attributable to the gross negligence or wilful misconduct of EncoreFX, its officers or its employees.

**19.2** EncoreFX will not be liable to the Customer for any losses or damages incurred as a result of the Customer's use of any online platform or online ordering system, any technical difficulties associated with the communication of information, or any interruption, malfunction or lack of availability of any online platform. Further, EncoreFX will not be liable to the Customer for any losses or damages incurred as a result of any act or omission of the Customer in connection with the operation of any device that allows the Customer to access online platforms or communicate information to EncoreFX.

**19.3** EncoreFX's liability to the Customer shall at all times be limited to the value of the Transaction out of which the claim arises. In no event shall EncoreFX be liable to the Customer for any economic losses or damages, nor will it be liable for any lost profits or punitive, exemplary or special damages, each of which is hereby excluded by agreement of the Customer and EncoreFX.

**19.4** EncoreFX will not be liable to the Customer for any losses or damages suffered by the Customer as a result of delays in monies being received by a designated **Payee**.

**19.5** The Customer acknowledges and understands that all representations and warranties provided by the Customer under this Agreement will be relied upon by EncoreFX. The Customer agrees to indemnify and hold harmless EncoreFX and its officers, directors, employees, securityholders and agents from and against any losses, damages or liabilities arising out of any breach of any warranty or representation of the Customer.

**19.6** The Customer acknowledges and understands that anything received from or provided by EncoreFX, including but not limited to, any and all information, communications and materials, is provided for the purpose of information only, and does not constitute advice given by EncoreFX to the Customer. The Customer agrees to indemnify and hold harmless EncoreFX and its officers, directors, employees, securityholders and agents from and against any losses, damages or liabilities arising out of the Customer's reliance on such information, absent gross negligence or wilful misconduct on the part of EncoreFX.

**ARTICLE 20 – AMENDMENTS TO MASTER TERMS AND CONDITIONS**

**20.1** EncoreFX reserves the right to amend any terms of these Master Terms and Conditions or this Agreement at any time for any reason whatsoever.

**20.2** Any amendments to the Master Terms and Conditions or this Agreement shall be effective upon the Customer's receipt of notice of such amendments. The Customer's continued use of the Services offered by EncoreFX following receipt of notice of any amendment shall constitute the Customer's agreement and consent to any such amendment without any signature from the Customer or further action of the Customer.

**ARTICLE 21 – NOTICE**

**21.1** In this Agreement, written notice means a notice in writing delivered by mail or courier to the address provided in this Agreement, or by facsimile to the fax number provided in this Agreement or by e-mail to the e-mail address provided in this Agreement. With respect to these Master Terms and Conditions, notice of change to these terms and conditions shall be given by posting same to the EncoreFX website which shall be effective notice from the date of posting (unless otherwise indicated) and which posting shall be sufficient notice to Customer for all Transactions entered into from that date forward.

**21.2** Notice provided by mail or courier shall be deemed to have been received on the date that such notice is delivered. Notice provided by facsimile or e-mail shall be deemed to have been received on the date that such notice is sent, provided that no indication of service interruption is received by the sender at such time as the notice is provided.

**21.3** Either Party to this Agreement may provide notice to the other that it wishes to change its address, fax number or e-mail address for the purpose of receiving notices at any time.

**ARTICLE 22 – MISCELLANEOUS**

**22.1** The parties acknowledge that they have specifically requested that all correspondence, agreements and other communications between the Customer and EncoreFX be in the English language. Les Parties reconnaissent qu'elles ont spécifiquement exigé que toute correspondence, convention et toute autre communication soit effectuée dans la langue anglaise.

**22.2** The Customer may not assign its interest in this Agreement without the prior written consent of EncoreFX. Where the Customer is a corporate entity, any Transaction whereby the effective voting control of the Customer changes shall be deemed to be an assignment for the purposes of this paragraph. EncoreFX may assign this Agreement without prior notice to or the consent of the Customer.

**22.3** This Agreement, including all interests in any Transactions, shall enure to the benefit of EncoreFX, its successors and assigns and shall remain binding upon the Customer and its respective successors and assigns.

**22.4** No delay or omission on the part of EncoreFX in exercising any of its rights under this Agreement shall be deemed to be a waiver thereof, nor shall any waiver preclude the right of EncoreFX to exercise such right in the future pursuant to the terms of this Agreement.

**22.5** Headings in this Agreement are used for ease of reference only and do not form part of this Agreement.

**22.6** Neither Party shall be liable for any failure or delay in the performance of any of its obligations under this Agreement which arise due to acts of God, war, terrorism, civil unrest or any other circumstances which are reasonably beyond the Party's control, provided that insolvency, lack or funds or other financial cause for delay will not be permitted reasons for any failure or delay hereunder.

**22.7** In the event any one or more of the provisions contained in this Agreement should be held to be invalid, illegal or otherwise unenforceable in any respect under the laws of any applicable jurisdiction, such provision shall only be ineffective to the extent of such invalidity, illegality or unenforceability and the remaining provisions of this Agreement shall remain in full force and effect.

**22.8** Time shall be of the essence in this Agreement. Any reference to times shall refer to the local time of EncoreFX's head office in Victoria, British Columbia, Canada, being **PST**.

**22.9** This Agreement shall be construed in accordance with and governed by the laws of the Province of British Columbia and the laws of Canada. All Transactions hereunder shall be deemed to have been entered into and have taken place in Canada at the head office of EncoreFX in Victoria, British Columbia, Canada. The courts of British Columbia shall have exclusive jurisdiction for settling disputes arising out of this Agreement and both Parties irrevocably submit to that jurisdiction.

**22.10** This Agreement, except as may be supplemented by an additional agreement entered into between the Parties and the terms and conditions of each Transaction, constitutes the entire agreement between the Parties with respect to the use of the Services by the Customer.

**ARTICLE 23 – DEFINITIONS**

**"ACH"** has the meaning ascribed thereto in Section 3.1 hereof.

**"Additional Margin Deposit"** has the meaning ascribed thereto in Section 6.3 hereof.

**"Agreement"** means these Terms and Conditions, together with the specific terms and conditions related to each Transaction entered into on the basis of and adopting these Terms and Conditions as forming part of such Transaction.

**"Application"** has the meaning ascribed thereto in Section 1.1 hereof.

**"Bank"** means an entity chartered by a state or federal government, which receives demand and time deposits, pays interest on those deposits and makes loans and invests in securities based on those deposits.

**"Bank Draft"** means a cheque drawn by one Bank against funds deposited into its account at another Bank, authorizing the second Bank to make payment to the individual named in the Bank Draft.

**"Business Day"** means a day, other than (a) Saturday and Sunday, and other than (b) a day on which commercial banking institutions are required to be closed in Calgary, Alberta; Winnipeg, Manitoba; Vancouver, British Columbia; Toronto, Ontario or Montreal, Quebec.

**"Certified Cheque"** means a cheque for which the Bank guarantees payment.

**"Confirmation"** means a document provided by EncoreFX to the Customer setting out the terms of a specific Transaction in accordance with the Agreement reached with the Customer or the instructions provided by the Customer.

**"Credit Facility Letter"** means an agreement between EncoreFX and the Customer outlining the credit terms approved by EncoreFX and accepted by the Customer including transaction limits, margin and deposits.

**"Currency"** means any form of money, including paper notes and coins, which is issued by a government and used in public circulation.

"**Expire**" means the decision of the Option holder not to exercise its Option.

"**Expiry Date**" means the date on which an Option Expires.

"**Expiry Time**" means the time at which an Option Expires on the Expiry Date.

**"Foreign Exchange"** means the trade of one national Currency for another and takes place "over the counter" and centrally on an inter-bank system.

**"Forward Contract"** means an OTC Transaction that is not a Spot Transaction, whereby EncoreFX agrees to deliver a specific Currency to the Customer, or as directed by the Customer, at some point of time in the future.

**"Hedge/Hedging"** means a type of protective investment designed to offset the risk of adverse price movements in Foreign Exchange.

**"Losses"** has the meaning ascribed thereto in Section 6.5 hereof.

**"Margin Call"** means a demand by EncoreFX on the Customer to deposit monies with Encore FX for the purpose of ensuring that the Customer's margin account is brought up to the minimum margin requirements for the Transaction.

**"Margin Deposit"** means a good faith deposit placed by a Customer with EncoreFX as collateral to hold a position for a Forward Contract or Option Contract.

**"Mid-Market Rate"** means a rate derived from the mid-point between the "buy" and "sell" rates for a currency.

**"Online Ordering System"** means the web based system and procedures to be followed as offered by EncoreFX to its customers to access certain Services of EncoreFX.

"**Option**" means the right granted pursuant to an Option Contract to either buy or sell a Currency at a given price at some date in the future.

**"Option Contract"** means an OTC derivative contract that grants the holder the right, but not the obligation, to either buy or sell a Currency at a given price at some date in the future.

**"OTC"** means over the counter as compared to a securities exchange based transaction.

**"Parties"** means the Customer and EncoreFX collectively, each individually being a "Party".

**"Payee"** means an individual who receives a form of payment.

"**PST**" means Pacific Standard Time.

**"Services"** has the meaning ascribed thereto in Section 3.1 hereof.

"**Settlement Date**" means the date on which the underlying Currency of an Option Contract or Forward Contract is delivered.

**"Speculation"** means the practice of purchasing Currency with the intention of investing in or profiting from price fluctuations that occur in the Currency as compared to an intention to Hedge when purchasing Currency.

**"Spot Transaction"** means an OTC Transaction, whereby EncoreFX agrees to deliver a specific Currency to the Customer, or as directed by the Customer, within two (2) Business Days of the order being placed by the Customer with EncoreFX.

**"Transaction"** means the specific Service(s) contracted for by the Customer with EncoreFX.

**"Wire Transfer"** means an electronic transfer of funds including by way of direct deposit.

# APPENDIX "A" TO THE MASTER TERMS AND CONDITIONS: **BRITISH COLUMBIA**

A Customer resident in or otherwise subject to the laws of the Province of British Columbia (as indicated on the Customer's Application Form) are subject to the following terms and conditions. Terms with the first letter capitalized herein, but not defined herein, shall have the respective meaning ascribed thereto in the Master Terms and Conditions:

1. **Qualified Party**. If the Customer is entering into Forward Contracts or Option Contracts with EncoreFX as part of the Services, then the Customer hereby represents and warrants to EncoreFX (and acknowledges that EncoreFX is relying thereon) that it is a "Qualified Party" as such term is defined in Section 1.1 of Blanket Order 91-501 *Over-the-Counter Derivatives*, and specifically the Customer is a person that uses a currency (the "**Notional Currency**") in its business and that is entering into a transaction with EncoreFX, which may involve the purchase or sale of one or more options for commercial hedging purposes in connection with such Notional Currency, provided that a material component of the underlying interest is:

   (a) the Notional Currency;
   (b) a related currency, security or variable;
   (c) a currency, security or variable that directly or indirectly affects the Notional Currency;
   (d) a currency, security or variable for which there is a high degree of correlation between the movement in its value and the movement in the value of the Notional Currency; or
   (e) another over-the-counter derivative, where a material component of the underlying interest of that over-the-counter derivative is a currency, security or variable referred to in the foregoing Section (a) to Section (d), inclusive.

   The foregoing representation is deemed to be made every time the Customer enters into a Transaction involving a Forward Contract or an Option Contract.

2. **Collection and use of Personal Information**. The Customer acknowledges that the Master Terms and Conditions, the Appendices and Schedules attached thereto and the documents contemplated by the foregoing, require the Customer to provide certain information to EncoreFX. Such information is being collected by EncoreFX for the purposes of determining the Customer's eligibility to enter into Transactions with EncoreFX under applicable securities laws and applicable derivatives laws and completing filings that may be required by any governmental or regulatory authority. Such filings may be made to a trade repository in accordance with applicable laws and if so made, shall be available for review by the securities regulatory authorities of the provinces of Canada. The Customer's information may be disclosed by EncoreFX to securities regulatory authorities, the professional advisors to EncoreFX or Canada Revenue Agency ("**CRA**"). By entering into these Master Terms and Conditions, the Customer is deemed to be consenting to the foregoing collection, use and disclosure of the Customer's information.

3. **Legal Entity Identifier**. There are new regulations in connection with over-the-counter derivatives that are currently in place in Manitoba, Ontario and Quebec and which EncoreFX anticipates will be coming into effect in all of the provinces of Canada, including British Columbia (see the handout provided with your Application entitled "Disclosure – Reporting Requirements" (the "**Derivatives Reporting Requirements**"), however, the exact timing of which is unknown. As EncoreFX is already subject to the Derivatives Reporting Requirements in Manitoba, Ontario and Quebec, and as EncoreFX will be required to comply at some point in the future in all of the provinces of Canada, EncoreFX will be reporting all of its Transactions with Customers in accordance with the Derivatives Reporting Requirements. Therefore, in order to enter into Forward Contracts and Option Contracts with EncoreFX, the Customer is required to obtain a legal entity identifier ("**LEI**"). The method to do so is set out in Disclosure – Reporting Requirements document of which the Customer acknowledges having received a copy. Entering into Forward Contracts or Option Contracts shall require that the Customer have a valid LEI in good standing.

4. **Reporting Requirement**. By agreeing to be bound by these Master Terms and Conditions the Customer consents to the disclosure of information in accordance with the Derivatives Reporting Requirements.

   Notwithstanding anything to the contrary in any non-disclosure, confidentiality or other agreement between the Customer and any other party, the Customer hereby consents to the disclosure of information:

   (a) to the extent required by Derivative Reporting Requirements in accordance with which the other party is required to act; or

   (b) to and between the other party's head office, branches or affiliates, or any persons or entities who provide services to such other party or its head office, branches or affiliates, in each case, in connection with such Derivative Reporting Requirements.

The Customer acknowledges that pursuant to global regulatory reform initiatives, regulators require reporting of trade data to increase market transparency and enable regulators to monitor systemic risk to ensure safeguards are implemented globally.

The Customer further acknowledges that disclosures made pursuant hereto may include, without limitation, the disclosure of trade information including a party's identity (by name, address, corporate affiliation, identifier or otherwise) to any data repository or one or more systems or services operated by any trade repository ("**TR**") and any relevant regulatory authority. The Customer further acknowledges that, for purposes of complying with the Derivative Reporting Requirements, a party may use a third party service provider to transfer trade information into a TR and that a TR may engage the services of a global trade repository regulated by one or more governmental regulators. The Customer also acknowledges that disclosures made pursuant hereto may be made to recipients in a jurisdiction other than that of the disclosing party or a jurisdiction that may not necessarily provide an equivalent or adequate level of protection for personal data as the Customer's home jurisdiction. For the avoidance of doubt, (i) to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy or other law imposes non-disclosure requirements on transactions and similar information required or permitted to be disclosed as contemplated herein but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by the Customer for purposes of such law; (ii) any agreement between the Customer and another party to maintain confidentiality of information contained in any agreement between the Customer and the other party or in any non-disclosure, confidentiality or other agreement shall continue to apply to the extent that such agreement is not inconsistent with the disclosure of information in connection with the Derivative Reporting Requirements as set out herein; and (iii) nothing herein is intended to limit the scope of any other consent to disclosure separately given by us to another party.

The Customer represents and warrants that any third party to whom the Customer owes a duty of confidence in respect of the information disclosed has consented to the disclosure of that information.

5. **Maintaining Accurate Information**. The Customer shall ensure that all information provided to EncoreFX, from time to time, remains accurate in all respects and the Customer shall provide notice to EncoreFX immediately if such information changes. In particular, and without limiting the generality of the foregoing, the Customer shall notify EncoreFX should any of the following change in connection with the Customer:

   a. business name
   b. location of business offices (whether new or relocated)
   c. Qualifying Party status (see Section 1 above of this Appendix A)
   d. local counterparty status
   e. legal entity identifier (LEI)
   **f.** banking information

# APPENDIX M

Ernst & Young Inc.
700 West Georgia Street
Vancouver, BC V7Y 1C7

Tel: +1 604 891 8200
Fax: +1 604 899 3530
ey.com

Building a better working world

**VIA EMAIL** [•] April 2020

To Client name,

We refer to our letter dated X April 2020 (the "**Margin Call Letter**") notifying Client name, among other things, of the bankruptcy of EncoreFX Inc. ("the **Company**") and Client name's obligation to pay amounts due under margin calls pursuant to the Master Terms and Conditions between the Company and Client name.

The Company has not received the margin calls payment within two business days as required under the Master Terms and Conditions. Pursuant to the Master Terms and Conditions, the Company hereby notifies Client name that:

- Client name is in violation of the Master Terms and Conditions; and
- The Company is terminating all Transactions (as defined in the Master Terms and Conditions, including Forward Contract and Option Contracts, as applicable) in accordance with the terms of the Margin Call Letter.

Upon the termination of the Transactions due to Client name's violation of the Master Terms and Conditions, the Company is relieved of its obligations under the Master Terms and Conditions to complete any Transactions, including its obligations under any Transactions entered into before such termination.

The Company has closed out all of Client name's Transactions. As a result, the amount of CAD $OTM amount is now due and payable to the Company by Client name (the "**Total Amount Outstanding**"). The Total Amount Outstanding is calculated as of April [6/7] **[NTD: Use April 6 for clients who received a letter on April 1; use April 7 for clients who received a letter on April 2.]**, 2020 and includes amounts under Transactions that may have recently expired and closed out. A copy of the details of the termination are attached as Schedule "A" to this letter.

On a without prejudice basis we have deducted the amount of $[•] ( the "**Deducted Amount**") from the Total Amount Outstanding which represents the amount of Margin Calls or Margin Deposits made prior to the bankruptcy filing on March 30, 2020. The legal right to reduce the Total Amount Outstanding by the Deducted Amount has not yet been determined by the Court. A Court may decide that the Deducted Amount may not be properly deducted from Total Amount Outstanding. In the event a Court decides that no amount should have been deducted from the Total Amount Outstanding (including the Deducted Amount) we reserve the right to claim the Deducted Amount from **Client name** at any time. After deducting the Deducted Amount from the Total Amount Outstanding the amount owing is $[•].

**The Master Terms and Conditions require Client name to pay $OTM amount within two business days from the date of this letter. Please refer to the wire instructions in Schedule "B" attached to this letter.**

**Client name's failure to make such payment will leave the Trustee with no choice but to exercise its legal rights to collect such amount from Client name.**

* * * * *

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For any questions or concerns, please contact **receivables@encorefx.com**.

Respectfully,

**ERNST & YOUNG INC.**
In its capacity as Trustee
in the bankruptcy of EncoreFX Inc.
and not in its personal capacity
Per:

Peter Venetsanos, CPA, CA, CIRP, LIT
Vice President

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**Schedule "A"**
**Details of Termination**

[Attached.]

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**Schedule "B"**
**Wire Instructions**

[Attached.]

# APPENDIX N

EY
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Ernst & Young Inc.
700 West Georgia Street
Vancouver, BC V7Y 1C7

Tel: +1 604 891 8200
Fax: +1 604 899 3530
ey.com

**VIA EMAIL**

[•] April 2020

To Client name,

As you are aware, on March 30, 2020 ("**Bankruptcy Date**"), EncoreFX Inc. (the "**Company**") filed an assignment in bankruptcy pursuant to Section 49(1) of the *Bankruptcy and Insolvency Act* (Canada) with respect to its Canadian operations. Ernst & Young Inc ("**EY**") was appointed trustee in bankruptcy (the "**Trustee**") of the Company.

Capitalized terms in this letter not otherwise defined have the meaning given to them in the Master Terms and Conditions ("**MTCs**") contained in the New Account Application (the "**Customer Agreement**") governing your relationship with the Company.

We write to you as a client of the Company whose Transactions in the aggregate are in the money ("**ITM**") at the time of our last calculation. That means that as at the time of that calculation, you may be a creditor of the Company (subject, among other things, to fluctuations in currency exchange rates and any other potential liabilities between you and the Company).

**COURT ORDER**

The Trustee sought and obtained a court order before the Supreme Court of British Columbia (the "**Court**") on April __, 2020 (the "**Order**") authorizing the Trustee to disclaim any Transactions between the Company and its customers where such Transactions were calculated to be ITM (the "**ITM Customers**"), including Client name. A copy of the Order is enclosed as Schedule "A" to this letter. The Trustee has not yet taken any steps to disclaim the Transactions of the ITM Customers.

The rationale for the Trustee seeking the authorization to disclaim ITM Customers contracts are detailed in a report filed by the Trustee, dated April **[22]**, 2020, with the Court; a copy of which report is available on the Trustee's website at www.ey.com/ca/EncoreFX.

To mitigate the impact on ITM Customers, to the extent possible, and based on the individual needs of each customer of EncoreFX, we are providing the ITM Customers an option with respect to their collective net contract position. The options are as set out below:

**OPTIONS**

The Trustee is providing the ITM Customers with the following options:

1. **Automatic closing out of Client name's Transactions**

   **Unless the Trustee receives your written instructions to keep your Transactions open by 5 PM PDT on [•], 2020 (the "Instructions Deadline"), the Trustee will close out your Transactions not previously closed out as of [•], 2020.** If the Trustee closes out your Transactions, the Trustee will provide a statement to you shortly thereafter that will detail the closing out of your Transactions. That statement will show, as of that date, the settlement details and your claim as against the estate as an unsecured creditor. To assist you with the bankruptcy process, the Trustee will complete a proof of claim form and admit same on your behalf, subject only to receiving back from you an executed copy of the proof of claim form for purpose of the bankruptcy estate administration.

**2. Conditional Maintenance of Client name's Transactions**

You may provide written instructions to the Trustee by no later than the Instructions Deadline to keep your Transactions open until the Settlement Date. **The Trustee advises that it will be unable to perform the settlement obligations under the Transactions on the Settlement Date; the maturity date will merely dictate the value of your unsecured claim for distribution purposes (including a *pro rata* sharing of the monies to be distributed by the Trustee, if any, following the conclusion of these proceedings).** Therefore, the maintenance of any of your Transactions is subject to the following conditions:

(a) You release the Trustee from any liability arising in connection with any of the Transactions.

(b) You acknowledge that your only remedies, if any, are against the Company as an unsecured creditor of the Company.

(c) You agree to indemnify and hold harmless the Company's estate and the Trustee, personally, for any losses suffered by them in connection with the Transactions (except to the extent of the Transactions' ITM amount on the Settlement Date).

(d) You acknowledge that your ITM positions may become out of the money ("**OTM**") based on fluctuations in currency exchange rates. If your Transactions become OTM, the Trustee advises and you acknowledge that the Credit Facility Letter, if any, between you and the Company is terminated and you will strictly comply with the MTCs to which the contracts were subject, including payment of margin payments. **This may result in your being a debtor of the Company.**

(e) You enter into a written agreement with the Trustee in a form satisfactory to the Trustee's counsel (acting reasonably) providing for the above conditions.

For purpose of the bankruptcy proceeding, the Trustee will complete a proof of claim form and admit same, based on the FX rate applicable as at the Bankruptcy Date, on your behalf, subject only to receiving back from you an executed copy of the proof of claim form for purpose of the bankruptcy estate administration. Upon maturity of the Transactions (the final contract associated with your account), the Trustee will amend the amount of your unsecured claim based on the ITM position, if any, applicable at that date; an amended proof of claim form will be provided to you for execution and return thereafter.

Should you desire to proceed with the Conditional Maintenance option, we would ask that you please contact Samer Awadh of MLT Aikins LLP at sawadh@mltaikins.com before the Instructions Deadline. A form of agreement will be provided to you by MLT Aikins LLP, legal counsel to the Trustee.

**FIRST MEETING OF CREDITORS**

Client name may have a claim against the Company for the Total Amount Outstanding. Client name may have other claims against the Company. Client name may wish to seek the advice of counsel to

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determine the quantum of its claim and to file a proof of such claim as an unsecured creditor of the Company. **Please note that the first meeting of creditors is currently scheduled for May 7, 2020.**

*****

For any questions or concerns, please contact **receivables@encorefx.com**.

Respectfully,

**ERNST & YOUNG INC.**
In its capacity as Trustee
in the bankruptcy of EncoreFX Inc.
and not in its personal capacity
Per:

Peter Venetsanos, CPA, CA, CIRP, LIT
Vice President

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**Schedule "A"**
**Court Order**

[Attached.]

# EXHIBIT A

## Control Ownership Org Chart